

**SUPPLEMENTAL FINDINGS
FILES SD-05-07 AND SP-14-07, THORNTON LAKE ESTATES SUBDIVISION
ADOPTED BY THE CITY COUNCIL ON JANUARY 9, 2008**

The following findings are adopted pursuant to the Albany City Council's decision to approve the Thornton Lake Estates applications for subdivision and site plan review for the removal of trees, Planning Files SD-05-07 and SP-14-07. These findings supplement the Staff Report and all its attachments presented to the Albany City Council for its October 10, 2007, hearing on this matter (the "*Staff Report*"). These Supplemental Findings together with the Staff Report are intended together to be the findings supporting the City Council's approval of applications SD-05-07 and SP 14-07. If these Supplemental Findings conflict with any findings in the Staff Report, these Supplemental Findings govern. These Supplemental Findings address the applicable criteria in light of the evidence that has been received by the Council throughout the proceedings before it.

I. Procedural Findings:

The Albany City Council held a public hearing on October 10, 2007, to hear public testimony regarding the appeal of the Albany Planning Commission's approval of the Thornton Lake LLC's concurrent applications to subdivide 24.2 acres of land into 78 residential single-family lots and two open space tracts and to remove 21 trees from the property as part of the proposed subdivision.

The applicant and his representatives presented testimony and opponents of the applications also presented testimony. Due to the large amount of testimony from opponents, the applicant requested to continue the hearing to respond with new evidence and argument to opponents' testimony. The Council granted that request, and a continued hearing was held on November 5, 2007, at which the applicant's representative presented new evidence and argument in support of the application. At that continued hearing, opponents requested that the hearing again be continued to respond to applicant's new evidence presented on November 5. At the November 5 hearing, the Council agreed, pursuant to the schedule developed by opponents' and applicant's representatives, to continue the hearing to December 10, 2007, and December 12, 2007. On December 10, opponents would present new evidence and argument responsive solely to new evidence submitted by applicant on November 5. On December 12, applicant would present final rebuttal argument only. These continued hearings were held as planned.

On December 12, 2007, following the applicant's final rebuttal argument, the Council deliberated regarding the proposed applications and voted 4-2 to affirm the Planning Commissions' decision by tentatively approving with conditions the Subdivision and Site Plan Review applications. The vote was tentative until the Council made their final decision to approve on January 9, 2008.

II. Substantive Findings:

A. Subdivision Tentative Plat Criteria [Albany Development Code (ADC) 11.180]

Albany Development Code Section 11.180 provides the criteria for approval of a subdivision tentative plat: *Approval of a tentative subdivision or partition plat will be granted if the review body finds that the applicant has met all of the following criteria which apply to the development:*

(1) Development of any remainder of property under the same ownership can be accomplished in accordance with this Code.

The Council finds that the proposed subdivision complies with this criterion for the reasons stated in the Staff Report's Findings of Fact and Conclusions regarding this criterion and as conditioned in the Staff Report.

(2) Adjoining land can be developed or is provided access that will allow its development in accordance with this Code.

The Council finds that the proposed subdivision complies with this criterion for the reasons stated in the Staff Report's Findings of Fact and Conclusions regarding this criterion.

(3) The proposed street plan affords the best economic, safe, and efficient circulation of traffic possible under the circumstances.

The Council finds that the proposed subdivision complies with this criterion for the reasons stated in the Staff Report's Findings of Fact and Conclusions regarding this criterion, as conditioned in the Staff Report, and for the following reasons:

3.1 To determine compliance with ADC 11.180(3), it is necessary to determine the circumstances. In this case, the circumstances are as follows:

a. ADC 12.060 requires development to have approved access to a public street currently open to traffic, and streets must be interconnected to reduce travel distance, provide multiple travel routes, and promote the use of alternative modes. In addition, ADC 12.110 requires that the location of all streets must conform to any approved transportation master plan.

b. The North Albany Local Street System Plan, adopted by the City as part of both its Transportation System Plan (TSP) and Comprehensive Plan, requires an east-west local street through the subject property in an alignment that connects to the future extension of Jones Avenue on the west side of North Albany Road and to Green Acres Lane on the east side of the subject property.

c. Green Acres Lane is not constructed to City standards.

d. The subject property is bordered to the north by East Thornton Lake and to the south by railroad tracks, leaving no economically feasible alternative access but through the west end of the property onto North Albany Road.

e. The 45 homes in the Green Acres Lane neighborhood only have one access to Springhill Road without any secondary emergency access.

f. There are no pedestrian facilities on North Albany Road connecting the commercial area south of the subject property to the school area north of the subject property.

g. ADC 12.120 requires five additional feet of right-of-way from the subject property to complete the right-of-way on the east side of North Albany Road.

h. Under Constitutional restrictions, the applicant can be required to provide only those improvements roughly proportionate to the impact of the proposed development.

3.2 Under these circumstances, and as conditioned in the Staff Report, the application will provide the following:

a. A local street plan that connects to the east side of North Albany Road in an alignment consistent with the TSP's future alignment of Jones Avenue on the west side of North Albany Road. The plan will also provide a right-of-way connection to the existing right-of-way

of Green Acres Lane, but vehicle access will be limited by a gate to emergency vehicles only because Green Acres Lane is not currently constructed to City standards to handle traffic to and from the proposed subdivision. The gated access will enhance safety by providing emergency access to both the Green Acres Lane neighborhood from North Albany Road and also the proposed Thornton Lake Estates neighborhood from Springhill Road. The gated access will also allow pedestrian and bicycle access between the neighborhoods, which benefits the multimodal connectivity of the street system in the area.

b. A stop-controlled T-intersection onto North Albany Road for the proposed subdivision's traffic. The City's performance standard for such an intersection is volume to capacity ("v/c") ratio, for which the maximum is 0.85. The proposed intersection will operate at a maximum v/c ratio of 0.27 after its buildout in 2009, and 0.53 in 2014. The intersection will operate within the City's standard.

c. Sidewalk on North Albany Road connecting the commercial property to the south, across the frontage of the subject property, all the way to the school to the north.

d. Either improvement of the North Albany Road frontage along the subject property to City standards, or, payment of a fee equal to the costs of such improvements.

e. Concrete pedestrian access to the south that can be connected to a trail proposed by Benton County that may be constructed some time in the future.

f. A slope and construction easement across the southern boundary of the property to facilitate the "Rails with Trails" project being proposed by the County and Oregon Department of Transportation (ODOT) Rail for promotion of multimodal connectivity between Corvallis and Albany and Benton and Linn Counties.

g. Right-of-way, streets, curbs, and sidewalks within the proposed subdivision that meet the City's design standards.

3.3 The applicant retained a traffic engineer to perform a Traffic Impact Analysis ("*TIA*") of the traffic to be generated by the proposed subdivision. The City has Traffic Impact Study Guidelines (the "Guidelines"). The Council regards the performance standards contained within the Guidelines as just that – guidelines. They have not been incorporated into the Development Code but are rather part of the Engineering Design Standards, and as such can be modified at the discretion of the City Engineer. The Guidelines may be used to help demonstrate compliance or non-compliance with ADC 11.180(3), however, they are not mandatory threshold standards that must be met for approval of a subdivision application. The Council deems the relevant criterion for whether a subdivision may be approved on the basis of traffic to be ADC 11.180(3).

3.4 The Council finds in this case that the TIA, prepared by the applicant, does satisfy the Guidelines. Consistent with the discretion provided to the City's traffic engineer pursuant to the Guidelines, the City's Transportation Systems Analyst, Ron Irish, verified and approved the analysis methodology used by the applicant including trip counts and distribution, background traffic volumes, and intersection performance evaluation. The City Transportation Systems Analyst approved use of the analysis methodology in order to have the analysis accurately account for not only the existing traffic, but also the future traffic to come from multiple subdivisions and commercial developments previously approved in North Albany but not yet built.

3.5 The Council finds that based on the TIA, as well as the written and verbal testimony of both the applicant's traffic engineer, Dick Woelk, and the City's Traffic Systems Analyst, Ron Irish, that the proposed street plan, as described in 3.2 above and as shown on the tentative plat, does provide the best economic, safe, and efficient circulation of traffic possible under the circumstances of this case.

3.6 The Council finds that the proposed plan affords the best safe circulation of traffic possible under the circumstances for the following reasons:

a. The accidents per million miles traveled (“APM”) for the segment of North Albany roadway impacted by this application will be 0.3 APM, well below the City’s TIA Guideline of 1.0 and well below the State’s APM for similar roadways of 2.26. The City’s accident data between 2002 and 2006 shows no accidents on this segment of North Albany Road between the proposed site entrance and the intersection of North Albany Road and Highway 20.

b. After buildout of the proposed subdivision, the average gap for vehicles making a left turn out of the proposed subdivision onto North Albany Road during the peak hour will be an average of 8.5 seconds, which is twice as long of a gap than the minimum deemed acceptable to drivers in the Highway Capacity Manual. The detailed gap study of current conditions on North Albany Road provided by the applicant’s traffic engineer also indicates that there are currently 91 gaps of between 5 and 10 seconds and 22 gaps of between 10 and 15 seconds. These gaps are of adequate number and length to safely accommodate the subdivision’s traffic.

c. The proposed subdivision will improve pedestrian safety on North Albany Road by constructing sidewalk for pedestrian connectivity between the school to the north and the neighborhood commercial center to the south, as well as from the proposed subdivision.

d. The street plan provides currently nonexistent, secondary emergency vehicle access to the 45 homes in the Green Acres Lane neighborhood.

e. The intersections of Hickory Street and Highway 20 with North Albany Road will continue to perform at acceptable Levels of Service (“LOS”), which is the City’s performance standard for these signalized intersections. In 2014, the Hickory Street intersection will have LOS B, and the Highway 20 intersection will have LOS C. The City’s minimum standard is LOS D.

3.7 The Council finds that the proposed plan affords the best economic and efficient circulation of traffic possible under the circumstances for the following reasons:

a. The proposed, stop-controlled, T-intersection is of minimal cost and does not require future expenditures by the City to accommodate increased traffic on North Albany Road as the roundabout option could.

b. The proposed intersection alignment conforms to the North Albany Local Street Plan adopted by the City as an east-west connection through the subject property in an alignment consistent with the future alignment of Jones Avenue.

c. The location of the proposed street plan and intersection minimizes impacts to or from the natural feature of East Thornton Lake and the railroad tracks to the south while allowing pedestrian access under the railroad tracks by not encroaching into the open space while maintaining an intersection as far as possible from the railroad tracks.

d. Development of the property will provide needed right-of-way for the eventual widening of North Albany Road, construction or funding of construction for improvements to North Albany Road, as well as sidewalk along North Albany Road, all of which likely would not have been financially feasible for the City without such development.

e. The plan provides access to and from the proposed subdivision without impacting the sub-standard Green Acres Lane while allowing emergency vehicle, pedestrian, and bicycle connectivity between the two neighborhoods.

3.8 The Council concludes that the proposed street plan affords the best safe, economic, and efficient street plan possible under the circumstances. Criterion (3) of ADC 11.180 is met.

3.9 Public Comments: Opponents of the subdivision provided testimony regarding traffic. Their testimony is summarized below. Findings responding to that testimony follow each of the concerns expressed by the opponents. The findings below supplement the findings contained in the Staff Report, which are incorporated herein by this reference. The public comments summarized below are primarily regarding the TIA's conclusions and assumptions. The Council reiterates that the TIA is not in and of itself a criterion, and the traffic impact study guidelines of the City are not necessarily criteria. The applicable subdivision criterion relating to traffic is ADC 11.180(3), which the Council has found satisfied based on the findings above. In this case, the TIA is evidence in support of those findings.

a. *Proximity to Railroad Tracks.* Testimony was received, including video, expressing concern regarding queued, northbound traffic on North Albany Road backing up over the railroad tracks south of the property.

Response: The video shown by North Albany Citizens in Action (NACIA) at the October 10, 2007, hearing shows traffic backed up over the tracks while a car waits to make a left turn onto the current Jones Avenue driveway. That backup across the tracks is caused by the Jones Avenue driveway being located on the west side of North Albany Road very close to the railroad tracks, which requires northbound traffic to turn left into the Jones Avenue driveway. Conversely, northbound traffic turning into the proposed subdivision will make uninhibited right turns, and there will be no queuing for such turns. The subdivision will not cause backup of traffic over the railroad tracks.

b. *Impact of Construction Truck Traffic.* Opponents expressed concern regarding construction traffic, including traffic of trucks importing or exporting fill dirt.

Response: Neither the City's Development Code, nor its TIA guidelines, require truck traffic counts to be considered in a traffic impact analysis. The truck traffic is not permanent as the traffic from a residential subdivision. The truck traffic will occur over a relatively short period of time to provide fill to raise the home sites above the floodplain as required by law. This truck traffic will cease to occur prior to the construction of homes on the site. Council finds this fill activity to be beneficial to the safety of the residents of the subdivision, and concludes that the truck traffic will not cause the proposed street plan to fail ADC 11.180(3). The Staff Report adopted by the City Council does include a condition that construction traffic avoids use of Green Acres Drive due to its narrow width and substandard pavement section.

c. *Percentage Growth Rate.* Opponents testified that the annual growth rate of two percent used for the TIA was too small.

Response: There are multiple methods that can be used under the City's traffic study guidelines. The guidelines give staff discretion to approve a lower growth rate. Such discretion was used in this case as determined appropriate by City Transportation Systems Analyst Ron Irish. For the reasons behind that determination, see Item 3 of Ron Irish's memo presented to the Council at the December 12, 2007, hearing, which Item 3 is incorporated herein by this reference.

d. *Springhill Road at Highway 20.* Opponents testified that the intersection of Springhill Road and Highway 20 should have been included in the applicant's TIA.

Response: As was found by the traffic engineer retained by North Albany Citizens in Action, Rick Nys of Greenlight Engineering, the applicant's TIA does not show enough trips generated from the proposed subdivision to warrant the applicant's analysis of the Springhill

Road/Highway 20 intersection. Mr. Nys, however, disagrees with the TIA's assumptions regarding trip distribution. The trip distribution used in the TIA was proposed by the applicant's traffic engineer based on previous studies done in the area, and was then approved by City staff. The applicant's TIA correctly implemented the distribution methodology approved by staff. Ron Irish defends the trip distribution used in the TIA in his December 12, 2007, memorandum. His response in Item 1 of the memorandum is hereby incorporated into these Supplemental Findings.

e. *North Albany Road at Highway 20.* Opponents testified that the intersection of North Albany Road and Highway 20 was incorrectly analyzed and will fail. Mr. Nys, Greenlight Engineering, stated that ODOT standards should apply.

Response: The City's minimum standard for signalized intersections is LOS D. The applicant's TIA evidences that the intersection of Highway 20 and North Albany Road will perform in 2014 at LOS C. Mr. Nys entered into the record his email correspondence with ODOT representatives. An email from John DeTar of ODOT dated sometime between November 10 and 17 responding to Mr. Nys indicates that "Albany's development review standards would apply to the project." ODOT was made aware of this application. ODOT did not participate in the application process or hearings.

In the event that ODOT's intersection performance standards are deemed to apply, the applicant's TIA indicates that the intersection would still meet ODOT's standard of v/c ratio .80. As the applicant's TIA demonstrates, the v/c ratio in the PM peak hour at the intersection upon buildout of the subdivision (2009) would be .80. See Table 4, p. 9 of June 13, 2007, TIA from Associated Transportation Engineering & Planning, Inc. ("ATEP"). ODOT's standard is also likely to increase to .85 in 2010 by virtue of the City's becoming a Metropolitan Planning Organization (MPO). See Ron Irish Memorandum, December 12, 2007.

Mr. Nys in his letter of December 10, 2007, made the case that if the applicant's TIA had used ODOT intersection analysis procedures in regard to lane saturation rates and other parameters, the resulting v/c ratio would have been higher than 0.80 and would not have met the ODOT performance standards contained in the Oregon Highway Plan. The Council has considered all the data in the record regarding the performance of the intersection when the development is completed. Council, however, finds that the standard required for use to evaluate this application is 11.180(3). The primary question is not whether the intersection meets the ODOT performance standards, but rather whether "[t]he proposed street plan affords the best economic, safe, and efficient circulation of traffic possible under the circumstances". The e-mail from John deTar of ODOT referenced above supports that position by concluding that "Albany's development review standards would apply to the project." The status of the intersection relative to ODOT's performance standard extends beyond this development application. The discussion contained in Item 2 in Ron Irish's memo to Council of December, 12, 2007, noted that if ODOT performance standards were to be considered a minimum threshold "...future development applications in North Albany that add trips to this intersection would face a similar problem and would likely have to be denied as well".

The circumstances also limit what may be exacted from the applicant for improvements to North Albany Road at its intersection with Highway 20. Albany's current TSP does not identify any additional capacity improvements at the intersection. Ron Irish, Transportation Systems Analyst, noted that TSP update work done to date envisions the need for a new bridge across the Willamette River, a costly project likely decades away from construction. The impacts of this subdivision on the Highway 20 intersection with North Albany Road, relative to the total traffic currently using the intersection, are not sufficient to justify this applicant making

improvements to the intersection. The costs of making the improvements needed for the intersection exceed this subdivision's proportionate impacts.

The Council finds that any deficiencies of the intersection of North Albany Road and Highway 20 cannot be attributable to this subdivision. The Council finds that the intersection satisfies the City's standards and ODOT's standards. The Council concludes that under these circumstances, as stated above, the proposed street plan affords the best safe, efficient, and economic circulation of traffic possible under the circumstances.

f. *Queuing on Highway 20.* Mr. Nys testified that the queuing storage in the westbound, right turn lane on Highway 20 for right turns onto North Albany Road exceeds its capacity.

Response: Council finds that the 2009 storage capacity of this right-turn lane will be exceeded in the PM peak hour whether or not this subdivision is approved. When the subject property is fully developed in 2009, there will be 882 vehicles making a right turn onto North Albany Road from Highway 20 in the PM peak hour. This subdivision will add only 30 right-turn trips at that location during that PM peak hour. Albany's guidelines only require that the TIA provide an estimate of the queuing capacity of the turn lane, but the guidelines do not establish a standard that requires turn lanes to have sufficient capacity to accommodate 100 percent of peak hour demand. There are many locations within the City where such a standard would be unachievable. The applicant's TIA provides the estimate as required by the guidelines. Council concludes that while the development will contribute to the need for the eventual extension of a right turn lane, a condition that the development constructs the entire improvement would exceed the development's proportional impact. The Council adds the following condition to the approval:

The applicant shall provide a Petition for Improvement/Waiver of Remonstrance for proportionate participation in a future assessment district for the extension of the westbound right turn lane from Highway 20 onto North Albany Road."

g. *Gaps.* Opponents questioned whether there would be sufficient gaps in the traffic for vehicles making left-hand turns out of the subdivision onto North Albany Road.

Response: See Finding 3.6.b above. Item 10 of Ron Irish's memo presented to the City Council on December 12, 2007, is hereby incorporated by this reference.

h. *Traffic counts.* Mr. Nys asserts that existing traffic counts should have been used.

Response: The City Transportation Systems Analyst determines which traffic counts are used for the purposes of traffic analysis in a TIA. Current traffic counts were taken by the applicant's traffic engineer, Richard Woelk of ATEP. However, the traffic counts did not reflect the 911 lots previously approved in the North Albany area but still not built. Accordingly, the traffic counts taken indicated artificially low traffic volumes compared to the full buildout of all previously approved subdivisions (the previous subdivisions are listed in the November 5, 2007, memo presented to the Council by Mr. Woelk). The City's analyst determined it was more accurate and conservative to use the background traffic volumes created by all previously approved subdivisions. Because the traffic analyses of prior subdivisions are cumulative, but are not reflected in traffic counts under current conditions, the City's traffic engineer determined it unnecessary to have existing traffic counts. The proposed subdivision's traffic is added to the

traffic counts of the unbuilt but approved subdivisions in North Albany. The Council finds that the traffic volume forecast methodology used by the City' engineer, and the applicant's engineer, provides credible, realistic, and conservative data. Accordingly, the Council finds the conclusions of the TIA reliable.

i. *Highway Capacity Manual.* Mr. Nys attempts to impose the methodologies of the Highway Capacity Manual (HCM) on this application.

Response: Compliance with the HCM is not a review criterion for this subdivision application. Nevertheless, all applicable aspects of the HCM have been satisfied.

j. *Lane utilization.* Mr. Nys asserts that lane utilization was not adequately addressed for the intersection of North Albany Road and Highway 20.

Response: Ron Irish's response regarding lane utilization on page 2 of his December 12, 2007, memorandum is hereby incorporated by this reference. See also Finding 3.9.i above. The Council finds that the TIA guidelines do not require lane utilization analysis, but that the applicant's TIA adequately considers lane utilization.

k. *Alignment of Jones Avenue Easement.* Opponents asserted that the proposed alignment of the subdivision's access onto North Albany Road ("Lakeview Avenue") violates ADC 12.160 by being too close to the access of the Jones Avenue easement onto North Albany Road. Mr. Nys, the traffic engineer for North Albany Citizens in Action, concurred at the December 10, 2007, hearing that this concern had been resolved since he originally raised it at the October 10, 2007, hearing.

Response: ADC 12.160 indicates that "[i]n no case shall the staggering of streets be designed where jogs of less than 300 feet are created as measured from the centerline of any intersection involving an arterial or collector street." (Emphasis added). "Street" is defined in ADC 22.400 as "[a] public thoroughfare or right-of-way dedicated, deeded or condemned; other than an alley, which affords the principal means of access to abutting property"

"Jones Avenue," as it exists today in accessing North Albany Road, is not a "street" as defined in the Albany Development Code. The tax assessor's map provided in the record shows that it is an easement. It is not dedicated to the public. It is not right-of-way. Accordingly, ADC 12.160 does not require Lakeview Avenue (proposed subdivision street) to be 300 feet away from the easement called "Jones Avenue."

The tax assessor's map also shows the existing terminus of the Jones Avenue right-of-way north and west of the easement access to North Albany Road. The North Albany Local Street Plan shows that terminus extending easterly to the alignment of the intersection of the proposed subdivision's access onto North Albany Road. The location of the existing Jones easement access onto North Albany Road is not consistent with the City's Transportation System Plan.

The alignment of the subdivision's proposed access complies with ADC 12.160 and facilitates the City's Transportation System Master Plan.

(4) *The location and design allows development to be conveniently served by various public utilities.*

The Council finds that the proposed subdivision complies with this criterion for the reasons stated in the Staff Report's Findings of Fact and Conclusions regarding this criterion, as conditioned in the Staff Report, and for the following reasons:

4.1 ADC 12.530 says the review body will approve a development request only where adequate provisions for storm and flood water runoff have been made as determined by the City Engineer.

4.2 ADC 12.570 says, "[d]evelopment must employ drainage management practices approved by the City Engineer which minimize the amount and rate of surface water runoff into receiving streams or drainage facilities or onto adjoining properties. Drainage management practices must include, but are not limited to, one or more of the following practices: (8) Other practices and facilities designed to transport storm water and improve water quality."

4.3 The City's Engineer Division has adopted standards for construction. Stormwater Management Engineering Standards Section E 1.01 H., says the standards "have the objective of developing a stormwater management system that will . . . maintain or improve the overall stormwater quality." Section 3.01, says "stormwater quality enhancements are encouraged and stormwater quality Best Management Practices shall be incorporated into the design."

Subdivision Review Criterion (3) simply requires that "[t]he location and design allows development to be conveniently served by various public utilities." The Engineering Standards are not subdivision review criteria. Nevertheless, the applicant chose to include elements referenced in the Engineering Standards in the storm drainage plan submitted with the subdivision application. A drainage plan and stormwater quality facility design satisfying these elements may be approved. The City does not currently have other design standards for water quality facilities.

4.6 The applicant's engineer, Multitech Engineering Services, Inc., provided a detailed storm drainage plan. See Sheets 2 and 7 of the Tentative Plat, "Utility & Grading Plan" and "Storm Drain Plan." The drainage plan includes a two-stage water quality treatment plan. The storm drainage from the proposed subdivision first passes through a "water quality structure" that separates heavy particulates such as oil, sediment, and other debris. Detailed design elements of this structure were provided by the applicant's engineer in his May 3, 2007, "Water Quality Report." After passing through the structure, the storm drainage will discharge into a vegetative water quality basin to remove remaining sediments and soluble heavy metals. Detailed design of the water quality basin was also provided by the applicant's engineer. See Sheets 8 and 9 of the Tentative Plat. A "Schematic Irrigation Plan" and a "Landscape Plan" for the water quality basin were also provided. See Sheets 1 and 2 of 2.

4.7 In addition to the detailed plans listed above, Multitech Engineering Services, Inc. also provided analysis in a "Water Quality Report" (May 3, 2007), a "Conveyance System Calculations" report including a "Conveyance System Analysis Plan" map (May 3, 2007), "Water Quality Pond Analysis" (October 9, 2007). Mark Grenz, Multitech Engineering Services, Inc., also provided extensive verbal testimony at the November 5, 2007, continued hearing regarding the water quality basin design and location. The reports, analysis, and testimony indicate that the location of the basin was done in consideration of protecting Thornton Lake, that the basin can effectively treat stormwater drainage from the proposed subdivision even in significant storm

events, that the design meets and exceeds Best Management Practices, that the slopes and basins will be stable, and that the water discharging into Thornton Lake from the water quality basin may be better quality than the existing drainage from the current farming activities on the subject property.

4.8 The applicant also retained Foundation Engineering, Inc. to perform a geotechnical investigation on the subject property, including analysis specific to the proposed site of the vegetative water quality basin. The applicant submitted the report from Foundation Engineering, Inc., dated May 10, 2007. The report concludes that “the proposed [water quality basin/pond] cut slopes should be stable.” (Geotechnical Report, p. 4.) The report also concludes that “the site is suitable for the proposed development.” (Geotechnical Report, May 10, 2007, cover letter to Byron Hendricks.)

4.9 City engineering staff reviewed the subdivision’s storm drainage plan as well as the plans for the water quality treatment structure and basin. Engineering staff concluded that the proposed water quality basin will treat 90 percent of the annual stormwater runoff and that the proposed storm drainage system will meet the City’s standards for drainage management practices and construction. The City’s Director of Public Works, Diane Taniguchi-Dennis, indicated at the December 12, 2007, hearing that the information provided by the applicant’s engineer is more than is usually provided for their review and concluded that the storm drainage plan will work.

4.10 The Council finds that stormwater drainage from virtually all existing development around East and West Thornton Lake is not treated prior to discharge into the lake. At the October 10, 2007, hearing, testimony was received from another resident of the lake and civil engineer, Dan Watson, that indicated that the water quality system design is beyond what is usually required and beyond what the City requires for its own projects.

4.11 The Council finds that the analysis regarding the design and location of the proposed water quality basin is extensive and credible. The Council finds that the evidence demonstrates that the drainage plan, including the water quality treatment facilities, is designed in a manner satisfying the City’s standards. This finding is based on the written and verbal testimony described above of both the applicant’s engineer and the City’s engineering staff. The Council finds that stormwater drainage from virtually all existing development around East and West Thornton Lake is not treated prior to discharge into the lake.

4.12 Because the applicant has provided a drainage plan that treats stormwater prior to discharge into East Thornton Lake, the design of the facilities incorporate Best Management Practices, and City engineering staff reviewed and approved the design of these facilities, the Council concludes that the proposed plan allows the property to be conveniently served by stormwater public utilities.

4.13 At the December 10, 2007 continued hearing, North Albany Citizens in Action submitted a letter from Eric W. Strecker, professional engineer of Geosyntec Consultants. Mr. Strecker provides comments and questions regarding the proposed stormwater quality basin. Mr. Strecker’s letter lists the documents he reviewed for his analysis. The list indicates that Mr. Strecker did not review much of the evidence that was provided by the applicant’s engineer. The Council finds that Mr. Strecker’s comments and questions are addressed by the extensive evidence provided by the applicant’s engineer, which evidence was not reviewed by Mr. Strecker.

4.14 During the course of the hearings, opponents questioned the location of the water quality basin partially within the open space area of the property. ADC 3.065 lists the uses permitted in

the Open Space Zoning District. “Neighborhood utilities” are permitted outright in the Open Space Zoning District. The Council interprets “Neighborhood utilities” to include water quality treatment facilities such as the proposed vegetative water quality basin. Council concludes that the proposed basin is allowed in the Open Space zone.

4.15 Opponents indicated that “ADC 9.3(c)” prohibits construction of the water quality basin. There is not a Development Code Section 9.3(c). The opponents cited language from 9.208(3)(c), which does not apply to this case. The Council interprets 9.208(3)(c) as only applying in cases where no site plan review application for tree felling has been submitted. In this case, a Site Plan Review application for tree felling has been submitted, and the criteria applicable to that application are addressed in the Staff Report.

4.16 Opponents cite ADC 9.208(5)(a) as preventing the placement the water quality basin at its proposed location because of the maple tree located near the basin. Sheet 9 of the Tentative Plat shows the location of the tree in relation to the proposed pond. The Council finds that this criterion is satisfied in that the tree and its roots are sufficiently distant from and below the proposed cuts due to the tree being located lower on the slope than the pond’s bench and the associated cuts further up the slope. The applicant’s engineer, Mark Grenz, also presented testimony at the November 5, 2007, continued hearing that the maple tree would not be damaged by the cuts for the pond, particularly in light of the liner to be placed in the pond preventing filtered sediments from leaching into the tree’s roots. Also, Council interprets ADC 9.208(5) as providing discretion to the Council in this matter. The beginning of ADC 9.208(5) states “[p]recautions shall be made to protect residual trees and tree roots from damaging agents during and after the removal process. The following tree protection specifications should be followed to the maximum extent feasible for all projects with protected existing trees.” Emphasis added. Council finds that the tree protection specifications in 9.208(5) have been followed to the maximum extent feasible in light of the Council’s desire to have the stormwater drainage treated for quality by the proposed basin. The Council reiterates that the applicant is preserving over 90 percent of the trees on the property, including all trees within the open space area.

4.17 The Council adds the following condition to the approval:

The applicant shall cause a fence to be constructed around the water quality basin in a reasonable manner to prevent persons, including children, from accidental fall into the basin. The fence shall be of the type that allows air and light to filter through the basin area (e.g. chain link). The fence shall have a locked gate to allow access for any repair and maintenance activities in the basin.

(5) Any special features of this site (such as topography, floodplains, wetlands, vegetation, historic sites, etc.) have been adequately considered and utilized.

The Council finds that the proposed subdivision complies with this criterion for the reasons stated in the Staff Report’s Findings of Fact and Conclusions regarding this criterion, as conditioned in the Staff Report, and for the following reasons:

Floodplain

5.1 The applicant provided aerial photographs showing the property in both the 1964 flood event and the 1996 flood event. The photographs show that the area of the property proposed to be developed does not convey water in a flood event.

5.2 The record contains a July 23, 2007. memorandum from Mark Grenz, professional engineer of Multitech Engineering Services, Inc., indicating that the fill on the property to raise the home sites above the floodplain “would likely have no impact to the water surface elevation on the surrounding properties.” The memo nevertheless provides calculations to provide a conservative estimate of the impact if “direct displacement” were to occur. Mr. Grenz states he does not believe such “direct displacement” will occur, but he estimates that if it were to occur, the impact on surface levels of surrounding properties would be 3/16 of one inch. The Council finds that Mr. Grenz’s memorandum demonstrates that the proposed subdivision will not adversely impact neighboring properties during a flood event and that obtaining a grading and fill permit for the proposed subdivision is feasible.

5.3 Though Comprehensive Plan policies are not criteria applicable to this subdivision application, it is instructive to note that Goal 7, Policy 16 of Albany’s Comprehensive Plan states “[w]hen approving development in the flood fringe follow FEMA guideline that states: ‘In mapping a floodway it is assumed that all floodplain areas outside the floodway will eventually be filled in or otherwise obstructed. Consequently there is no need for a case by case hydraulic analysis of each proposed development in the fringe areas.’ (Source: FEMA, The Floodway: A Guide for Community Permit Official).” Emphasis added. The property proposed for development is not located within a floodway, but some portions are within the floodplain.

5.4 Based on these findings and those within the Staff Report, the Council finds that the floodplain areas on the property have been adequately considered, and they are being utilized by filling the appropriate areas so home sites to be created on the property will be above the 100-year floodplain elevation.

Wildlife Habitat

5.5 The subject property has been in farm use for decades as demonstrated by the historical aerial photographs entered into the record by the applicant. The farm use has involved plowing, planting, harvesting, and disking. The property has been surrounded by urban uses for some time, including railroad tracks to the south, North Albany Road to the west, residential development to the north and east of the property. The property is zoned for urban use.

5.6 The applicant is providing a conservation easement along the southern boundary of the property that will protect trees and wildlife habitat along the southern boundary of the property.

5.7 The applicant is preserving an open space area along the northern boundary of the property between the proposed lots and East Thornton Lake. All trees within the open space area will be preserved, and the open space tract is restricted to only those uses allowed in the Open Space Zoning District. There is no open space buffer between the lake and the urban uses west, north, and east of the lake. Residential lots on the north side of the lake extend directly into the lake.

5.8 The applicant is providing a water quality treatment system that will clean stormwater before discharging into the lake, thereby protecting any habitat in the lake. The applicant’s engineer indicates that such stormwater drainage may be cleaner than the water draining into the lake from the existing farming activities on the property.

5.9 The applicant’s wildlife expert visited the property and found that the property neither contains Western Pond Turtle nests, nor constitutes good nesting habitat for the Western Pond Turtle, particularly because of the plowing and harvesting of the farming activity on the property.

5.10 City staff contacted the Oregon Department of Fish and Wildlife (ODF&W) regarding the possible presence of Western Pond Turtle nesting on the property. Ann Kraeger of ODF&W visited the property. Ms. Kraeger provided a letter indicating that the subdivision property, in its present vegetative state, does not contain habitat appropriate to nesting of Western Pond Turtles. North Albany Citizens in Action asked Ms. Kraeger to submit a new letter changing her opinion. Ms. Kraeger did not change her opinion and did not submit a new letter.

5.11 The opponents provided letters regarding the Western Pond Turtle from a wildlife biologist, Paul Adamus, and an advocate from The Turtle Conservancy, Susan Beilke, of Tigard. Mr. Adamus did not personally observe any turtles or nests. Ms. Beilke is from Tigard, and her letter does not indicate that she either visited the property or personally observed turtles or nests. The Council finds that the letters do not conclusively prove the presence of Western Pond Turtles or their nests on the area of the property to be developed. The letters also do not prove that the design of the subdivision with its open space buffer between the lots and the lake will negatively impact any such habitat.

5.12 The Council finds that there is no conclusive evidence that the Western Pond Turtle is nesting on the subject property. The Council finds that if any nesting is occurring, it has been adequately considered and utilized by the preservation of habitat with the open space buffer between the lots and the lake that varies in width between 50 and 120 feet.

5.13 The Council concludes that any wildlife habitat on the property is preserved by the proposed plan, particularly the preservation and protection of wooded areas on the south and north sides of the property. For the above-stated reasons and the reasons stated in the Staff Report, the Council concludes that any wildlife special features of the site have been adequately considered and utilized.

5.14 The Council concludes that all special features of the site have been adequately considered and utilized. ADC 11.180(5) will be met when the conditions proposed in the Staff Report are satisfied.

B. ADC 11.190 – Lot and Block Arrangement

The Council supplements the Staff Report with the following findings and conclusions regarding ADC 11.190:

1. Consistent with ADC 11.190(1) and (2), the Council finds that the proposed street layout and lot design are such that no topographical or foreseeable other restraints will prevent the securing of building permits to build on all lots in compliance with the requirements of the Development Code. The lots are all of the width and depth required by this Code, and the lots have sufficient area to allow residences to be built within the setbacks for the lots. All lots have access to the public streets to be constructed within the subdivision. All lots will have elevations above the 100-year floodplain to avoid flood damage to the homes. The lots are of a size that no further subdivision of the lots will be allowed.

2. The Council finds that the proposed block lengths are consistent with ADC 11.190(5), particularly in light of the physical conditions of the site and adjacent uses, including the wooded open space area with the lake to the north, and the wooded conservation easement area and the railroad tracks to the south. Further, none of the blocks in the subdivision exceed the 600-foot average block length standard contained in ADC 11.090.

3. The only off-street pedestrian pathway in the subdivision is between Lots 56 and 57. The pathway is connected to the street network via proposed Lakeview Ave., thereby satisfying the requirements of ADC 11.190(6).

4. This application does not involve the intersection of two arterial streets. Accordingly, the Council finds that ADC 11.090(7) does not apply.

5. The proposed intersections of all streets in the tentative plat include arcs consistent with ADC 11.190(10).

C. Tree Felling Criteria (Site Plan Review under 9.207(2))

The Council finds that the proposed subdivision tree felling complies with the criteria applicable to site plan review for tree felling for the reasons stated in the Staff Report's Findings of Fact and Conclusions regarding these criteria and as conditioned in the Staff Report.

D. Response to Various Public Comments

Numerous code references were made by several opponents of the subdivision application. Opponents believe those code sections apply and are violated. The Council desires consistent interpretation and application of the Development Code for this and future applications, and the responses below are provided for that purpose.

1. **Issue:** North Albany Citizens in Action (NACIA) cites Albany Development Code (ADC) Section 2.630. NACIA believes that Site Plan Review is required for the proposed subdivision and that the subdivision does not meet some of the Site Plan Review Criteria.

Response:

ADC 2.630 says:

When Site Plan Review is Required. In general, a Site Plan Review covers all proposed exterior alterations included in the development proposal, but does not cover portions of the existing development that are not being modified. An exception to this is parking areas, where any proposed change to the parking lot will result in the entire parking area being reviewed. Site Plan Review is required in all of the following instances:

- (1) *New development.*
- (2) *Building expansions of 500 square feet or more, or any expansion that results in a reduction of parking spaces.*
- (3) *Parking area expansions of 1,000 square feet or more.*
- (4) *Any development listed in Articles 3, 4, and 5 that specifically requires Site Plan Review.*

A subdivision is not a building expansion, parking area expansion, or listed in Article 3, 4, or 5 as requiring Site Plan Review.

A subdivision may be construed to be "new development." However, ADC 2.600 says the purpose of Site Plan Review is:

“Purpose. Site Plan Review is intended to promote functional, safe, and attractive developments, which maximize compatibility with surrounding developments and uses and with the natural environment. Site Plan Review mitigates potential land use conflicts resulting from proposed development through specific conditions attached by the review body. Site Plan Review is not intended to evaluate the proposed use or the structural design of the proposal. Rather, the review focuses on the layout of a proposed development, including building placement, setbacks, parking areas, external storage areas, open areas, and landscaping.”

This purpose statement says the review focuses on “the layout of a proposed development, including building placement, setbacks, parking areas, external storage areas, open areas, and landscaping.” At the time a subdivision tentative plat is submitted for review, there are no buildings, setbacks, parking areas, external storage areas, open areas (in terms of lot coverage) or landscaping proposed.

Site Plan Review is not required for subdivisions. Subdivisions are regulated in an entirely separate section of the ADC – Article 11. ADC 11.180 lists the review criteria for a Subdivision Tentative Plat. The review criteria do not include the Site Plan Review criteria, but do cover many of the same criteria as Site Plan Review. The overview of the Subdivision regulations in ADC 11.000 says in part “[t]his article establishes the standards and procedures for property line adjustments, partitions, subdivisions, planned developments, and condominiums.” [Emphasis added]

ADC 11.030 specifies which other Development Code regulations apply to subdivisions:

Relationship to Other Local Regulations. All proposed development governed by this article must meet the applicable on-site improvements of Article 9 (i.e., off-street parking, landscaping, buffering and screening) and the applicable environmental standards of Article 6 - Special Purpose Districts (i.e., floodplain, hillsides, wetlands, and Willamette Greenway).

This section does not list Article 2 or Site Plan Review as a requirement.

City Staff indicate that only once in the last 15 years has the City used the Site Plan Review criteria as part of a subdivision review (File SD-01-02/SP-12-02), and it was done in that case only because the applicant requested it. The applicant for that subdivision asked that staff do a Site Plan Review for the subdivision in case someone reviewing the report thought the subdivision required it. Staff agreed to do the Site Plan Review, but noted that the Development Code does not require it.

The authors of the Development Code intended that subdivisions be reviewed based on the review criteria and other requirements listed in Article 11. They did not intend to require Site Plan Review for subdivisions. This is further evidenced by the number of times site plan review and land division/tentative plat are mentioned as *alternative applications*—not concurrent applications. See e.g. ADC 12.380, 12.440, 12.500, and 12.530.

The City has never required site plan review for a subdivision. For the reasons stated above, the Council interprets the Development Code as not requiring site plan review for subdivision applications. For that reason, the Council also interprets ADC 12.100(4) as not applying in this case. ADC 12.100(4) states “[t]he location, width, and number of accesses to a public street may be limited for developments which are subject to site plan review provisions of this Code. All development that proposes access to an arterial street is subject to site plan review procedures and the design requirements of 12.230.” The Council interprets this section as

applying to developments that propose private access(es) from an arterial street. The subject development does not propose private access to North Albany Road. The subject development provides a new public right-of-way and street improvement from which private driveway accesses will be taken for the proposed residential lots. The location, width, and design of the new public street are part of the subdivision application review. The Council finds Site Plan Review therefore unnecessary and inapplicable.

2. **Issue:** NACIA cites ADC 3.200 and subsequent ADC sections relating to density bonuses.

Response:

ADC 3.200 says:

Lot Size Variation Within a Land Division. Up to 50% of the total number of detached single-family lots in a land division may have lot sizes up to 30 percent smaller than the standard permitted in any zone provided that the average lot size for lots in the development is at least the standard required in the zone after application of all density bonuses. No reduction in the minimum lot size is permitted for lots created for attached housing units. In such cases, the recorded plat shall indicate that the larger lots may not be further divided or deed restrictions shall be established indicating the same.

The Staff Report for Thornton Lake Estates explains how the proposed subdivision uses this Code section to provide a variety of lot sizes. (Staff Report, page 4 under the heading “Description of the Applications,” bottom two paragraphs.)

The “bonus provisions” in ADC 3.220 allow the average minimum lot size to be reduced under certain circumstances. These provisions are separate from ADC 3.200 and not related. The applicant has not requested a reduction in the average minimum lot size for Thornton Lake Estates and none of the bonus provisions have been requested or granted. The lot sizes in the subdivision meet the required average minimum lot size without any bonuses.

The Council interprets ADC 3.200 as allowing up to 50 percent of the total number of lots in a land division to have lot sizes up to 30 percent smaller than the standard permitted in any zone so long as the average lot size for lots in the development is at least the standard required in the zone. Council does not require density bonuses as a prerequisite to this standard. If density bonuses have been applied, Council will require the average lot to still be consistent with the standard in the zone. However, that does not mean that 50 percent of the lots can be 30 percent smaller only if density bonuses have been granted.

The Development Code provisions regarding intended densities on this property in effect at the time this application was submitted also indicate that development should occur at 6 to 8 units per acre in the RS 6.5 Zoning District and 3 to 4 units per acre in the RS 10 Zoning District. See ADC 3.020(3) and (3). The proposed development is well within that density.

This subdivision has no more than 50 percent of its lots 30 percent smaller than the standard permitted in the zone, and the average lot size is still consistent with the standard in the zone. Accordingly, the Council finds the density of the proposed subdivision complies with the Development Code.

3. **Issue:** NACIA cites ADC 3.190. ADC 3.190, Table 1, Residential District Development Standards, shows that the minimum lot depth for lots in RS-6.5 zoning districts is 80 feet.

Response:

“Lot depth” is defined in ADC Article 22 as “[t]he horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line excluding any panhandles.”

The depth of Lots 36, 37, 38, 39, 40, and 41, and Lots 70, 71, 72, 73, 74, 75, 76, and 77 were less than 80 feet on the plat originally reviewed by the City Council.

At the November 5, 2007, continued hearing, the applicants presented a plan that shows the lot depth requirement can be met. Oregon Revised Statutes (ORS) 197.522 requires the review body to impose reasonable conditions if there are such conditions to make a development proposal consistent with applicable regulations. Because the applicant has provided a plan demonstrating that the lot depth standard can be met, the Council must impose a condition that the lot depth requirement be met.

The draft plan now shows double frontage lots. The double frontage lots meet the minimum lot depth requirement. NACIA noted that ADC 11.090(3) says:

Double frontage lots shall be avoided except where necessary to provide separation of residential developments from streets of collector and arterial street status or to overcome specific disadvantages of topography and/or orientation.

ADC 11.090(3) says that double frontage lots shall be avoided “except where necessary to overcome specific disadvantages of topography.” The Thornton Lake Estates property is located between a lake and wooded area on the north and a railroad track and wooded area on the south. These are topographic features of the property. The applicant intends to set the lots back from the lake so that the subdivision does not encroach on the Open Space-zoned property along the lake. The applicant will provide a conservation easement along the south boundary of the subdivision to preserve an area of natural vegetation and wildlife. This restricts the width of property left for lots and streets. The Council deems it appropriate pursuant to its discretion under ADC 11.090(3) to allow double frontage lots in this situation to overcome the specific disadvantages of the topographic features of the property.

4. **Issue:** NACIA cites ADC 9.3(c).

Response:

There is not a Development Code Section 9.3(c). The language that NACIA cites is included in ADC 9.208(3)(c) which says:

Wooded areas associated with natural drainageways and water areas will be maintained to preserve riparian habitat and minimize erosion. The wooded area to be retained shall be at least 10 feet in width or as required elsewhere in this code.

ADC 9.208(3) lists (c) as one of the review criteria that apply “[f]or property where tree felling has not been approved as part of a site plan review, conditional use, or land division application.” The Council interprets this section as applying where a Site Plan Review

application for tree felling has not been submitted. The proposed tree felling for Thornton Lake Estates will be approved as part of the Site Plan Review for Tree Felling submitted with the Subdivision application. Accordingly, Council finds that the ADC 9.208(3) review criteria do not apply to the proposed tree felling. Regardless, the applicant does not propose to cut trees in the wooded area along East Thornton Lake.

5. **Issue:** NACIA cites North Albany Refinement Plan policies.

Response:

The City Council did not adopt the North Albany Refinement Plan. The Plan policies are not subdivision review criteria and do not apply to the review of the Thornton Lake Estates application.

(The City Council did adopt Comprehensive Plan amendments to implement the North Albany Refinement Plan, but the policies cited by NACIA are not among the policies adopted.)

6. **Issue:** NACIA cites Comprehensive Plan Goals.

Response:

ADC 1.050 says:

Consistency with Plan and Laws. Actions initiated under this Code shall be consistent with the adopted Comprehensive Plan of the City of Albany and with applicable state and federal laws and regulations as these plans, laws, and regulations may now or hereafter provide. Since the City of Albany has a Comprehensive Plan and implementing regulations which have been acknowledged by the State of Oregon as being in compliance with statewide goals, any action taken in conformance with this Code shall be deemed also in compliance with statewide goals and the Comprehensive Plan. Unless stated otherwise within this Code, specific findings demonstrating compliance with the Comprehensive Plan are not required for land use application approval. However, this provision shall not relieve the proponent of the burden of responding to allegations that the development action requested is inconsistent with one or more Comprehensive Plan policies.

ADC 2.020(2) says:

Function of Review Criteria. ... (2) The review criteria have been derived from and are based on the Comprehensive Plan. Reviews against the goals and policies of the Comprehensive Plan are not required unless specifically stated. Fulfillment of all requirements and review criteria means the proposal is in conformance with the Comprehensive Plan.

Accordingly, Council concludes that because the applications meet the applicable Development Code review criteria, the application is consistent with Comprehensive Plan goals and policies.

7. **Issue:** NACIA cites Albany Development Code (ADC) Section 12.230.

Response:

ADC 12.230 says:

Access to Arterials. Where a development abuts or contains an existing or proposed arterial street, the development design shall provide adequate protection for residential properties and shall separate residential access and through traffic, or if separation is not feasible, the design shall minimize the traffic conflicts. The design requirements may include any of the following:

- (1) A parallel access street along the arterial.
- (2) Lots of suitable depth abutting the arterial to provide adequate buffering and having frontage along another street.
- (3) Screen planting at the rear or side property line to be contained in a nonaccess reservation along the arterial.
- (4) Other treatment, as determined by the City Engineer, suitable to meet the objectives of this subsection.

NACIA asserts that a frontage street parallel to North Albany Road is required.

The Council finds a frontage street parallel to North Albany Road neither warranted nor required by ADC 12.230. ADC 12.230 contains only two requirements: “adequate protection for residential properties” and separation of “residential access and through traffic” unless not feasible, in which case design shall minimize traffic conflicts.

Adequate protection for residential properties may be provided as described in ADC 12.230(2): lots of suitable depth to provide adequate buffering and having frontage along another street. Only one lot in the proposed subdivision, Lot 68, abuts an arterial street (North Albany Road). This lot is more than 100 feet in depth, which provides suitable depth to provide adequate buffering between a house on the lot and the street, and the lot has frontage on another street (Lakeview Avenue). The lot’s driveway will not access North Albany Road. It will access the new public, internal street of the subdivision.

This Code section also says the development design “shall separate residential access and through traffic.” A residential access is a driveway. No driveway accesses to an arterial street (North Albany Road) are proposed. The residential accesses of the proposed lots are separate from through traffic.

The Council finds that North Albany Road does not conflict with the driveway accesses of lots in the subdivision or with the future homes on those lots. The Council concludes that ADC 12.230 is satisfied.

8. **Issue:** NACIA cites ADC 12.250.

Response:

ADC 12.250 says in relevant part: “Local streets needed for connectivity purposes shall be public streets. Gated residential streets are prohibited. Private streets shall be designed and constructed with a 20-year design life. Plats for developments containing private streets must show that streets are private and upkeep and maintenance the responsibility of the abutting property owners. The review body may require legal assurances for the construction and continued maintenance of private streets.”

NACIA asserts that this precludes the option of installing a barrier between the subdivision's internal street and Green Acres Lane to the east. The barrier would include a gate so that emergency vehicles will be the only vehicles with access through the barrier for emergency purposes. The Council does not agree. The Council interprets ADC 12.250 to prohibit "gated communities." The Council does not interpret ADC 12.250 as prohibiting barriers that limit access to a street not improved to City standards, such as Green Acres Lane. NACIA has previously argued that no access should be allowed to or from this subdivision through Green Acres Lane. The barrier accomplishes that purpose. The Council concludes that the proposed subdivision does not violate ADC 12.250.

9. **Issue:** NACIA cites ADC 12.120 as requiring the North Albany Road right-of-way width to be 120 feet in width.

Response:

ADC 12.120 says (emphasis added):

Unless otherwise indicated on an approved street plan or in Section 12.130, the street right-of-way and roadway widths shall not be less than the minimum width in feet shown in the following table. Where a range is indicated, the width shall be determined by the City Engineer.

The referenced table shows a range for the right-of-way for arterial streets. The range is 70 to 120 feet wide. NACIA asserts that ADC 12.120 requires 120 feet of right-of-way for North Albany Road.

The findings in the Staff Report explain that:

"The right-of-way for North Albany Road NW varies from 69 feet wide at the south boundary of the subdivision property to 66 feet wide at the north boundary. ADC 12.120 shows that the minimum right-of-way width for arterial streets must be 70 to 120 feet. Albany's Transportation System Plan (TSP) identifies the needed right-of-way width for this section of North Albany Road as 80 feet. The City Engineer has determined that in order to allow for the eventual improvement of North Albany Road NW, an additional 5 feet of public right-of-way is needed across the frontage of the property where the subdivision is proposed."

The City Engineer has determined that the right-of-way for North Albany Road should be 80 feet. Pursuant to ADC 12.120, the Council interprets that to be the requirement for North Albany Road. The subdivision provides sufficient right-of-way for North Albany Road to be 80 feet in width. The Council concludes that ADC 12.120 is satisfied.

10. **Issue:** NACIA cites ADC 3.025. This is the purpose statement for the Open Space districts. NACIA asserts that a Conditional Use application must be approved for the proposed water quality basin. NACIA also asserts that Site Plan Review criteria apply.

Response:

The Council deems ADC 3.025 and the other Code provisions below do not apply to this application:

- a. **ADC 3.025.** The purpose statement of the Open Space Zoning District, ADC 3.025, does not include Subdivision review criteria or development standards. It says, in relevant

part: “Uses that are allowed in the OS district are listed following the Schedule of Permitted Uses and do not appear in the Schedule.”

ADC 3.065 shows “Uses Allowed Outright” in Open Space zoning districts. One of the uses allowed outright (without a requirement for a land use application) is “Neighborhood utilities, including pump stations, electric substations less than 5,000 square feet, and all local utility lines.” The Council deems the proposed water quality basin to be a “neighborhood utility,” thus being allowed in the Open Space zone.

b. ADC 2.250. This provision contains the criteria for a conditional use permit. There is no application in this case for a conditional use permit, nor is such a permit required.

c. ADC 2.600, 2.630, and 12.100 do not apply as they all relate to site plan review for applications other than a tree-felling permit. Site plan review provides the City a land use review opportunity for permitted uses that would otherwise only require a building permit. As explained in detail above, the City does not apply site plan review to residential subdivisions and never has.

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