

AN ORDINANCE AFFIRMING THE CITY )  
OF LEBANON'S LAND USE DECISION )  
IN ORDINANCE BILL NO. 34 FOR 2002, )  
ORDINANCE 2321, (HERB/COOK) )  
AND MAKING FURTHER FINDINGS IN )  
SUPPORT OF SUCH DECISION )

ORDINANCE BILL NO. 9  
For 2004  
ORDINANCE NO. 2362

WHEREAS; the City Council for the City of Lebanon passed Ordinance Bill Number 34 for 2002, Ordinance 2321, on August 14, 2002 which approved the annexation of that certain property described herein in Exhibit "A", which is incorporated here by this reference, assigning said property certain zoning; and

WHEREAS, said decision of the City Council was appealed to the Land Use Board of Appeals for the State of Oregon by the Friends of Linn County (FOLC), LUBA Case Number 2002-107; and

WHEREAS, the parties stipulated that such appeal be remanded to the local governing body for further proceedings to allow the issues raised by FOLC to be addressed by the City Council; and

WHEREAS, the case was subsequently again appealed to LUBA, assigned case number 2003-045, heard by LUBA, which ordered the remand of the case to the City Council for further consideration; and

WHEREAS, the case was appealed to the Oregon Court of Appeals in case number A122518, which heard the case on November 3, 2003 and affirmed the decision of LUBA, remanding the case to the Council for further consideration; and

WHEREAS, the City of Lebanon has received a submission by written request for annexation of real property to the City of Lebanon, signed by more than one-half of the landowners who also own more than one-half of the land in the contiguous territory described in

✓  
After Recording Please Return To:  
City of Lebanon  
Community Development Department  
853 Main Street, Lebanon, OR 97355

Exhibit "A", which real property represents more than one-half of the assessed value of all real property in the contiguous territory to be annexed; and

**WHEREAS**, the Lebanon City Council has elected to dispense with submitting the question of the proposed annexation to the electors of the City, initiating the annexation of the territory pursuant to ORS 222.120, calling a hearing and directing that notice be given as required by ORS 222.120(3); and

**WHEREAS**, after conducting the hearing and considering all objections or remonstrances with reference to the proposed annexation, and further considering the recommendation of the Lebanon Planning Commission, the issues raised in the appeal of this matter in LUBA Case No. 2003-045, the City Council finds that this annexation is in the best interest of the City and of the contiguous territory.

**NOW, THEREFORE**, the City of Lebanon ordains as follows:

**Section 1. Findings.** In addition to the findings referred to above, the City Council further adopts and finds those matters contained in Exhibit "B", which is incorporated herein by this reference as if fully set forth at this point.

**Section 2. Annexation Area.** Based upon the findings contained above and in Exhibit "B", the contiguous territory described in Exhibit "A" and incorporated herein by this reference as if fully set forth at this point is hereby proclaimed, again, to be annexed to the City of Lebanon, Ordinance Bill Number 34 for 2002, Ordinance Number 2321 is hereby affirmed and the subject property is zoned as indicated in accordance with the Lebanon Zoning Ordinance No. 1773, given the zoning of Residential Mixed Density (RM) for Linn County Tax Lot 1400 and Residential Low Density (RL) for Linn County Tax Lot 2000.

**Section 3 Record.** The City Recorder shall submit to the Oregon Secretary of State a

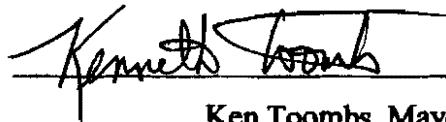
copy of this Ordinance. The City Recorder is further ordered to send a description by metes and bounds, or legal subdivision, and a map depicting the new boundaries of the City of Lebanon within ten (10) days of the effective date of this annexation ordinance to the Linn County Assessor, Linn County Clerk and the Oregon State Department of Revenue, if required by said agencies as a result of this ordinance affirming the Council's prior decision.

//

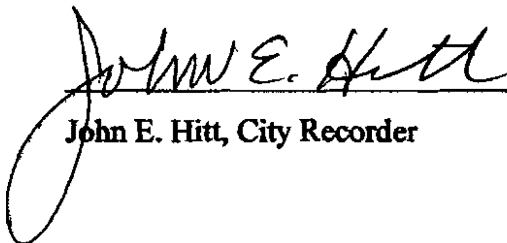
//

//

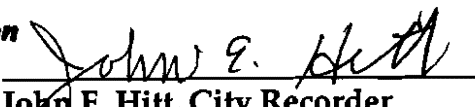
Passed by the Lebanon City Council by a vote of 6 for and 0 against and approved by the Mayor this 3rd day of November, 2004.

  
\_\_\_\_\_  
Ken Toombs, Mayor

ATTEST:

  
\_\_\_\_\_  
John E. Hitt, City Recorder

I hereby certify that I am the City Recorder for the City of Lebanon, State of Oregon; that the foregoing is a full, true, correct copy of the original; and the Ken Toombs, whose signature appears on the original document, was at the time of signing the Mayor of the City of Lebanon.

  
\_\_\_\_\_  
John E. Hitt, City Recorder

9-47

12S-2W-23A; TAX LOT 1400

PARTITION PLA

C.S. 22283

LOG POI

PARCEL 1

CONVEYANCE

1600

10N

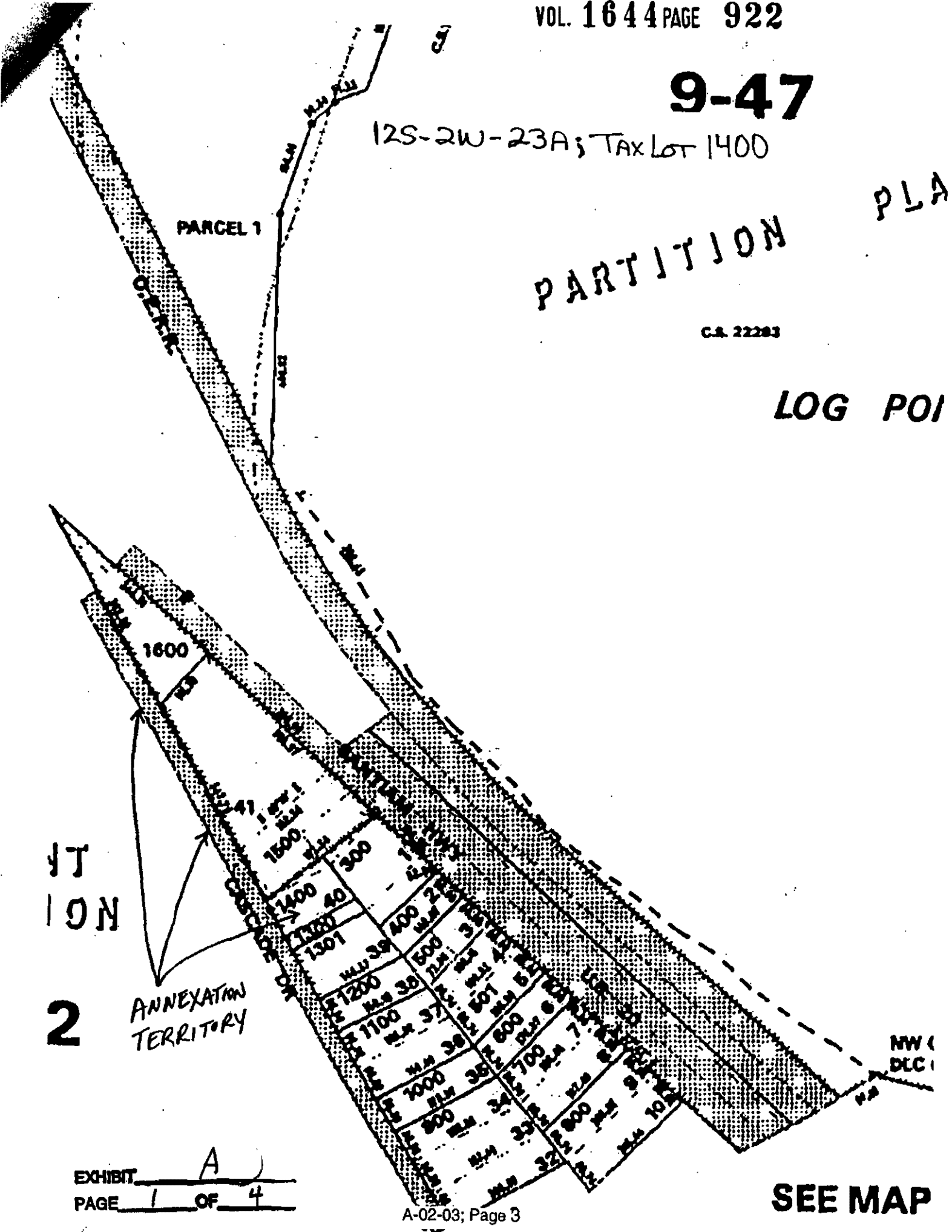
2

ANNEXATION TERRITORY

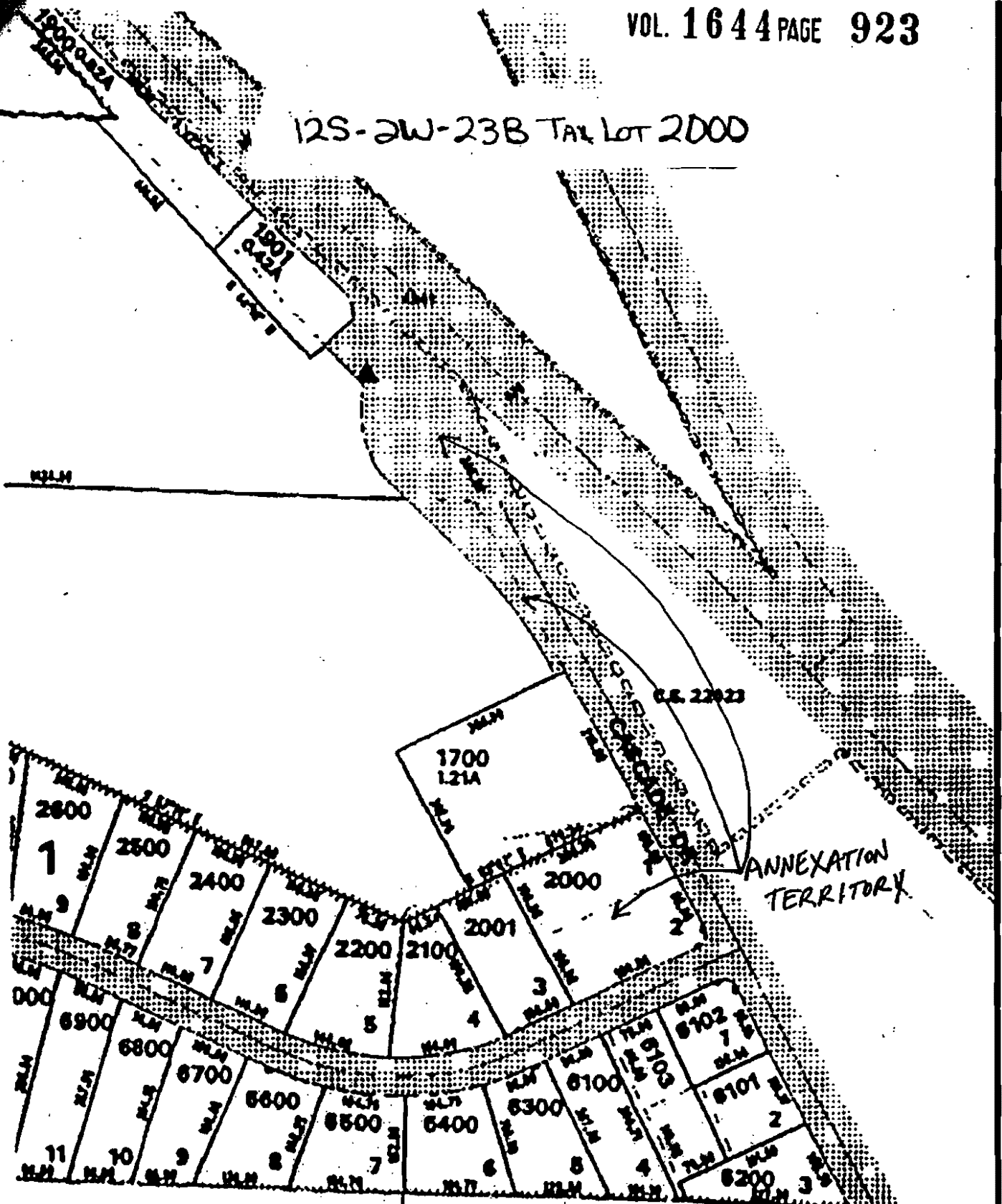
NW (DEC)

EXHIBIT A  
PAGE 1 OF 4

SEE MAP



12S-2W-23B TAX LOT 2000

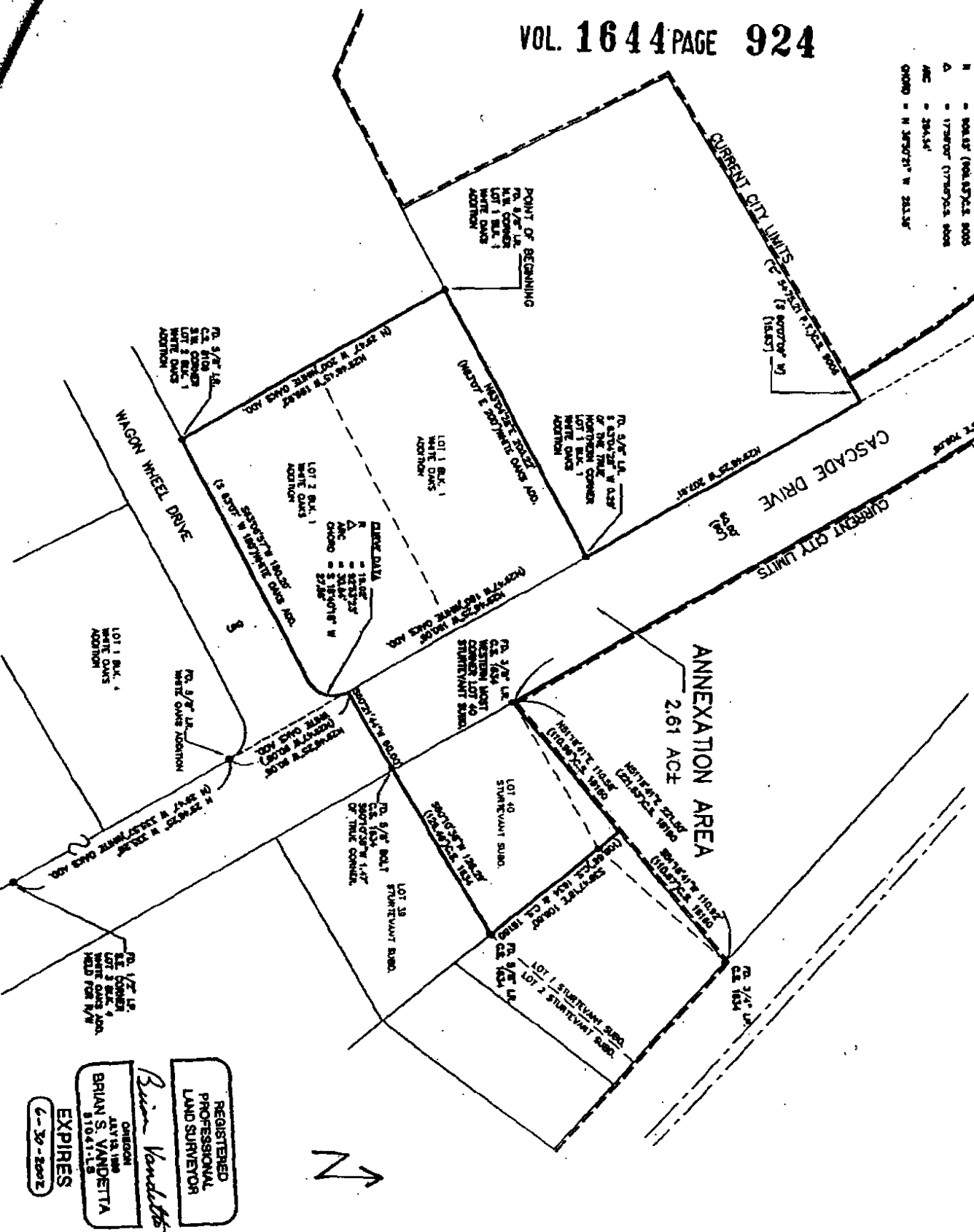


**LEBANON**  
**12 2W 23B**

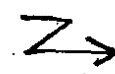
EXHIBIT A  
PAGE 2 OF 4

07/23/01.10:25:08.Mon

B = 304.5' (90.875' x 3.333)  
 A = 174.00' (174.00' x 1.000)  
 AC = 284.5'  
 CHORD = 11.390' x 28.55'



REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
*Brian Vandetta*  
 CARBON  
 JAN 12, 1989  
 BRIAN S. VANDETTA  
 810411LS  
 EXPIRES  
 4-30-2002



SHEET 1  
 OF 1  
 SCALE: 1" = 50'

date  
 4-04-02  
 Project  
 HERB-COOK.DWG  
 drawn by  
 BSV  
 checked by

ANNEXATION MAP  
**HERB-COOK**

# JAMES F. UDELL ENGINEERING & SURVEYING

63 EAST ASH STREET  
LEBANON, OREGON 97355  
PHONE (541) 451-5125  
FAX (541) 451-1366

HERB -COOK  
ANNEXATION

An area of land in Section 23 of Township 12 South of Range 2 West of the Willamette Meridian Linn County, Oregon more particularly described as follows:

Beginning at a 5/8 iron rod marking the Northwest corner of Lot 1 in Block 1 of White Oaks Addition; thence North 63°04'28" East 200.22 feet to the Northern most corner of said Lot 1 and being on the Westerly right-of-way of Cascade Drive; thence along said Westerly right-of-way the following courses and distances North 29°46'25" West 207.61 feet; thence South 60°07'09" West 15.63 feet; thence along the arc of a 909.93 foot radius curve to the left 284.54 feet (chord bears North 38°50'21" West 283.38 feet) to a 5/8" iron rod; thence North 47°47'51" West 20.09 feet; thence South 89°43'06" East 76.83 feet; thence North 29°46'25" West 336.37 feet to the Southwest right-of-way of US Highway No. 20; thence along said US Highway No. 20 right-of-way South 47°43'56" East 194.60 feet to the Easterly right-of-way of Cascade Drive; thence along said Easterly right-of-way South 29°46'25" East 709.08 feet to a 3/8" iron rod marking the Western most corner of Lot 40 in Sturtevant Subdivision; thence leaving said right-of-way North 51°18'41" East 110.58 feet; thence South 38°47'18" East 108.80 feet to a 5/8" iron rod marking the Eastern most corner of said Lot 40 ; thence South 60°10'38" West 126.29 feet to the Southern most corner of said Lot 40 on the Eastern right-of-way of Cascade Drive; thence South 60°21' 44" West 60.00 feet to the Western right-of-way of Cascade Drive; thence following the arc of a 19.02 foot radius curve to the right 30.84 feet to the Northwest right-of-way of Wagon Wheel Drive (chord bears South 16°40'18" West 27.56 feet); thence along said Northwest right-of-way South 63°06'57" West 180.20 feet to a 5/8" iron rod marking the Southwest corner of Lot 2 in Block 1 of White Oaks Addition; thence North 29°46'45" West 199.92 feet to the point of beginning.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Brian Vandetta*

OREGON  
JULY 13, 1999  
BRIAN S. VANDETTA  
51041-LS

EXHIBIT A  
PAGE 4 OF 4

EXPIRES

6-30-2007

**FINDINGS****Findings Applicable to all Criteria**

In previous Lebanon annexation proceedings, the Land Use Board of Appeals (Urbanization Element of the Comprehensive Plan, Annexation Policy #1 (page 4-P-2): States that...*the City shall annex land only within the Urban Growth Boundary on the basis of findings that support the need for additional developable land in order to maintain an orderly, compact growth pattern within the City's service capability.* LUBA stated that a specific development proposal is necessary to determine if the annexation will comply with the Comprehensive Plan and whether there is a general ability to serve the subject property with the City infrastructure. There is no requirement in the City's ordinances or policies for an annexation applicant to submit a specific development proposal. Such a proposal is only necessary in delayed annexations. The opponents in the previous annexation proceedings incorrectly cited this requirement, which was adopted by LUBA. The differences between a delayed annexation and the normal annexation process were submitted into this record so that no confusion will result in this annexation. A delayed annexation involves an agreement between the City and County to annex property in the future and permits urban uses prior to actual annexation. That is the purpose in approving a site development plan. A regular annexation does not address site development because no development will occur until after annexation.

While the City does not require the submission of a specific development proposal, applicant has submitted such a proposal in case there is continued confusion during this annexation. The specific development plan itself is non-binding and has no relevance with regard to the development that will actually occur on the site. A site development process flow chart was submitted into the record to show the process that will be followed when the property is developed. That procedure will address all impacts and necessary improvements to address those impacts at the time of development. Because impacts will not be known until the time of development, the City cannot require improvements at the time of annexation.

In addition to the findings contained herein and the evidence presented during this proceeding, the City relies on those findings made when this application was previously considered in February 2003.



**Criterion 1:**

**City Annexation Policy Section 1:** Requires proof that urban services are available or can be made available to serve the property considered for annexation and that the additional demands that would be placed on those services will not overburden their present capacities.

**Findings # 1:**

The proposed annexation complies with City Annexation Policy, Section 1, in that urban services can be made available to serve the property. Subject site known as Tax Lot 1400 is currently hooked-up to the City's sanitary sewer. The subject site known as Tax Lot 2000 currently has urban services available, but not connected. Sanitary sewer is available via the recently constructed 12-inch sanitary sewer which is nearby on Cascade Drive to the Seven Oak School. City water service can be made available in the near future as the nearest water mains consist of a 12-inch main on Santiam Highway, southeast of Truman Street and an additional 8-inch main on Market Street. Current construction on a new store, the Super Wal-Mart site will bring a major City water line to within 850 feet of the subject properties. The specific development plan presented by the applicant, indicating a maximum build out of possibly six single-family dwelling units would add only a relatively small increase to the total community need for such services as solid waste removal, communications, and electricity. The private vendors of such services have indicated that they can provide services to the subject property. The Council has considered the evidence presented concerning urban services for Wastewater, Water, Storm Drainage, Streets, Police Safety and Emergency Services, Parks, Library, Senior Services, Fire Emergency Services, Education Services, Solid Waste Services, Electrical Services and Telephone Services and finds that all of these services can be available to the subject property without overburdening the capacities of those services.

No evidence was submitted that contradicted the expert testimony and documentary evidence that was submitted into the record. The only opponent, Jim Just, provided written testimony raising as an issue the capacity of the sewage system. Mr. Just provided a partial transcript of another meeting of the city, a Citizen's Advisory Committee meeting which he represented as evidence that the wastewater system is not shown to have capacity to serve this subject property.

The City Council finds that the evidence presented to it by its City Engineer and Public Works Director is credible and sufficient to show that the City's wastewater system has the capacity to serve this subject annexation property, or that it can be developed to adequately serve the subject property. First of all, one dwelling on the tax lots, number 1400, is currently connected to the system and there is no evidence that this connection has overburdened the system. It is also noted that the Council heard testimony in a related case on a proposed annexation at a site in the same sewer service area in the vicinity of this proposal, Gilbert Limited Partnership, file A-02-03, wherein the evidence showed that the City is committed to replace or improve the Harrison Street pump station which will eliminate concerns about capacity to the system. Furthermore, the Council finds that Mr. Ruef's out of context statements made at the Citizen's Advisory Committee concern capacity for the system for a 25 year event. The Council takes notice that the Department of Environmental Quality considers fining the city when the system overflows

during a 5 year event. Accordingly, considering the proposal submitted by the applicants here, coupled with the Council's determination to replace the pump station in the near future, the Council is satisfied that the evidence, taken in its entirety, shows that the system will not be overburdened by this annexation.

As stated by City staff, the City Council, and the representative for Applicant, it is not possible to address all of the specific impacts on drainage, traffic, or any other urban services, until the exact development that will occur on the annexed property is known. Calculating these impacts is a specific mathematical process that cannot be undertaken until the time of development when the variables will be better known. That is the purpose of the multi-level approval process followed by the City of Lebanon. It is enough to show that the services can be made available and will not overburden the facilities.

**Criterion 2:**

**City Annexation Policy Section 2:** *States that public rights of way necessary for the safe and efficient movement of traffic, bicycles and pedestrians shall be provided with the annexation and without obligation to the City of Lebanon.*

**Findings # 2:**

The proposed annexation complies with City Annexation Policy, Section 2. Cascade Drive is adjacent to the subject property and is available to serve the annexation. Cascade Drive is presently a county standard road. There will be no additional impact as a result of this annexation itself. Case law dictates that public right-of-way shall be dedicated at the time or juncture when the nexus or need is established by an actual development proposal. The development proposal which has been submitted as required by LUBA in this annexation is a non-binding proposal.

The subject property is bordered by ample rights-of-way to ensure safe and efficient movement of pedestrian and vehicular traffic. Future public rights of way will be dedicated as the eventual development of the subject property itself is considered.

No evidence or testimony was submitted in opposition to these findings and no argument was made that Criterion 2 was not met.

**Criterion 3:**

**City Annexation Policy, Section 3:** *Specifies that parties involved in seeking the annexation or who may be included in the annexation shall initiate a program to upgrade any urban services and/or public facilities within the area considered for annexation that do not meet standards as may be established by the City of Lebanon.*

**Findings # 3:**

The proposed annexation complies with City Annexation Policy, Section 3, in that one of the subject properties (Tax Lot 1400) is currently hooked-up to the City's sanitary sewer service. Additionally, a 12-inch sanitary sewer main has been constructed on Cascade Drive to the Seven Oak School. This sewer main is available to serve the annexation.

The nearest water mains are a 12-inch main on Santiam Highway southeast of Truman Street and an 8-inch main on Market Street which are in the vicinity of the subject properties. Further development may require drainage improvements. Additional on-site public and private infrastructure improvements will be provided as the property actually develops. Case law dictates that such public infrastructure improvements shall be provided at the time or juncture when the nexus or need is established by application for development permits. Currently, the available urban services and public facilities available to serve the property are sufficient to meet the needs of the proposed development plan. Mitigation cannot be required until the impacts of an actual development proposal have been established. As the plan is implemented, the applicant will be required to improve the urban services and public facilities on site to City standards prior to any development. At that time, the actual development of the property will be clear and the impacts can be addressed in specific detail.

The city also relies upon the findings under Criterion 1 in support of this criterion. No credible evidence was submitted to contradict the testimony and evidence submitted by qualified professionals.

**Criterion 4:**

**City Annexation Policy, Section 4:** States that *no annexation shall be considered that does not conform with the Lebanon Comprehensive Plan and its goals and policies.*

**Findings # 4:**

The proposed annexation complies with City Annexation Policy, Section 4, in that the property complies with Zoning Ordinance and Comprehensive Plan policies pertaining to the property and zoning. The submitted conceptual development plan identifies possible future land uses that conform to the Comprehensive Plan and Zoning Map designations for the property. This annexation is in conformity with all Comprehensive Plan policies and goals applicable to this annexation, and is not in conflict with any other Comprehensive Plan goal or policy. The findings under Criterion 7 are also applicable to some extent to this criterion.

LUBA has previously stated that if all other criteria are met, Criterion 4 is also met. The City has found that all other criteria were met.

**Criterion 5 and 7:**

**City Annexation Policy, Section 5:** States that *it shall be the burden of proof of the applicant that a public need exists for the proposed annexation and that the annexation is in the public's interest.*

**Urbanization Element of the Comprehensive Plan, Annexation Policy #1 (page 4-P-2):** States that...*the City shall annex land only within the Urban Growth Boundary on the*

*basis of findings that support the need for additional developable land in order to maintain an orderly, compact growth pattern within the City's service capability.*

**Findings # 5 and 7:**

The proposed annexation complies with City Annexation Policy, Section 5, in that a public need exists for developable lots to support new housing development within the City. This development represents opportunity for infill and redevelopment of the subject properties to help satisfy this need.

Another important need satisfied by this annexation is the public health need to correct failing septic systems on individual residential lots, specifically 265 Cascade Drive, Tax Lot 1400, which has a declared failed septic system. According to Linn County, Department of Health Services, the county agency that is the local authority on the issuance of septic system installation and repair permits, Oregon Administrative Rule 340-71-160(5)(f) prohibits the county from issuing a permit for an on-site sewerage disposal system when a sewerage system is both legally and physically available. Consequently, if this annexation territory is not allowed (continued) access to the City's sewerage collection system on Cascade Drive, either an imminent public health threat will occur due to the resumed use of a failed on-site septic system or the property owners will be required to vacate their home.

In support of this finding, the Council relies upon evidence in this record concerning the need for multi-family residential uses identified in the City's 1995 Periodic Review Work Program which resulted in the 1997 Buildable Lands Inventory. This work concluded that 390 acres of land would be needed to meet the City's 20-year housing needs.

The City Council also finds persuasive evidence that in September of 2004, the Willamette Valley Multiple Listing Service reported that there were only eleven properties totaling 28.55 acres of residential land on the local real estate marked at that time. Of the eleven residential properties listed on September 29, 2004, six were smaller than one-half acre, four were between .51 acres and 1.08 acres, and one was 24.58 acres in an RM zone. These statistics satisfy the Council that adequate public need exists for this annexation.

Jim Just, by written testimony, stated that the multiple listing methodology used by the City to show a need for residential property is unacceptable, without an explanation as to why it is not a proper consideration. It is clear from the evidence that there is a need for this annexation and Mr. Just failed to clarify any particular details that were inadequate to show this need. Mr. Just provided no information to contradict the testimony and evidence in the record. Therefore, the City Council finds that his testimony is not credible.

**Criterion 6:**

**Urbanization Element of the Comprehensive Plan, Phased Growth Program, Policy #1 (page 4-P-1):** States that . . . *the City shall maintain a compact growth pattern that expands the City limits incrementally in an orderly and efficient manner within the service capabilities of the City.*

**Findings # 6:**

The proposed annexation complies with Comprehensive Plan Urbanization Element, Phased Growth Program, Policy #1, (page 4-P-1) in that it would be an orderly and efficient expansion of City limits within City service capabilities. A compact growth pattern means to expand the boundaries of the City in a rational, incremental manner that will allow the development of annexed property to urban standards within the limits of City services. In other words, if Criterion 1 is met, the application goes a long way towards meeting this criterion.

These subject properties are located within the City's Urban Growth Boundary. Tax Lot 1400 abuts the city limits to the north, and Tax Lot 2000 is directly across the road to the west from Tax Lot 1400 and is one tax lot away from Santiam Village Mobile Home Park to the north, which is in the city limits. All of the area to the north, northwest, east and northeast of the annexation territory is within the City limits. Seven Oak Middle School is located to the south. Therefore, this annexation represents a timely infill opportunity that will result in a compact growth pattern that expands the City limits incrementally in this area of the City.

No credible evidence was submitted to contradict the testimony and evidence submitted into this record.

**Criterion 8:**

**Urbanization Element of the Comprehensive Plan, Annexation Policy #3 (page 4-P-2):** States that .... *Unless otherwise approved by the City, specific development proposals shall be required for annexation requests on vacant land adjacent to the City to insure completion within a reasonable time limit in conformance with a plan approved by the City.*

**Findings # 8:**

The proposed annexation complies with Urbanization Element of the Comprehensive Plan, Annexation Policy #3 (page 4-P-2), in that the applicant has provided a non-binding specific development strategy or plan for the development of the subject property, as required by LUBA. The City once again finds that there is no requirement pursuant to the criteria for such a development plan and this is purely a LUBA created criterion. Such a plan is only required if the City deems it so for conventional annexations, although such a plan is always required for delayed annexations. The conceptual development proposal identifies uses that comply with the Comprehensive Plan and Zoning Ordinance and that can be served by existing and proposed public and private infrastructure improvements in the area. Any additional details regarding the proposed development plan will be properly addressed during the permitting phases of development, pursuant to the City's two-phase process for annexation and development. The adequacy of urban services was determined by referring to the proposed development plan. No credible evidence was submitted to contradict the testimony and evidence submitted

**Criterion 9:**

**Public Facilities and Services Element of the Comprehensive Plan, General Policy #2 (page 8-P-1):** States that *the City shall consider impacts on community facilities before ... annexation requests are approved.*

**Findings # 9:**

The proposed annexation complies with Comprehensive Plan Public Facilities and Services Element, General Policy #2, (page 8-P-1) in that the annexation will not result in an adverse impact on community facilities, as the property on Tax Lot 1400 contains one single family residence and the property on Tax Lot 2000 is currently vacant and therefore will not have an impact upon community facilities until developed. It has been determined that, upon development, the street, water, sewer, and storm drainage infrastructure improvements to support the types of development identified for the site are feasible. It should be added that City police, fire, and library services already serve the property. Therefore, the annexation of the property has no adverse impact on these City urban and community facilities. The findings under Criterion 1 are also relied upon to satisfy this criterion, considering the specific development plan submitted by applicant.

**Criterion 10:**

**Zoning Ordinance Section 3.050 – Zoning of Annexed Areas:** *All areas annexed to the City shall be placed in a zoning classification in accordance with the adopted Comprehensive Plan. If a zoning designation other than one in accordance with the Comprehensive Plan is requested by an applicant, the zoning requested shall not be granted until the plan is amended to reflect concurrence.*

**Findings # 10:**

This proposed Annexation is in compliance with Zoning Ordinance Section 3.050. Currently the subject property does not have a City zoning designation because it is not within the City limits. However, since the property is within the City's Urban Growth Boundary, the current Comprehensive Plan designation on the subject property is Mixed Density Residential for Tax Lot 1400 and Single Family Residential on Tax Lot 2000. Special Development District. The corresponding City zoning designation for a Comprehensive Plan designation of Mixed Density Residential is Residential Mixed Density (RM) and Single Family Residential is Residential Low Density (RL). The applicant is requesting the aforementioned zoning designations be automatically assigned for the subject properties. LUBA has decided in Just v. Comell Family Trust, Or. LUBA No. 2003-044 (Just 1) that the City's process in applying zoning to the annexed property is proper.

**Criteria 11 and 12:**

**City of Lebanon/Linn County – Urban Growth Management Agreement**

11. Section 2: Delineation of Authority in the Urban Growth Area (UGA), 2<sup>nd</sup> paragraph:

*The Lebanon Comprehensive Plan designates the future city zoning UGA lands will receive upon annexation to the City.*

12. Section 5: Annexations

*The UGA identifies land that may be subject to future City annexation. The City may annex land using its own procedures in accordance with state law. Only land within the UGA will be considered for annexation. The City will notify the County of any proposed annexations. Upon annexation, the City assumes all jurisdiction for land use actions.*

**Findings # 11 & 12:**

The City's annexation review procedures on annexation request File # A-02-03 have complied with the City of Lebanon/Linn County Urban Growth Management Agreement, Sections 2 and 5 regarding city authority to annex lands within the urban growth area and assign city zoning in accordance with the Lebanon Comprehensive Plan Map. The City has conducted an advertised and noticed public hearing regarding the annexation of the property into the City and the assigning of the Comprehensive Plan Map designated City zoning classification of Residential Mixed Density and Residential Low Density. Accordingly, the assigned zoning is consistent with the Comprehensive Plan, and by authority of the UGMA this is the appropriate zoning for this property. No argument was presented that these criteria were not met.

STATE OF OREGON  
County of Linn

I hereby certify that the attached  
was received and duly recorded  
by me in Linn County records.

STEVE DRUCKENMILLER  
Linn County Clerk

M. 25  
R. 20  
S. 11  
A. 11

8:30 O'clock a.m. <sup>96</sup>

NOV 12 2004

MF 1644

By [Signature] Deputy PAGE 919