NOTICE OF PUBLIC MEETING
CITY OF ALBANY
CITY COUNCIL
Council Chambers
333 Broadalbin Street SW
Wednesday, August 24, 2011
7:15 p.m.

AGENDA

OUR MISSION IS

"Providing quality public services for a better Albany community."

OUR VISION IS

"A vital and diversified community that promotes a high quality of life, great neighborhoods, balanced economic growth, and quality public services."

Rules of Conduct for Public Meetings

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the hearing.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ROLL CALL

4. SCHEDULED BUSINESS

   a. Continued Consolidated Legislative Public Hearing
      1) CP-02-10/DC-05-10, Goal 5. [Pages 1-178]
      Action: _____

   b. Business from the Public

   c. Adoption of Consent Calendar
      1) Approval of Minutes
         a) June 8, 2011, Regular Session. [Pages 179-187]
         b) July 11, 2011, Work Session. [Pages 188-189]
         c) August 10, 2011, Regular Session. [Pages 190-192]
      2) Authorizing appropriation of unappropriated beginning fund balance in the Justice Assistance Grant (JAG) fund. [Pages 193-194] RES. NO._____
      3) Transferring appropriation from the General Fund beginning balance to the Library. [Pages 195-196] RES. NO._____
      4) Authorizing the Library to sell surplus property. [Page 197]
      Action: _____

   d. Approval of Agreement
      1) Renewing intergovernmental ground lease agreement with the state of Oregon through its Military Department for the National Guard Armory property. [Pages 198-204]
      Action: _____

   e. Appointments
      1) City Council Representatives. [Page 205]
      Action:_____

5. BUSINESS FROM THE COUNCIL

6. RECESS TO EXECUTIVE SESSION TO DISCUSS PENDING LITIGATION OR LITIGATION LIKELY TO BE FILED IN ACCORDANCE WITH ORS 192.660 (2)(h)

7. RECONVENE

8. NEXT MEETING DATE: Work Session September 12, 2011
Regular Session September 14, 2011

9. ADJOURNMENT

The location of the meeting/hearing is accessible to the disabled. If you have a disability that requires accommodation, please notify the Human Resources Department in advance by calling (541) 917-7500.

TO: Albany City Council

VIA: Wes Hare, City Manager
Greg Byrne, Community Development Director

FROM: Heather Hansen, Planning Manager HAH

DATE: August 17, 2011, for the August 24, 2011, City Council Meeting

SUBJECT: Recommended Natural Resource Protection Program to Comply with Goal 5

RELATES TO STRATEGIC PLAN THEME: • Great Neighborhoods; Safe City; and Effective Government

Action Requested: Reopen hearing, take public testimony, close public hearing, discuss and vote on recommended amendments to implement Goal 5.

Summary:

Goal 5 Program

The attached materials reflect a minimal approach to implementing Goal 5. Some highlights include:

- Overlay districts are the primary mechanism for identifying and protecting significant wetlands, riparian corridors, and wildlife habitat.
- A natural resource impact review, which will take place concurrent with any land use application or building permit, will be required for many development activities within the overlay districts.
- Many residential activities are exempt from the regulations, such as routine maintenance of existing development and landscaping.
- Property owners have the option of impacting up to 25-feet of lower quality Riparian Corridor areas if the remaining 25-feet are enhanced. Existing residential lots less than 20,000 square feet are not required to enhance.
- Up to 2,000 square feet of the Habitat Assessment Overlay can be impacted before the requirement for a habitat assessment kicks in.
- There are provisions to address density transfer from the overlay districts to adjacent property.
- Public infrastructure to support new development is allowed if disturbed areas are replanted.

Ordinance

The attached Ordinance, when adopted, will complete the package of Comprehensive Plan and Development Code amendments to implement Statewide Planning Goal 5-Open Spaces, Scenic and Historic Areas, and Natural Resources. It is the last required work task in our Periodic Review work program with the state.

The following Exhibits to the Ordinance are included in the agenda packet:

- Exhibit A: Comprehensive Plan text amendments
- Exhibit B: Amended Comprehensive Plan Plate 3-Natural Vegetation & Wildlife Habitat
- Exhibit C: Amended Comprehensive Plan Plate 4-Streams, Rivers, and Lakes
- Exhibit D: Amended Comprehensive Plan Plate 6-Local Wetland Inventory
- Exhibit E: *Citywide Goal 5 ESEE: Riparian Corridors and Significant Wetlands*

- Exhibit F: *Goal 5 ESEE Analysis: Thornton Lakes Significant Turtle Habitat*
- Exhibit G: Albany Development Code text amendments
- Exhibit H: New Albany Native Plant List
- Exhibit I: Staff report including Findings of Fact to support the decision

Policy Direction:

City Council Work Session with Public

A special Goal 5 work session was held on July 25, 2011in the Council Chambers. City staff, staff from three State agencies Oregon Departments of Land Conservation and Development (DLCD), State Lands, and Fish & Wildlife), the City's Goal 5 consultant, and members of the public participated in the discussion. More than 30 questions were displayed on flip charts and discussed. Additional issues and questions were raised and discussed as well.

Direction from Council & DLCD

The City Council gave direction to staff to make revisions to address the following:

- Density bonuses
- On-site stormwater – is it allowed?
- Inability to mitigate on-site due to easements and rights-of-way
- Alternatives to bonding for mitigation

Staff from DLCD requested that the City do the following:

- Reconsider the outright exemption from the Riparian Corridor Overlay for residential lots less than 20,000 square feet. The reason is that an outright exemption would allow primary structures and other significant development in the overlay, which would not result in protecting the resource.
- Strengthen the ESEE Analysis report to justify a 25-foot encroachment into the Riparian Corridor Overlay.

Revisions for Review in Agenda Packet

Proposed revisions in the agenda packet address the abovementioned direction given by City Council and DLCD, as well as several minor edits to clarify intent; they are highlighted in yellow in the following attached documents:

- ADC Article 3 – Density bonus. *Added density transfer provisions to Section 3.220.*
- ADC Article 6 – Riparian Corridor exemption. *Revised and moved from Section 6.290(8) to 6.310(B)(2)(b)(ii).*
- ADC Article 6 – Alternatives to onsite enhancement. *Added a 'payment in lieu of' option to Section 6.310(B)(2)(b)(ii).*
- ADC Article 6 – Additional options for providing financial assurance for mitigation. *Added options to Section 6.410(3).*
- ADC Article 6 – Potential for on-site stormwater. *Staff reviewed Article 6 and determined that there are adequate provisions to allow onsite stormwater.*
- ADC Article 6 – Minor edits to clarify intent. *Sections 6.290, 6.310, 6.410, and 6.450.*
- Citywide ESEE – Strengthen rationale for allowing 25-foot encroachment. *Language was added to reinforce that only degraded areas are eligible for the encroachment, and restoration of the remaining area is required, so it's a win-win.*

Budget Impact: None

Attachment – Goal 5 Community Meeting Notes – July 25

CITY OF ALBANY
Goal 5 Community Meeting
Council Chambers, 333 Broadalbin Street
Monday, July 25, 2011
6:00 p.m.

NOTES

City Council present:	Sharon Konopa, Mayor; Dick Olsen; Floyd Collins; Bill Coburn; Bessie Johnson
State staff present:	Amanda Punton, Oregon Dept. of Land Conservation & Development (DLCD); Rob Hallyburton, DLCD; Ed Moore, DLCD; Anna Buckley, Oregon Dept. of State Lands (DSL); Jim Noyes, Oregon Department of Fish & Wildlife (ODFW)
City Staff present:	Wes Hare, City Manager; Greg Byrne, Community Development Director; Heather Hansen, Planning Manager; Anne Catlin, Planner II; and Tari Hayes, Administrative Assistant
Others present:	Greg Winterowd, Winterbrook Planning; Members of the public (no one signed in)

Wes Hare opened the meeting by welcoming and thanking everyone for their participation in the Goal 5 process. Introductions were made. The intent of the meeting was to answer previous and any final questions the community may have regarding Goal 5.

Goal 5 questions, grouped into six areas, were presented. The questions, with answers, are attached (Attachment A). Additional issues and questions were raised and discussed as well.

Minimal Regulations

The reason other cities may appear to be doing less or have different regulations, is that they may not be in compliance with the current Goal 5 regulations, likely because they started periodic review prior to 1996 when the Goal 5 regulations were adopted. They would be required to meet the regulations at their next periodic review. Portland Metro has additional requirements for communities within its jurisdiction. Sooner or later all cities are going to have to come up with comparable levels of protection. The periodic review trigger is generally 10,000 people.

Goal 5 regulations provide some flexibility to local governments for uses that conflict with the resource, if they can provide findings that show negative consequences for the environment, economy, or social or economic objectives. An Economic, Social, Environmental and Energy (ESEE) analysis must be done.

Councilor Collins asked about the ability to exempt existing residential development. Rob Hallyburton acknowledged the rules allow different resource areas to be treated differently but that DLCD was concerned that the blanket exemption for residential lots may not protect the resource.

Wildlife Habitat

The Goal 5 rules require the City to identify the significant wildlife resources and protect them locally. There were two turtle species identified as significant in the inventories because they are listed as "sensitive-critical" species by the state and they were documented by a professional. Other resources can be added through plan amendments, but they must be documented.

Within the habitat assessment overlay, existing development and landscaping can be maintained and improved upon up to an additional 2,000 square feet. Any additional development within the habitat assessment overlay would require a habitat assessment. If habitat is found, mitigation for impacts would be reviewed by ODFW.

Wetlands

The City is required through Goal 5 to identify the significant wetlands and protect them locally. The state and federal regulations may not go far enough in the protection. Regulations for water quality, endangered species, and floodplain regulations tied to endangered species will continue to change. The City may be required to update their regulations during periodic reviews.

There are community members who feel the city is going too far in regulating land and there are members who feel the City is not going far enough to protect environmental resources.

It was suggested that if mitigation cannot occur on site that the director be allowed to approve an alternative mitigation plan.

Regarding whether a wetland determination or delineation would be required with permits, Anna Buckley with DSL noted that a wetland determination could be sufficient if the wetland boundary is obvious. DSL can assist the property owner with those free of charge, as staff time allows, usually two – three weeks. The local wetland inventory was not designed to be precise, it's a planning document. Wetland delineation requires a consultant to come out and redraw the boundary, at a cost to the property owner. DSL will also review a consultant's determination.

Riparian Corridors

Collins asked if natural resource and other required permits can be incorporated into one permit. It was noted that not every development requires every permit. There is a preapplication process that provides the applicant with a list of all the permits necessary for their project. The streamlining of the permit process is an ongoing goal.

Mitigation/Vegetation

The City has an approved plant list and uses the state noxious vegetation list to determine approved planting. The Calapooia Watershed Council, along with state, local and private organizations are studying the effects of native and non-native vegetation on the local waterways. A rapid assessment is being conducted on the Willamette on invasive species in sensitive habitats between Corvallis and Albany.

Other

The Calapooia Watershed Council has a list of available incentives for natural resource protection.

Albany's Goal 5 requirements do not conflict with Statewide Planning Goal 9 (economic development land), Goal 10 (residential land) and Goal 15(Willamette River Greenway protection) and meets the buildable land requirements. Density bonuses could be included in the Goal 5 protection program.

Are there mitigation opportunities for a landowner who wants to disturb more than 2,000 square feet? Yes, mitigation may be an option after a site assessment.

Public Comment & Staff Response

The City and State can't recommend consultants. Landowners should ask around for recommendations. Society of Wetland Scientists is another resource.

There is a 5-year expiration on wetland delineations because the land can change. A permit issued to impact the wetland is for one year. Permits may be renewed or extended by DSL on a case by case basis.

Generally speaking, if an application has been accepted, the project will finish under the rules in place at the time of the approval. There are some exceptions, such as fire and life safety changes.

Council Direction

Open space zoning - when the natural resource overlays are superimposed on the open space, the line should be able to moved, in order to keep with the purpose of the zoning district.

Density bonus - bring to the Council other density bonus and incentive options. There's been concern in the past with cluster development, allow the transfer of the density if it enhances the natural resource protection. Council would like staff to look at the implementation and design of existing developments given density considerations.

Council would like staff to look into on-site storm water allowance in certain cases in the riparian corridor (not currently addressed).

Open space zoning is supposed to follow natural features. If a new study or delineation finds that the open space area doesn't contain any of the resources it's designed to protect, the change could be made with a simple boundary adjustment based on natural resources. But if there proposal is to fill the open space, the change would need to be completed through a plan amendment or zoning change with Council review.

Providing for more options to bonding as financial assurance for mitigation was supported. There is Council support for alternatives for mitigation when it can't occur on site due to existing easements or right-of-way.

The meeting adjourned at 8:00 p.m.

Submitted by,

Tari Hayes
Administrative Assistant

GOAL 5 FREQUENTLY ASKED QUESTIONS

MINIMAL REGULATIONS

Q: If the City is taking a minimal approach to complying with Goal 5, why do other cities appear to be doing less?

A: It's true that some jurisdictions are doing less to protect Goal 5 resources than what is being proposed for Albany. In most cases, the periodic review work programs for those jurisdictions were approved prior to the current Goal 5 regulations (1996). Their rules would not comply with the current Goal 5 requirements. Communities within the Portland Metro jurisdiction, on the other hand, have higher standards than the minimum Goal 5 requirements. They are accomplishing resource protection through a variety of means, including Goal 5. Setbacks are only a part of their entire protection program.

Q: Why can't we use a voluntary approach to protect Goal 5 resources?

A: The state of Oregon requires us to do more than that. And we can look around and see that a voluntary approach hasn't been effective.

Q: Can't we use the Standard ESEE approach to allow full impacts to the Goal 5 resources to meet other statewide planning goals?

A: The Goal states: "Local governments shall adopt programs that will protect natural resources . . . for present and future generations." This is the point of the whole exercise. The rule provides flexibility for how the goal is achieved. Local governments may allow, to some degree, uses that conflict with the resource if there are well-supported findings that not doing so would result in significant negative consequences for environmental, social, economic, and energy objectives. If a jurisdiction decides to fully allow a use that conflicts with the resource, "the ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided. . ." [OAR 660-23-0040(5)(c)]

WILDLIFE HABITAT

Q: Why are two species of turtles in the Thornton Lakes area getting so much attention?

A: They are the only two species that are both 'documented' and 'listed' in Albany. Protecting species that are documented and listed is the highest wildlife habitat priority through Goal 5.

Q: The turtles aren't endangered species. They are listed by the State of Oregon as 'Sensitive-Critical.' ODFW's handout on this type of listing emphasizes a voluntary approach, not a regulatory one. Why are we doing more than that?

A: The focus of Goal 5 is local protection of significant resources, and habitat for the turtles is considered a significant resource in Albany.

Q: Why isn't the City or state concerned with protecting other wildlife?

A: We don't have enough information to enable us to identify other areas for protection. However, enhancing and protecting riparian areas also enhances habitat for many species.

Q: If development within the Habitat Assessment overlay triggers an assessment, is it done for the entire property or just within the Habitat Assessment area?

A: Just within the Habitat Assessment overlay.

Q: Won't mitigation requirements impact the nesting habitat for turtles, which is sparsely vegetated land with good solar exposure?

A: It's possible that they would, but development that impacts land within the Habitat Assessment overlay would also require a habitat assessment in most cases.

Q: Can't the turtle ESEE (and the Council) conclude that the 20-acre East Thornton Lake Natural Area is adequate mitigation and protection for the sensitive turtles?

A: It would be difficult to support that conclusion without a turtle habitat assessment of the Thornton Lakes area.

Q: My backyard is in the Habitat Assessment area. Can I build a play structure? Can I maintain my garden? Can I expand my garden?

A: You can maintain existing landscaped and developed areas, and you can impact up to 2,000 square feet of additional area before a habitat assessment is required.

WETLANDS

Q: Why is Albany proposing to regulate wetlands locally when Oregon Department of State Lands (DSL) and the US Army Corps of Engineers already regulate them?

A: The state of Oregon requires protection of locally significant wetlands. State and federal regulations don't prevent vegetation removal or filling of wetlands, and the significant wetlands are too important to let that happen.

Q: Why isn't documentation of wetland permits from the state/feds enough to protect the resource?

A: The state, through Goal 5, requires local regulations for protection of significant resources.

Q: Why do we have a 50-ft buffer around riparian wetlands if DSL doesn't regulate uplands and doesn't require a wetland buffer?

A: This is a Goal 5 requirement. The adjacent wetlands are part of the riparian corridor complex and the buffer helps to protect/maintain the wetland functions, such as removing pollutants and providing wildlife habitat.

Q: Why is a wetland delineation or determination needed?

A: If a property owner wants to change the boundary of the wetland shown on the Local Wetland Inventory (LWI) maps, or development is planned within 30 feet of a wetland shown on the LWI, then a DSL-approved delineation or determination is needed. A DSL-approved determination may be sufficient if there is an obvious steep change in grade and the wetland is shown climbing the slope, for example. Most times, a wetland delineation will be necessary.

RIPARIAN CORRIDORS

Q: Are you sure that the riparian corridor buffer is measured 50 feet from the edge of the wetland or just measured to include the wetland?

A: The OARS [660-23-0090(5)(c)] require it to be measured from the upland edge of the adjacent wetland.

Q: If OARs require the 50-foot riparian corridor to be measured around significant wetlands, why don't Salem's regulations require an additional 50 feet around wetlands in the riparian corridor?

A: Salem's natural resource protection regulations do not meet current Goal 5 requirements and would not be approved if re-submitted to the State now as is.

Q: Since most of the riparian corridors are in the floodplain, why aren't the floodplain development regulations enough to protect the riparian areas?

A: They are intended to address different but related objectives. Floodplain regulations do not adequately address the Goal 5 requirements for resource protection.

Q: Why can't the riparian corridor regulations be limited to just prohibiting structures, prohibiting planting noxious weeds and prohibiting clearing vegetation without obtaining an erosion control permit?

A: This would fall short of protecting the significant natural resources, but would be more restrictive regarding placement of structures.

Q: Why is the City regulating riparian corridors in manmade channels?

A: Goal 5 requires local protection of all fish-bearing water. Even intermittent streams can provide seasonal fish habitat. Over the decades, many natural channels have been engineered, but they still provide riparian function and value. Water in those channels still empties into the Willamette River.

MITIGATION/VEGETATION

Q: Why is there so much emphasis on native vegetation? Non-native vegetation provides benefits and habitat, so why can't non-native vegetation be planted in the overlays if it is not invasive or noxious?

A: Native vegetation, once established, requires little care, and the use of pesticides should be little or none. Also, wildlife evolved along with the native plants, so it helps support their survival.

Q: Would previous native plantings count towards mitigation/enhancement?

A: If previous plantings were required as mitigation for previous wetland impacts, then no, they wouldn't count. Native plantings under Goal 5 are intended to mitigate for future impacts to the resource, after Goal 5 is implemented.

Q: Why do mitigation plans have to be prepared by a professional?

A: Professionals will know the type of mitigation that is appropriate and effective for the site. We can work with the watershed council and others to come up with "off the shelf" mitigation plans that can be used for specific types of resource sites.

Q: Why does the mitigation work have to be bonded?

A: To ensure that it will be effective. This is a common way of doing business. The City Council can also consider alternatives to bonding.

Q: Why can't the mitigation work be performed under the required City erosion control permit process with plants that are locally available?

A: The City's Erosion Prevention and Sediment Control program has different objectives that do not address protection of significant resources.

OTHER

Q: What incentives are available for natural resource protection?

A: The City can consider site incentives such as density bonuses and relaxed development standards, such as setbacks, lot coverage, and parking requirements. There are incentives available through programs in other agencies as well.

Q: Why don't the recommendations provide for density transfer of land impacted by the overlay districts like some other cities do?

A: Unlike other jurisdictions, most proposed overlay districts are already zoned Open Space, which allows little development, so there's really no density to transfer. The City Council can still decide to provide density bonuses in the Goal 5 protection program.

Q: Why are filled wetlands or land removed from the floodplain through fill not eligible for an Open Space boundary line adjustment?

A: The Open Space zoning was intended to protect natural features. An adjustment is warranted to correct maps where the Open Space zone boundary does not reflect the actual location of those natural features. But if land were to be rezoned due to destruction of the natural features through placement of fill, it would require a Comprehensive Plan and Development Code amendment public hearing process to change the zoning.

Q: How do the restrictions in the overlays affect buildable lands?

A: When an inventory of buildable commercial and industrial lands was completed in 2007, we assumed that significant wetlands and riparian corridors were not suitable for development so they were not counted as buildable.

Q: Can on-site stormwater facilities be placed in the riparian corridor?

A: Yes, but it should be addressed more explicitly in the proposed amendments to the Development Code.

Q: Why can't Grand Prairie Water Control District (GPWCD) be exempted from Goal 5?

A: GPWCD activities are exempted in the proposed amendments to ADC Article 6. However, any work below ordinary high water mark is NOT exempt from Oregon Department of State Lands and US Army Corps of Engineers wetland and waterway permit requirements.

Q: Will currently approved plans need to comply with Goal 5 when it's implemented?

A: No. Any active applications, permits, or plans need to comply with regulations in effect at the time they were submitted or approved.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 4447, WHICH ADOPTED THE CITY OF ALBANY COMPREHENSIVE PLAN AND MAP, AND AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE COMPREHENSIVE PLAN TEXT AND MAPS, AND DEVELOPMENT CODE TEXT RELATING TO PROTECTION OF NATURAL RESOURCES (STATEWIDE PLANNING GOAL 5), ADOPTING FINDINGS, AND DECLARING AN EMERGENCY
(FILES CP-02-10 AND DC-05-10).

WHEREAS, in 1996, the City of Albany received notice from the Oregon Department of Land Conservation and Development to begin "Periodic Review" of its Comprehensive Plan; and

WHEREAS, the Oregon Department of Land Conservation and Development approved the City of Albany's Periodic Review Work Program in 1997 that included an update of the Albany Development Code to implement the Comprehensive Plan; and

WHEREAS, Work Task #2 (Goal 5) of the City's approved Periodic Review Work Program included completing wetland inventories, and developing an ordinance to protect significant wetlands per OAR 660-23-100; and

WHEREAS, Work Task #2 (Goal 5) of the City's approved Periodic Review Work Program included applying the safe harbor approach to identify the location of fish-bearing lakes and streams, and developing an ordinance to protect fish-bearing lakes and streams per OAR 660-23-090; and

WHEREAS, Work Task #2 (Goal 5) of the City's approved Periodic Review Work Program included compiling existing wildlife inventories from appropriate state and federal agencies and developing an ordinance to protect significant wildlife habitat per OAR 660-23-110; and

WHEREAS, the City completed four Local Wetland Inventories (LWI) between 1995 and 2001 on most of the vacant and underdeveloped lands in the City; and

WHEREAS, the Oregon Department of State Lands approved the City's four LWIs – *Southeast Industrial Area; East I-5; Willamette River, Calapooia, Oak Creek; and North Albany* – and has them available on their website; and

WHEREAS, the City used the "Safe Harbor" approach to identify the fish-bearing lakes and streams in Albany that are significant riparian corridors; and

WHEREAS, two species of turtles listed by the State of Oregon as "sensitive-critical" are documented by the Oregon Department of Fish and Wildlife in the Thornton Lakes area, and the area is therefore considered significant wildlife habitat; and

WHEREAS, most of Albany's significant natural resources are zoned Open Space and the existing Open Space Zoning is not sufficient for protecting the resources; and

WHEREAS, the proposed amendments establish overlay districts which are intended to serve as the primary mechanism for identifying and protecting significant wetlands, riparian corridors, and wildlife habitat; and

WHEREAS, the proposed amendments establish a process to enable local review of potential natural resource impacts from proposed development activities within the overlay districts; and

WHEREAS, the proposed amendments include standards for the natural resource impact review that are intended to protect, or lessen the impact upon, the significant resources; and

WHEREAS, between 2009 and 2011 a series of public meetings were held to seek public input on Goal 5, including an open house, roundtable forum, multiple Planning Commission and City Council work sessions and public meetings; and

WHEREAS, on February 14, 2011, the City mailed notice of the Planning Commission and City Council public hearings on the proposed amendments to all potentially affected property owners in accordance with ORS 227.186; and

WHEREAS, on January 31, March 7, March 21, and April 4, 2011 the Planning Commission held public hearings on the proposed amendments, and recommended City Council approval of the proposed amendments based on findings contained in the staff report and testimony presented at the public hearing; and

WHEREAS, staff's recommendation of "Safe Harbor" protections for riparian corridors and significant wetlands was not acceptable to the community; and

WHEREAS, the City conducted a Citywide ESEE (Economic, Social, Environmental, Energy) Analysis for riparian corridors and significant wetlands, and a Thornton Lakes ESEE Analysis for turtle habitat, to seek an appropriate balance of environmental protection and reasonable economic use of property; and

WHEREAS, on May 20, 2011, notice of the City Council public hearings was published in the Albany Democrat Herald; and

WHEREAS, on May 25, 2011 the City Council held a public hearing concerning the proposed amendments and continued the public hearing to June 8, 2011; and

WHEREAS, on June 8, 2011 the City Council held a public hearing, reviewed the amendments recommended by the Planning Commission, and subsequent amendments proposed by staff, heard testimony presented at the public hearing, and then instructed staff to have another meeting with the public to answer questions regarding Goal 5; and

WHEREAS, on July 25, 2011 the City Council held a special Goal 5 work session to answer questions from the public, and then instructed staff to revise the proposed amendments to address specific issues; and

WHEREAS, on August 24, 2011 the City Council held a public hearing, reviewed the revisions to the amendments proposed by staff, heard testimony presented at the public hearing, and then deliberated; and

WHEREAS, the City of Albany has completed the requirements associated with the implementation of Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources and in doing so has balanced the protection of natural resources with reasonable economic use of property.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Albany Comprehensive Plan text is hereby amended as shown in attached Exhibit A.

Section 2: The Albany Comprehensive Plan Plate 3-Natural Vegetation and Wildlife Habitat is hereby amended as shown in attached Exhibit B.

Section 3: The Albany Comprehensive Plan Plate 4-Streams, Rivers, and Lakes is hereby amended as shown in attached Exhibit C.

Section 4: The Albany Comprehensive Plan Plate 6-Local Wetland Inventory is hereby amended as shown in attached Exhibit D.

Section 5: The four Local Wetland Inventories for the City of Albany previously approved by the Oregon State Department of State Lands (DSL) – *Southeast Industrial Area*; *East I-5*; *Willamette River, Calapooia, and Oak Creek*; and *North Albany* -- are hereby adopted by reference and can be found on the DSL website http://www.oregonstatelands.us/DSL/WETLAND/lwi.shtml

Section 6: The *Citywide Goal 5 ESEE: Riparian Corridors and Significant Wetlands* is hereby adopted as a supporting document to the Albany Comprehensive Plan as shown in attached Exhibit E.

Section 7: *The Thornton Lakes Significant Turtle Habitat ESEE* is hereby adopted as a supporting document to the Albany Comprehensive Plan as shown in attached Exhibit F.

Section 8: The Albany Development Code text is hereby amended as shown in attached Exhibit G.

Section 9: The Albany Native Plant List is hereby adopted as shown in attached Exhibit H.

Section 10: The Findings of Fact contained in the staff report and attached as Exhibit I are hereby adopted in support of this decision.

IT IS HEREBY adjudged and declared that this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effect on _____, when signed by the Mayor.

Passed by Council:_____

Approved by Mayor:_____

Effective Date: September 30, 2011

_____
Mayor

ATTEST:

_____
City Recorder

CHAPTER 1: NATURAL RESOURCES

*[Amendments to Chapter 1 are shown in **bold** and ~~strike~~. When bold text is proposed, it is shown underlined.]*

OPEN SPACES, SCENIC & HISTORIC AREAS, & NATURAL RESOURCES (GOAL 5)

VEGETATION AND WILDLIFE HABITAT BACKGROUND SUMMARY

The Albany area ~~exists~~ within a highly diverse natural vegetation zone, which over the years, has undergone extensive changes. Agriculture and urban development have displaced most of the natural vegetation within the Albany urban growth boundary. Most of the Willamette Valley's native woodlands and prairies have been replaced by croplands. **By 2011, most agricultural uses within Albany's city limits have given way to urban development.** Vegetation within urban areas is comprised mostly of ~~imported~~ **non-native** trees and shrubs.

However, rivers and other drainageways within the Albany area are lined with a narrow fringe of natural riparian vegetation. Other significant natural vegetation includes isolated stands of native Oregon oaks and a mixture of deciduous and evergreen trees on the hillsides of North Albany and Knox Butte. These woodlands are intermixed with residential development and farmland and generally occur on slopes of more than 15 percent. **Albany's native vegetation and wildlife habitat sites are identified on Plate 3: Natural Vegetation and Wildlife Habitat.**

The natural woodland vegetation along waterways and hillsides provides the most important wildlife habitat within the Albany area. **Many species are dependent upon specific types of vegetative cover found only within riparian areas.** Although no comprehensive field survey has been completed, over 250 bird and animal species may exist within the area. **Records of wildlife sightings in Albany include birds, fish, other vertebrates, and plant species that are listed as endangered or threatened at the state and federal levels[1], and federally protected migratory birds.[2]** ~~Many of these species are dependent upon specific types of vegetative cover found only within riparian areas.~~ **The specific habitat locations of most of these species have not been determined or documented. Salmonids have been documented in the Willamette River, Calapooia River, Truax Creek, Periwinkle Creek and Cox Creek.**

Wildlife habitat was designated as significant using the Safe Harbor methodology in state law[3] for when one or more of the following conditions exist:

(a) The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;
(b) The habitat has documented occurrences of more than incidental use by a species described in (a);
(c) The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to the Oregon Forest Practices Act and Rules;
(d) The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or
(e) The area is identified and mapped by Oregon Department of Fish and Wildlife as habitat for a wildlife species of concern and/or as a habitat of concern.

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[1] Oregon Heritage Information Center
[2] The Migratory Bird Treaty Act of 1918 protects more than 800 species of migratory birds
[3] Oregon Administrative Rules, 660-023-0110 (4).

The Oregon Department of Fish and Wildlife documented that two species listed as "sensitive-critical" by the state were found in the Thornton Lakes area. The two sensitive species are the Northern Pacific (Western) pond turtle (*Actinemys marmorata*) and the Western painted turtle (*Chrysemys picta*). The Lakes provide critical habitat for these turtles as much of their lives are spent in slow-moving water.

The state requires the City to adopt a program to protect significant wildlife habitat. The City prepared an analysis of economic, social, environmental, and energy consequences (ESEE) of allowing, limiting or prohibiting conflicting uses in the turtle habitat impact area. The analysis concluded that development should be reviewed for its potential impact to turtle habitat when it is within 75 feet from the ordinary high water mark of Thornton Lakes. The Significant Turtle ESEE Analysis is adopted into the Plan as a supporting document.

Other findings from the 2009 habitat assessments include the loss of connectivity between habitat sites and the overall declining value of them due to human encroachment. However, those associated with water, good food sources, and in close proximity to other habitats scored higher. Connectivity between many adjacent habitat sites is interrupted by housing developments and roadways. Wildlife need connected habitat corridors and often require a combination of food, water and vegetative cover necessary for travel, protection, feeding, and reproduction.

In addition, riparian vegetation helps provide fish habitat in many waterways by anchoring the soil on riverbanks and gravel. The Willamette River is a major route for migrating fish. The river also serves as an important recreational fishery. The Calapooia River has been identified as having potential for both bank and boat fishing for warm-water fish, salmon, steelhead, and trout. The city's vegetated open space areas and parkland also include a number of small lakes which provide fish habitat as well as habitat for the many waterfowl which live in the area or visit seasonally. These small lakes are stocked regularly by the Department of Fish and Wildlife in cooperation with the Albany Parks and Recreation Department.

The area's natural vegetation also provides important erosion control along river and stream banks, drainage channels, and on steep slopes. The stability of both banks of the Willamette and Calapooia Rivers is dependent upon vegetation to prevent excessive bank erosion and resultant property damage. This is especially true for the south cut-bank of the Willamette River along the downtown waterfront. Retaining vegetation along the Calapooia is particularly important since the river has been identified as having bank erosion problems.

Vegetation **and trees** in the Albany urban area can accomplish important environmental functions including: modification of temperature extremes, the amelioration of environmental pollution, the reduction of soil erosion and surface runoff, and aesthetic enhancement of the city. With its large areas of paved surfaces and light reflective buildings, the city acts as a heat trap. This is particularly true on hot summer days. Trees planted around large paved areas, such as parking lots and streets and adjacent to buildings can help to reduce the reflection and build-up of glare and heat. Trees can reduce temperature extremes by absorbing solar radiation, channelling or blocking wind, providing shade, and absorbing reflected heat. Vegetation, in contrast with paved surfaces, absorbs and slows water runoff and should be used whenever possible to prevent the rapid runoff of rain. The use of trees and other types of vegetation can help to reduce the air pollution in the Albany urban area, particularly in industrial areas, ~~the Central Business District,~~ along major arterials, and Interstate 5.

[Staff Comments: This content relates more to aesthetics, beautification, and urban design than to native vegetation and wildlife. Staff proposes relocating this content to Comprehensive Plan Chapter 7, Aesthetics and Urban Design, pages 7-8 through 7-12.]

~~Albany's older neighborhoods contain a large number of mature trees and shrubs which provide shade and lend substantial beauty and charm to the older portions of Albany. Many of the newer residential areas exhibit some attempt at street tree planting, but there is a conspicuous lack of vegetation in the majority of these neighborhoods. Vegetation is also scarce along the Pacific Boulevard and Santiam Highway commercial strips. These highway commercial strips represent Albany's highest visibility areas. However, some visual~~

~~improvement was made at the north Pacific Boulevard/I-5 interchange with the completion of Waverly Park. A street tree planting program was completed in 1984 in the Albany Central Business District. A total of 146 trees were planted. In time, this effort will substantially improve the aesthetic and environmental quality of the downtown. The City does not have an established street tree maintenance program. Monteith Riverpark has also improved the aesthetic and environmental quality of the downtown area. This previously deteriorated and degraded waterfront was transformed into a fourteen-acre park and completely revegetated.~~

~~The planning approval process is also an important part of providing for urban landscape and vegetation. Most of the significant plantings that have occurred in Albany during the last five years were done by private business.~~

~~The Albany area's industrial property owners and managers have undertaken steps to improve Albany's visual image along Interstate 5. The Albany Area Chamber of Commerce is coordinating the "I-5 Beautification Program." This effort proposes to plant several thousand trees and shrubs along the Albany area's industrial interface with I-5. However, much work continues to be needed within the industrial zones and especially in those areas where industrial properties are next to commercial, residential, or other potentially incompatible land uses.~~

~~The use of vegetation for aesthetic purposes, such as the creation of buffer zones between incompatible development or street tree planting, can help improve the livability of the Albany area. These aesthetic needs and opportunities are more thoroughly discussed in Chapter 2 of the Comprehensive Plan.~~

More detailed information on vegetation and wildlife habitat can be found in the **following** Comprehensive Plan Background Report~~s~~**:**

~~under~~

- **Goal 5 ESEE Analysis: Thornton Lakes Significant Turtle Habitat (2011).**
  ~~Goal 4: Forest Resources and~~
  - ~~Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources.~~

OPEN SPACES, SCENIC & HISTORIC AREAS, & NATURAL RESOURCES (GOAL 5)

VEGETATION AND WILDLIFE HABITAT GOALS, POLICIES, AND IMPLEMENTATION METHODS

GOALS

Ensure **native** vegetation ~~is and~~ remains an integral part of Albany's environment.

Protect and enhance significant wildlife habitat in the urban growth boundary.

Balance compact development patterns with natural resource protection.

[Staff Comments: the policies and implementation measures shown in "strike through" are being moved to Chapter 7, Aesthetics and Urban Design & Development, because they relate to urban landscaping.]

POLICIES

1. Protect existing vegetation ~~which~~ **that** possesses significant environmental, wildlife **and fish** habitat, ~~and~~ aesthetic qualities**, or educational and recreational values**, particularly along the ~~Santiam Canal and the~~ Willamette and Calapooia Rivers, their tributaries, and associated floodplains**, wetlands,** and drainageways.

2. Encourage the protection of trees of significant size that represent a visual and aesthetic resource to the community and recognize that the vegetation resources of Albany's Historic Districts are an important element of Albany's historic and cultural heritage.

3. Where possible, retain the environmental and aesthetic qualities of existing wooded areas by incorporating them into public park and open space plans, and ensure the maximum preservation of vegetation during the development review and construction process.

4. Require new development to utilize **existing mature and native** landscaping~~ and encourage the improvement of existing development sites to current Development Code standards, especially by planting~~ **and incorporate native** trees **and vegetation into landscape plans.** Landscaping shall address the need to:

   a. **Maintain existing wildlife habitat.** ~~Visually enhance development projects.~~
   b. Provide buffering and foster compatibility between different land uses.
   c. Reduce water runoff and maintain soil stability.
   d. Reduce energy use by using vegetation for shading, windbreaks, and insulation.

~~5. Develop and implement a landscape enhancement program for Albany that:~~

   ~~a. Enhances Albany's appearance and image.~~
   ~~b. Creates an attractive and comfortable environment for Albany's residents and visitors.~~
   ~~c. Maintains and manages existing vegetation resources.~~

~~6. Utilize landscaping around public buildings and spaces, including parking lots to improve Albany's appearance and image.~~

~~7. Encourage the upgrading of existing developments to meet current Development Code landscape requirements. Emphasis shall be placed on landscaping.~~

5. **Limit removal of native vegetation and wildlife habitat and introduction of non-native or invasive species in areas identified on Plate 3: Natural Vegetation and Wildlife Habitat. Mitigation for losses may be a requirement of development approval.**

6. **Provide flexibility in development regulations to locate development away from and/or limit adverse impacts to significant vegetation and wildlife habitat areas.**

7. **Require wildlife habitat assessments when new development is proposed in significant habitat areas in order to identify and maintain critical habitat.**

8. **Development within significant natural resource overlay districts shall be consistent with the relevant regulations or guidelines of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Federal Emergency Management Agency, Oregon Department of Fish and Wildlife, U.S. Army Corps of Engineers, Oregon Division of State Lands, and the Oregon Department of Environmental Quality.**

9. **Use a combination of programs that involve development regulations, purchase of land and conservation easements, educational efforts, and mitigation of impacts on resource sites in order to conserve, protect and enhance natural resource sites and values.**

IMPLEMENTATION METHODS

1. Preserve existing vegetation through actions such as:

   a. ~~Undertaking an~~ **Maintain** ~~inventory~~ **inventories** of significant vegetation**, wildlife habitat,** and stands of trees within the Albany Urban Growth Boundary, including trees that have potential historic value. Subsequently, develop and provide information concerning the location, care, and maintenance needs of identified significant trees **and habitat**.
   b. Development of review procedures for actions that propose removal of significant trees or significant amounts of vegetation. These standards would address wood cutting, timber harvesting, and development actions within the Urban Growth Boundary.
   c. Require site design and construction practices to preserve, to the maximum extent **reasonably feasible** ~~possible~~, significant trees both on and off the site. City staff **shall** ~~would~~ work with applicants to develop alternatives that would minimize vegetation loss.
   d. Application of Greenway ~~Conditional Use~~**standards and** procedures for actions proposed along the Willamette River to maintain and enhance the river's riparian vegetation.
   e. Application of appropriate floodplain and floodway development standards to maintain vegetation in areas prone to flooding.

2. Recognize the importance of vegetation for sustaining wildlife habitat and, where possible, mitigate adverse impacts through ~~design~~ **development code** modifications. Especially consider the impacts on wildlife habitat when reviewing development in **a natural resource overlay district,** floodplains and vegetated hillside areas.

3. **Adopt regulations that reduce impacts of development on significant wildlife species likely to be present on development sites, and mitigation of such impacts to the extent reasonably feasible. Regulations should allow for flexibility in development standards to achieve wildlife habitat protection.**

4. **Develop habitat friendly development standards and best practices.**

5. **When significant wildlife habitat is documented within the City's Urban Growth Boundary, revise the habitat assessment overlay district boundary, the development standards, and Plate 3 as necessary.**

RECOMMENDATIONS

1. **Encourage public and private acquisition programs for significant Goal 5 Resources; prepare and maintain a long-range list of priority resource locations for public acquisition.**

2. **Facilitate and encourage voluntary habitat protection and enhancement, habitat friendly development and maintenance practices, and low impact development.**

3. **Provide educational opportunities for the public through the internet and workshops on habitat friendly standards and impacts of habitat alterations.**

4. **Develop linkages with programs at Oregon State University, Linn and Benton Counties, watershed councils, and other organizations or volunteers that may be interested in assisting with activities such as education and outreach, or conducting habitat assessments.**

~~3. Encourage and, when appropriate, offer assistance to utility companies to improve line clearing practices to avoid public safety hazards associated with improper pruning and improve the health and aesthetic contribution of Albany's street trees.~~

~~4. Undertake the following as part of the City of Albany's landscape enhancement program:~~

- ~~a. Street tree programs which provide for the planning for, planting, and maintenance of trees in all areas of the community including all street rights of ways, public open space areas, and on the grounds of all institutions.~~
- ~~b. Encourage neighborhood organizations, schools, and service clubs to participate in tree planting programs and other landscape enhancement efforts.~~
- ~~c. Adopt city street tree regulations and standards.~~
- ~~d. Implement an ongoing and professional maintenance program for Albany's street trees and other vegetation within public rights of way and on other public properties.~~
- ~~e. Ensure that trees are part of the landscape design for all developments except where they are determined to be inappropriate or present hazards.~~
- ~~f. Encourage local industry to use appropriate vegetation to visually enhance development sites and provide buffering from incompatible uses.~~
- ~~g. Develop landscapes around public buildings and spaces, including parking lots to improve community appearance and image.~~
- ~~h. Encourage property owners to improve and maintain their landscapes, including provision of replacement vegetation when older, deteriorated vegetation is removed.~~
- ~~i. When necessary, provide an appropriate level of site design and landscape planning assistance.~~
- ~~j. Develop, maintain, and distribute public information pertaining to site planning, landscape design, appropriate use of plant materials, and other technical information.~~
- ~~k. Improve Albany's appearance along Interstate 5.~~
- ~~l. Where possible, promote the energy saving benefits of appropriately planted vegetation.~~

~~5. Utilize the report "City of Albany Beautification Opportunities - Phase I" as a guide to implement specific landscape development and community beautification programs for:~~

- ~~a. Albany's residential neighborhoods.~~
- ~~b. Major city entryways.~~
- ~~c. The downtown commercial core.~~
- ~~d. The Willamette River waterfront.~~
- ~~e. The Pacific Boulevard and Santiam commercial strips.~~

~~f. Industrial areas.~~

~~6. Except for single family and two family residential development, require developers to utilize the skills of landscape architects, landscape designers, or otherwise receive City approval of landscape designs, and guarantee the completion of landscape requirements (i.e. through performance bonding or by setting aside funds for landscaping).~~

~~7. Require the continued maintenance of landscaped areas in accordance with Development Code requirements and conditions of planning approval.~~

~~8. Require the establishment and maintenance of landscaped areas in all parking lots to provide shade and visual amenities, except where site conditions are inappropriate or where hazards would result. Landscape development in parking lots should emphasize the following:~~

~~a. The planting of broad spreading trees to provide shade and mitigate the negative visual and environmental impacts of parking lots.~~
~~b. Installation of other plant materials in a manner to provide effective screens between parking lots and adjacent uses.~~

~~9. Develop specific urban design and beautification measures for the Pacific Boulevard and Santiam commercial strips whereby:~~

~~a. Specific site design, landscape, and street tree design improvements are developed for each establishment.~~
~~b. Funding alternatives are developed that utilize a combination of private, city, state, or federal funds.~~
~~c. For projects which funding sources become available, completion shall be accomplished within five years of the acquisition of funds.~~

~~10. Where appropriate, street design and construction standards shall provide for a planter area between the curb and sidewalk in all areas used by pedestrians, including residential and commercial areas and areas in close proximity to schools to provide:~~

~~a. Pedestrian safety by separating the sidewalk from the street.~~
~~b. Beautification and visual amenity.~~
~~c. Shade and buffering from streets.~~

~~11. Pursue designation for Albany as a "Tree City USA" sponsored by the National Arbor Day Association. Designation requires the following:~~

~~a. Expenditure of at least one dollar per capita for maintenance, preservation, and planting of street and other publicly-owned trees.~~
~~b. Adoption of an ordinance providing for the protection and planting of street trees and other trees on public properties.~~
~~c. The formation of a Shade Tree Advisory Committee to guide the City's tree program and to formulate policy.~~
~~d. The holding of an annual Arbor Day Celebration and tree planting event.~~

~~12. Develop and maintain up-to-date landscape development specifications within the City's Standard Specifications Manual.~~

~~13. Develop and implement comprehensive street tree programs for Albany's local, collector, and arterial streets.~~

~~RECOMMENDATIONS~~

~~1. Encourage Albany area schools to make an ongoing commitment involving students and school district resources to plant and maintain shade trees on school grounds and other public places.~~

~~2. Encourage the Oregon Department of Transportation to improve and maintain the Interstate 5 landscaping along Albany's interface with the freeway.~~

~~3. When private property is unavailable, encourage the Oregon Department of Transportation to allow Albany businesses to utilize the undeveloped portion of right-of-way along Pacific Boulevard and Santiam Highway to meet landscape requirements.~~

*[Proposed changes to the original content are shown in **bold** and ~~strike~~.]*

OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES (GOAL 5)

OPEN SPACE & RIPARIAN RESOURCES BACKGROUND SUMMARY

~~A substantial amount of open space exists with the Albany Urban Growth Boundary, both inside and outside the city limits. A little less than half of the Urban Growth Boundary acreage is presently in some form of open space, either as agricultural land, parks, vacant or undeveloped land, bodies of water, floodplain or other natural areas. Most of this open space is in agricultural use outside of the city limits in the East, South, and North Albany neighborhoods. Within the city limits, open space is largely parks, vacant or undeveloped lands.~~

Open space lands add to the ~~liveability~~**livability** of ~~the area~~**a community**. Local awareness and appreciation for nature and the need to provide a physically and psychologically healthy urban environment are reasons for promoting a compatible mix of natural and urban areas. Urban areas provide for a diversity of economic, social, and cultural opportunities. Diversity in the natural environment of the city can also occur. With proper planning, it is possible to allow intense urban development on suitable land and still retain valuable islands and corridors of open space. Open space may reflect a sensitive natural area, such as the floodway fringe or wetland, which is protected from development. Open space can also be a park, a golf course, a cemetery, **riparian corridors,** a body of water, or an area left undeveloped within a private commercial or residential development. Agricultural and forested lands on the fringe of the urban area, in addition to their primary use, provide secondary scenic and open space values.

As city growth and development continues, **wedges and corridors of open space around natural features, steep, vegetated hillsides, floodplains, wetlands, drainage ways, rivers, water bodies and existing parks will increase in importance and will add value to the city.** ~~a large portion of the land that is currently regarded as open space will be used for future urban uses. However, the conversion of all of this open space to urban use should not be considered inevitable. In some cases it will not even be possible since much open space is in drainageways, floodplains, wetlands, small lakes, and the steep, vegetated hillsides of North Albany and Knox Butte. The Comprehensive Plan calls for many of these natural features to be used to partially fulfill recreational and open space land needs. In addition, to provide protection to e~~**Some of Albany's e**nvironmentally sensitive areas, many drainageways, wetlands, and floodplains ~~will be left in their natural state, although they~~ may **need to** be adapted to fit special urban needs for recreational and open space uses. ~~Some other vacant land and agricultural land will also be needed to meet the recreational needs of the projected 46,000 population in the year 2005. (A needs assessment for park acreage is included within the Parks and Recreation Section of the Plan.)~~

~~Furthermore, it may be possible to retain valuable wedges and corridors of open space without overly restricting development by using existing natural features.~~ For example, there are several natural waterways radiating outward from the Willamette River and cutting across many neighborhoods within the city. These drainage courses provide the city with ~~seven~~ corridors of open space ~~which could be~~ **that are** used for alternate modes of transportation such as for bicycle and pedestrian pathways; used as effective buffers between incompatible types of urban development; used in floodplain protection and storm drainage management, or for wildlife habitat. **Albany's streams, rivers and lakes are identified on Plate 4.**

Riparian areas are found adjacent to a river, lake, or stream, and consist of the area of transition from an aquatic ecosystem to a terrestrial ecosystem. They often contain wetlands and native vegetation that improve water quality by providing shade to help moderate stream temperatures to support fish and other aquatic animals, trapping sediment, and stabilizing banks. Riparian areas provide valuable wildlife habitat, including food and nesting areas for a variety of animals, birds, and mammals, including

anadromous salmonids. Riparian corridors also provide connectivity between habitat sites to provide a safe corridor for migrating birds and other wildlife that feed along lakes, rivers, and creeks. These corridors enhance the urban environment by providing open space, natural features, and corridors for trails and paths.

The state requires that cities inventory and determine significant riparian corridors using either the "safe harbor" method or the "standard" method, which analyzes each riparian resource to determine the corridor boundary. Pacific Habitat Services conducted riparian inventories for all water bodies within the City using a state-approved methodology called the Urban Riparian Inventory and Assessment Guide. The City elected to use the safe harbor method to define Albany's significant riparian corridors, which is 50 feet upland from the ordinary high water of Albany's lakes and fish-bearing water bodies. The riparian corridor includes the following water resources and associated in-stream lakes: Calapooia River, Burkhart Creek, Cathey Creek, Cox Creek, Crocker Creek, Horseshoe Creek, Oak Creek, Periwinkle Creek, Thornton Lakes, and Truax Creek. The Willamette River riparian corridor is located in the Willamette River Greenway. When the riparian corridor includes all or portions of a significant wetland, the district is measured horizontally from the upland edge of the significant wetland.

State law requires cities to adopt provisions to prevent the permanent alteration of significant riparian corridors, with some exceptions, and to control the removal of riparian vegetation. Albany's significant riparian corridors are identified as an overlay district in the Albany Development Code.

More detailed information on open space resources **and riparian corridors** can be found in the **following Comprehensive Plan** Background Report:

- **Citywide Goal 5 ESEE Analysis: Riparian Corridors and Significant Wetlands.**

OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES (GOAL 5)

OPEN SPACE & RIPARIAN RESOURCES GOALS, POLICIES, & IMPLEMENTATION METHODS

GOALS

Ensure the provision of open space and protection of natural and scenic resources.

Maintain a healthy environment and natural landscape in riparian corridors.

POLICIES

1. Retain open space lands ~~which~~**that** provide **at least one of** the following:

   a. Aesthetic and environmental relief from the ~~density~~**intensity** of urban development.
   b. ~~Future r~~Recreational lands and opportunities.
   c. Buffers between incompatible development.
   d. Protection of natural hazard, wetlands, steep slopes, and other areas not suitable for development.
   e. Significant fish and wildlife habitats.
   f. Protection of significant historic areas.

2. Recognize and promote the recreational and open space importance of the Albany area's small lakes such as Timberlinn Lake, Periwinkle Lake, Freeway Lakes, Swan Lakes, Thornton Lake, Scravel Hill Lake, and Waverly Lake by ensuring or providing continued public enjoyment and supporting state agency programs such as the Oregon Department of Fish and Wildlife's fish stocking programs.

3. Where possible, utilize major utility easements, rights-of-way, abandoned railroad rights-of-way, and drainageways **and riparian corridors** for bicycle and pedestrian pathways.

~~4. Recognize the open space value of quasi public areas such as cemeteries and golf courses.~~

~~5~~**4.** Support the interim use of public lands for community-related uses including open space and parks, community gardens, and city nurseries to store and grow plant materials for future beautification efforts.

5. The City shall preserve and enhance riparian corridors by managing uses and activities that could adversely affect riparian corridors through education, and adoption and enforcement of development standards.

6. Provide flexibility in some development regulations, such as setbacks, building height, and street widths, in order to protect significant riparian corridors. Where the combination of riparian, wetlands, and other requirements would result in an unbuildable lot, provide hardship variance procedures.

7. Limit the removal of native riparian vegetation.

IMPLEMENTATION METHODS

1. Preserve floodplains and ~~drainageways~~ **riparian corridors** to provide a basic open space framework for the community using the following guidelines:

   a. ~~Reserve~~ **Designate a riparian corridor overlay district that is 50 feet from the ordinary high water mark of Albany's significant riparian resources.**

   ~~**b.** as open space a minimum of 50 feet on each side of the centerline of Truax and Burkhart Creeks and 100 feet on each side of the centerline of Cox Creek (exact open space delineation should consider topography, scenic areas, vegetation, proposed adjacent development, and drainage characteristics of the particular areas).~~

   b. Designate ~~the~~ floodways **and significant riparian corridors** ~~of Oak Creek and the Calapooia River~~ as open space.

   c. When appropriate, require the dedication of public access easements for pedestrian and bicycle trails along those ~~drainageways~~ **corridors** designated for open space when development occurs on adjacent properties.

~~2. Develop measures to maintain public safety and protect public and private property from vandalism and trespass to the maximum extent practicable when providing for public use and access of Albany's open space areas.~~

~~3~~**2.** Utilize a variety of means to promote public access and enjoyment of Albany's open space areas including:

   a. Fee simple acquisition.
   b. Long-term lease agreements.
   c. Promotion of incentives for the protection or dedication of open space.
   d. Acceptance of maintenance and liability responsibilities when private property is made available for public access.

~~4~~**3.** **Coordinate among city departments to:** ~~Develop an Albany Open Space Master Plan in conjunction with other planning efforts to identify:~~

   ~~a. Those lands that will be preserved as open space.~~

   ~~b. Management~~ **Develop management** measures for, **and public access to, city-owned** open space, **riparian corridors,** ~~including~~ vegetation, wildlife habitat, wetlands, **and** lands designated as floodplains ~~and floodways.~~

~~c. Means to promote public enjoyment and access of Albany's open space areas~~ consistent with the preservation and enhancement of open space **and natural resource** values.

~~5~~**4.** **Develop a cultural resources management plan that** ~~R~~recognizes the open space and historic value of the Santiam Canal**, with best management practices**.

~~6~~**5.** Apply the Open Space Comprehensive Plan and zoning designation to the following areas:

   a. Local lakes, canals, streams, drainageways, and associated floodways.
   b. Areas designated as wetlands ~~by the City~~ **that are associated with riparian areas**.
   c. Important vegetation and wildlife habitat areas located within flood fringe areas.

RECOMMENDATIONS

1. Encourage **the city departments,** Linn and Benton Counties**, residents and developers** to maintain and enhance **riparian corridors and** wetland areas by methods such as:

   a. Preserving natural vegetation.

b. Maintaining setbacks between **significant riparian** wetland resources and future development.
c. Considering wetland areas as part of the overall drainage system.
d. Identifying and preventing contamination from point and non-point sources.

OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES (GOAL 5)

*[The wetlands section moved from Chapter 2 to Chapter 1 since it is also a Goal 5 resource. Proposed changes to the original content are shown in **bold** and ~~strike~~.]*

WETLAND RESOURCES BACKGROUND SUMMARY

The nation's coastal and inland wetlands are vital natural resources to the nation as a whole and to our area in particular. Wetlands are areas of great natural productivity, hydrological utility, and environmental diversity. They provide natural flood control, improved water quality, recharge of aquifers, flow stabilization of streams and rivers, and habitat for fish and wildlife resources. Wetlands contribute to the production of agricultural products and timber, and provide recreational, scientific, and aesthetic resources of national interest.

Many people enjoy passive or "non-consumptive" recreation such as bird watching and photography, and wetlands provide some of the best opportunities for these activities. Education groups, including public schools, use wetlands for a variety of outdoor learning activities that stimulate interest in sciences, literature, art, and other disciplines. Wetlands provide tranquil open space that contributes to individuals' sense of well-being. Wetland planning can protect these values for the community.

~~Technically w~~Wetlands are defined as **those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are part of larger interconnected hydrologic systems within a watershed. Alteration to any part of the system will affect the function of the system as a whole.** ~~land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life.~~ **Some wetlands provide year-round or seasonal habitat for wildlife and plant species that are completely dependent on the wetland habitat for all or part of their life cycle. These species, in turn, support other species, both terrestrial and aquatic, that would be diminished by loss of the wetland habitat. Wetlands support a crucial stage of development for most of the fish species in Oregon that are currently listed as threatened or endangered under the federal Endangered Species Act. Without adequate wetland resources, these populations cannot recover in the wild. Thirty-five percent of the federally listed threatened or endangered plants in Oregon are either dependent on or usually found in wetlands.**

The soil chemistry of wetlands has a unique ability to transform certain nutrients and pollutants into forms that are less harmful to the water quality of adjacent streams or groundwater. The unique ability of wetlands to purify water has been used by various industries to treat their wastes. In many places, including the Albany-Millersburg Talking Water Gardens, artificial wetlands have been specifically designed and constructed to provide natural treatment for wastewater flow. The Albany-Millersburg Talking Water Gardens wetlands system will be the final step in returning this treated water safely to the Willamette River. Talking Water Gardens will become a destination for walking, picnics, wildlife watching and other outdoor recreation.

~~Within Albany there are a number of wetland areas. These areas are primarily located adjacent to water bodies and major drainageways, although there are some inland wetland sites. Wetland areas are mapped on Plate 6. More information regarding wetlands within the Albany Urban Growth Boundary can be found in the Background Report.~~

The unwise use and development of wetlands will destroy many of their special qualities and important natural functions**, and have an adverse impact on natural resources.** ~~Recent estimates indicate that the United States~~

~~has already lost over 40 percent of 120 million acres of wetlands first inventoried in the 1950's. This piecemeal alteration and destruction of wetlands through draining, dredging, filling, and other means has had an adverse cumulative impact on our natural resources.~~

~~The problem of loss of w~~Wetland **loss** ~~arises~~ **occurs** mainly from land use practices. Government policy can be responsible for or can influence these practices in the construction of projects, in the management of its own properties, in the provision of financial or technical assistance, and in its role of shaping and providing land use regulations. **In 1989, Oregon adopted a process to inventory wetlands and develop a management program that complies with** ~~Oregon's~~ statewide planning Goal 5 ~~specifies that jurisdictions must develop a program to manage all Goal 5 resources, including wetland resources~~. This management strategy may range from complete protection of the resource to fully allowing conflicting uses. However, since the goal is "to conserve ... and protect ...," the emphasis is toward the restriction of uses that would deteriorate the resource or its open space values.

Between 1992 and 2001, the City conducted local wetland inventories (LWI) in areas with development potential within the City: East I-5; North Albany; Southeast Industrial Area; Willamette River, Calapooia, and Oak Creek. All of the local wetland inventories were approved by the Division of State Lands. The approved LWIs replace the National Wetlands Inventory and are incorporated into the state's wetland inventory. The LWIs are adopted by reference in the Comprehensive Plan. The Oregon Department of State Lands maintains the LWIs on their website. Wetlands identified in the LWIs are mapped on Plate 6.

The City used the criteria outlined in state law to determine which wetlands in the LWI were significant by assessing wetland functions and conditions. Wetlands must be classified as significant if *any* of the criteria can be met for the wetland (OAR 141-086-0350):

- **The wetland provides diverse wildlife habitat.**
- **At least one of the following wetland functions is intact: fish, water quality, OR hydrologic control.**
- **The wetland is less than ¼ mile from a water body listed by the Department of Environmental Quality (DEQ) as a water quality limited water body and the wetland contributes to improving the conditions related to the DEQ listing.**
- **The wetland contains a rare plant community.**
- **The wetland is inhabited by any species listed federally as threatened or endangered or state listed as sensitive, threatened or endangered.**
- **The wetland has direct surface water connection to a stream segment mapped by Oregon Department of Fish and Wildlife as habitat for indigenous anadromous salmonids and the wetland's fish habitat function is intact, impacted or degraded.**

~~In regard to wetland areas, the City has proposed a management strategy for those areas within the City as well as an approach for managing those areas within the urban fringe areas.~~ **The City elected to use a modified version of the "safe harbor" approach to protect most significant wetlands based on a citywide Economic, Social, Environmental and Energy (ESEE) analysis was done.**

The Citywide ESEE Analysis evaluated the consequences of allowing, limiting, or prohibiting public infrastructure across waterways and significant wetlands throughout the City. The analysis concluded that a limited protection program with mitigation would provide substantial protection to significant wetlands, while providing for public infrastructure that is necessary to support urban development. This approach is identified in the following goals, policies, implementation methods, and recommendations with specific regulation criteria included within the Development Code.

While the City has developed a wetland management **program** ~~approach~~, it is not the only governmental agency with regulatory authority. On all wetland sites, state and federal agencies including the State Division of Lands, State Department of Environmental Quality, Environmental Protection Agency, and U.S. Army Corps of

Engineers, may also exercise regulatory authority. These regulations, along with City regulations, create the ~~beginning~~ foundation for a coordinated and comprehensive wetland management strategy.

More detailed information on Albany's wetlands can be found in the following Comprehensive Plan Background Reports:

- **Citywide Goal 5 ESEE: Riparian Corridors and Significant Wetlands (2011).**

OPEN SPACES, SCENIC & HISTORIC AREAS, & NATURAL RESOURCES (GOAL 5)

WETLAND RESOURCES
GOALS, POLICIES, & IMPLEMENTATION METHODS

GOAL

Protect wetlands to ensure their continued contribution as natural areas, open space, wildlife and vegetative habitat, and storm water retention and conveyance.

POLICIES

1. ~~Maintain wetland inventory information as part of the Comprehensive Plan which indicates areas within the Urban Growth Boundary which may be subject to state and federal regulations. Such information may be refined and updated administratively as more precise information becomes available.~~**Protect and enhance wetlands adopted as significant in the Local Wetland Inventory.**

2. ~~Work with Linn and Benton Counties and applicable state and federal agencies to refine wetland inventory information and to develop local management measures. Until such measures are adopted, evaluate wetland characteristics and permit requirements on a case-by-case basis.~~ **Prohibit development within significant wetlands except for planned public utilities and infrastructure.**

3. Within the city limits, wetlands within ~~thea~~ floodway **or significant riparian corridor** shall receive ~~maximum~~ protection and any development proposed ~~for these areas~~ shall not degrade the resource.

4. Coordinate the review of any development proposal that could impact a wetland with applicable local, state, and federal agencies including Linn and Benton Counties, the Oregon Division of State Lands, the Army Corps of Engineers, Soil Conservation Service, Soil and Water Conservation Districts, etc. ~~In addition, development that would impact a wetland within the city shall be subject to City Conditional Use requirements and Development Code standards pertaining to wetlands~~.

5. Review all land use applications to determine if wetland characteristics exist on the proposed development site. The actual extent and boundaries of wetland areas shall be determined on a case-by-case basis **through a wetland determination or delineation**.

IMPLEMENTATION METHODS

1. Maintain a wetland inventory ~~which~~ **that** identifies the following:
   a. **All wetlands identified in the Local Wetland Inventory and the National Wetland Inventory within the city's urban growth boundary.** ~~Wetland sites which are within the city limits, have been designated as open space and are subject to local, state, and federal land use regulations.~~
   b. **Locally significant wetlands.** ~~Sites which are within the city limits but are not designated as open space but may still be subject to federal and/or state land use regulations.~~
   c. Wetland sites within the urban fringe which will require additional information to determine the status of the resource and exact boundaries and may be subject to state and federal and future local regulation.

2. Encourage applicants to acquire a more formal determination from the Oregon Division of State Lands or other applicable state and federal agencies when development is proposed that would impact an uninventoried site or when there are differences between current wetland inventory information and

actual site conditions. Other precise or updated information regarding site-specific wetland resources or boundary locations may be submitted as part of a development application, including special studies, **delineations,** or other information prepared by qualified parties and which are accepted by state and federal regulatory agencies.

3. Apply the Open Space Comprehensive Plan and Zoning Designation to the following areas:

   a. Local lakes, canals, streams, drainageways, and associated floodway.
   b. Important vegetation and wildlife habitat areas located within the floodway and flood fringe areas.
   c. Inventoried wetland sites within the city ~~which~~ **that are associated with riparian corridors.** ~~exhibit wetland characteristics with the exception of the following types of sites:~~
      ~~i. Lands committed to urban development where there are limited on-site opportunities for preservation or protection.~~
      ~~ii. Lands where existing public improvements have significantly degraded the wetland characteristics.~~

4. Apply specific management measures and conditions of approval, consistent with state and federal regulations, to protect and enhance ~~designated~~ **significant** wetlands such as:

   a. Regulation of fill and drainage of wetland areas.
   b. Limiting vegetation removal.
   c. Establishing buffer and setback requirements for adjacent development.
   d. ~~Discouraging off-road vehicle use~~**Allow limited impacts to wetlands in hardship situations through the adjustment or variance process, or an ESEE analysis when changes in circumstances would warrant an amendment to the protection program for a specific wetland.**

5. Ensure no development will result in the elimination or degradation of a **significant** wetland area ~~which has been designated as open space~~, or be located totally within a wetland without acquiring permit approval from state and federal regulatory agencies and the City of Albany, and where necessary amending the **significant wetland overlay zoning district**~~Open Space Zoning and Comprehensive Plan designation~~. Also, ensure development does not infringe upon such a wetland, without meeting the following criteria:

   a. The development cannot be located outside the wetland area, or the wetland is proposed to be reconfigured such that the proposed total area is at least equal in size and quality to the wetland area existing prior to the proposed development.
   b. The encroachment upon the wetlands is the minimum necessary to complete the development.
   c. Encroachment upon wetlands or change of drainage patterns or other actions which would adversely affect wetland characteristics have been mitigated.
   d. Development review is coordinated with the Oregon Division of State Lands, the Army Corps of Engineers, and other applicable agencies and all other required state and federal permits have been obtained.
   e. The applicable floodway or floodplain requirements of the Albany Development Code have been met.
   f. Applicable Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resource policies of the Comprehensive Plan have been addressed.

6. Where possible, improve wetland areas to provide flood retention, storm drainage, vegetation and wildlife habitat, compatible recreation opportunities, and scenic quality.

7. When planning for future storm drainage projects recognize the importance of wetlands as part of the overall drainage system and ensure their preservation for retention and discharge of storm drainage and flood waters.

RECOMMENDATIONS

1. Encourage Linn and Benton Counties**, residents, and developers** to maintain and enhance wetland areas by methods such as:

   a. Preserving natural vegetation.
   b. Maintaining setbacks between wetland resources and future development.
   c. Considering wetland areas as part of the overall drainage system.
   d. Identifying and preventing contamination from point and non-point sources.

2. Encourage Linn and Benton Counties to notify the City and request comment on development actions within the Urban Growth Boundary that would impact a wetland.

3. Encourage the Oregon Division of State Lands to periodically review the regional cumulative impacts of development upon wetlands in the mid-Willamette Valley in order to monitor their extent and quality and to determine to what degree the resource has been enhanced or degraded and thus what level of protection is needed.

4. **Provide educational opportunities for the public through the internet and workshops on benefits of wetlands and wetland restoration.**

5. **Develop linkages with programs at Oregon State University, Linn and Benton Counties, watershed councils, and other organizations or volunteers that may be interested in assisting with activities such as education and outreach, or natural resource management.**

[Relocates language regarding urban landscaping from Chapter 1 to Chapter 7. No other changes are proposed to Chapter 7.]

CHAPTER 7: SOCIAL AMENITIES

OPEN SPACES, SCENIC & HISTORIC AREAS, & NATURAL RESOURCES (GOAL 5)

AESTHETICS AND URBAN DESIGN BACKGROUND SUMMARY

Community aesthetics and appearance are important elements of a community's well-being. This is apparent in many ways. In residential areas, neighborhood appearance directly affects property values. Appearance and aesthetic quality also reflect community pride and may further affect neighborhood stability and environmental health. Commercial areas have a vital stake in their own aesthetic quality. Not only can a pleasant shopping area attract customers, but good aesthetics also attract them to stay. An attractive community also aids industrial development. A positive image can help in the recruitment effort since a growing number of firms perceive quality of life as a major benefit. Also, with good design, the overall business climate may be enhanced by reducing residential and industrial conflicts.

The most important areas in which to emphasize good aesthetics are those which are seen the most. Such areas include commercial strips along major arterials (i.e. Pacific and Santiam Highways) and other commercial districts (i.e. the Central Business District). Because of minimal landscaping, congestion, and competing signage; the Pacific Boulevard-Santiam commercial strips present an image of Albany which does not reflect the community's true character. This is also true of the image many people have of Albany when traveling Interstate-5. That part of the community viewed from the freeway is almost entirely dominated by heavy industry.

Albany has significant visual and aesthetic resources. The most important are those of the Willamette River Greenway and the community's unique historic architecture. It is important to protect and enhance these resources. An important part of urban design is the type and location of vegetation. The need for vegetation in the urban environment and related policies are discussed in Chapter I of the Comprehensive Plan.

Albany's older neighborhoods contain a large number of mature trees and shrubs which provide shade and lend substantial beauty and charm to the older portions of Albany. Street trees are required in new developments, but there is a lack of vegetation in many of Albany's newer neighborhoods. Vegetation is also scarce along the Santiam Highway and the southern strip of Pacific Boulevard. These highway commercial strips represent Albany's highest visibility areas. Some visual improvement was made at the north Pacific Boulevard/I-5 interchange with the completion of Waverly Park and the highway couplet. A street tree planting program has improved several areas downtown. The City's urban forestry program includes a free street tree planting program and recommendations for street trees, planting and maintenance.

The planning approval process is also an important part of providing for urban landscape and vegetation. The use of vegetation for aesthetic purposes, such as the creation of buffer zones between incompatible development or street tree planting, can help improve the livability of the Albany area.

Since the Comprehensive Plan was adopted, there have been several projects and programs ~~which~~ **that** have enhanced Albany's aesthetic image. One of the most recent positive occurrences is the growing public awareness that appearance and aesthetic quality is important to community image. The following are the most significant accomplishments during the last **twenty** five years.

PARK DEVELOPMENT

Albany has pursued an aggressive park development program. Monteith Riverpark along the Central Business District waterfront and Waverly Park along the Pacific Boulevard entrance to the city each received the Oregon Park and Recreation Association Design Award in 1984 and 1985 respectively. Albany has also developed and improved several neighborhood parks during this period. These improvements have contributed significantly to the quality and aesthetic character of Albany's neighborhoods.

SIGN CODE ADOPTION

Albany adopted its first comprehensive Sign Code in October 1984. The Sign Code provides equitable methods of accomplishing business identification, reduction of signage conflicts, increased traffic and pedestrian safety, and enhancement of the aesthetic value and economic viability of the community.

The Sign Code also has a "take down" provision that takes effect within seven years of its adoption for those existing, non-conforming signs which are not in conformance with its provisions.

HISTORIC ALTERATION AND DEMOLITION ORDINANCE

In 1985, the City adopted an Historic Alteration and Demolition Ordinance that provides for review of exterior alterations to historic structures within the historic districts. This ordinance provides for maintenance of the historic districts' architectural and aesthetic integrity.

ALBANY DEVELOPMENT CODE

The Development Code provides for appropriate landscaping and/or screening and buffering for all new commercial, industrial, and multi-family developments. These provisions have resulted in substantial aesthetic improvements in Albany's commercial and industrial districts. Many developers realize the importance of good aesthetics to overall project character and have provided for site design features and landscaping in excess of the City's requirements. The Albany Development Code also provides for underground utilities in all new residential subdivisions.

MISCELLANEOUS PROJECTS

There have been several programs and projects in addition to the above that have resulted in a marked difference in Albany's appearance. The most significant of these are:

1. **City of Albany Downtown Street Tree Planting:** In 1983, Albany received a federal grant to plant 150 street trees in the Central Business District.

2. **8th Avenue Historic Information Gazebo and Victorian Garden:** Through cooperation between the Albany Historic Tours Committee, adjacent businesses and residents, St. Mary's Catholic Church, and the City of Albany; a two-block section of unpaved city street was developed into an attractive parking lot and Historic Information Center. Volunteers developed and maintain a Victorian Theme Garden on this site that has drawn attention from throughout the region. This project has additional significance because of its location at the Highway 20 entrance into downtown Albany.

3. **Albany/Millersburg I-5 Enhancement Project:** This project, developed through the Albany/Millersburg Chamber of Commerce, proposes to create an attractive landscape along the Interstate 5 interface of Albany and Millersburg. The purpose of the concept is to mitigate the negative views presented to passing motorists by the two cities' industrial districts and to minimize the negative environmental impacts the freeway has on adjacent land uses. Implementation of the program has begun. In 1986, 300 trees were

planted on the site of Willamette Industries' paper mill.

4. **Other Projects:** Several other projects and programs have been undertaken that have had substantial impact. The Albany Downtown Association Streetscape Committee regularly meets to investigate ways to improve the appearance of the Downtown District. Results of their efforts have included building facade improvements, street furniture placement, and attractive new signage. The City of Albany has developed a planning document entitled, City of Albany Beautification Opportunities. It is an analysis of beautification opportunities and constraints within each of Albany's separate neighborhood districts. During the last five years, the City has also funded several landscape/beautification projects intended to improve the appearance of public property. General city appearance has also been improved through utilizing community service workers for litter cleanup, landscape maintenance, and other tasks.

Much has been done to improve Albany's aesthetic quality and image. However, enhancement of community image is an ongoing process that needs the daily attention of Albany's residents and leaders. A positive image and a high quality of life are some of the major benefits a community can offer its citizens.

OPEN SPACES, SCENIC AND HISTORIC AREAS, & NATURAL RESOURCES (GOAL 5)

AESTHETICS AND URBAN DESIGN GOAL, POLICIES, AND IMPLEMENTATION METHODS

GOAL

Improve Albany's image, livability, appearance, and design quality through aesthetic enhancement.

POLICIES

1. Expansion and new development projects shall be designed and landscaped to complement and enhance the appearance of the development site and surrounding area.

2. Develop and maintain a sign code to:

   a. Provide equitable and economic methods of business identification.
   b. Reduce signage conflicts.
   c. Promote traffic and pedestrian safety.
   d. Increase the aesthetic appearance of the city.

3. Develop enforcement procedures to abate dangerous and nuisance-creating situations to promote compatibility and reduce conflict within neighborhoods and between different land uses.

4. Continue to develop and implement aesthetic enhancement programs that will improve Albany's image.

5. Recognize and protect the unique aesthetic contribution that the Willamette and Calapooia Rivers lend to the Albany area.

6. Preserve and enhance desirable and distinctive neighborhood features which satisfy the following criteria:

   a. Are commonly recognized features by neighborhood residents as desirable and distinctive.
   b. Are features which can be preserved and enhanced without significantly impairing development or redevelopment opportunities in conformance with other Comprehensive Plan and Development Code provisions.
   c. Are features which can be preserved and enhanced through consideration of design alternatives in development and redevelopment projects.

7. **Develop and implement a landscape enhancement program for Albany that:**

   a. Enhances Albany's appearance and image.
   b. Creates an attractive and comfortable environment for Albany's residents and visitors.
   c. Maintains and manages existing vegetation resources.

8. **Utilize landscaping around public buildings and spaces, including parking lots to improve Albany's appearance and image.**

9. **Encourage the upgrading of existing developments to meet current Development Code landscape requirements. Emphasis shall be placed on landscaping.**

IMPLEMENTATION METHODS

1. Provide site design review assistance for new developments (industrial, commercial, multi-family, and planned residential developments) and those that constitute a major change or expansion of use in order to:

   a. Ensure compliance with the Albany Development Code.
   b. Determine the most efficient means to provide public facilities and services.
   c. Suggest methods to enhance the project's aesthetic quality, protect and enhance on-site natural features, and to mitigate adverse impacts on adjacent or surrounding property.

2. Periodically review past development proposals that required planning approval to determine compliance with development conditions and the standards of the Albany Development Code.

3. Maintain development standards that assure compatibility of commercial and industrial areas with surrounding land uses, including residential neighborhoods. Pay particular attention to areas adjacent to residential streets, Pacific Boulevard, Santiam Highway, and those adjacent to or visible from Interstate 5. These standards may include:

   a. Setback, buffering and landscape provisions, and other site amenities including screened refuse disposal.
   b. Traffic safety considerations including provisions for safe pedestrian movement.

4. Periodically review and, if necessary, update Development Code requirements and other policies and ordinances that address issues of public nuisance and community appearance.

5. Develop programs and regulations which will result in the underground placement of existing overhead utilities.

6. Continue to develop area improvement plans which show what aesthetic improvements could be made and at what cost. Existing strip commercial areas should be considered a priority.

[Staff Comments: The following implementation method is proposed to be deleted because the projects are included in more detail in methods relocated from Chapter 1.]

~~7. As funds and circumstances warrant, implement specific aesthetic enhancement projects such as:~~

~~a. Those outlined in the "City of Albany Beautification Opportunities - Phase I."~~
~~b. City entryway identification and beautification.~~
~~c. Interstate 5 beautification and enhancement.~~
~~d. Pacific Boulevard and Santiam Highway commercial strip landscape and design improvement.~~
~~e. Improvement of the downtown commercial core.~~
~~f. Buffering of industrial areas from incompatible uses.~~

87. Increase the aesthetic and design quality of the ~~Central Business District~~ **downtown commercial core** through:

    a. The use of vegetation and maintenance of the existing street trees.
    b. Regulation of signs and other forms of on-street advertising.
    c. Increased design orientation towards the Willamette River.
    d. Alleyway improvements.
    e. Encouraging the use of well-designed and functional streetscape improvements such as street furniture (drinking fountains, benches, trash containers, bicycle racks, information centers, etc.), decorative pedestrian scale street lights, planting and maintenance of street trees and other forms of landscaping, sidewalk improvements, bus shelters.
    f. Utilization of the Historic Alteration and Demolition Ordinance to promote design consistency within the Downtown Historic District.
    g. Improvements of Parking Assessment District properties, particularly those parking lots adjacent to the waterfront.

[Staff Comments: The following implementation methods are being relocated from Chapter 1.]

8. Encourage and, when appropriate, offer assistance to utility companies to improve line clearing practices to avoid public safety hazards associated with improper pruning and improve the health and aesthetic contribution of Albany's street trees.

9. Undertake the following as part of the City of Albany's aesthetic and landscape enhancement programs:

    a. Develop and implement comprehensive street tree programs that includes planning for, planting, and maintenance of trees in all areas of the community including all street rights of ways, public open space areas, and on the grounds of all institutions.
    b. Encourage neighborhood organizations, schools, and service clubs to participate in tree planting programs and other landscape enhancement efforts.
    c. Adopt city street tree regulations and standards.
    d. Implement an ongoing and professional maintenance program for Albany's street trees and other vegetation within public rights of way and on other public properties.
    e. Ensure that trees are part of the landscape design for all developments except where they are determined to be inappropriate or present hazards.
    f. Encourage local industry to use appropriate vegetation to visually enhance development sites and provide buffering from incompatible uses.
    g. Develop landscapes around public buildings and spaces, including parking lots to improve community appearance and image.
    h. Encourage property owners to improve and maintain their landscapes, including provision of replacement vegetation when older, deteriorated vegetation is removed.
    i. When necessary, provide an appropriate level of site design and landscape planning assistance.
    j. Develop, maintain, and distribute public information pertaining to site planning, landscape design, appropriate use of plant materials, and other technical information.
    k. Improve Albany's appearance along Interstate 5.
    l. Where possible, promote the energy saving benefits of appropriately planted vegetation.

10. Utilize the report "City of Albany Beautification Opportunities - Phase I" as a guide to implement specific landscape development and community beautification programs for:

    a. Albany's residential neighborhoods.
    b. Major city entryways.
    c. The downtown commercial core.

d. **The Willamette River waterfront.**
e. **The Pacific Boulevard and Santiam commercial strips.**
f. **Industrial areas.**

11. **Except for single family and two family residential development, require developers to utilize the skills of landscape architects, landscape designers, or otherwise receive City approval of landscape designs, and guarantee the completion of landscape requirements (i.e. through performance bonding or by setting aside funds for landscaping).**

12. **Require the continued maintenance of landscaped areas in accordance with Development Code requirements and conditions of planning approval.**

13. **Require the establishment and maintenance of landscaped areas in all parking lots to provide shade and visual amenities, except where site conditions are inappropriate or where hazards would result. Landscape development in parking lots should emphasize the following:**

    a. **The planting of broad spreading trees to provide shade and mitigate the negative visual and environmental impacts of parking lots.**
    b. **Installation of other plant materials in a manner to provide effective screens between parking lots and adjacent uses.**

14. **Develop specific urban design and beautification measures for the Pacific Boulevard and Santiam commercial strips whereby:**

    a. **Specific site design, landscape, and street tree design improvements are developed for each establishment.**
    b. **Funding alternatives are developed that utilize a combination of private, city, state, or federal funds.**
    c. **For projects which funding sources become available, completion shall be accomplished within five years of the acquisition of funds.**

15. **Where appropriate, street design and construction standards shall provide for a planter area between the curb and sidewalk in all areas used by pedestrians, including residential and commercial areas and areas in close proximity to schools to provide:**

    a. **Pedestrian safety by separating the sidewalk from the street.**
    b. **Beautification and visual amenity.**
    c. **Shade and buffering from streets.**

16. **Pursue redesignation for Albany as a "Tree City USA" sponsored by the National Arbor Day Association. Designation requires the following:**

    a. **Expenditure of at least one dollar per capita for maintenance, preservation, and planting of street and other publicly-owned trees.**
    b. **Adoption of an ordinance providing for the protection and planting of street trees and other trees on public properties.**
    c. **Formation of a Shade Tree Advisory Committee to guide the City's tree program and to formulate policy.**
    d. **Holding an annual Arbor Day celebration and tree planting event.**

RECOMMENDATIONS

1. Encourage Pacific Power and Light Company to develop a long-range plan to reduce visual clutter within

the Albany downtown and elsewhere through relocation and undergrounding of utilities.

2. Encourage the Albany Downtown Association to provide building and facade design assistance to downtown merchants and property owners.

3. Encourage the Albany/Millersburg Chamber of Commerce to provide leadership and coordination to implement the "Albany/Millersburg Interstate 5 Enhancement Project."

4. Encourage the Historic Tours Committee and other organized historic groups to maintain the historic information center as an entry focal point to the downtown.

5. Encourage Albany/Millersburg industries to develop buffering and landscaping programs to enhance the appearance of their sites.

6. **Encourage Albany area schools to make an ongoing commitment involving students and school district resources to plant and maintain shade trees on school grounds and other public places.**

7. **Encourage the Oregon Department of Transportation to improve and maintain the Interstate 5 landscaping along Albany's interface with the freeway.**

8. **When private property is unavailable, encourage the Oregon Department of Transportation to allow Albany businesses to utilize the undeveloped portion of right-of-way along Pacific Boulevard and Santiam Highway to meet landscape requirements.**

[A few minor amendments related to Goal 5 are proposed in Chapter 8, on pages 8-17 to 8-19, in the North Albany Planning Area. No other changes are proposed to Chapter 8.]

CHAPTER 8: URBANIZATION

NORTH ALBANY PLANNING AREA (GOAL 14) GOALS, POLICIES, AND IMPLEMENTATION METHODS

LAND USE

GOALS

1. Support growth that protects North Albany's rural character and natural and cultural resources while encouraging quality developments at appropriate densities.

2. Create great neighborhoods that offer diversity in housing choices.

3. Create village and neighborhood centers that offer daily goods, services and employment convenient to North Albany residents.

4. Preserve the carrying capacity function of Highway 20 in North Albany.

POLICIES

1. Preserve North Albany's rural character and natural features by allowing and encouraging cluster development.

2. Encourage development patterns that promote the efficient use of land and infrastructure **and conservation of significant natural resources.**

3. Open Space designations on the Comprehensive Plan Map are intended to maintain open space in areas generally unsuitable for development and to identify linear linkages between undevelopable, open space areas. In some circumstances~~, Open Space map designations are generalized rather than site specific and it is the intent of the City to exercise flexibility in determining specific locations~~.

4. Development ~~which~~ **that** is not at its ultimate urban density shall be approved only when it can be shown that such development will not preclude or inhibit further development in the surrounding area from occurring in a logical and efficient manner. All development on, or resulting in, parcels larger than the minimum lot size for the zoning district shall be designed so as not to interfere nor conflict with the subsequent orderly transition to efficient, higher density planned urban uses. This also applies to construction of all single family units on existing lots of record which are outside platted subdivisions. Urban conversion plans are required for all such development demonstrating that the proposed lot and/or development can accommodate future development at the density range allowed by the Albany Comprehensive Plan and/or Zoning Map will allow the logical and efficient extension of streets and city services.

5. Encourage new residential development bordering designated and zoned farmland outside the UGB to be adequately set back, screened and buffered to minimize potential conflicts between residential and farm activities.

IMPLEMENTATION MEASURES

1. Continue to refine planning policies and appropriate map designation to promote desirable housing

opportunities in North Albany.

2. Within North Albany, evaluate the need for neighborhood commercial opportunities as part of the on-going evaluation of the Albany Comprehensive Plan. In particular, consider the future intersection of Crocker Lane and North Albany Road as a neighborhood node.

3. Provide the opportunity to cluster development within areas subject to environmental constraints to achieve allowed densities and protect public safety and environmental values.

4. Develop standards that would consider the protection of views in North Albany as part of the land development review process.

5. Urban conversion plans are required to be submitted with development proposals which result in development of parcels which can be further divided. This also applies to construction of all single family units on all lots which are outside of platted subdivisions. The urban conversion plan shall demonstrate that the lot can accommodate future development at the density range allowed by the Albany Comprehensive Plan and/or Zoning Map and will allow the logical and efficient extension of streets and city services. The urban conversion plan shall show street and road rights-of-way, utility easements, drainage ways, natural or man-made lot development constraints (steep slopes, wetlands, access easements, etc.), future lot divisions at urban densities, and other proposed improvements including dwellings and accessory structures. All dwellings shall be placed within the boundaries of the future lots shown on the conversion plan and shall meet the setback and lot development requirements of the Albany Development Code.

6. Encourage the Greater Albany Public School District (GAPS) to recognize the importance of North Albany neighborhood schools and to examine all alternatives before proposing closure.

NATURAL AND CULTURAL RESOURCES

POLICIES

1. Minimize potential impacts to riparian vegetation, stream hydrology and adjacent land uses.

2. Protect wetlands, floodplains, riparian corridors and other critical natural resources through the use of stormwater management measures and through appropriate practices (cluster development, setbacks from significant resources, corridor protection and reduction of impervious surfaces).

3. Provide neighborhood parks and a connecting off-street multi-use trail system.

4. Protect and enhance cultural and historic resources.

IMPLEMENTATION MEASURES

1. Within North Albany, maintain open space in areas that are unsuitable for development including steep slopes, floodway, wetlands, and drainageways.

2. Where possible in North Albany, develop linkages between steep slopes, drainageways, wetlands and publicly owned lands to develop a linear network of open spaces and/or parks.

3. Implement adopted City provisions which would provide for the protection of identified North Albany wetlands consistent with state and federal law.

4. Consider recommendations in the North Albany Refinement Plan for inclusion in the Parks, Recreation,

and Open Space Plan when it is updated.

5. Identify resources in North Albany which are appropriate for addition to the City's historic inventory.

6. Utilize historic review procedures to protect North Albany's historic resources.

7. Develop site planning review procedures for forest management practices that would assist in maintaining the special character of the North Albany area.

8. **Provide educational opportunities for the public through the internet and workshops on North Albany's natural resources.**

9. **Develop linkages with programs at Oregon State University, Benton County, watershed councils, and other organizations or volunteers that may be interested in assisting with activities such as education and outreach, or natural resource management.**

[A few amendments related to Goal 5 are needed in Chapter 9, on pages 9-11, primarily to add the new overlay designations. No other changes are proposed to Chapter 9.]

CHAPTER 9: LAND USE PLANNING

[Staff Comments: Only the following changes are proposed to page 9-11 of Chapter 9.]

SPECIAL USE DESIGNATIONS (GOAL 2)

OPEN SPACE: Identifies and protects areas where development is infeasible or undesirable and where it is in the public interest to protect lands for the maintenance of natural drainageways and flood channels, to protect fish and wildlife habitats, to enhance scenic and historic areas, to protect natural resources, and to protect potential recreation trails and park sites. The principal private uses of these areas will include **one single-family dwelling per property,** grazing and crop production, and recreation and open space uses ~~within private developments~~.

OVERLAY DESIGNATIONS (GOAL 2)

The following overlay designations are used to designate areas within the City where additional regulations apply to the standards of the base zoning district. The overlay designations will be applied at the time of annexation in accordance with the Comprehensive Plan Plate maps.

FLOOD PLAIN (/FP): Identifies lands located within the 100-year flood plain as determined by the **Federal Emergency Management Agency on the Federal Insurance Rate Maps, as augmented by best available local knowledge.** ~~U.S. Army Corps of Engineers for purposes of specified regulation and protection.~~

HABITAT ASSESSMENT (/HA): Identifies lands where significant habitat for species listed as threatened, endangered, or sensitive by the state or federal governments have been documented as shown on Plate 3.

HILLSIDE DEVELOPMENT (/HD): Identifies lands that have hillsides with slopes of 12 percent or greater as shown on Plate 7.

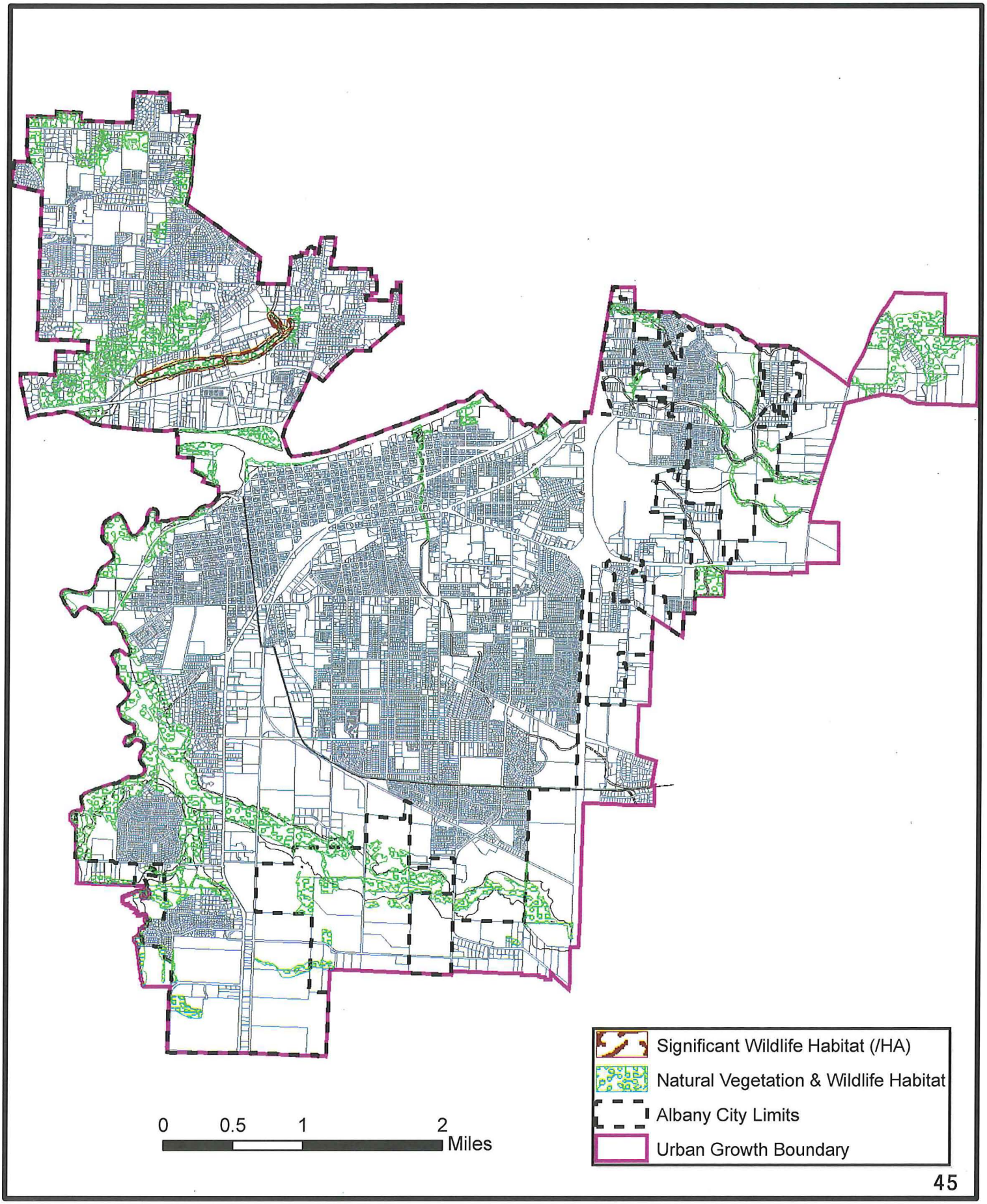
RIPARIAN CORRIDOR (/RC): Identifies significant riparian corridors adjacent to Albany's rivers, creeks, streams and drainageways as shown on Plate 4.

WILLAMETTE RIVER GREENWAY (/~~G~~WG): Identifies lands located within the Willamette River Greenway boundary which are subject to special regulations intended to "protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River."

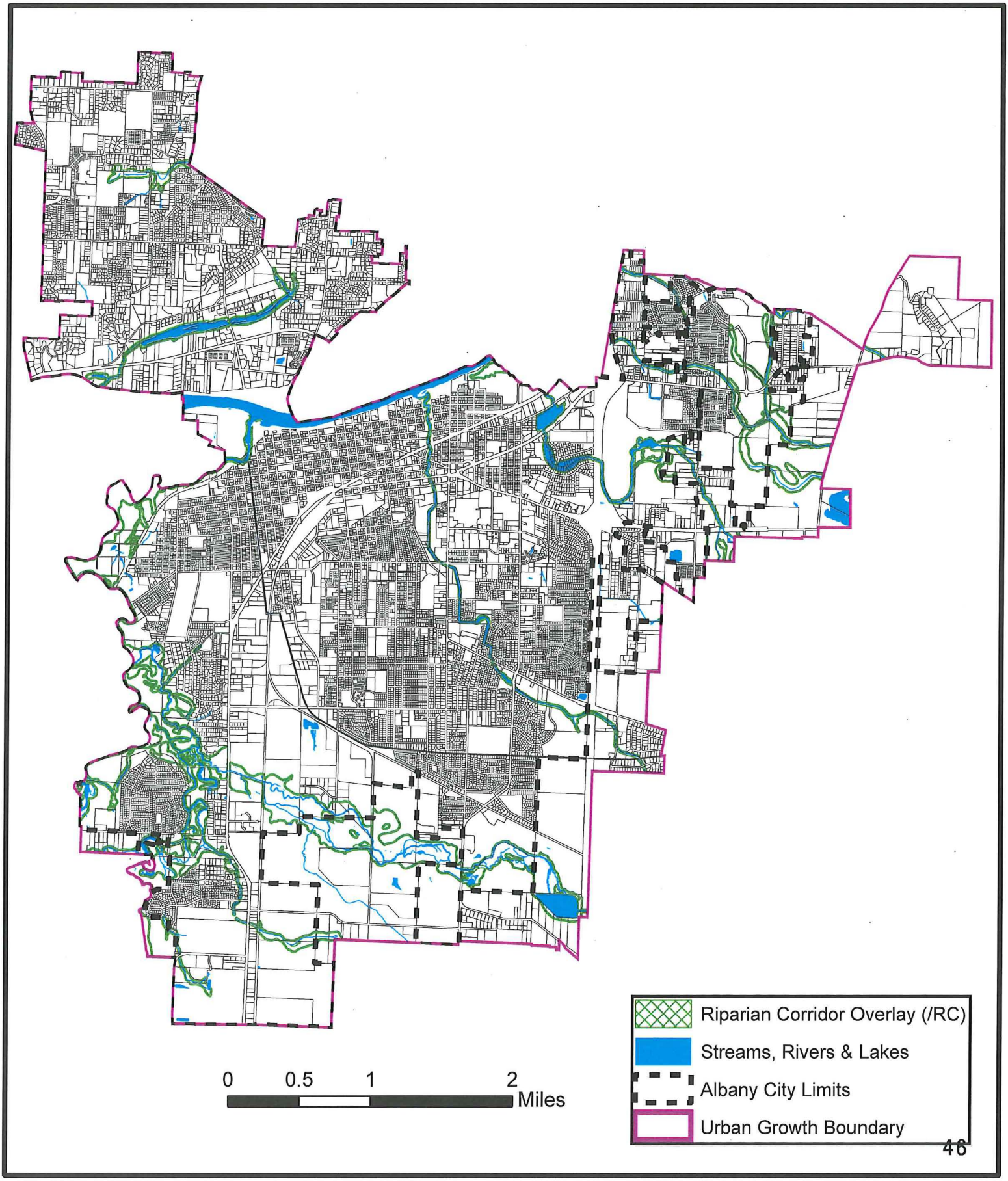
WETLANDS (/SW~~T~~L): Identifies lands located ~~on~~ **in** the **City's Local** ~~U.S. Fish and Wildlife w~~Wetland ~~i~~Inventory **that are classified as significant wetlands, and** which ~~may be~~**are** subject to local, state, and/or federal land use regulations. **Significant and non-significant wetlands are identified on Plate 6.**

EXHIBIT B

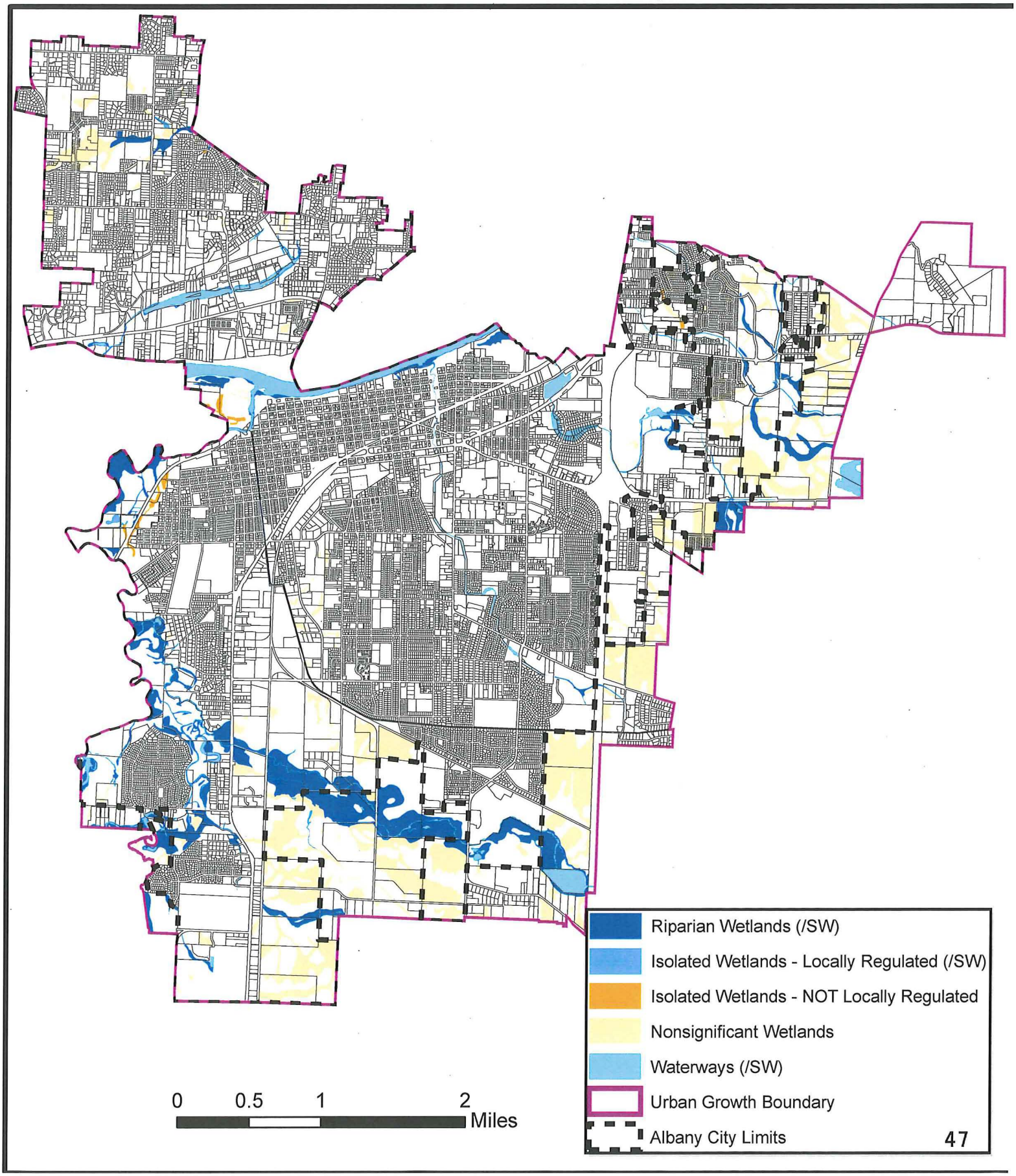
REPLACEMENT of
PLATE 3-Natural Vegetation and Wildlife Habitat



REPLACEMENT of PLATE 4-Streams, Rivers and Lakes



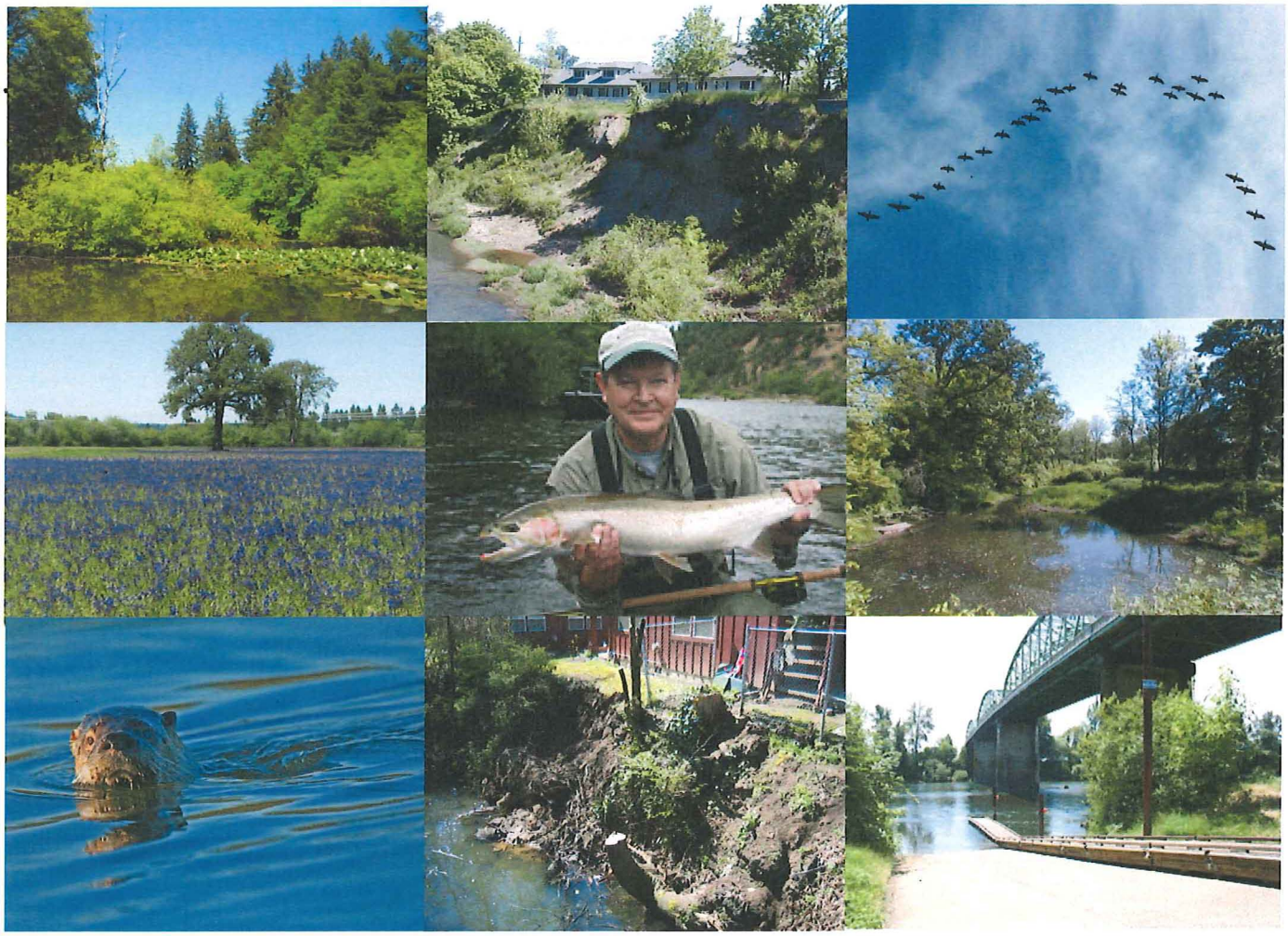
REPLACEMENT of PLATE 6-Wetland Sites: Local Wetland Inventory and Significant Wetland Overlay



Citywide Goal 5 ESEE Analysis

Riparian Corridors and Significant Wetlands

DRAFT – August 17, 2011



City of Albany, Oregon

With assistance from:
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Albany ESEE Analysis for Riparian Corridors and Locally Significant Wetlands

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Background

Albany is required to adopt a program to protect its significant wetlands, riparian corridors and wildlife habitat. Significant fish and wildlife habitat within the Albany UGB is located within significant wetlands, lakes and riparian corridors. Therefore, by protecting significant riparian corridors and wetlands, Albany is also protecting riparian wildlife habitat.

The Local Wetland Inventory

Albany completed its local wetland inventories (LWI) between 1995 and 2000 in accordance with Department of State Lands (DSL) administrative rules (OARs). The LWI includes wetlands in the following significant riparian corridors, which are defined as fish-bearing lakes and streams that have average annual flow of less than 1,000 cubic feet per second (cfs):

- Calapooia River
- Burkhart Creek
- Cathey Creek
- Cox Creek
- Crocker Creek
- Horseshoe Creek
- Oak Creek
- Periwinkle Creek
- Thornton Lakes
- Truax Creek

As documented in the LWI, most of Albany's locally significant wetlands (LSW) are "associated" with these riparian corridors because they are located within 50 feet of the "top of bank" of the relevant stream.

Albany also has 14 LSW that are "isolated" in the sense they are not located within a riparian corridor. Together these wetlands total about 24 acres. Most (10) of these wetlands have only one wetland function intact (diverse wildlife habitat, fish habitat, water quality, or hydrological control). Only four isolated wetlands have two or more wetland functions intact.

Goal 5 Rule Requirements

The Goal 5 administrative rule (OAR Chapter 660, Division 023) requires that local governments:

1. Conduct an inventory of Goal 5 resource sites (for this analysis, riparian corridors and wetlands);
2. Determine the significance of each resource site;
3. Identify land uses and activities that conflict (i.e., could adversely impact) with the resource site;

4. Consider the economic, social, environmental and energy consequences of the program options:
    a. Full protection of the resource site (allow no conflicting uses);
    b. Limited protection of the resource site (balance development and conservation objectives); and
    c. No local protection for the resource site (allow conflicting uses fully).
5. Based on the ESEE analysis, adopt a local protection program to protect significant Goal 5 resources.

This five step process outlined above is called the "standard" Goal 5 process.

Safe Harbor Provisions of Goal 5

The drafters of the Goal 5 rule recognized that steps necessary to achieve Goal 5 compliance are complex and expensive. The Goal 5 rule includes so-called "safe harbor" provisions that are available to local governments to reduce the complexity and cost of the standard Goal 5 process. As defined in the Goal 5 rule:

> *(2) A "safe harbor" consists of an optional course of action that satisfies certain requirements under the standard process. Local governments may follow safe harbor requirements rather than addressing certain requirements in the standard Goal 5 process. For example, a jurisdiction may choose to identify "significant" riparian corridors using the safe harbor criteria under OAR 660-023-0090(5) rather than follow the general requirements for determining "significance" in the standard Goal 5 process under OAR 660-023-0030(4). Similarly, a jurisdiction may adopt a wetlands ordinance that meets the requirements of OAR 660-023-0100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.*

Albany's Approach

Originally, Albany had planned to take advantage of three safe harbor provisions in the Goal 5 rule:

1. The safe harbor for determining the significance and location of riparian corridors;
2. The safe harbor for regulating significant wetlands (which spells out a regulatory program for wetlands that does not require identification of conflicting uses or conduct of an ESEE analysis); and
3. The safe harbor for regulating riparian corridors (which spells out a regulatory program for streams, associated wetlands and specified setback areas that does not require identification of conflicting uses or conduct of an ESEE analysis).

However, after listening to public comments and reviewing the implications of these safe harbor provisions for property owners, City staff, and the general public, the City decided that the economic and social consequences resulting from strict adherence to the wetland and riparian corridor safe harbor protection programs (items 2 and 3 above) would be adverse and not in the public interest. Consistent with the results of this ESEE analysis, the City has chosen to adopt a modified version of the safe harbor protection program that better meets the needs of the community.

Goal 5 requires that the economic, social, environmental, and energy (ESEE) consequences of three decision options be considered prior to adoption of a formal natural resource protection program. Goal 5 and the other Statewide Planning Goals are implemented city wide. As a result, different decision options for Goal 5 may represent conflicts with other statewide planning goals. Therefore, Albany believes it is critical to balance the needs of the community and City policies under the Statewide Planning Goals, for the entire UGB area. A balance between the necessary public infrastructure to serve a municipality and encourage growth within the UGB (rather than outside the UGB) and protection of natural resources within the UGB must be struck in order to meet the collective needs of the community and natural resources. As a result, this ESEE analysis considers required public infrastructure as called for under Statewide Planning Goals 11 and 12 and the protection of Goal 5 resources within the entire Albany UGB.

Meaning of the Term "Protect"

The term "protect" as used in the Goal 5 rule has an inclusive definition (OAR 660-023-010):

> *(7) "Protect," when applied to an individual resource site, means to limit or prohibit uses that conflict with a significant resource site. * * *. When applied to a resource category, "protect" means to develop a program consistent with this division.*

Consistent with this definition, the local government must adopt a local program that (a) fully protects the resource site, (b) limits development of the resource site, or (c) provides no local protection:

> *(6) "Program" or "program to achieve the goal" is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as part of the comprehensive plan and land use regulations (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).*

However, in the case of wetlands and fish-bearing lakes and streams, the third program option (allow conflicting uses fully with no local protection) is misleading, because both the Oregon Department of State Lands (DSL) and the US Army Corps of Engineers (ACE) have demanding

standards for protection of water resources under their jurisdiction. Thus, all wetlands, lakes, and streams identified in Albany's Local Wetland Inventory (LWI) have limited protection – but not necessarily at the local level.

Local water quality programs will provide additional protection. These include the City's (a) Erosion Prevention and Sediment Control Program that regulates construction activities to prevent erosion on construction sites and protect against sedimentation in local waterways and wetlands, and (b) post construction stormwater quality program that will require Low Impact Development and other water quality facilities as part of all development and redevelopment projects. These and other programs, such as illicit discharge detection and elimination, are all being conducted in conformance with the City's Willamette Basin TMDL (total maximum daily load) Implementation Plan. Finally, the City is evaluating hydro-modification in local creeks. This analysis will drive new development requirements in Albany specifically targeted at protecting local creeks, preserving habitat, and providing protection from future hydro-modification.

Organization of this ESEE Analysis

This ESEE analysis is organized by resource type: (1) riparian corridors and associated wetlands; and (2) isolated significant wetlands outside of riparian corridors.

Riparian Corridors and Associated Locally Significant Wetlands

Riparian Corridor Safe Harbor Inventory

Albany has elected to base its riparian corridor inventory on the safe harbor provisions of OAR 660-023-0090(5),[1] which establishes a 50-foot riparian buffer on either side of the stream's top-of-bank. Any LSWs that are included within this 50-foot setback become part of the riparian corridor, and the 50-foot setback is measured from the upland edge of the associated wetland.

Identification of Conflicting Uses and Impact Area

The Goal 5 rule explains how conflicting uses generally are determined (OAR 660-023-040):

> *(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses,*

[1] (5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows: * * * (b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank. (c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

*local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. * * **

The Goal 5 rule is more specific when it comes to identifying conflicting uses for riparian corridors in OAR 660-023-0090 using the standard:

(7) When following the standard ESEE process in OAR 660-023-0040 and 660-023-0050, a local government shall comply with Goal 5 if it identifies at least the following activities as conflicting uses in riparian corridors:

(a) ***The permanent alteration of the riparian corridor by placement of structures or impervious surfaces****, except for: (A) Water-dependent or water-related uses; and (B) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area; and*

(b) ***Removal of vegetation in the riparian area****, except: (A) As necessary for restoration activities, such as replacement of vegetation with native riparian species; (B) As necessary for the development of water-related or water-dependent uses; and*

Thus, conflicting uses are uses allowed in the underlying zoning district that involve (1) ***placement of structures or impervious surfaces*** **or** (2) ***removal of vegetation in the riparian area***.

Applicable Zoning Districts

The study area is situated wholly within the Albany Urban Growth Boundary (UGB). Within the UGB, the land use designations on the Albany Comprehensive Plan Map indicate the type, location, and density of land development that will be permitted in the future. Albany has adopted the Comprehensive Plan Map designations for the study area as listed in Table 1.

Table 1. Comprehensive Plan Designations

- Residential
- Industrial
- Commercial
- Village Center
- Open Space
- Public Facilities
- Urban Residential Reserve

Source: Albany Comprehensive Plan

The Comprehensive Plan designations are general categories of land use that are broken down into specific categories and applied as zoning districts on the zoning map. These primary zoning

districts, together with the accompanying provisions of local zoning codes, constitute the regulatory scheme that governs land uses in the riparian corridor.

Two local governments have zoning authority in the study area. The City of Albany administers city zoning on land that has annexed to the City. Linn County administers county zoning in areas that have not annexed to the City of Albany. Primary zoning districts that are mapped in the study area by the City of Albany and Linn County are listed in Table 2.

Table 2. Primary Zoning Districts In the Study Area

City of Albany
▪ IP (Industrial Park), ADC Art. 4
▪ LI (Light Industrial), ADC Art. 4
▪ NC, OP, CC, RC (Commercial Zones), ADC Art. 4
▪ MUC (Mixed Use Commercial), ADC Art. 5
▪ OS (Open Space), ADC Art. 3
▪ RR (Residential Single Family), ADC Art. 3
▪ RS-10 (Residential Single Family), ADC Art. 3
▪ RS-6.5 (Residential Single Family), ADC Art. 3
▪ RS-5 (Residential Single-Family), ADC Art. 3
▪ RM/RMA (Residential Medium-Density), ADC Art. 3
Linn County
▪ UGA-EFU (Urban Growth Area Exclusive Farm Use), LCC 930.100-930.130
▪ UGA-UGM-5 (Urban Growth Area Urban Growth Management), LCC 930.700-930.730
▪ UGA-UGM-20 (Urban Growth Area Urban Growth Management), LCC 930.700-930.730

ADC = Albany Development Code
LCC = Linn County Code
Source: Albany Planning, Albany GIS, Linn County GIS

Uses and activities envisioned by the purpose statement and allowed through zoning provisions of each zoning district were examined to identify potential conflicts with full protection of significant wetlands. A general characterization of conflicting uses by zoning district follows.

- The IP and LI zoning districts allow commercial and industrial uses through site plan review, conditional use, and building permit processes. Development standards allow replacement of existing vegetation with a high percentage of impervious surfaces including buildings and pavement. These zones allow streets and public facilities/utilities necessary to serve development.

- The commercial zoning districts include MUC (Mixed Use Commercial), OP (Office Professional, CC (Community Commercial), and RC (Regional Commercial). There are very few commercial sites impacted by the riparian overlay, and in most cases the overlay is at the edge of the property and could be avoided. These zones also allow

streets and public facilities/utilities necessary to serve development.

- The RS-10, RS-6.5, and RS-5 zoning districts are low-density residential zones, limited to single-family development. The number suffix refers to the minimum lot size allowed in the zone (*e.g.*, 6,500 square feet). Residential development is allowed as standard subdivisions, planned unit development, or cluster development. Development may include vegetation removal, grading, excavation, fill, trenching, installation of infrastructure, and construction of streets, utilities, and homes.

- The RM and RMA zoning districts are medium-density residential zones. RM allows a mix of housing types with a limit of 25 units per gross acre. RMA allows a mix of attached units at a limit of 35 units per gross acre. Development may include vegetation removal, grading, excavation, fill, trenching, installation of infrastructure, and construction of streets, utilities, and housing. There are very few undeveloped medium-density residential sites impacted by the riparian overlay, and in most cases the overlay is at the edge of the property and could be avoided.

- Institutional uses, such as schools, hospitals, churches, and parks are allowed as conditional uses in all residential zones. They generally require large sites and can avoid impact to the resources.

- The OS zoning district is a conservation district that pre-dates the current Goal 5 rules. The zone has not been updated to comply with Goal 5. Although it functions as a zone that prohibits most forms of development, it does not comply with any provisions of the Goal 5 rules. The zone allows a single-family dwelling as a precaution against regulatory takings claims. Vegetation removal and grading are allowed during the construction process. In addition, a limited range of conditional uses allows vegetation removal, excavation, utilities, and construction of impervious surfaces including streets. The OS zoning district applies to most of the riparian corridors within the Albany UGB.

- The UGA-EFU and UGA-UGM zoning districts are transitional zones administered by Linn County that allow nominal use of land prior to annexation. One single-family dwelling per parcel and a limited range of conditional uses are allowed. Vegetation removal, excavation, installation of utilities, and construction of impervious surfaces such as streets are allowed activities. After annexation, the land is eligible for Albany zoning as described in Table 3.

Table 3. Transition to Albany Zoning Districts

Linn County Zone	Albany Comprehensive Plan	Albany Zoning District
UGA-EFU	Open Space	OS
UGA-UGM	Urban Residential Reserve	RS-10, RS-6.5, RS-5, RR, RM, RMA, MUR, OP, NC

Source: Plan Designation Zoning Matrix (Albany Comprehensive Plan, page 9-13)

Table 4 identifies specific zoning districts that apply to specific riparian corridors throughout the Albany UGB.

Table 4. Riparian Corridors and Underlying Zoning Districts

Water Body	Zones within the Riparian corridor	Urban Fringe
Truax Creek	OS, RS-6.5, RS-5, RM, LI (little development potential), MUC	URR
Burkhart Creek	OS, RS-6.5, RS-5, RM, MUC, RC	URR
Cox Creek	OS, RS-6.5, LI (city airport), RC	URR, LI, CL (Commercial Light)
Periwinkle	OS, RS-6.5, RS-5, RM, RMA, CC, NC, OP	URR
Calapooia	OS, HM, HD, RS-6.5,	
Oak Creek	OS, RS-6.5, RM, LI, IP	URR, LDR
Thornton Lakes	OS, RS-10, RS-6.5, RR	
Horseshoe Creek	RS-10	

Source: City of Albany

Transportation, Utility and Park Facilities as Conflicting Uses

Public facilities and services often conflict with the full protection of significant Goal 5 resource areas. Construction of public facilities and services usually requires vegetation removal and grading and often results in construction of impervious surface area. As urban development occurs, an urban level of public facilities and services is required. Such services often must pass through significant resource areas to serve buildable land outside of such areas. Although public utilities are often located within the street right-of-way, that option is not always possible. Sanitary sewer and stormwater management facilities function most efficiently under gravity-flow conditions and benefit from location in or adjacent to natural drainage ways. Similarly, major water transmission lines necessary to move large supplies of water from one part of town to the other may not be located within the ROW. Additionally, per the ADC and Engineering Standards supporting franchise utilities are typically not allowed to be located

within the ROW as that is typically the minimum space required to locate required public infrastructure that would conflict with franchise utilities.

The City of Albany recently adopted a new Transportation System Plan (TSP). This plan identifies the general location of existing and proposed major street projects. Several of these required projects are located within or cross Goal 5 resources. Street construction and expansion often conflict with resource conservation in urban areas. The City of Albany ESEE analysis for public utilities and transportation facilities evaluates these conflicts within the urban growth boundary.

The City's 5-year capital improvements program sets priorities, refines costs estimates, and identifies funding sources for planned public facilities. It is the short-term element of each of the public facilities plans. Facility plans by nature show connectivity requirements and conceptually required alignments, but they do not include detailed engineering design, which considers additional competing priorities and topographical conditions. As projects move from the facility planning stage to the Capital Improvement Program (CIP) they are looked at more closely to determine if any modifications are required. The CIP will often include high priority projects with a community wide benefit that may conflict with identified Goal 5 resources. The City of Albany ESEE analysis for public utilities and transportation facilities evaluates these conflicts within the urban growth boundary.

The ADC currently permits "Basic utilities" and "Park and open areas" in all of Albany's zoning districts. As defined in ADC Section 22.180, basic utilities include "water and sewer systems *(referring to sanitary and storm sewer)*, telephone exchanges, power substations and transit. Services may be public or privately provided."

The primary zoning district that currently controls development within significant riparian corridors is the OS (Open Space) district. Section 3.060 permits transportation facilities and "neighborhood utilities" outright; Section 3.070 permits outdoor recreational facilities, public park and recreational facilities, fairgrounds, on-site parking for approved uses, and regional/community utilities through the conditional use process.

Such public and private facility uses potentially conflict with riparian corridor environmental values.

Conflicting Uses for Specific Riparian Corridors

The following narrative describes how uses allowed by applicable base zones apply to specific riparian corridors and associated wetlands. Albany has detailed facility plans for sanitary sewer, public water, and stormwater management and has recently adopted a new Transportation System Plan. These facilities are most likely to conflict directly with full natural resource

protection because often there is no reasonable alternative to routing these facilities through natural areas to serve nearby buildable land. The specific locations of these conflicts are found throughout the urban growth area. **Appendix A** provides a list of planned transportation, utility and park projects that could conflict with full protection of riparian corridors (including associated wetlands) and isolated wetlands outside of riparian corridors.

Most of the Truax, Burkhart and Cox Creek riparian corridors are zoned OS (Open Space). The Comprehensive Plan requires that Albany "reserve as open space a minimum of 50 feet on each side of the centerline of Truax and Burkhart creeks, and 100 feet on each side of the centerline of Cox Creek." Single-family residential developments north of Knox Butte have already protected streams and wetlands through the development process, by designating these resources Open Space (OS). Thus, the OS zone already protects streams and wetlands (but not necessarily the entire 50-foot riparian buffer, which in some cases is occupied by the developed single-family lots).

Truax Creek and Associated Wetlands

- **TRU-5** - runs along Albany's northern UGB boundary. Land adjacent to this reach is primarily undeveloped RS-6.5 and RS-5 except for a few small LI lots on Century Drive.
- **TRU-10B and TRU-1** – undeveloped RS-5 is located along this reach. A new elementary school is on large site adjacent to TRU-1, but separated from the creek by Timber Street; vacant land adjacent to this creek reach is unlikely to develop.
- **TRU-14** – undeveloped in UGB, URR designation, but developed in City; the creek is zoned OS and is captured in the common open space designated along creek and backyards in RS-6.5 development before completely disappearing at Alameda Street.
- **TRU-10G** – Like TRU-14, the northern reach of the riparian corridor is zoned OS, and is contained within land designated as OS in single-family developments. There is undeveloped RM land (up to 25 units/acre) and MUC along this reach.
- **TRU-3A/3B, TRU-2** – the riparian corridor is mostly contained within the OS zone and avoids undeveloped MUC to the east; TRU-3A/B goes through undeveloped RS-6.5 to the west.

Burkhart Creek and Associated Wetlands

- **BUR-11** – most of the land in this reach is zoned OS, and has undeveloped RM land adjacent to the reach, and a little undeveloped RC commercial.
- **BUR-6A, BUR-1E, BUR-1B, BUR-8** – A fair amount of undeveloped low-density residential (RS-6.5, RS-5, and URR in UGB).
- **BUR-9A, -5A, -5B** – most of this reach is zoned OS, and developed RS-5 to the west and undeveloped MUC to the east.

Cox Creek and Associated Wetlands

- **COX-9, COX-14A/B, COX-15A** – LI and RS-6.5 zoning, developed with City Park and Airport – in the long term, could redevelop if airport relocates (highly unlikely).
- **COX-9** – primarily undeveloped/underdeveloped land outside City limits, this reach crosses Goldfish Farm and south to Hwy 20 – land planned for LI, URR, CL (light commercial).
- **COX-6A/B/C/D** – South of Hwy 20, URR and CL undeveloped, a tiny bit of RC zoning mostly developed.

Periwinkle Creek and Associated Wetlands

- The OS zone/comp plan layer is applied over the creek within the City limits.
- **From the Willamette to 1st**, the creek is on land owned by the City, with developed RM and RS-5. Some redevelopment potential exists in this area.
- **From 1st to Santiam**, the creek is located on RM land with redevelopment potential.
- **From 7th crossing Hwy 99E couplet/9th Ave**, the creek is adjacent to undeveloped/underdeveloped CC and RM (Lowe's approved for site south of 9th Avenue).
- **Creek then runs in City r-o-w with bike trail and grass, little tree canopy** – all the way to Grand Prairie/Waverly. A mix of undeveloped RM and developed single-family housing along this reach.
- **East of Waverly**, the creek is adjacent to undeveloped RS-6.5, then crosses under I-5 and underdeveloped URR in UGB. Enhancement potential exists along this stream reach which is managed by the Grand Prairie Water Control District.

Oak Creek and Associated Wetlands

Starting at Calapooia heading east...going along the main stem:

- At **OAK-1A** – Cathey Creek angles up to NE in City r-o-w, adjacent to developed RS-6.5.
- **OAK-1A/B/D/E, OAK-6A** – The riparian corridor is primarily contained within the OS zone, but OAK 1-B extends into back yards of homes and undeveloped RS-6.5.
- **OAK-7A, OAK-1G** – extends into undeveloped RS-6.5.
- **East of 99E** – the riparian corridor and wetlands are on undeveloped LI to North to Lochner Road (also some developed LI south of 41st Avenue); otherwise the riparian corridor is contained within the OS zone.
- **North of creek between Lochner and I-5** – primarily undeveloped URR in UGB, some RS-6.5, developed RM
- **South of Oak Creek between 99E and Columbus St** – undeveloped RS-6.5, URR and RS-5; provides the greatest opportunities for enhancement and protection.

- The branch that runs due south on W side of 99E, crosses 53rd, **OAK-5B, -10, -11, -12, 18** – wetlands on undeveloped RS-6.5 and some LDR (Low Density Residential) in UGB.
- **OAK 11-A** – some undeveloped MUC.
- **OS-C, S of 53rd, E of 99E** – underdeveloped RM and NC, then on LBCC campus landscaping south of Belmont.
- **OAK 19E** – runs across undeveloped IP and LI land.

Calapooia River and Associated Wetlands

- This riparian corridor goes along the **western edge of the UGB**. It is zoned/designated OS, and is primarily contained within that zoning.
- North end – **CAL-6, CAL-7A/B, CAL-9B** extend onto undeveloped RS-6.5.

Thornton Lakes and Associated Wetlands

- Most is zoned OS, undeveloped RS-10 on south side and west end.
- Undeveloped RS-6.5 on north side; south side is planned to be a city park, natural area. Area zoned RR is mostly developed with large lot s-f.

Existing and Proposed Goal 5 Limited Protection Program

Existing Open Space Zoning

Albany currently regulates riparian and wetland resources by application of the Open Space (OS) zoning district to these resources. As shown on **Map A, Net Geographic Impact of Recommended Riparian Corridor Overlay District**, the OS zoning district applies to most riparian corridor areas and provides limited protection for such areas. The OS zoning district:

- Permits agricultural uses, transportation facilities, neighborhood utilities (covering less than 5,000 square feet), and a single family residence on an existing lot outright;

- Conditionally permits other urban uses, including park and recreational facilities, mining and quarrying, nurseries, fairgrounds, regional (major) utilities, parking lots, tree removal and wetland development.

The proposed and more restrictive Riparian Corridor (RC) overlay zone will supersede some of these provisions.

Albany's Proposed Riparian Corridor "Limited Protection" Program

If a local government adopts the riparian corridor protection safe harbor specified in OAR 660-023-0090(8) [2], an ESEE analysis is not required. However, Albany is required to conduct an ESEE analysis *because* the City proposes to adopt a limited protection program that varies in some respects from the riparian corridor protection safe harbor.

Albany's "limited protection" riparian corridor protection program has been adapted from the "safe harbor" protection program in OAR 660-023-0090(8) with the following modifications:

1. Like the riparian corridor safe harbor, Albany's proposed RC Overlay District applies to a riparian setback area 50 feet from the stream or lake top-of-bank, or the edge of any LSW that is "associated" with the stream (*i.e.,* is located within the 50-foot streambank setback area).

2. Like the riparian corridor safe harbor, Albany's proposed RC Overlay District prevents permanent alteration of the riparian area by grading or placement of structures for uses that would otherwise be allowed in the underlying zoning district, except for transportation facilities, paths, drainage and utility facilities, water-related and water-dependent uses, and replacement of existing structures in the same location.

3. Like the riparian corridor safe harbor, Albany's proposed RC Overlay District contains provisions to control the removal of riparian vegetation while allowing removal of non-native vegetation and replacement with native plant species; and removal of vegetation necessary for the development of water-related or water-dependent uses;

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[2] (8) As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt an ordinance to protect a significant riparian corridor as follows:

(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area: (A) Streets, roads, and paths; (B) Drainage facilities, utilities, and irrigation pumps; (C) Water-related and water-dependent uses; and (D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

(b) The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow: (A) Removal of non-native vegetation and replacement with native plant species; and (B) Removal of vegetation necessary for the development of water-related or water-dependent uses;

(c) Notwithstanding subsection (b) of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4;

(d) The ordinance shall include a procedure to consider hardship variances, claims of map error, and reduction or removal of the restrictions under subsections (a) and (b) of this section for any existing lot or parcel demonstrated to have been rendered not buildable by application of the ordinance; and

(e) The ordinance may authorize the permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary established under subsection (5)(a) of this rule upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.

4. Like the riparian corridor safe harbor, Albany's proposed RC Overlay District includes a procedure to consider hardship variances, claims of map error, and reduction or removal of the land use restrictions for any existing lot or parcel demonstrated to have been rendered not buildable by application of the program.

5. Like the riparian corridor safe harbor, Albany's proposed RC Overlay District includes local standards to ensure that permitted uses are designed and constructed to minimize intrusion into the riparian area and that disturbed areas are replanted with native vegetation. However, Albany's proposed RC Overlay District permits transportation, drainage and utility facilities to be constructed within associated LSWs located in riparian corridors, subject to meeting state and federal permitting requirements. Albany will rely on Department of State Lands (DSL) and US Army Corps of Engineers (ACE) to ensure that permitted transportation, drainage and utility impacts are avoided or minimized and mitigated within streams and wetlands under the jurisdiction of these agencies.

   As discussed previously, the City's other local programs for erosion prevention sediment control, post construction stormwater quality, hydro-modification, and other Willamette Basin TMDL water quality programs will provide an additional level of protection for Albany's riparian corridors and associated LSW.

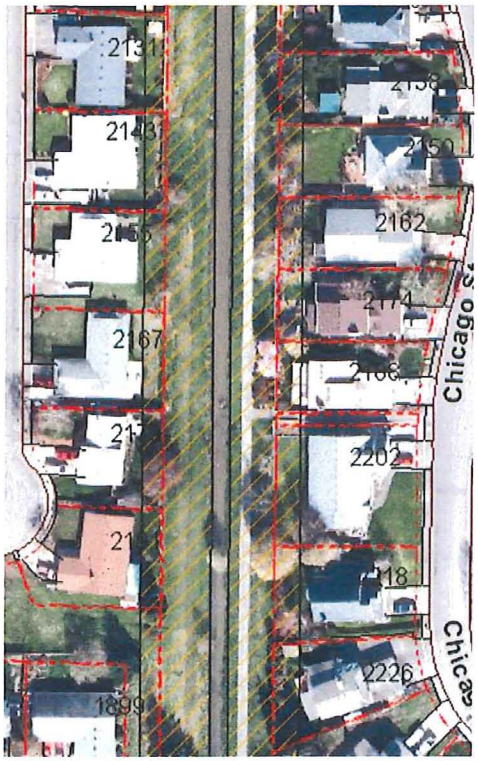
6. Like the riparian corridor protection safe harbor for streams with 1000 cfs or greater, Albany's proposed RC Overlay District applies this performance standard to streams with less than 1000 cfs. For reasons that are not explained in the Goal 5 rule, riparian corridors for streams with 1000 cfs or greater may reduced by up to 50% with "equal or better protection," but this safe harbor provision is not available for smaller streams. Albany's proposed limited protection program allows a ~~50% setback~~ **up to a 25-foot encroachment into the corridor if:**

   - **"The resource is characterized as marginal or degraded;" and**
   - "Demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures." **If the site is encumbered by easements or rights-of-way that would preclude onsite mitigation, an in-lieu of fee payment can be made equal to the cost of mitigation. The proposed encroachment will require improvement of marginal or degraded areas through on-site mitigation that would not be required if the corridor is avoided. This will result in better protection of the resource.**
   - **Existing residential lots up to 20,000 square feet that can't be further divided are proposed to be exempt from the onsite restoration requirements in the remaining**

25 feet because these lots were developed before the Goal 5 standards were adopted. (See Figures 1 and 2.) New single-family lots will be subject to Goal 5 standards, including the mitigation requirement.

~~7. Unlike the riparian corridor safe harbor, Albany's proposed RC Overlay District exempts existing, developed residential lots of 20,000 square feet or less, that cannot be further divided, from riparian corridor setback standards.~~ However, construction of new impervious surface area and native vegetation removal are prohibited within the stream or associated wetland. This ~~exemption~~ **encroachment into the riparian corridor only** is designed to minimize adverse social impacts from regulating ~~people's~~ **existing residential** back yards. **The City will encourage voluntary compliance with the Goal 5 provisions.**

Figure 1: Existing residential development along Periwinkle Creek



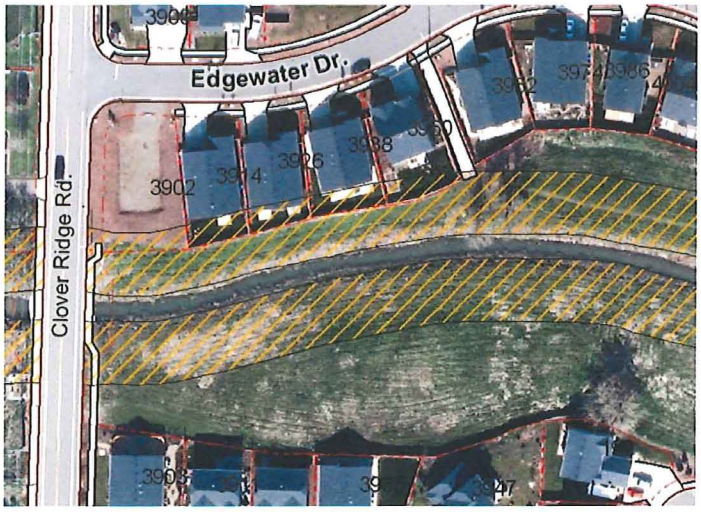


Figure 2: Existing residential development along Burkhart Creek

This ESEE analysis is based on Albany's "limited protection program" outlined above and set forth in the text of the RC Overlay District.

ESEE Analysis for Riparian Corridors and Associated LSW

This section considers the ESEE consequences of three alternatives for protecting riparian corridors:

A. **Full local protection:** allowing no conflicting land uses, excavation or vegetation removal within 50 feet of a protected stream or associated wetland;

B. **No local protection:** allowing full development without restriction within the riparian corridor; and

C. **Limited local protection:** relying on the proposed Riparian Corridor overlay district, which balances economic, social, environmental and energy conservation values.

- The RC overlay is intended to protect the significant (fish-bearing) riparian corridors and associated wetlands consistent with the Goal 5 Administrative Rule (OAR Chapter 660, Division 23).

- In most respects the RC Overlay District is similar to the riparian corridor safe harbor as applied to large streams (with 1000 cfs and greater). However, there are two important differences:

  - First, the backyards of existing developed **residential** lots under 20,000 square feet **that can't be further divided** are exempt from **the onsite restoration requirements associated with the 25-foot encroachment** ~~the 50-foot setback standard~~;

  - Second, transportation and utility facilities necessary to serve planned urban development are permitted within LSW and streams, subject to state and federal review and local re-vegetation standards within the riparian setback area. Other local stormwater quality program requirements will also apply to these projects.

Economic Consequences

Fish-bearing streams within Albany UGB provide a number of economic benefits by:

- Serving as support and breeding areas for salmon and steelhead and supporting Willamette River fisheries;
- Supporting Albany locally accessible passive recreational opportunities that reduce travel costs for community residents;
- Increasing adjacent residential property values that benefit from preserved open space and views;

- Improving the work environment for nearby commercial, industrial and public employees; and
- Providing natural drainage channels, rather than artificial conveyance systems, for urban runoff.

Full Local Protection Option (No Conflicting Land Uses Allowed)

The economic consequences of full local protection (protecting the entire 50-foot setback area regardless of existing development) would be mixed. On the one hand, full protection of the 50-foot riparian corridor would support the economic benefits identified above by prohibiting additional development within the 50-foot setback area.

The full protection option would have at least one significant but frequently overlooked economic benefit. Riparian Corridors and associated LSWs provide substantial stormwater management benefits because they intercept or detain rainfall and reduce stormwater runoff. Unrestricted removal of trees to allow development would reduce the City's "green" stormwater infrastructure, necessitating the construction of extensive new facilities to address the increased storm flows. However, as described below, these benefits can derive from the Limited Protection Program (RC Overlay District) as well.

On the other hand, from the point of view of individual property owners, the economic consequences of full local protection would be adverse, because developed riparian corridors sometimes have improvements within 50 feet of the streambank. Under the full protection option, existing development would become "non-conforming" making expansion difficult and expensive. Restrictions would also be placed on lawns, gardens and accessory structures within the 50-foot setback area that would be burdensome to property owners, especially in developed residential neighborhoods.

In addition to prohibiting residential, commercial, industrial and public uses allowed by the base zone, full riparian corridor protection in developed areas would make it impossible to extend transportation facilities and utilities necessary to allow for access and full utilization of underdeveloped properties. Full local protection would also prohibit parks, trails and passive recreational opportunities near streams and wetlands, which increase the value of nearby residential and employment properties.

Efficient and effective management of Albany's growth depends primarily on ensuring that the full range of public facilities and services is available to support planned urban development. This program has substantial social and economic benefits to Albany citizens and businesses, by helping to ensure an adequate supply of serviced industrial, commercial, residential, and public lands (with associated job opportunities). Growth management ensures that local shopping and services are available to residential areas, as are quality housing in well-designed

neighborhoods, good and accessible schools, potable water, and adequate sanitation. By managing the direction and timing of growth, the public costs of providing public facilities and services are reduced.

The full protection option would make efficient growth management in Albany difficult to achieve. This option would mean that no public facilities construction or maintenance could occur within protected significant natural resource areas. Since significant natural resource areas comprise a substantial portion of the land within the UGB, avoiding such areas would preclude the efficient provision of public facilities and services that are necessary to support planned urban development. The economic and social costs to the public resulting from a different form of "leap-frog" development would be extremely high.

For example, sanitary sewer and water services would be required to be routed around natural resource areas, regardless of public or private expense. This option would severely restrict future development patterns, both public and private, as roads and utilities could not be extended through resource areas. Albany's quality-of-life and its appeal as a place to locate business would suffer substantially. The City would also incur significant additional construction and long-term operating costs associated with the additional lift stations.

In conclusion, fully protecting all significant natural resource areas would severely restrict urban growth and urban design options. Housing costs would increase dramatically, and job opportunities would be lost, with attendant adverse social and economic impacts. Conversely, allowing unrestricted development of the sites would mean the loss or degradation of many of the economic benefits described previously.

Finally, the full protection option provides no incentive for property owners or developers to restore riparian vegetation or to minimize stream bank erosion (when compared with the "limited protection" option described below).

No Local Protection Option

The no local protection option would mean that the economic benefits provided by intact riparian corridors and associated wetlands would be compromised. Importantly, providing no local protection is not a realistic option from a state and federal regulatory perspective. No local protection would mean that stream temperatures and sedimentation would increase as riparian vegetation continues to be removed to make room for development, in violation of state and federal environmental regulations – with attendant economic consequences.

Limited Protection Option (Application of the RC Overlay District)

The City's Riparian Corridor overlay district offers limited riparian corridor in exchange for riparian corridor mitigation. The RC overlay prohibits most types of residential, commercial,

industrial and public development within a reduced 25 foot setback area (while allowing transportation, public utilities, parks, trails, and water dependent uses) – provided that riparian vegetation is restored by planting of native vegetation. In this manner, the economic benefits associated with intact riparian corridors are enhanced without placing an undue burden on individual property owners and without restricting the ability of the city to provide public facilities and services, consistent with Statewide Planning Goals 11 and 12, to support planned population and employment growth.

Allowing Riparian Corridor Setback Reduction

Albany's proposed RC Overlay District allows **encroachment into the** riparian setback ~~adjustments of~~ up to ~~50% (~~25 feet, **only when the resource is degraded or marginal,** ~~)~~ provided that there is equal or better protection provided for the riparian corridor, through enhanced buffer treatment (removal of invasive species, planting of native species, and other appropriate methods to improve riparian habitat and water quality).

The economic consequences of this approach are positive for individual property owners and developers, because more of the land they own can be developed for uses permitted by the Albany Comprehensive Plan and ADC. The economic consequences are also positive for the City as a whole, because land is used – and public facilities can be provided – more efficiently. By using land within the UGB efficiently, less pressure is put on adjacent farm land for development, which supports Linn and Benton County's agricultural economy.

Importantly, this approach also creates an economic incentive for restoration of degraded riparian habitat that will increase the economic benefits associated with intact stream corridors and wetlands.

The City and property owners would incur substantial regulatory costs by not allowing some flexibility for existing residential lots within the RC Overlay District, with little environmental benefit. Developed residential lots typically have fenced rear yards with lawns and gardens.

Another important consideration in subdivisions is that they were approved prior to the proposed Goal 5 ordinance and therefore did not take Goal 5 resources into account when they were designed. Under the new regulations, they would have been designed differently so there would be adequate backyards outside the proposed resource overlays.

For this reason, the RC Overlay District would also allow encroachment into the riparian setback up to 25 feet for activities on existing residential lots less than 20,000

square feet, that can't be further subdivided. However, no development is permitted within LSW or within 25 feet of streams in this district.

Permitting Transportation and Utility Facilities

As documented in the economic analysis above, permitting transportation and utility facilities to cross creeks and wetlands is often necessary to efficiently serve planned urban development. The economic consequences of avoiding associated LSW in all cases are substantial. Moreover, there are substantial local costs involved in regulating the location of needed transportation and utility facilities resulting from uncertainty, delay, consultant and application fees. To minimize these adverse economic impacts, the RC Overlay District defers the determination of *whether* and under what conditions a transportation or public utility may impact an LSW or stream to DSL and ACE. The RC Overlay District includes standards to ensure that impacts to the riparian corridor are mitigated through replanting of disturbed areas with native plants.

~~***Exempting Developed Residential Lots***~~

~~Developed residential lots typically have fenced rear yards with lawns and gardens.~~

~~The City and property owners would incur substantial regulatory costs by including developed lots within the RC Overlay District, with little environmental benefit. For this reason, the RC Overlay District exempts existing developed (with a house) residentially zoned lots of 20,000 square feet or less, that can't be further subdivided, from riparian corridor setback standards. However, no development is permitted within LSW or streams within this district.~~

Social Consequences

Riparian corridors provide aesthetic and functional benefits for a community. For example, a stream can add value and enjoyment in a residential setting, or provide places to relax and enjoy scenic views in a work setting. Urban fish and wildlife habitat also provide social values in terms of connecting city dwellers to outdoor recreational opportunities. Streams can also provide educational value when they are relatively high quality and accessible to schools and parks. At the same time, the social value of riparian corridors is enhanced when they are accessible by the public.

Full Local Protection Option (No Conflicting Land Uses Allowed)

The social consequences of full local protection are mixed. On the one hand, protecting riparian corridors contribute to urban aesthetics and provide a direct connection to nature for existing residential, commercial and industrial development. On the other hand, protecting riparian corridors could limit development options for commercial, industrial and residential

property owners, and the transportation and public utilities that serve such development, with corresponding adverse social impacts (e.g. increasing housing costs or decreasing job opportunities). Moreover, full protection would mean that people would not have access – via trails along or streets across riparian corridors.

No Local Protection Option (Reliance on State Regulations)

The social consequences of the no local protection for riparian corridors are negative: the aesthetic, natural and educational values of existing riparian corridors would continue to be diminished for the community as a whole, for individual property owners, and for their neighbors.

Limited Protection Option (Application of the RC Overlay District)

The social consequences of a limited protection option (application of the City's RC Overlay District to relatively developed streams), would have positive social consequences, because individual property owners would be able to use and expand development on most of their property (minimizing potential impacts to jobs and housing costs), while maintaining and restoring critical vegetation along riparian corridors (thereby maintaining and restoring aesthetic, natural and educational values associated with riparian corridors). The limited protection option also allows public access along and through riparian corridors, which increases their social value.

Environmental Consequences

Intact riparian corridors provide a wide array of environmental benefits[3]:

- **Microclimate and shade:** Streams and adjacent trees and woody vegetation are associated with localized air cooling, increased humidity, and soil moisture. Shading from riparian vegetation also helps keep stream water cool which is critical to fish (especially salmonids) and other aquatic species. Some of Albany's fish-bearing streams are water quality limited for in-stream temperature and bacteria. The Oregon Department of Environmental Quality (DEQ) has set shade targets for these streams. Existing tree canopy and overhanging shrubs contribute to meeting the shade targets.

- **Bank stabilization and control of sediments, nutrients and pollutants:** Trees, vegetation, rocks and leaf litter intercept precipitation, hold soils, banks and steep slopes in place, slow surface water runoff, take up nutrients, and filter sediments and pollutants found in surface water. In more developed locations, fish-bearing streams

[3] Much of the information regarding environmental benefits provided by riparian corridors is adapted from the *Portland Airport Futures Final Report, Appendix C, Economic, Social, Environmental and Energy Analysis* (February 2011).

are more likely experience slumping and erosion. Existing riparian vegetation helps to reduce stormwater runoff. Upland soil may also contain legacy pollutants (*e.g.,* DDT) which can be transported to the stream when vegetation is cleared, the soil is disturbed and stormwater picks up soil particles. Vegetation also filters other urban pollutants (*e.g.*, oils and brake dust from car) from stormwater.

- **Organic inputs, food web and nutrient cycling:** Streams, associated wetlands and riparian vegetation provide food and nutrients for aquatic and terrestrial species (*e.g.*, plants, leaves, twigs, seeds, berries, and insects) and are part of an ongoing chemical, physical and biological nutrient cycling system. The streams and riparian areas within Albany UGB contribute organic inputs to the Willamette River and nearby wetlands, and to food and nutrient recycling in the watershed.

- **Wildlife habitat/corridors:** Vegetated riparian corridors and associated features (*e.g.*, downed trees) provide wildlife habitat functions such as food, cover, breeding and nesting opportunities, and migration corridors. Native and non-native vegetation patches and corridors support local native wildlife and migratory species, which in some cases (as documented in Albany Local Wetland Inventory) are listed by federal and/or state wildlife agencies. Vegetated riparian corridors allow wildlife to migrate and disperse among different habitat areas while providing access to water. Vegetation creates a buffer between human activities and wildlife. Noise, light, pollution, people and domestic animals can adversely impact wildlife and riparian vegetation can reduce these impacts.

- **Stream flow moderation and flood storage:** Streams and associated wetlands provide conveyance and storage of stream flows, floodwaters and groundwater discharge. Trees and vegetation intercept precipitation and promote infiltration which tempers the stream flow fluctuations and short-term flooding events.

Full Local Protection Option (No Conflicting Land Uses Allowed)

The environmental consequences of full protection would be positive, because these riparian corridors offer fish and wildlife habitat, water quality and flood control values that would not be further diminished by development. However, prohibiting residential, commercial and industrial development within 50 feet of a stream bank would do little to encourage *restoration* of native vegetation that cools steam temperatures and stabilizes stream banks.

Moreover, depending on topographical and soil conditions, prohibition of stormwater management and sanitary sewer facilities within riparian corridors could impair the

functionality of these urban facilities, with corresponding environmental problems. Pump stations and extensive excavation outside of natural areas might also be required, which could impair water quality and increase energy consumption and attendant pollution.

No Local Protection Option

Under the no local protection option, development would be allowed within riparian setback areas, wetlands and streams without local restriction, which would have extremely adverse environmental consequences. State and federal regulations focus on wetlands and streams, but do not ensure protection of adjacent riparian areas.

Limited Protection Option (Application of the RC Overlay District)

The environmental consequences of a limited protection option (the City's proposed RC Overlay District) would be mixed, but generally positive, since stream vegetation within the 25 foot setback area would eventually be restored, supporting the environmental benefits described above. Intrusion of permitted uses within the riparian corridor would be minimized and disturbed areas resulting from construction would be replanted with native vegetation. Limited impacts from construction of transportation and public utilities within wetlands and streams would be addressed and mitigated by state and federal environmental regulations. As discussed previously, the City's local programs for erosion prevention sediment control, post construction stormwater quality, hydro-modification, and other Willamette Basin TMDL water quality programs will also provide a level of protection to Albany's riparian corridors and associated significant wetlands.

In many cases, the environmental consequences of potential public improvement projects are initially considered at the master planning stage as potential projects are first identified. For example, Albany's recently adopted Transportation System Plan (TSP) minimized creek crossings and avoid wetlands whenever possible. This is especially apparent when one reviews the planned street network in the undeveloped portions of South Albany. As projects move forward into the 5-year Capital Improvement Plan, projects are evaluated further from a resource and project design perspective. At this point, if a viable alternate alignment exists that further avoids wetlands or creeks, modifications are made. In this manner, many of the adverse environmental, social, and economic consequences of the full and no protection scenarios (described above) have been, or will be further, avoided or minimized.

Energy Consequences

In Albany, vegetated riparian corridors provide shade and windbreaks which can modify high temperatures during the summer months and the effects of cold winds during the winter months. The use of existing riparian corridors for storm water storage and conveyance reduces energy that would otherwise be used for construction and maintenance of stormwater culverts

and storage ponds. At the same time, full protection would limit commercial, industrial and residential infill opportunities, which would have a marginal effect on land use efficiency within Albany UGB. Full protection would also restrict connectivity, increase out-of-direction travel, and impair bicycle and pedestrian activity – all of which increase energy consumption.

Full Local Protection Option (No Conflicting Land Uses Allowed)

The energy consequences of full local protection would be positive. Existing riparian vegetation would continue to provide shade during the summer months and a windbreak during the winter months. Fish-bearing streams would continue to provide stormwater conveyance and storage functions. On the other hand, full local protection would increase energy consumption because land development patterns would be somewhat less efficient and vehicular, bicycle and pedestrian connectivity would be limited. Moreover, energy costs would increase if the city were required to rely on pump stations rather than gravity for conveyance.

No Local Protection Option

Providing no local protection means that development would be allowed to the edge of the stream bank. The lack of streamside vegetation would increase stormwater flows and increase sedimentation in streams, thus reducing the effectiveness of a stream's stormwater retention and conveyance function. The lack of streamside vegetation would also mean that riparian corridors would no longer provide effective shading and windbreak functions.

Limited Protection Option (Application of the RC Overlay District)

The energy consequences of applying RC Overlay District protection to riparian corridors would also be positive, because streamside vegetation would be restored over time, maintaining and improving the shading, windbreak and stormwater functions of fish-bearing streams within Albany UGB. The limited protection option allows infill development in existing developed areas, transportation connectivity, and reduced reliance on pump stations for stormwater and wastewater conveyance, all of which increase land use efficiency and energy conservation.

Recommendation for Significant Riparian Corridors

On balance, the ESEE consequences analysis supports implementation of RC Overlay District provisions (rather than the full or no protection options) by balancing economic, social, environmental, and energy conservation values. The RC Overlay District mirrors the Goal 5 riparian corridor protection safe harbor in most respects, but provides more local flexibility by:

- **Allowing ~~a 50% encroachment~~ up to 25 feet into the riparian corridor ~~setback reduction~~ for marginal or degraded resources in exchange for riparian restoration within the remaining 25-foot setback area;**

- **Allowing an "in lieu of" payment equal to the cost of onsite mitigation if the site is encumbered by easements or rights-of-way that preclude onsite restoration or enhancement; and**
- **~~Exempting backyards of smaller~~ Allowing encroachment up to 25 feet into the riparian corridor for existing ~~developed~~ residential lots less than 20,000 square feet that can't be further divided without the requirement for onsite restoration ~~from the 50-foot setback standard~~; and**
- **Permitting transportation and utility facilities necessary to serve planned urban development are permitted within LSW and streams, subject to state and federal review and mitigation.**

Isolated Locally Significant Wetlands (LSW)

Isolated LSW are located outside of riparian corridors as defined in the Goal 5 rule. This section distinguishes between:

- Isolated, relatively high quality LSW; and
- Isolated, relatively low quality LSW.

A modified version of the Goal 5 safe harbor wetland protection is recommended for isolated, relatively high quality wetlands. This is the same program for the wetlands associated with riparian corridors.

An ESEE analysis was done for the isolated, relatively low quality wetlands. It enables the City to rely primarily on DSL and ACE regulations for Goal 5 protection, while allowing density transfer in residential areas through Cluster Development.

Isolated Significant Wetland Inventory

The Local Wetland Inventory (LWI) identifies fourteen locally significant wetlands (LSW), totaling approximately 24 acres, that are *not* located within a riparian corridor. Table 5 summarizes the acreage and quality, measured in terms of wildlife habitat, fish habitat, water quality function, and hydrologic control functions.

If an LSW has at least two of four wetland functions intact it is considered to be a relatively high quality wetland for purposes of this ESEE analysis.

Table 5. Location, Quantity, and Quality of Isolated Significant Wetlands

Wetland Code	Wetland Acres	Wildlife Habitat	Fish Habitat	Water Quality	Hydrologic Control	Relatively High Value?	Protection Type
BUR-10B	1.37	Limited	unknown	*Intact*	Impacted	No	No local
BUR-11	0.89	Limited	NA	*Intact*	Impacted	No	No local
CAL-3A	2.21	Limited	NA	Impacted	*Intact*	No	No local
CAL-3B	4.01	Limited	NA	Impacted	*Intact*	No	No local
CAL-6	2.17	Limited	unknown	Impacted	Impacted	No	No local
CAL-7A	2.35	*Diverse*	Impacted	Impacted	Impacted	No	No local
CAL-7B	1.17	Limited	unknown	Impacted	*Intact*	No	No local
CAL-8	1.81	Limited	Impacted	Impacted	*Intact*	No	No local
CAL-11A	2.67	*Diverse*	Impacted	Impacted	*Intact*	**Yes**	***Local***
CAL-11C	1.11	Limited	unknown	Impacted	*Intact*	No	No local
HRS-11A	1.32	Limited	unknown	*Intact*	*Intact*	**Yes**	***Local***
HRS-13	0.64	Limited	unknown	*Intact*	Impacted	No	No local
OAK-26M	1.22	Limited	*Intact*	*Intact*	Impacted	**Yes**	***Local***
SPH-3	0.77	Limited	NA	*Intact*	*Intact*	**Yes**	***Local***

Source: LWIs

Application of a Modified Version of the Wetland Safe Harbor Protection to Higher Quality LSW

The City proposes to apply the wetland safe harbor protection provisions of OAR 660-023-100(4)(b) to protect relatively high quality isolated LSW – with one notable exception. As with LSW in riparian corridors, public transportation facilities and utilities are permitted within the relatively high quality LSW subject to DSL and ACE review and approval. This provision will be implemented by the City's Isolated Significant Wetland Overlay District (/SW) which includes the following provisions:

A. Restricts grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention, except for public transportation facilities and utilities; and

B. Includes a variance procedure to consider hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions for any lands demonstrated to have been rendered not buildable by application of the overlay district.

There are four relatively high quality LSWs totaling approximately 6 acres that will be subject to the City's /SW Overlay District:

- CAL-11A is an open water pond that covers about 2.67 acres, and has diverse wildlife habitat and intact hydrological control function. The surrounding zoning is Open Space.
- HRS-11A is in a residential area of North Albany, covers 1.32 acres, and has intact water quality and hydrologic control functions. The surrounding zoning is Single-Family (RS-10).
- OAK 26-M is an agricultural area outside the city limits, covers 1.22 acres, and has intact fish habitat and water quality function. The surrounding plan designation is Urban Residential Reserve and Open Space.
- SPH-3 is a forested wetland that covers 1.05 acres, has intact water quality and hydrologic functions, and has additional educational benefits because it is located on the North Albany Middle School grounds. The surrounding zoning is Single-Family (RS-10).

An ESEE Analysis is required because public transportation and utility facilities are permitted within the proposed /SW Overlay District.

Identification of Conflicting Uses and Impact Area for Higher Quality LSW

The Goal 5 rule requires cities to determine conflicting urban uses based on uses allowed by applicable zoning districts. Table 6 shows the zoning districts that apply to isolated relatively high quality LSWs and adjacent properties.

Table 6: Zoning for Relatively High Quality LSWs

Wetland Code	Wetland Acres	Zoning/ Comp Plan	Surrounding Land Uses
CAL-11A	2.67	OS	hazelnut orchard, farming
HRS-11A	1.32	RS-10	residential development
OAK-26M	1.22	URR, OS	pasture, farming, oak grove
SPH-3	1.05	RS-10	school, residential development

Impact Area

The impact area for isolated, relatively high value LSW includes adjacent properties that (a) in most cases drain to the wetland, and (b) could be affected by application of modified wetland safe harbor provisions to the LSW.

ESEE Analysis for Isolated, Relatively High Quality LSW

This section considers the ESEE consequences of three alternatives for protecting relatively high quality LSW that are not within inventoried riparian corridors:

(a) Full local protection (allowing no conflicting land uses – similar to the safe harbor provisions of OAR 660-023-100);
(b) No local protection (relying solely on ACE/DSL regulations); and
(c) Limited local protection (prohibits most conflicting uses allowed in the underlying zoning district except for public transportation and utility facilities; in addition to USACE/DSL regulation, relies on local stormwater quality programs and Cluster Development provisions).

The ESEE analysis for relatively high quality but isolated LSW is the same as the ESEE analysis for associated LSW found in the Riparian Corridor ESEE analysis found on pages 19-28 of this report.

Program Recommendation for Relatively High Value Isolated Wetlands

Recommendation: Apply a modified version of the wetland safe harbor protection provisions of OAR 660-023-100(4)(b) to relatively high quality isolated LSW. This provision will be implemented by the City's Isolated Significant Wetland Overlay District (/SW) which: (A) Except for public transportation and utility facilities, restricts grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and (B) Includes a procedure for hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions for any lands demonstrated to have been rendered unbuildable by application of the overlay district.

Identification of Conflicting Uses and Impact Area for Lower Quality LSW

The Goal 5 rule requires cities to determine conflicting urban uses based on uses allowed by applicable zoning districts. Table 7 shows the zoning districts that apply to isolated relatively low quality LSWs and adjacent properties.

Table 7: Zoning for Relatively Low Quality LSWs

Wetland Code	Wetland Acres	Zoning/ Comp Plan	Surrounding Land Uses
BUR-10B	1.37	LDR	outside city limits, residential development
BUR-11	0.89	RM	church property, farmland
CAL-3A	2.21	OS	city park, farmland
CAL-3B	4.01	OS	city park, farmland
CAL-6	2.17	RS-6.5	against east side of RR embankment, residential development
CAL-7A	2.35	RS-6.5	against east side of RR embankment, residential development
CAL-7B	1.17	RS-6.5	against east side of RR embankment, residential development
CAL-8	1.81	RS-6.5	against east side of RR embankment, residential development
CAL-11C	2.67	OS	farmland
HRS-13	1.11	RS-10	city-owned detention facility for surrounding subdivision

Source: City of Albany and Albany Comprehensive Plan Map.

Applicable Zoning Districts

- The RS-10 and RS-6.5 zoning districts are low-density residential zones, limited to single-family development. The number suffix refers to the minimum lot size allowed in the zone (*e.g.*, 10,000 square feet). Residential development is allowed as standard subdivisions, planned unit development, or cluster development. Development may include vegetation removal, grading, excavation, fill, trenching, installation of infrastructure, and construction of streets, utilities, and homes.

- The RM zoning district is a medium-density residential zone. RM allows a mix of housing types with a limit of 25 units per gross acre. Development may include vegetation removal, grading, excavation, fill, trenching, installation of infrastructure, and construction of streets, utilities, and housing.

- Institutional uses, such as schools, hospitals, churches, and parks are allowed as conditional uses in all residential zones. They generally require large sites and can avoid impact to the resources.

- The OS zoning district is a conservation district that pre-dates the current Goal 5 rules. The zone has not been updated to comply with Goal 5. Although it functions as a zone that prohibits most forms of development, it does not comply with any provisions of the Goal 5 rules. The zone allows a single-family dwelling as a precaution against regulatory takings claims. Vegetation removal and grading are allowed during the construction process. In addition, a limited range of conditional uses allows vegetation removal, excavation, utilities, and construction of impervious surfaces including streets. The OS zoning district applies to most of the wetlands near the Calapooia.

Impact Area

The impact area for isolated, relatively low value LSW includes adjacent properties that (a) in most cases drain to the wetland, and (b) could be affected by application of modified wetland safe harbor provisions to the LSW.

ESEE Analysis for Isolated, Relatively Low Quality LSW

This section considers the ESEE consequences of three alternatives for protecting relatively low quality LSW that are not within inventoried riparian corridors:

(a) Full local protection (allowing no conflicting land uses);

(b) No local protection (relying solely on Corps/DSL regulations); and

(c) Limited local protection (Cluster Development) in addition to Corps/DSL regulation and local stormwater quality programs.

Economic Consequences

Albany's grid street system serves developed and buildable land that is drained by a network of channels and small wetlands that are isolated from inventoried riparian corridors, but nevertheless qualify as locally significant wetlands (LSW). In developed areas, the channels often follow street or railroad rights-of-way, or run between subdivision lot lines, indicating that wetland areas were channelized or disconnected to allow urban development. Some remnant LSW are protected as Open Space or were left undeveloped. However, in undeveloped areas, it may be necessary to relocate or fill these linear wetlands to allow efficient urban development.

Full Local Protection Option (No Conflicting Land Uses Allowed)

The economic consequences of full local protection would be adverse, because relatively low quality LSW could no longer be filled or relocated to allow for efficient urban development or for extension of infrastructure. In addition to prohibiting residential, commercial, industrial and public uses allowed by the base zone, full local wetland protection would make it impossible to extend streets and utilities necessary to allow for access and full utilization of underdeveloped properties. Full protection of the low quality wetlands would preclude Residential and associated development on most of the affected sites.

For these reasons, there would be significant adverse economic impacts resulting by a local ordinance that fully protected (allowed no conflicting land uses on) relatively low quality LSW.

No Local Protection Option (Reliance only on State Regulations)

The economic consequences of no local protection (relying on the State's fill and removal law) would, in most cases, be positive when compared with the full local protection option. DSL regulations allow some flexibility to allow conflicting urban uses where no reasonable alternative exists; and, like the limited local protection option, DSL regulations may allow road and utility extensions where necessary to serve urban development.

DSL regulations provide the flexibility necessary to create suitable industrial land in the southern portion of the UGB; whereas either the full or limited local protection options would severely limit the efficient development of the affected Residential sites – which would adversely affect the property owner and the community (in terms of potential lost housing).

Thus, there will be situations where it makes economic sense go through the state process to allow for more efficient urban development. Although there would be economic costs associated with this process (which requires on- or off-site mitigation, or payment of a fee to DSL), these costs may be off-set by increased development potential of sites affected by LSWs. Thus, the economic impact of no local protection (relying solely on DSL regulations) would be positive in many cases.

Limited Protection Option (Cluster Development)

The City's Limited Protection Option for relatively low quality isolated LSW is to permit residential density transfer through the City's Cluster Development chapter. Density transfer is effective for residential development, but not for commercial and industrial development. The economic consequences of allowing density transfer are positive for the property owner and for the community, because density transfer allows for more efficient land use and for more affordable housing opportunities.

Social Consequences

In many cases, locally significant wetlands provide aesthetic and functional benefits for a community. For example, an open water wetland can add value and enjoyment in a residential setting, or provide places to relax and enjoy scenic views in a work setting. Urban fish and wildlife habitat also provide social values in terms of connecting city dwellers to outdoor recreational opportunities. Wetlands can also provide educational value when they are higher quality and accessible to schools. However, low quality isolated LSW typically do not have these qualities.

On the other hand, protecting relatively low quality wetlands on otherwise buildable land can have the unintended consequence of increasing housing costs or decreasing job opportunities, which have adverse social consequences. Because lower quality wetlands listed in Table 6 offer minimal aesthetic value and limited fish and wildlife habitat value, their protection should be balanced against adverse impacts on the buildable land supply for housing.

Full Local Protection Option (No Conflicting Land Uses Allowed)

The social consequences of full local protection are mixed but largely negative. On the one hand, relatively low quality wetlands provide a minimal contribution to urban aesthetics and provide a limited connection to nature. On the other hand, protecting these relatively low quality wetlands could limit development efficiency (thereby increasing housing costs and decreased job opportunities), with corresponding adverse social impacts.

No Local Protection Option (Reliance on State Regulations)

The social consequences of the no local protection for relatively low quality wetlands are more positive than the full protection option, because there is greater flexibility in state regulations. DSL requires mitigation for some wetland values that may be lost to development, while allowing more efficient use of residential, commercial, industrial and public land – with corresponding social benefits associated with lower housing costs and increased job opportunities.

Limited Protection Option (Cluster Development)

The social consequences of a limited protection option (use of Cluster Development density transfer provisions) would be less adverse than the full protection option because public facilities may be allowed where consistent state and federal environmental regulations. Density transfer provisions of Cluster Development would have positive social consequences due to increased land use efficiency that provide affordable housing opportunities.

Environmental Consequences

Wetlands provide a wide array of environmental benefits. They protect and preserve drinking water supplies because they purify surface water and ground water. They also reduce soil erosion because the vegetation holds the soil in place. The wetlands in Albany specifically help to protect life and property during floods by storing and absorbing water. Moreover, they can provide an important fish and wildlife habitat function due to a presence of water, habitat for breeding, nesting, feeding and predator escape.

However, relatively low quality wetlands have only limited fish and wildlife habitat value, and typically have limited water quality and storage functions.

Full Local Protection Option (No Conflicting Land Uses Allowed)

The environmental consequences of full protection would be positive, because these relatively low quality wetlands offer limited fish and wildlife habitat value. Likewise, they provide limited benefits for water quality or hydrologic control. However, a full protection option would ensure protection for all LSW and the limited environmental benefits they provide.

No Local Protection Option (Reliance on State Regulations)

Under the no local protection option, wetlands would be protected under DSL administrative rules, which allow for removal and fill of wetlands, provided that there is no reasonable alternative, impacts are minimized, and that lost functions and values are mitigated. However, from an environmental standpoint, created wetlands may not provide the same ecological

function as naturally occurring wetlands. Thus, reliance on DSL regulations (without local protection) would have somewhat adverse environmental consequences.

Limited Protection Option (Use of Cluster Development)

The environmental consequences of a limited protection option (Cluster Development) would be similar to the full protection program. The limited protection program would provide for density transfer in exchange for protecting the wetland.

Energy Consequences

Energy consequences include effects of each option on transportation connectivity, which reduces vehicle miles traveled and supports alternative transportation modes), compact urban growth (which conserves energy when compared with more expansive growth forms, shading (provided by some trees for some LSW), and storm water retention (which uses less energy than underground conduits – especially when construction costs are considered).

Full Local Protection Option (No Conflicting Land Uses Allowed)

The energy consequences of full local protection would be mixed but largely negative. On the one hand, the existing surface (ditch) drainage system consumes relatively little energy. Where trees are present, preservation of relatively low value wetlands can provide summer shading and cooling. On the other hand, the full local protection option limits street connectivity and can result in a less compact urban growth form, which have adverse energy consequences.

No Local Protection Option (Reliance on State Regulations)

The energy consequences of relying on state regulations are also mixed. In cases where the existing surface (ditch) drainage system does not impede transportation connectivity or efficient urban development, there would be no reason to replace relatively "green" drainage ditches with less energy-efficient "gray" conduit systems.

However, in some case, replacing drainage ditches with pipes may result in more efficient use of scarce urban land. In such cases, constructing underground pipes to drain relatively low quality farmed wetlands or to replace surface drainage ditches consumes relatively little energy – when compared with the energy it would take to construct storage facilities to replace the hydrological functions of higher quality open water wetlands.

Many lower quality wetlands do not have trees, so the summer shading and cooling effect is limited in any case. Where ditches have trees, there would be adverse effects on summer cooling resulting from filling linear wetlands. On the other hand, the no local protection option allows for street connectivity where consistent with the Transportation System Plan and

greater flexibility can result in more efficient development and a more compact urban growth form, which have positive energy consequences.

Limited Protection Option (Cluster Development)

The energy consequences of using Cluster Development provisions for lower quality wetlands would also be positive, because increased density on buildable land allowed through density transfer correlates with reduced energy consumption. In cases where the existing surface (ditch) drainage system does not impede transportation connectivity or efficient urban development, there would be no reason to replace relatively "green" drainage ditches with less energy-efficient "gray" conduit systems. Many relatively lower quality wetlands do not have trees, so the summer shading and cooling effect is limited in any case. The limited protection option allows for street connectivity where consistent with the Transportation System Plan, which reduces energy consumption.

Recommendation for Relatively Low Quality Wetlands

On balance, the ESEE consequences analysis supports reliance on the Oregon Department of State Lands to protect relatively low quality LSW within the Albany UGB, combined with the density transfer provisions of Cluster Development. DSL regulations provide greater flexibility in allowing fill and removal of lower quality wetlands than the "full local protection" or the "limited local protection" options – while requiring mitigation for lost wetland values.

Recommendation: Use of Cluster Development and stormwater management provisions for isolated, relatively low value wetlands identified in Table 7. Rely on DSL and ACE regulations to avoid, minimize and mitigate for impacts from conflicting land uses.

Summary of Recommendations

For Riparian Corridors and Associated Wetlands

Recommendation: Apply the draft Riparian Corridor Overlay District to fish-bearing lakes and streams within the Albany UGB as called for in Albany Comprehensive Plan.

- **The draft RC Overlay District ordinance provides for a 50-foot riparian setback along fish-bearing lakes and waterways, and associated wetlands. Allowed uses within the riparian corridor include transportation and utility facilities necessary to support development, water-dependent and water-related uses, replacement of existing structures, removal of non-native vegetation, planting of native vegetation, and passive recreational uses.**

- **The draft RC Overlay District ordinance also provides for a setback reduction up to ~~50% (~~25 feet~~)~~ in exchange for restoration of riparian vegetation within the reduced setback area, or an 'in lieu of payment ' to the City when onsite restoration is precluded due to existing easements or rights-of-way.**

- **Existing residentially zoned lots ~~that have a house, are~~ less than 20,000 square feet that ~~and~~ cannot be further divided ~~are exempt from~~ may encroach up to 25 feet into the 50-foot setback standard without the requirement to restore the remaining 25-feet.**

For Relatively High Quality Isolated Wetlands

Recommendation: Apply a modified version of the safe harbor wetland protection provisions of OAR 660-023-100(4)(b) to higher quality isolated LSW. This provision will be implemented by the City's Significant Wetland Overlay District (/SW) which:

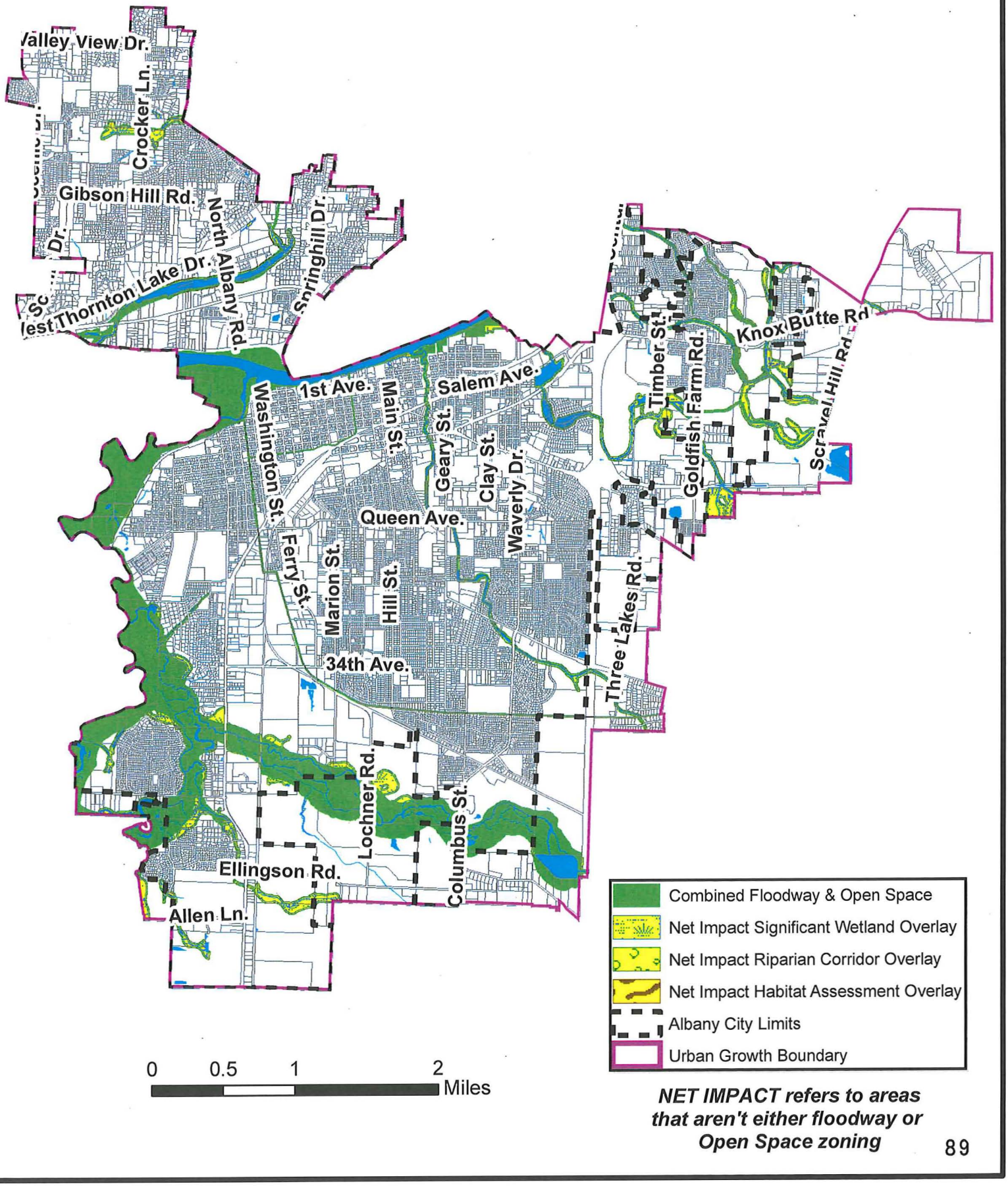
- **Except for public transportation and utility facilities, restricts grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and**

- **Includes a procedure for hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions for any lands demonstrated to have been rendered unbuildable by application of the overlay district.**

For Relatively Low Quality Isolated Wetlands

Recommendation: Use Cluster Development and stormwater management provisions for isolated, relatively low quality wetlands identified in Table 7. Rely on DSL and ACE regulations to avoid, minimize and mitigate for impacts from conflicting land uses.

MAP A: Net Impact of Recommended Goal 5 Overlay Districts



NET IMPACT refers to areas that aren't either floodway or Open Space zoning

Citywide Goal 5 ESEE Analysis

APPENDIX A

Planned Transportation, Utility and Parks Projects

Transportation Projects		
ID	**Water Body**	**Project Description**
T1	Truax Creek	L24 Knox Butte Road widening
T2	Truax Creek	L49 Scravel Hill Road widening
T3	Truax Creek	L15 Timber Ridge Street extension
T4	Truax Creek	L39 Century Drive widening
T5	Burkhart Creek overflow	L19, L57 Somerset Drive extension
T6	Burkhart Creek overflow tributary	L15 Timber Ridge Street extension
T7	Burkhart Creek overflow	L24 Knox Butte Road widening
T8	Burkhart Creek	L14 Dogwood Avenue extension
T9	Burkhart Creek, tributary	L14, L15 new intersection Timber Ridge Street, Dogwood Avenue
T10	Burkhart Creek tributary	L15 Timber Ridge Street extension
T11	Burkhart Creek	L23 Knox Butte Road widening
T12	Burkhart Creek	L18 Timber Street extension
T13	Burkhart Creek	L17 Expo Parkway extension
T14	Burkhart Creek	L25 Dunlap Avenue extension
T15	Wetland	L18 Timber Street extension
T16	Burkhart Creek	L39 Century Drive widening
T17	Cox Creek	L56 Santiam Highway widening
T18	Cox Creek	L16 new east / west collector
T19	Cox Creek	L52 Godl Fish Farm Road widening
T20	Periwinkle Creek	L61 Three Lakes Road widening
T21	Periwinkle Creek	Mountain View Drive extension
T22	Periwinkle Creek	L9 Queen Avenue widening
T23	Oak Creek	L46 Columbus Street widening
T24	Oak Creek	L8 Lochner – Columbus new collector
T25	Oak Creek	L54 Lochner Road widening
T26	Tributary	Industrial site new access street
T27	Tributary	L34 Looney Lane extension
T28	Tributary	L45 Allen Lane widening
T29	West/East Thornton Lake	L6 North Albany Road widening
T30	Crocker Creek	L10 new collector
T31	Crocker Creek	L10 North Albany Road extension
T32	Crocker Creek	L42 Crocker Road widening
T33	Wetland	L42 Crocker Road widening
T34	Crocker Creek	Broadway Street extension
T35	Burkhart Creek	M7 East Timber Linn new trail
T36	Cox Creek	M3 West Timber Linn new trail
T37	Cox Creek, Willamette River	M4 South Waterfront new trail
T38	Periwinkle Creek	M1 crossing improvement
T39	Periwinkle Creek	M10 Periwinkle Trail extension
T40	Oak Creek	M2 Oak Creek new trail
T41	Willamette River	M6 Albany-Corvallis Multiuse new path
T42	West Thornton Lake outlet	M5 Albany-Corvallis Multiuse new path
T43	Cox Creek	P7 Pedestrian improvements on Airport Rd.
T44	Cox Creek	B15 Bike improvements on Bain Street
T45	Willamette River	B21 Bike improvements on Ellsworth Street
T46	Willamette River / Thornton Lake Outlet	B-7 Construct bike lanes on US20
Sources: Transportation System Plan, Albany staff		

Water Projects		
ID	**Water Body**	**Project Description**
W1	Truax Creek	P27 Water main extension along Scravel Hill Road
W2	Burkhart Creek overflow, wetland	P36 Water main extension along Somerset Drive.
W3	Burkhart Creek overflow	P27 Water main extension along Knox Butte Road
W4	Burkhart Creek	P33 Water main extension along Scravel Hill Road
W5	Burkhart Creek tributary	P33 Water main extension along Scravel Hill Road
W6	Cox Creek	P33 Water main extension along Santiam Highway
W7	Swan Lakes/Cox Creek	P25 Water main extension along Bain Street
W8	Periwinkle Creek	P30 Water main extension along Three Lakes Road
W9	Oak Creek	P28 Water main extension along Lochner Road
W10	Calapooia River, Willamette River	P40 Water main extension from Vine Street WTP to North Albany Road
W11	West/East Thornton Lakes	P39 Water main extension along North Albany Road
Sources: Water Facility Plan, Albany staff		

Sanitary Sewer Projects		
ID	**Water Body**	**Project Description**
S1	Truax Creek	New sewer extension along Knox Butte Road
S2	Truax Creek	New sewer extension along Scravel Hill Road
S3	Burkhart Creek overflow	New sewer extension along Knox Butte Road
S4	Burkhart Creek overflow	New sewer extension along Somerset Drive
S5	Burkhart Creek	Replacement sewer along Century Drive
S6	Burkhart Creek tributary, Cox Creek	New sewer extension from Timber Linn Park to Scravel Hill Road
S7	Cox Creek	New sewer extension along Santiam Highway
S8	Cox Creek	New or replacement sewer along Price Road
S9	Swan Lake/Cox Creek	Replacement sewer along Swan Lake
S10	Swan Lake/Cox Creek	Replacement sewer along Swan Lake
S11	Waverly Lake/Cox Creek	Replacement sewer along Waverly Lake, Cox Creek
S12	Cox Creek	Replacement sewer from Waverly Lake to WWTP
S13	Periwinkle Creek	New sewer extension along Three Lakes Road
S14	Oak Creek	New sewer extension to expand Mennonite Village
S15	Oak Creek	New sewer extension along Columbus Street
S16	Oak Creek	Lift station expansion and new force main north of creek
S17	Oak Creek tributary	New sewer extensions in Ellingson Road vicinity
S18	Willamette River	Replace river front interceptor
S19	West Thornton Lake outlet	New sewer extension
S20	West Thornton Lake outlet	New sewer extension along Highway 20
S21	West/East Thornton Lake	Replacement sewer along North Albany Road
Sources: Wastewater Master Plan, Albany staff		

Stormwater Projects		
ID	**Water Body**	**Project Description**
D1	Cox Creek, Willamette River	New storm drain to Willamette River
D2	Periwinkle Creek	Additional culvert near Juan Way
D3	Periwinkle Creek	Additional culvert under 40th Avenue
D4	Periwinkle Creek	Additional culvert under Albany-Lebanon Canal
D5	Periwinkle Creek	Additional culvert near Three Lakes Road
D6	Periwinkle Creek	Additional culvert under Three Lakes Road
D7	Periwinkle Creek	New culvert from Edgewood Mobile Home Park
D8	Periwinkle Creek	New culvert from Mountain View Drive extension
D9	Periwinkle Creek	Additional culvert under Grand Prairie Road
D10	Periwinkle Creek	New culvert from Ermine Street
D11	Periwinkle Creek	Additional culvert from Geary Street
D12	Periwinkle Creek	Additional culvert under Queen Avenue
D13	Periwinkle Creek	New culvert from Oak Street
D14	Oak Creek	New culvert from Seven Mile Lane area
D15	Oak Creek	New culvert from Ellingson Road area
D16	Oak Creek	New culvert from Hill Street area
D17	Oak Creek	New culvert from Marion Street
D18	Oak Creek	New culvert from railroad area
D19	Tributary	Additional culvert under railroad
D20	Tributary	Additional culvert under Pacific Boulevard
D21	Tributary	Additional culvert under Belmont Avenue
D22	Tributary	Additional culvert under Morse Avenue
D23	Tributary	New culvert for Alandale Avenue extension
D24	Tributary	Additional culvert under Allen Lane
D25	Tributary	New culvert for Looney Lane extension
D26	Tributary	Additional culvert under Liberty Street
D27	Tributary	Additional culvert under Lawnridge Street
D28	Tributary	Additional culvert under Park Terrace
D29	Wetland	New culvert from 12th Avenue
D30	West Thornton Lake outlet	New culvert from Rainwater Lane area
D31	West Thornton Lake outlet	New culvert from West Thornton Lake Drive area
D32	West Thornton Lake outlet	New culvert from Jones Avenue area
D33	West Thornton Lake	New culvert from Jones Avenue area
D34	West Thornton Lake	New culvert from West Thornton Lake Drive area
D35	West/East Thornton Lake	New culvert from North Albany Road
D36	West/East Thornton Lake	New culvert from North Albany Road
D37	East Thornton Lake	New culvert from Green Acres Lane area
D38	East Thornton Lake	New culvert from East Thornton Lake Drive area
D39	Crocker Creek	New culvert from Crocker Lane
D40	Crocker Creek	New culvert from Crocker Lane
D41	Crocker Creek	New culvert from Broadway Street
D42	Crocker Creek	New culvert from Broadway Street
Sources: Storm Drainage Master Plan, Albany staff		

Park & Recreation Projects		
ID	**Water Body**	**Project Description**
P1	Truax Creek	T-3 new creek side trail
P2	Burkhart Creek overflow	NP-2 new neighborhood park
P3	Burkhart Creek and overflow	T-4 new creek side trail
P4	Cox Creek	Timber Linn park improvements
P5	Waverly Lake	Waverly Park improvements
P6	Cox Creek	Creek side trail improvements Waverly Lake to Willamette River
P7	Periwinkle Creek	Grand Prairie Park improvements
P8	Periwinkle Creek	Periwinkle Park improvements
P9	Periwinkle Creek	Periwinkle Bikepath improvements
P10	Periwinkle Creek, Willamette River	Bowman Park improvements
P11	Oak Creek	NP-5 new neighborhood park
P12	Oak Creek	T-5 new creek side trail
P13	Oak Creek	CP-1 new community park
P14	Oak Creek tributary, Calapooia River	Oak Creek Greenbelt new trail
P15	Calapooia River	T-6 new river side trail
P16	Calapooia River	NA-1 new natural area
P17	Calapooia River, Willamette River	Bryant Park improvements
P18	Calapooia River, Willamette River	Monteith Riverpark improvements
P19	Willamette River	Dave Clark Trail improvements and extension
P20	Thornton Lakes	East Thornton Lake Natural Area
Sources: Park & Recreation Master Plan, Albany staff		

Transportation System Plan Projects and Goal 5 Resources

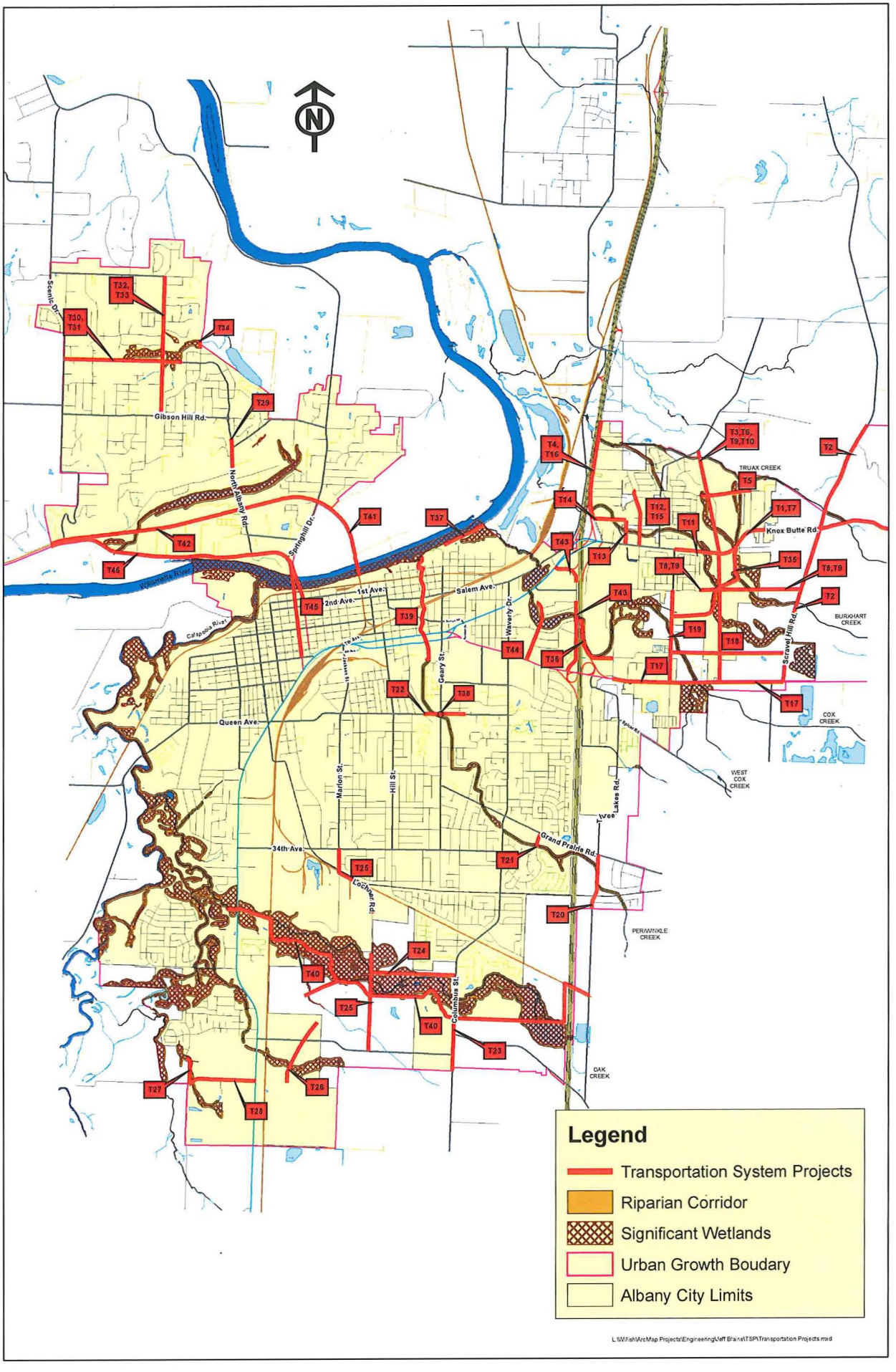
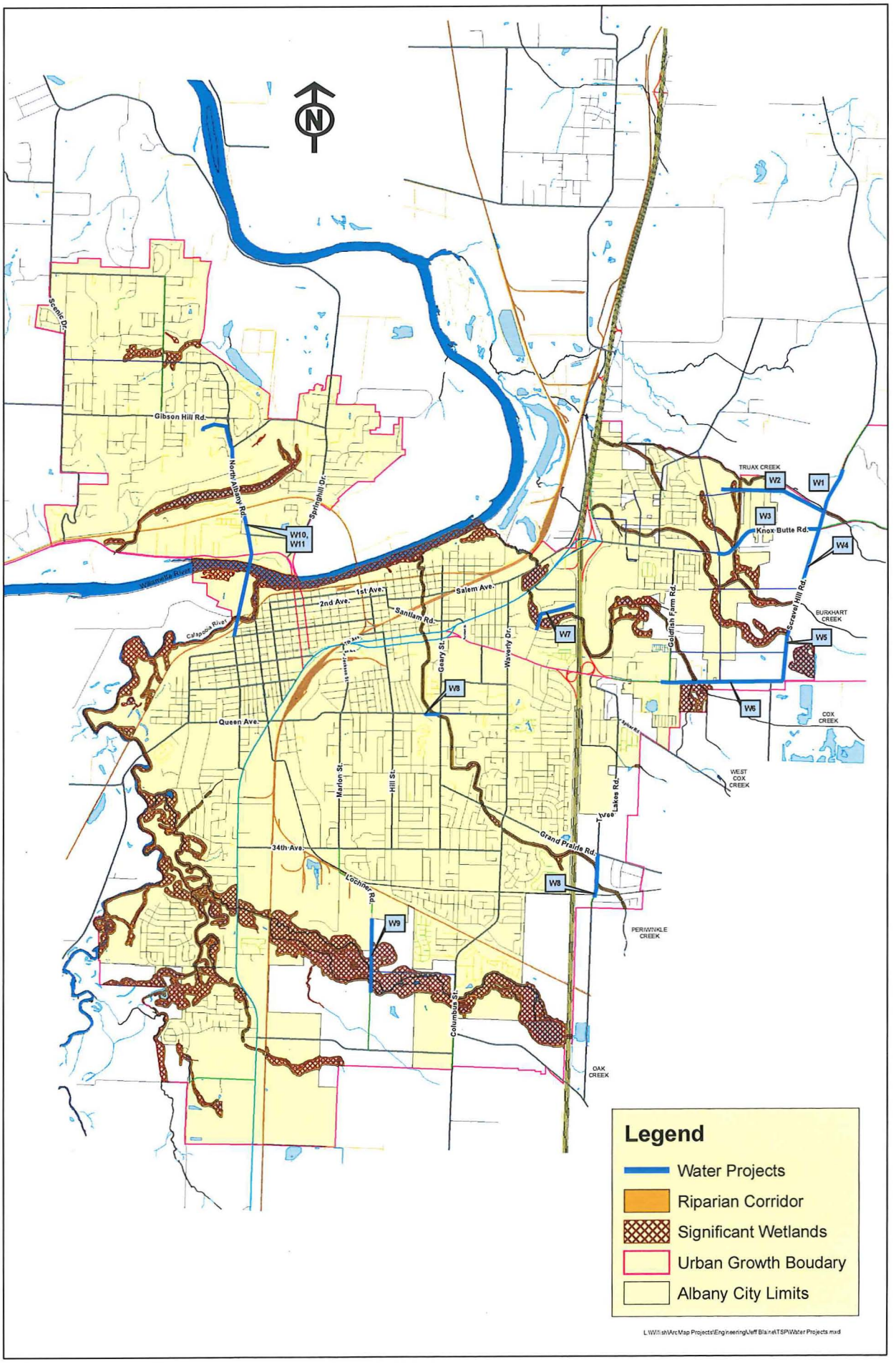
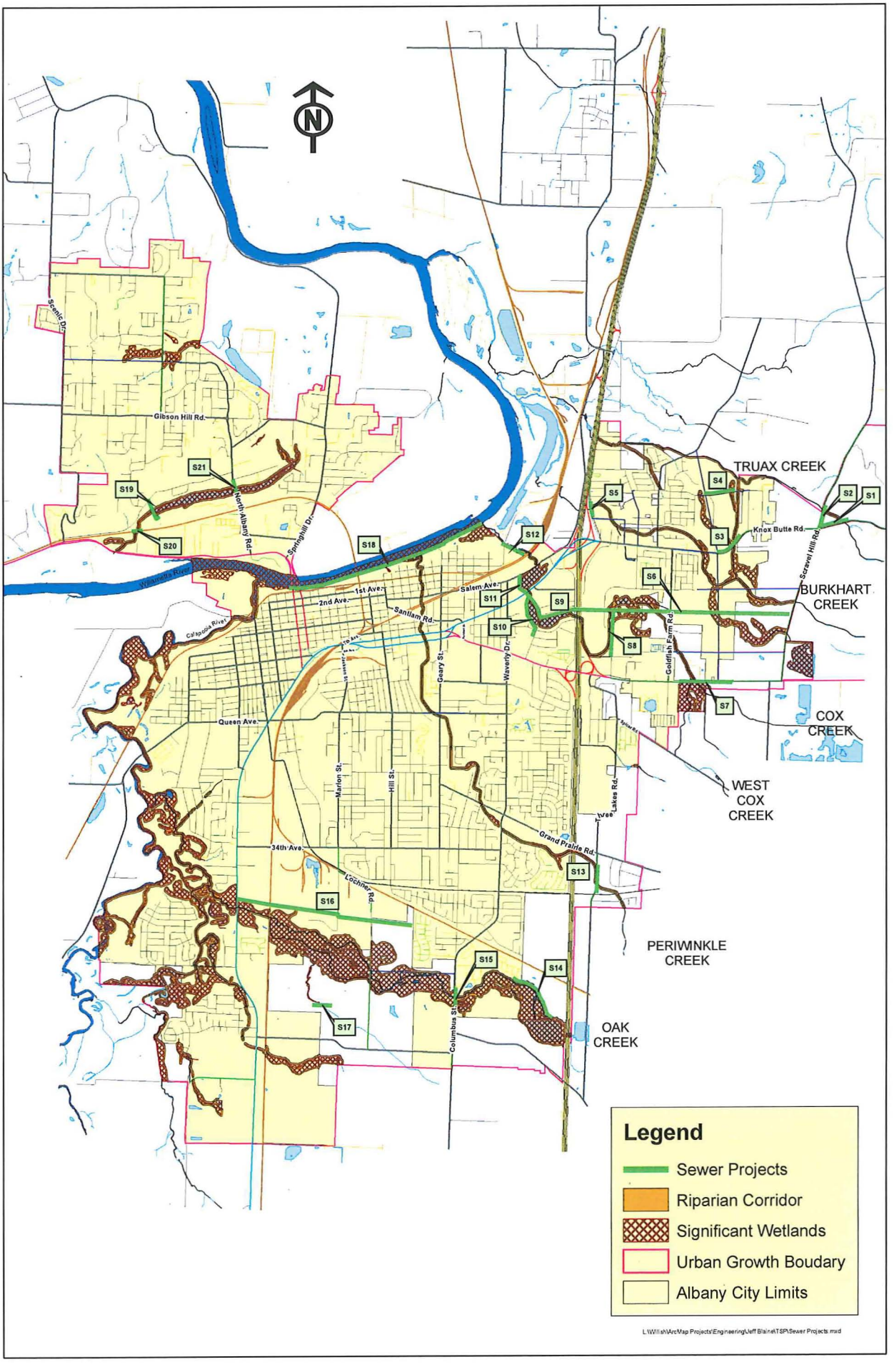


EXHIBIT E

Water Facility Plan Projects and Goal 5 Resources



Sewer Facility Plan Projects and Goal 5 Resources



Storm Water Facility Plan Projects and Goal 5 Resources

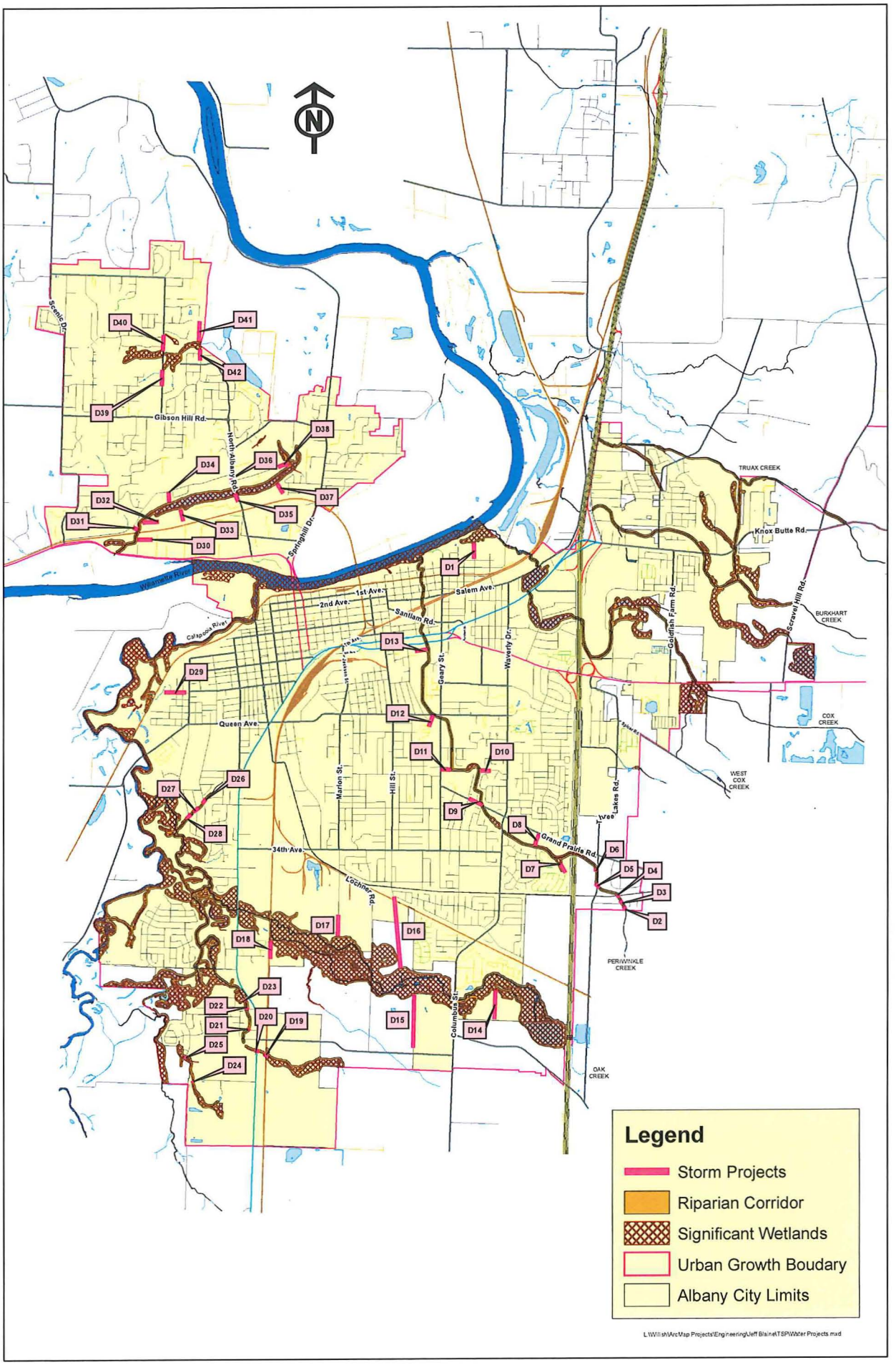
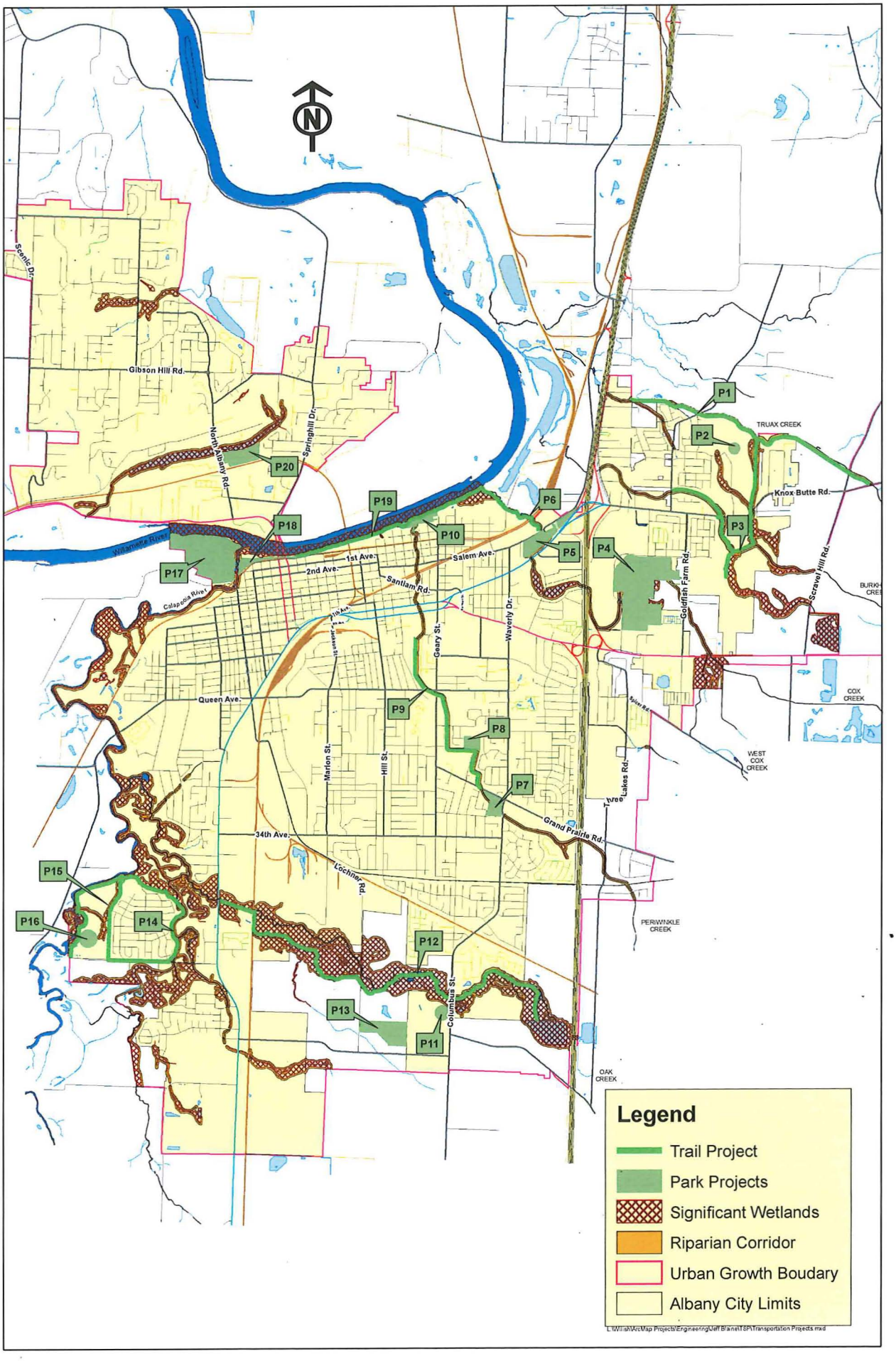


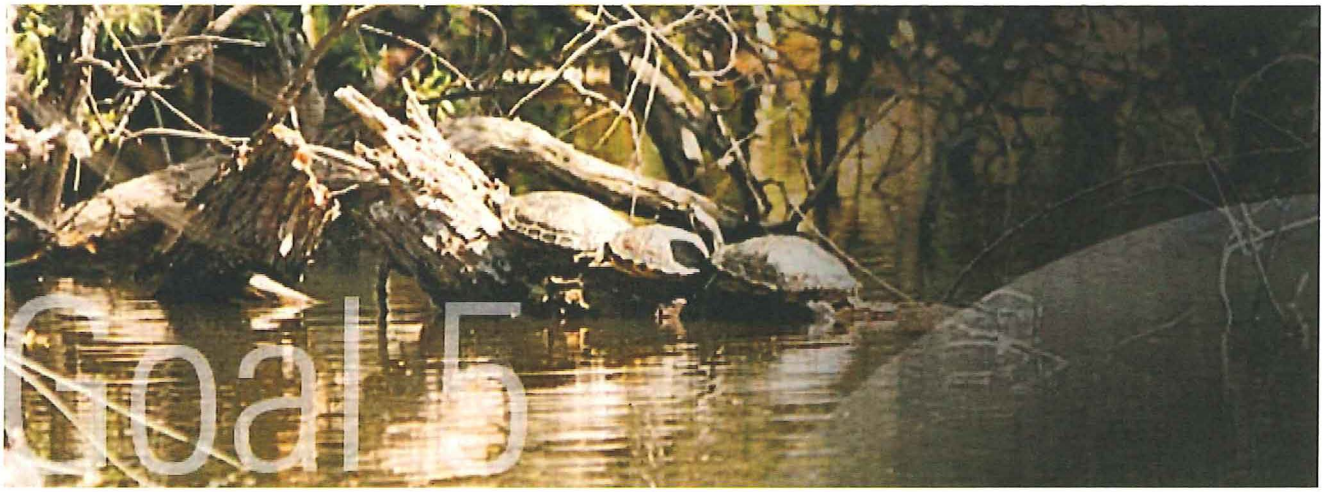
EXHIBIT E

Parks Master Plan Projects and Goal 5 Resources



GOAL 5 ESEE ANALYSIS
(Economic, Social, Environmental, & Energy)

THORNTON LAKES
SIGNIFICANT TURTLE HABITAT



City of Albany
Community Development Department
DRAFT May, 2011

ALBANY SIGNIFICANT TURTLE HABITAT ESEE ANALYSIS

As set out in OAR 660-023-0250(5), local governments shall develop programs to protect wildlife habitat following the standard procedures and requirements of OAR 660-023-0040 and 660-023-0050. Local governments shall coordinate with appropriate state and federal agencies when adopting programs intended to protect threatened, endangered, or sensitive species habitat areas.

The Goal 5 ESEE (economic, social, environmental, energy) analysis involves evaluating the tradeoffs associated with different levels of natural resource protection. As required by the Goal 5 rule, the evaluation process involves identifying the consequences of allowing, limiting or prohibiting conflicting uses in areas containing significant natural resources. Specifically, the rule requires the following steps:

1. Identify conflicting uses – A conflicting use is "any current or potentially allowed land use or other activity reasonably and customarily subject to land use regulations that could adversely affect a significant Goal 5 resource." [OAR 660-23-010(1)]
2. Determine impact area – The impact area represents the extent to which land uses or activities in areas adjacent to natural resources could negatively impact those resources. The impact area identifies the geographic limits within which to conduct the ESEE analysis.
3. Analyze the ESEE consequences – The ESEE analysis considers the consequences of a decision to either fully protect natural resources; fully allow conflicting uses; or limit the conflicting uses. The analysis looks at the consequences of these options for both development and natural resources.
4. Develop a program – The results of the ESEE analysis are used to generate recommendations or an "ESEE decision." The ESEE decision sets the direction for how and under what circumstances the local program will protect significant natural resources.

SIGNIFICANT HABITAT & IMPACT AREA

In 2009, Pacific Habitat Services used both the safe harbor and standard inventory methods to determine Albany's significant wildlife habitat sites. Under the safe harbor method, a habitat site was determined significant when at least one of the following criteria was satisfied:

- The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;
- The habitat has documented occurrences of more than incidental use by a species described in (first bullet);
- The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to the Oregon Forest Practices Act and Rules;
- The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or
- The area is identified and mapped by Oregon Department of Fish and Wildlife as habitat for a wildlife species of concern and/or as a habitat of concern.

Using the standard inventory method, the City compiled a list of all locations with stands of trees greater than or equal to 5 acres in size. Several patches of tree groves close together were combined, resulting in 27 habitat inventory sites within the City's urban growth boundary (UGB). Pacific Habitat Services conducted a wildlife habitat assessment of each site to assess the quality, availability and diversity of water, food, and cover. Habitat was considered significant under the standard inventory method if it:

- Is a forested stand that is greater or equal to 5 acres and receives a wildlife habitat assessment score of 80 points or more;
- Provides habitat for a wildlife species listed by the Federal government as a threatened or endangered species or by the State of Oregon as threatened, endangered, or sensitive-critical species;
- Provides a documented rookery for great blue herons or a bald eagle nest;
- Is documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission; or
- Is identified and mapped by the Oregon Fish and Wildlife Department as habitat for a wildlife species of concern and/or as habitat of concern.

A review of the safe harbor habitat significance criteria and the habitat assessments of sites 5 acres or larger, the results both determined that Thornton Lakes was the only significant wildlife habitat due to the documented presence of two species listed as "sensitive-critical" by the State of Oregon: the Western Pond Turtle (*Actinemys marmorata marmorata*) and Northwestern Painted Turtle (*Chrysemys picta*). The pond turtle is also a federal species of concern. It has been directly observed in Thornton Lakes (Oregon Natural Heritage Information Center 2009 and Oregon Department of Fish and Wildlife staff, ODFW). The painted turtle has been documented in Thornton Lakes by ODFW staff.

Property owners adjacent to Thornton Lakes have spotted both the painted turtle and pond turtle in the lakes and on properties around both lakes. Turtles have been known to nest in yards several hundred feet away from the water.

IMPACT AREA

Under the Goal 5 rule, "[l]ocal governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified natural resource" (OAR 660-23-040(3)).

The impact area is based on the **habitat needs** for the sensitive-critical turtle species and the extent that they are available around Thornton Lakes as documented by Pacific Habitat in 2009.

The **pond turtle** habitat consists mainly of streams, ponds, lakes, and some wetlands. Though much of their lives are spent in water, they need terrestrial habitats for nesting. They also may disperse via overland routes, and often overwinter on land. Pond turtles are commonly observed basking on fallen logs, rocks, floating vegetation, or even mud or sand banks, provided escape cover is nearby. Basking is necessary to maintain bsic metabolic processes. Nesting takes place from May to mid-July, at which time the female excavates a cavity in upland soils with sparse vegetation cover.

Historically, the upland areas most suitable for nesting contain little canopy cover, such as white oak and conifers savannah, prairie, or pastureland. By contrast, overwintering turtles may use upland sites up to 0.3 mile from water, typically burrowing into deep leaf or needle litter in woodlands with up to 90% canopy cover (WDFW, 1999).

- *Special needs identified in the Oregon Conservation Strategy:* Marshes, streams, rivers, ponds, and lakes; sparsely vegetated ground nearby for digging nests. Basking structures such as logs.
- *Limiting factors identified in the Oregon Conservation Strategy:* loss of aquatic and nesting habitats (due to conversion and invasive species and long period for young in nests).

The **painted turtle** is mainly aquatic, spending much of its life time in slow moving waters with a soft, muddy bottom and submerged logs. During the winter, painted turtles are rarely observed as they are usually hibernating at the bottoms of streams, lakes, ponds, or some wetlands. Similar to the pond turtle, the painted

turtle is commonly observed on logs basking in the sun. During mid to late summer mating occurs. Nesting occurs usually on drier land with soils composed of sand, silt, and clay. Painted turtle nest near aquatic habitat, usually within 50 meters.[1] Typically, the nesting sites are open, sunny, and sparsely vegetated areas similar to the pond turtle nesting sites (WDFW, 1999).

- *Special needs identified in the Oregon Conservation Strategy:* Marshy ponds, small lakes, slow-moving water with both deep and shallow areas, quiet off-channel portions of rivers; prefer muddy bottoms with aquatic vegetation; need open ground for nesting; need logs or vegetation for hiding and basking.
- *Limiting factors identified in the Oregon Conservation Strategy:* loss of aquatic and nesting habitats due to conversion and invasive species.

The Pacific Habitat wildlife assessments made the following findings for the two habitat sites including and adjacent to Thornton Lakes:

- Site #8, 57 acres: Includes Thornton Lakes and vegetation on south bank of East Thornton Lake, including a thin line of Douglas fir trees, which provide canopy for a portion of the lake and yards, creating both nesting and hiding habitat for Western painted turtles and Northwestern pond turtles.
- Site #7, 146 acres: North of Thornton Lakes is dominated by Douglas fir and south slope by oaks and madrones; Himalayan blackberry dominates understory; may provide upland habitat for nesting turtles located in Thornton Lake.

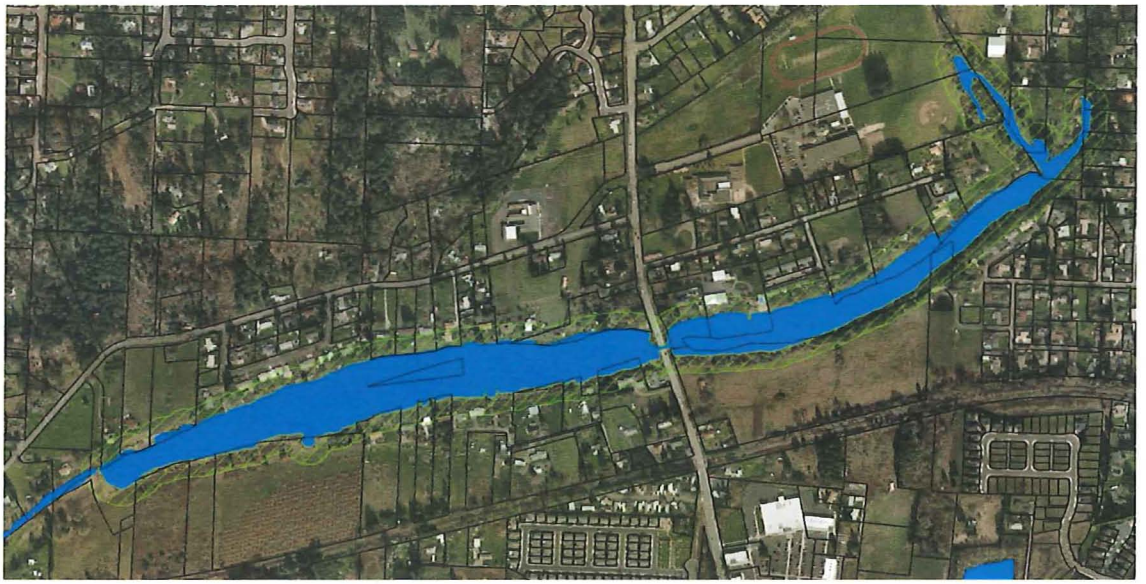
Thornton Lakes associated vegetation provide critical turtle habitat. As an aquatic species, the lakes provide water and food. The trees and vegetation provide basking structures and the sunny banks provide nesting habitat. The vegetation around the lakes varies in its habitat value depending on the quantity, proximity to the lakes, connectedness, and proximity to migrating obstacles.

Thornton Lakes are considered a single resource for this ESEE analysis. The lakes are commonly referred to as East Thornton Lake and West Thornton Lake, with the dividing line being the North Albany Road bridge. The lakes connect under the bridge and adjacent land contains similar uses and residential zoning.

Much of the land adjacent to the lake is developed with large-lot single-family residential development. Many of the lakefront dwellings are located within 75 feet from the ordinary high water mark. Most of the riparian trees and wetlands are also within 75 feet from ordinary high water (OHW). The lack of connected vegetated corridors and cover, and increased conflicts with human activity (structures, vehicle traffic) beyond 75 feet from OHW poses an obstacle to turtle nesting and migration.

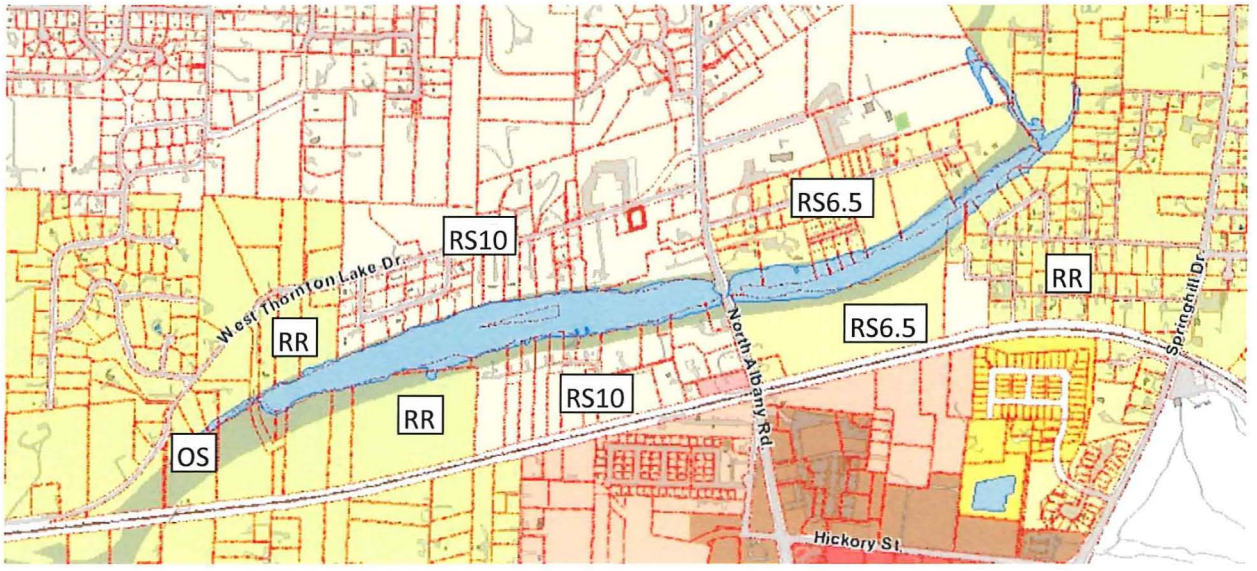
The **impact area** for the resource (sensitive/significant habitat for two listed turtle species) is defined as the area between the ordinary high water mark of Thornton Lakes to 75 feet from the ordinary high water mark of the lakes or the upland edge of an adjacent wetland. It is shown on the map below as the area within the green lines. (Note: A riparian corridor overlay district extends 50 feet from the lakes but this district is not shown.)

[1] Conservation Assessment for the Western Painted Turtle in Oregon, Version 1.1, September, 2009, page 13.



IDENTIFY CONFLICTING USES

To identify conflicting uses, local governments shall examine land uses outright or conditionally within zones applied to the resource site and impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site [OAR 660-23-040(2)].



Thornton Lakes and most of its banks are zoned Open Space, but properties abutting the lakes are zoned residential, the RS-6.5, RS-10, and RR zoning districts. Descriptions of the zones and allowed uses follow.

The RR, RESIDENTIAL RESERVE DISTRICT is intended to recognize areas which, because of topography, level of services, or other natural or development factors are best served by a large lot designation. This district is applied on an interim basis until urban services become available. The minimum lot size is five acres, thereby limiting land divisions and uses. When both water and sewer are available, the properties adjacent to Thornton Lakes will be zoned RS-10. Properties zoned RR around the Lakes include: the west end of West Thornton Lake on both the north and the south banks and property abutting East Thornton Lake on the east end. The properties

on the west end of the lakes are not fully developed, and range in size from less than one acre to 13.6 acres. The properties on the east end of the lake are considered fully developed with large lot single-family because they are unlikely to be rezoned in the near future because City sewer service is nowhere nearby.

The RS-10, Residential Single Family District is intended primarily for a lower density single-family residential environment. The average minimum lot size is 10,000 square feet and allows up to 4 units per acre. This zoning district is applied on land north and south of West Thornton Lake just between North Albany Road and the RR zoning to the east.

The RS-6.5, Residential Single Family District is intended primarily for low-density urban single-family residential development. The average minimum lot size is 6,500 square feet and allows up to 6 units per acre. This zone is applied to the north and south sides of East Thornton Lake.

The OS, Open Space District is intended for the establishment, continuation, and preservation of agricultural uses, park and recreation areas, wildlife habitats, wetlands, natural areas, and other uses that do not involve the construction of structures other than minor facilities that might be required to conduct the principal use. The uses allowed outright in the OS zone include: one single-family dwelling on an existing legal lot, residential accessory buildings, agricultural uses, plant nurseries and greenhouses, parks and outdoor recreational facilities, roads and utilities. No land divisions are permitted within the zone, unless to remove the OS portion of a split-zoned property. The boundaries of the OS zone include most of the Lakes and generally follows the waterline on the north side and extends south from Thornton Lakes an average of 75 feet. Most of the land within the OS zone is within the 100-year floodplain.

The Riparian Corridor Overlay District (PROPOSED): The City's riparian corridor overlay district will extend 50 feet upland from the ordinary high water mark of Thornton Lakes or 50 feet from the outer edge of any significant wetlands within the riparian resource. The district standards will prohibit new structures and impervious surfaces, with a few exceptions. Water-related and water-dependent uses, roads, driveways, bridges, culverts, and pedestrian and bike paths will be allowed if they are designed, constructed and maintained to minimize intrusion into the riparian area and when no other locations outside the Riparian corridor exists to access buildable areas of property. Removal of riparian vegetation will be controlled.

North Albany Road crosses over the mid-section of Thornton Lakes, dividing the east and west lakes. Currently the road is two lanes and bike lines within a right of-way that is 70 and 80 feet. It is one of two arterial streets linking North Albany with Highway 20 and the remaining portion of the city south of the Willamette River. The road and the bridge across Thornton Lake is the route used by roughly 75 percent of North Albany residents and currently averages 10,000 trips a day. Albany's Transportation System Plan (TSP) anticipates traffic volumes that will exceed 12,000 average daily trips. In order to adequately serve the needs of residents and the community, the road needs to provide bike, pedestrian, and vehicular access that links residents with schools, commercial services, and employment.

The North Albany Road Bridge currently lacks sidewalks and is too narrow to accommodate widening the road on either side of the bridge to provide a center left turn lane. The bridge deck is also several feet below the 100 year flood elevation. The lack of pedestrian facilities poses a safety risk for pedestrians crossing the bridge. The lack of a left turn lane on either side of the bridge has resulted in an increasing number of rear-end crashes. Widening the bridge to provide those facilities and raising the bridge deck above the 100 year flood elevation is scheduled in the TSP. It is hopeful that the existing right-of-way can accommodate most of the needed improvements to this minor arterial street.

Utilities – water, sewer and stormdrain. City water and sewer lines run in the North Albany road right-of-way. Several utility improvement projects are planned in this right-of-way.

- **Water Improvements**: The Broadway Reservoir Transmission Main Project, Phase II *waterline project* will add a second feed/drain line to the Broadway Reservoir. Broadway Reservoir serves all of Albany,

except for the higher elevations in North Albany. This project will ensure continued compliance with water quality requirements of Statewide Planning Goal 6 and also provide the needed capacity to meet peak demands and fight fires. This project is in the Capital Improvement Program and in updated studies that support the city's Water Facility Plan.

- The existing *waterline* in the North Albany Road right-of-way also serves all of Albany, except for the higher elevations in North Albany. It is suspended under the bridge. When North Albany Road is improved, the City will need to evaluate whether the waterline location needs to be changed. This could have impacts on the Thornton Lakes area. This project is not currently shown in any adopted plan.
- **Sewer Improvements**: Two projects are identified in the Thornton Lakes impact area: 1) A new sewer line across the west end of Thornton Lake is identified as a required improvement in the adopted 1998 Wastewater Facility Plan. It is currently identified at 8-inches in diameter. The line is necessary to serve undeveloped properties or properties with failing septic systems south and west of West Thornton Lake. The lines will also extend northwest of the lake up Edgewood Drive. 2) The existing sewer line runs within the North Albany Road right of way through the flow path of water between West and East Thornton Lake. It serves all of North Albany north of the North Albany Road bridge crossing. In the future, the City will need to evaluate whether or not the line needs to be relocated due to its location in the floodway and risk of failure during a flood. Secondly, is there a benefit to relocating the line such that it doesn't affect the ability of water to flow freely between the lakes; and if so, is it physically possible. This project is not currently identified in a facility plan.
- **Stormwater Improvements**: Stormwater improvements will be required in order to support the North Albany Road improvement project. If the road is raised out of the floodplain, storm drain improvements will be required to make sure that floodplain conditions are not negatively impacted. These improvements are not identified in a specific plan. Other allowances for stormwater quality improvements should also be considered. The improvements serve persons using the road and the neighboring properties impacted by the floodplain.

SUMMARY OF CONFLICTING USES PERMITTED WITHIN THE IMPACT AREA

The primary permitted use in the RR, RS-10 and RS-6.5 zones is single-family detached dwellings (up to 6 units per acre) and associated accessory buildings and uses. Other uses allowed outright are residential care homes (child or adult), duplexes on corner lots, and crop production. Attached dwellings are permitted through planned or cluster developments. Conditional uses permitted in these zones include community facilities, educational and religious institutions, indoor and outdoor recreation, day care facilities, residential care facilities, and utilities. Office and commercial uses are permitted in planned developments.

The OS district is intended to protect natural resources, but still allows the following conflicting uses on existing legal lots: one single-family dwelling, agricultural uses, plant nurseries and greenhouses, parks and outdoor recreational facilities, roads and utilities. Activities associated with existing uses may occur within the impact area.

All permitted uses in the adjacent zoning districts could conflict with the turtle habitat.

Widening the North Albany Road bridge to provide sidewalks, bike lanes, and a turning lane; and raising the bridge deck above the 100-year flood elevation may result in an impact on the turtle habitat. Necessary utility improvements may also impact turtle habitat.

LIKELIHOOD OF PERMITTED CONFLICTING USES IN IMPACT AREA

The impact area is 75 feet from the ordinary high water mark or wetland edge upland around all of Thornton Lakes. The banks slope up away from the Lakes, and in many areas fairly steeply at 25 percent or more, and are subject to the City's hillside overlay regulations. (The City requires a geologic and soils report with

development when slopes are at least 12 percent.) The costs to develop in sloped areas are often much higher and more structurally challenging.

The riparian corridor overlay district will restrict most new uses within the district due to limits on impervious surfaces within the district. The riparian restrictions realistically leave a 50-foot depth for development within the turtle habitat impact area that is available for development of conflicting uses. This area is not deep enough for most uses, except for new residences, accessory structures, and related residential activities.

Most of the lots abutting the Lakes are much deeper and have land outside the impact area that could be developed. The presence of steep slopes on many lots will limit the types of conflicting uses that could reasonably be constructed, and will likely cause those uses to develop outside of the impact area.

The land around the lakes is designated residential and is not needed for commercial activities. Educational, institutional, assisted living, commercial and office developments usually require a large site with room for buildings and parking lots. Land within the impact area would be more expensive to develop due to slopes and riparian vegetation.

Due to the presence of steep slopes, already developed land, restrictions on new development in the riparian corridor district and the OS zone, and the presence of Thornton Lakes at the center of impact area, it is ***highly unlikely*** that non-residential and park-like uses that require larger building footprints and parking lots would locate within the impact area. Therefore, the following conflicting uses are not included in the analysis as specified in 660-23-0040(2): educational, institutional, assisted living, indoor recreation, religious institutions, commercial and office developments.

The North Albany Road bridge widening project is a planned and necessary improvement. The road project would include addressing storm drainage. The water and sewer lines running through the right-of-way will need improvements, and may need to be relocated in the future.

In summary, the following conflicting uses are possible within the turtle impact area: single-family dwellings, accessory structures, residential care homes, daycare homes, duplexes, parks, outdoor recreational uses, and North Albany Road and bridge improvements, and utility improvements.

ACTIVITIES ASSOCIATED WITH CONFLICTING USES

The permitted and conditional uses have **common impacts** on the wildlife habitat. The degree and intensity of development and activities will vary by zone and development type, and even construction protocols. The primary conflicting activities resulting from the permitted uses are new impervious surfaces, vegetation removal, excavation and grading, and introduction of non-native vegetation and animals.

- **Vegetation Removal and Impervious Surfaces.** Tree canopies and associated understory vegetation, downed logs and snags create shade and local microclimate that provide quality wildlife habitat. Removal of vegetative cover reduces habitat for native wildlife by removing food, nesting opportunities, cover, and perching and roosting locations. Removal of vegetation can fragment riparian and upland wildlife movement corridors, isolate remaining vegetation patches, and limit wildlife access to water. These impacts create hazards or barriers to wildlife migration and movement, making wildlife populations more vulnerable to predation and extirpation.

  Certain native species such as the Oregon white oak/Pacific madrone require specific soil, water and sun exposure to survive and are slow growing, taking many years to become established. These unique vegetated sites exist along the south side of the lakes and provide important habitat. Removal not only reduces habitat functions, but also would contribute to the decline in these unique vegetation types and potentially extirpation within the city.

Riparian vegetation removal and new impervious surfaces will be prohibited, only allowing them when there are no feasible alternatives. The presence of steep slopes around much of Thornton Lakes will also limit impervious surfaces.

- **Landscaping with non-native and/or invasive vegetation.** The removal of native vegetation and establishment of lawns and cultivated landscapes can reduce food, cover and nesting opportunities for the sensitive turtles. Some non-native plants used in landscaping are invasive and can out-compete native plants. Non-native landscapes may also require irrigation or may be treated with chemical fertilizers and pesticides, which can run-off into local waterways and wetlands, or may be ingested by the turtles and other wildlife.

  Within the riparian corridor, existing non-native vegetation would be allowed to remain and be maintained. New non-native vegetation will be restricted and removal of non-native and invasive vegetation will be encouraged. Landscaping within the remaining 50-foot impact area could impact turtle habitat.

- **Grading, excavation, filling and soil compaction.** Grading activities and soil compaction can accelerate soil loss and erosion. These activities can reduce the capacity of soil to support vegetation by disturbing the soil structure and decreasing soil fertility, microorganisms, seeds and rootstocks. Stormwater infiltration can be reduced by grading, excavating, filling and soil compaction, which can reduce groundwater recharge and water levels and flows. Adverse impact to the quality of Thornton Lakes will adversely impact the turtles and other aquatic species. Grading and excavating can also disturb turtle nesting sites.

- **Barriers to wildlife movement.** Barriers to wildlife movement can include buildings, roads, fences and other manmade features. These barriers fragment connectivity between wildlife habitats and reduce the ability of the significant turtles to find food, mates, and nesting sites. Barriers such as roads may create hazards resulting in turtle mortality.

- **Others.** Turtles need undisturbed areas for nesting and basking. Human activities that create noise and light can disrupt the competition, communication, mating and predation habits of wildlife. It takes a couple of years for turtles to grow large enough that other animals can't eat them. Other wildlife and domestic pets can kill or injure turtles or compete for limited space. Domestic pet waste, litter and garbage can also degrade turtle habitat including the water quality of the Lake and upland soils.

ESEE ANALYSIS

Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation. It should enable the reader to gain a clear understanding of the conflicts and the consequences to be expected. OAR 660-23-040 (4):

In evaluating the consequences of *allowing* conflicting uses it is assumed that the impact area/resource site would be subject to development allowed in the base zoning districts. It is also assumed that mitigation for impacts on natural resources would not be required.

In evaluating the consequences of *limiting* conflicting uses it is assumed that rules would be established to limit the impacts of allowable development within the impact area and to significant turtle habitat. Mitigation may also be required.

In evaluating the consequences of *prohibiting* conflicting uses it is assumed that rules would be established that preclude uses that would impact significant turtle habitat.

The ESEE analysis will be combining similar conflicting uses in two categories: low-density residential and parks/recreation as follows:

- Low-density residential will include single-family dwellings, accessory structures, residential care homes, daycare homes, and duplexes.
- Parks will include parks and outdoor recreational uses.

ECONOMIC

Economic consequences of the different uses are generally the same, but vary in the intensity of impacts to wildlife habitat, job creation, and cost to develop the land, and land values. While related to Goal 9, Economic Development, the property within the impact area is designated residential in the Albany Comprehensive Plan. This land is not included in the Goal 9 buildable lands inventory for future commercial, industrial or mixed use development. Roads, driveways, and utilities would also be required to service new development, but it is unlikely these would extend much into the impact area due to slopes and availability of land outside the impact area.

Conflicting Use	Allow	Limit	Prohibit
Low Density Residential	Construction jobs for new housing and expansions to existing housing. (+) Lakefront lots have higher assessed values. (+) No restrictions on house size or configuration. (+) May remove or degrade vegetation/habitat that benefit existing residential land values (-) Development costs lower if can clear lot and no mitigation. (-)	May reduce construction jobs. (-) Lakefront lots have higher assessed values. (+) May limit house size and configuration. (-) Maintain most vegetation/habitat that benefit existing residential land values (+) Development costs may be higher to avoid habitat or for mitigation. (-)	Reduced construction jobs. (-) Reduced assessed values. (-) House size limited to existing. (-) Intact vegetation/habitat that benefit existing residential land values (+) Would provide open space and buffer between uses. (+)

Conflicting Use	Allow	Limit	Prohibit
Parks/Recreation	New jobs. (+) Maintenance costs to maintain grass and landscaping. (-) Parks and outdoor recreation may generate tourism revenue. (+) Properties adjacent to parks have higher values. (+)	New jobs. (+) Reduced maintenance costs if keep and use native vegetation. (+) Parks and outdoor recreation may generate tourism revenue. (+) Properties adjacent to parks have higher values. (+)	No new jobs. (-) No landscape maintenance costs. (+) No tourism revenue. (-) Properties adjacent to open space have higher values. (+)
North Albany Road Bridge Widening or Replacement	Maintaining and improving road capacity supports future allowed development. (+) North Albany Road improvements & widening ensures residents have direct access to jobs, schools, and commercial centers. (+)	Maintaining and improving road capacity with mitigation supports future allowed development. (+) North Albany Road improvements & widening with mitigation ensures residents have direct access to jobs, schools, and commercial centers. (+)	Prohibiting improvements and increased capacity limits future development. (-) Prohibiting North Albany Road improvements & widening limits access to jobs, schools, and commercial centers. (-)
Public Utilities	Maintaining and improving capacity of the water and sewer lines supports existing and future development. (+)	Maintaining and improving capacity of the water and sewer lines with mitigation supports existing and future development. (+)	Prohibiting improvements and increased capacity limits future development. (-)

SOCIAL

This section examines the social consequences of allowing, limiting or prohibiting conflicting uses for Thornton Lakes. The social analysis focuses on the following topics:

- Health, safety and welfare
- Recreational, educational, and cultural opportunities
- Housing opportunities
- Open space and buffering between uses
- Scenic and natural amenities

The following statewide planning goals that relate to social consequences for development in the impact area primarily are Goal 5, Natural Resource Protection; Goal 8, Recreation; and Goal 10, Housing. The Lake is zoned Open Space in order to protect the natural area, wildlife habitats, wetlands, and recreation areas. The land around the lake is designated residential and is included in Albany's residential buildable land inventory. A majority of the properties abutting the lake are developed with single-family housing and are desirable places to live.

In general, existing residents enjoy the scenic values of the lakes and access to them for recreation. Vegetation and trees provide lasting health benefits.

Conflicting Use	Allow	Limit	Prohibit
Low Density Residential	Would create housing opportunities adjacent to Lakes. (+) Would reduce health benefits to people associated with wildlife, vegetation, and open space. (-) Would reduce visual amenities and neighborhood character provided by wildlife habitat and open space. (-) Could increase access to and use of lakes, resulting in disturbance to existing uses/users. (-)	Would maintain most housing opportunities adjacent to lakes. (+) Would maintain health benefits to people associated with wildlife, vegetation, and open space. (+) Would maintain most visual amenities and neighborhood character provided by wildlife habitat and open space. (+) Could increase access to and use of lakes, resulting in disturbance to existing uses/users. (-)	Would reduce housing opportunities adjacent to Lakes. (-) Would maintain health benefits to people associated with wildlife, vegetation, and open space. (+) Would preserve visual amenities and neighborhood character provided by wildlife habitat and open space. (+) Maintain existing use of lake, reducing disturbance to neighbors. (+)
Parks/Recreation	Would provide recreational amenities and places for picnics, trails, and gathering areas. (+) Could create educational opportunities associated with wildlife. (+) Would provide health benefits to people associated with recreation, parks, and open space. (+) Could increase access to and use of lakes, resulting in disturbance to existing uses/users. (-)	Would provide recreational amenities and places for picnics, trails, and gathering areas. (+) Could create educational opportunities associated with wildlife. (+) Would provide health benefits to people associated with recreation, parks, and open space. (+) Could increase access to and use of lakes, resulting in disturbance to existing uses/users. (-)	May reduce recreational amenities and places for picnics, trails, and gathering areas. (-) Could create educational opportunities associated with wildlife. (+) May reduce health benefits to people associated with recreation. (-) Maintain existing use of lake, reducing disturbance to neighbors. (+)
North Albany Road Bridge Widening, to include sidewalks, bike lanes and a left-turn lane	Would improve the safety of this arterial street. (+) Would support more walking and biking to destinations, improving health and may improve neighborhood desirability. (+)	Would improve the safety of this arterial street. (+) Would support more walking and biking to destinations, improving health and may improve neighborhood desirability. (+)	May make the road more dangerous and may increase the number of accidents. (-) Lack of sidewalks may discourage walking to for fitness and may impact neighborhood desirability. (-)
Public Utilities: water, sewer and stormdrain line improvements and a second water line	Upgrading and protecting water and sewer lines will ensure safe and clean drinking water and safe removal of sewage. (+) New waterline would provide needed capacity to meet peak demands and fight fires. (+) Storm drain improvements	Upgrading and protecting water and sewer lines will ensure safe and clean drinking water and safe removal of sewage. (+) New waterline would provide needed capacity to meet peak demands and fight fires. (+)	Inability to make necessary upgrades to the water and sewer lines may put these utilities at risk. (-) Lack of second line may result in inability to meet peak demands and fight fires. (-)

	related to North Albany Rd would improve the roadway and would reduce runoff on neighboring properties impacted by the floodplain. (+)	Storm drain improvements related to North Albany Rd would improve the roadway and reduce runoff on neighboring properties impacted by floodplain. (+)	Lack of storm drain improvements may negatively impact floodplain conditions. (-)

ENVIRONMENT

While this analysis is specific to protecting wildlife habitat for the Northwestern Pond Turtle and Western Painted turtle, habitat provides many other environmental functions and benefits including the following:

- **Wildlife habitat**– Native trees and vegetation, including snags and downed logs, provide food, shelter, breeding and nesting opportunities, and migration corridors. Vegetation creates a buffer between human activities and wildlife.
- **Cooling and Air Quality**–Trees and native vegetation provide shade to cool the air and nearby water, which is important for the listed turtles as well as other fish and aquatic wildlife. Vegetation also retains soil moisture. Vegetation also captures carbon dioxide and other pollutants in the air, improving air quality.
- **Bank stabilization and control of sediments, nutrients and pollutants** – Trees, vegetation, roots and leaf litter intercept precipitation, hold soils, banks and steep slopes in place, slow stormwater runoff, take up nutrients, and filter sediments and pollutants found in surface water, protecting the water quality in the lakes.

Almost all of the statewide planning goals affect the environment in some way. The goals that are most applicable within the impact area are: Goal 5, Natural Resource Protection; Goal 6, Air and Water Quality; Goal 10, Housing; and Goal 14, Urbanization.

Conflicting Use	Allow	Limit	Prohibit
Low Density Residential	May reduce wildlife habitat and create obstacles to migration, nesting and basking. (-) May introduce invasive and non-native vegetation that impact habitat. (-) Would increased use of chemicals and pesticides applied to lawn and landscaping that could impact wildlife and adjacent riparian areas. (-) Limits opportunities for wildlife habitat enhancement. (-) Impervious surfaces and/or vegetation removal would reduce environmental functions and benefits provided by vegetation (clean air, etc.). (-) Could increase access to and use of lakes, resulting in increased disturbance to habitat. (-)	Would maintain most wildlife habitat and avoid obstacles to migration, nesting and basking. (+) Would prohibit new invasive and non-native plant species and may result in removal of invasive or non-native vegetation. (+) Would reduce the use of chemicals and pesticides. (+) Would provide opportunities for wildlife habitat enhancement. (+) Would maintain most environmental functions and benefits associated with vegetation and pervious surfaces. (+) Could increase access to and use of lakes, resulting in increased disturbance to	Would maintain most wildlife habitat and avoid obstacles to migration, nesting and basking. (+) No new invasive and non-native vegetation, but may reduce removal of non-native and invasive vegetation. (+-) No use of chemicals and pesticides. (+) May reduce opportunities for wildlife habitat enhancement. (-) Would maintain environmental functions and benefits associated with vegetation and pervious surfaces. (+) Would limit access to and use of lakes, resulting in

		habitat. (-)	fewer disturbances to habitat. (+)
Parks/Recreation	May reduce wildlife habitat and create obstacles to migration, nesting and basking. (-) May introduce invasive and non-native vegetation that impact habitat. (-) Would increase use of chemicals and pesticides applied to lawn and landscaping that could impact wildlife and adjacent riparian areas. (-) May limit opportunities for wildlife habitat enhancement. (-) Impervious surfaces and/or vegetation removal would reduce environmental functions and benefits provided by vegetation (clean air, etc.). (-) Could increase access to and use of lakes, resulting in increased disturbance to habitat. (-)	Would maintain most wildlife habitat and avoid obstacles to migration, nesting and basking. (+) Would prohibit new invasive and non-native plant species and may result in removal of invasive or non-native vegetation. (+) Would reduce the use of chemicals and pesticides. (+) Would provide opportunities for wildlife habitat enhancement. (+) Would maintain most environmental functions and benefits associated with vegetation and pervious surfaces. (+) Could increase access to and use of lakes, resulting in increased disturbance to habitat. (-)	Would maintain most wildlife habitat and avoid obstacles to migration, nesting and basking. (+) No new invasive and non-native vegetation, but may reduce removal of non-native and invasive vegetation. (+-) No use of chemicals and pesticides. (+) May reduce opportunities for wildlife habitat enhancement. (-) Would maintain environmental functions and benefits associated with vegetation and pervious surfaces. (+) Would limit access to and use of lakes, resulting in fewer disturbances to habitat. (+)
North Albany Road Bridge Widening, to include sidewalks, bike lanes and a left-turn lane	May negatively impact existing habitat and wetlands. (-) Wider bridge may provide shade for wildlife and help cool water. (+)	Impacts to existing habitat and wetlands would be mitigated. (+) Wider bridge may provide shade for wildlife and help cool water. (+)	Limited impact to existing habitat and wetlands. (-)
Public Utilities: water, sewer and stormdrain line improvements, possible relocation, and a second water line	Improving and possibly relocating sewer line may improve water flow between E. and W. Thornton Lakes and would ensure functionality of system to avoid environmental problems related to sewage. (+) Stormwater quality improvements would improve the water quality of the lake, habitat and wetlands on adjacent properties. (+)	Improving and possibly relocating sewer line with mitigation may improve water flow between E. and W. Thornton Lakes and adjacent habitat, and would ensure functionality of system to avoid environmental problems related to sewage. (+) Stormwater quality improvements with mitigation would improve the water quality of the lake, habitat and wetlands on adjacent properties. (+)	Not improving sewer line may result in loss of function or failure of line, which would create environmental problems related to sewage. Lack of stormwater quality improvements may reduce the water quality of the lake, habitat and wetlands on adjacent properties. (-)

ENERGY

The energy section of the analysis will focus on the impacts conflicting uses have on energy consumption, energy conservation, and the efficient use of urban land.

- **Heating and Cooling.** Energy demand for heating and cooling structures can be high, but can be affected by site design, building form, and presence of trees, vegetation or water bodies. The orientation of buildings and use of vegetation to maximize solar heating in the winter and shading in the summer reduce both heating and cooling needs.
- **Transportation.** Energy used for transportation relate primarily to travel distances and mode of transportation used. The availability of jobs near housing reduces commuter miles, reliance on automobiles, and energy consumption.
- **Urbanization.** Efficient site design, e.g., clustered housing, reduces the overall demand for infrastructure facilities due to shorter lines, less pavement, and more efficient stormwater and wastewater treatment. Efficient site design can also allow development to avoid vegetation removal, although in some instances additional energy may be needed to avoid the resource. Trees and vegetation help capture carbon dioxide, a contributing factor to global warming. Trees also reflect and absorb solar radiation before it heats the ground, buildings, or pavement. Trees planted to the south or west of a building can significantly reduce air conditioning costs by blocking the sun during summer.

The following statewide planning goals relate to energy: Goal 13, Energy; Goal 14, Urbanization; Goal 11, Public Facilities; and Goal 12, Transportation.

Conflicting Use	Allow	Limit	Prohibit
Low Density Residential	Would require energy for land preparation and construction of more infrastructure to reach development in impact area. (-) May increase energy consumption for heating and cooling buildings, and maintaining non-native landscaping. (-) May reduce heating and cooling benefits of native habitat. (-) Could reduce transportation energy demand by providing residential close to education and employment centers (North Albany Village). (+)	Energy demand from development would be shifted away from impact area, which may result in more energy efficiencies from clustered infrastructure and less pavement. (+) Maintaining vegetation may reduce energy consumption for heating and cooling, and reduced maintenance of native landscaping. (+) Would maintain heating and cooling benefits of native habitat. (+) Could reduce transportation energy demand by providing residential close to employment and services (North Albany Village and schools). (+)	Energy demand from development would be shifted away from impact area, which may result in more energy efficiencies from clustered infrastructure and less pavement. (+) Would maintain heating and cooling benefits of native habitat. (+) Could reduce transportation energy demand since residential would locate away from Lakes closer to employment and services. (-)
Parks/Recreation	May increase energy consumption for heating and cooling buildings, and maintaining non-native landscaping. (-) May reduce heating and cooling benefits of native habitat. (-) Could reduce transportation energy demand by providing parks and recreation close to residents and employment	Maintaining vegetation may reduce energy consumption for heating and cooling, and reduced maintenance of native landscaping. (+) Would maintain heating and cooling benefits of native habitat. (+) Could reduce transportation energy demand by providing parks and recreation close to	Would maintain heating and cooling benefits of native habitat. (+) May increase transportation energy demand if parks and recreation are farther away from existing residential and employment. (-)

	centers (North Albany Village). (+)	residents and employment. (+)	
North Albany Road Bridge Widening, to include sidewalks, bike lanes and a left-turn lane	Would support efficient transportation system and connections, and may reduce need to find other routes that may increase vehicle miles traveled and energy consumption. (+) Would support more walking and biking to destinations to reduce vehicle miles traveled and energy consumption. (+)	Would support efficient transportation system and connections, and may reduce need to find other routes that may increase vehicle miles traveled and energy consumption. (+) Would support more walking and biking to destinations to reduce vehicle miles traveled and energy consumption. (+)	May cause residents to find new routes that may increase vehicle miles traveled and energy consumption. (-) Would not support walking and biking to destinations to reduce vehicle miles traveled and energy consumption. (-)
Public Utilities: water, sewer and stormdrain line improvements, possible relocation, and a second water line	Would support existing and planned efficient utility distribution system. (+)	Would support existing and planned efficient utility distribution system. (+)	Relocating utilities outside natural areas would increase energy consumption to construct and reduce efficiencies in operation. (-)

PROGRAM OPTIONS TO ACHIEVE GOAL 5

Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site [OAR 660-23-040 (5)]:

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be *prohibited.*

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a *limited* way that protects the resource site to a desired extent.

Note: A program to limit a conflicting use can be designed to allow some flexibility with certain restrictions to protect turtle habitat to the maximum extent possible. Design standards and mitigation may also be required to lessen the impact on the turtle habitat.

(c) A local government may decide that the conflicting use should *be allowed* fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

Note: A decision to allow the conflicting use does not necessarily eliminate regulation of the resource. Development in significant habitat areas may be subject to state and federal government regulations.

ESEE ANALYSIS SUMMARY –PROGRAM DECISION

Allowing new residential and recreation uses would likely result in new impervious surfaces, loss of habitat, and the introduction of non-native species in the impact area. Allowing these uses may reduce turtle habitat and migrating corridors to the point that the turtle populations decline or disappear. These uses may also impact the water quality of Thornton Lakes. Increased use of the lakes by new conflicting uses would reduce the social benefits enjoyed by current lakefront property owners. The economic benefits from construction and property values would be minimal given the small size of the impact area and the opportunities for equivalent development outside the impact area. Energy consumption would be required in allowing uses within the impact area and there may be reduced efficiencies in infrastructure and pavement.

Allowing improvements to North Albany Road, an existing arterial street and bridge would have more positive economic, social, environmental and energy benefits than not allowing improvements. The road improvements are needed to improve the safety and functionality of the road system and the improvements would be contained to the existing location (right-of-way, although more right-of-way may be needed on the north side).

Allowing improvements to the existing public utilities would also have more positive economic, social, environmental, and energy benefits than not allowing these improvements – primarily because the utilities exist and are designed and located in the North Albany Road right of way because it is efficient location for serving the community and for limiting impacts to the environment and habitat.

Prohibiting residential and recreational uses within the impact area would preserve existing turtle habitat, but there may be limited opportunities for habitat enhancement that might be required with development or happen with development, such as removal of invasive or non-native species. Most of the land within the impact area is zoned for residential use and is in residential use. Prohibiting uses and activities within the impact area on existing properties would restrict normal use of residential property and may adversely affect property values and investment values.

Prohibiting residential and recreational uses appears to have overall positive environmental impacts, but there may be no incentive to enhance the habitat within the impact area or remove non-native vegetation.

Prohibiting improvements to North Albany Road and bridge, and to Albany's water, sewer and stormdrain services would have more negative economic, social and energy consequences than allowing them or limiting them (allowing with mitigation).

Limiting conflicting uses would allow for land development, but limit disturbance to the turtle habitat. There would be minimal economic and social consequences with this option because development would still be permitted. The standards would limit impacts to the environment, to Thornton Lake and native vegetation in particular, which would maintain the social benefits of living near the lake. Energy consumption would be required in allowing uses within the impact area, but they would be less than under the allowed option because there may be more energy savings from reduced vegetation removal, impervious surfaces and infrastructure within the impact area.

Limiting conflicting uses would result in the most positive consequences of the three decision options. A limit decision will also avoid many of the negative consequences attributed to either allowing or prohibiting all conflicting uses. Through the application of site design and development standards to conflicting uses, the impacts on turtle habitat can be avoided, while a relatively high level of economic, social, environmental and energy benefits can be achieved from both allowing the use and protecting and possibly enhancing the turtle habitat.

The impact area is small enough that limiting development within it will not affect the Goal 10 buildable lands inventory. Most of the properties adjacent to Thornton Lakes have enough land to locate new development away from the impact area.

DECISION: The analysis concludes that **a limited protection program** designed to limit conflicting uses through development standards and mitigation would offer the most benefit to the turtles and to the community, and would strike a balance between conflicting uses and planning goals.

GOAL 5 LIMITED PROTECTION PROGRAM

The recommendation is to protect sensitive turtle habitat through a program that places limits on uses that are allowed in the impact area. The limited protection program would offer a clear and objective path and an alternative path for uses as outlined in the table below.

The proposed development standards within the Habitat Assessment Overlay District are located in Article 6, Natural Resource Districts.

Recommended Implementation Measures	Reason for Recommendation
Establish a habitat assessment overlay district: The recommendation is 75 feet from the ordinary high water mark of Thornton Lakes.	Many of the properties around the lake have houses within 75-feet of the lake. The 75-foot boundary is justified because the significant turtle habitat is Thornton Lakes and habitat in the near vicinity.
Vegetation Management: Prohibit removal of native vegetation within the habitat assessment district.	Native vegetation provides critical life sustaining habitat for turtles. This limit does not impact existing development and is not likely to restrict the potential for new development allowed in the zone.
Development within the Impact Area: Up to 2,000 square feet, or 20% of the overlay district area within a property, whichever is less, can be impacted by normal residential activities, such as construction of home additions, decks, patios, sheds, gardens, landscaping, etc. Development activities will be reviewed at the time of application for building permits. If cumulative development impacts exceed the limit described above, a turtle Habitat Assessment will be required.	Many of the lots are already developed and restricting normal use of backyards would not be reasonable. Turtles only utilize a portion of the undeveloped area surrounding the lakes. The 20% or 2,000 square feet provides a clear and objective standard, as required by the OAR. An applicant can chose to enter into a discretionary review process if they want to disturb more.
Public Utilities Improvements: Exempt from a land use review. Projects would be reviewed at the time of public works permits (Erosion Prevention and Sediment Control, and Site Improvements).	The standards to limit impacts to the habitat and wetlands will be adopted into the Engineering standards.
When a habitat assessment is required, AND the habitat assessment finds evidence of turtle habitat on the property, the following standards apply: (a) impacts to turtle habitat will be avoided; or	The turtles are sensitive-critical species. The clear and objective path is to avoid the turtle habitat. The discretionary path allows for

Recommended Implementation Measures	Reason for Recommendation
(b) Oregon Department of Fish and Wildlife has reviewed the proposed development and any necessary mitigation or habitat restoration plans to offset any impacts of the development.	mitigation of impacts.
Emphasize incentive-based approaches, such as reduction in some development requirements (e.g., setbacks, buffers, lot sizes, off-street parking), to focus development away from the lakes and to restore turtle habitat.	Effective, yet minimizes impact on residential property owners.
Emphasize voluntary protection and enhancement efforts. Many residents are interested; we just need more turtle-specific information to share with them.	Effective, yet minimizes impact on property owners. Makes the best use of the growing knowledge base of habitat needs.

When a turtle habitat assessment is required, the applicant will be required to hire a qualified biologist to conduct a habitat assessment. The habitat assessment will determine whether the proposed development will have a long-term loss of one or more habitat requirements of the species, including, but not limited to, overall habitat size within the impact area, degradation of water quality, and reduction in vegetation density or diversity. When development cannot avoid negative impacts to turtle habitat, mitigation will be required in accordance with ODFW's recommendations.

RECOMMENDED LIMITED PROTECTION PROGRAM EFFECTS ON STATEWIDE PLANNING GOALS

Goal 5, Natural, Cultural and Historic Resources is largely procedural in nature: it requires that certain steps be followed before making a decision regarding the level of protection, if any, which should be afforded to a significant Goal 5 resource site. It sets forth a *process* for resolving conflicts between natural resource preservation and urban development. The ESEE analysis is a process to evaluate the Goal 5 program protection for the listed turtles. The limited protection option would minimize conflicts of conflicting uses through standards and mitigation and may result in enhanced wildlife habitat, wetlands and riparian corridors.

Goal 6, Air and Water Quality, requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as air quality, stream quality, and groundwater pollution. Regulations that maintain vegetated corridors along riparian corridors, streams, and wetlands protect water quality. The limited protection option would maintain water quality of Thornton Lake, which provides essential turtle habitat. This option may result in enhanced air and water quality (and turtle habitat) if native vegetation and trees are maintained and enhanced.

Goal 8, Recreational Needs, requires Albany to plan for the park and recreational needs of the community. This Goal is related to the Goal 14 requirement to provide land to meet the "livability" needs of a community. Planning for, developing, and maintaining Albany's system of parks, open space, and trails is related to the level of protection provided to the turtle habitat and to Thornton Lakes wildlife in general. The largest site adjacent to Thornton Lakes, 27 acres located on the south side of East Thornton Lake currently zoned RS-6.5, was recently purchased by the City to be preserved as a natural area, a place to discover plants and animals that are disappearing from the Willamette Valley. The limited protection option would allow parks and recreational uses that maintain native vegetation within the impact area.

Goal 9, Economic Development, requires Albany to provide sufficient and suitable land within its UGB to meet long-term needs for industrial, commercial, office and mixed use development. The property within the impact area is designated residential in the Albany Comprehensive Plan. This land is not included in the Goal 9 buildable lands inventory for future commercial, industrial or mixed use development. The limited protection

option would discourage commercial and office uses in the impact area due to the potential impacts to the turtle habitat and migration corridors.

Goal 10, Housing, requires Albany to provide for the housing needs of citizens including encouraging the availability of adequate numbers of needed housing units at a range of prices and allow for flexibility of housing location, type and density. The limited protection option would maintain the residential development potential and buildable land supply. The land around Thornton Lakes is zoned low-density residential and is a needed housing type. The impact of the limited protection decision on the residential buildable land supply would be very minimal because according to the city's Housing Needs Analysis, there is plenty of low-density land available for housing needs.

Goal 11, Public Facilities and Services, requires jurisdictions to develop public facilities plans to coordinate the type, location and delivery of public facilities and services in a manner that best supports existing and proposed land uses within the urban growth boundary. The City's main water and sewer lines are currently located within the North Albany Road right of way. A second water line (Broadway Reservoir Transmission Main Project, Phase II) is in the city's facility plans and in the CIP, and would be located in the North Albany Road right-of-way. A second sewer line is needed to serve undeveloped property and failing septic systems. It is planned to be located at the west end of West Thornton Lake in order to minimize impacts to habitat. The limited protection program would incorporate standards into the City's engineering standards in order to reduce impacts to the turtle habitat and migration corridors and within significant wetlands and the riparian corridor while supporting maintenance and expansion of the city's public utilities outlined in the city's facility plans.

Goal 12, Transportation, requires the city to develop a transportation plan that avoids traffic congestion, reduces vehicle miles, and considers all modes of transportation and accessibility to these modes. Development around Thornton Lakes is close to schools and employment, reducing travel distances. The Thornton Lakes area straddles North Albany Road, a minor arterial in North Albany. Albany's Transportation System Plan shows widening the road to add sidewalks and a left-turn for the stretch of North Albany Road that runs over Thornton Lakes. This project is funded in the CIP. The limited protection program would incorporate standards into the City's engineering standards in order to reduce impacts to the turtle habitat and migration corridors and within significant wetlands and the riparian corridor while supporting expansion of North Albany Road and the city's Transportation System Plan.

Goal 13, Energy Conservation. The intent of Goal 13 is that land use and development be managed and controlled to maximize the conservation of all forms of energy – to support the efficiencies of the transportation and infrastructure systems, for example. The limited protection option may result in new development being clustered together outside the impact area and/or minimizing intrusion into the impact area.

Goal 14, Urbanization. The intent of Goal 14 is to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.
The limited protection option would allow residential development around Thornton Lakes, which is located on the south end of North Albany, right off a major arterial, close to services and jobs in North Albany Village and easy access to Highway 20. Development around Thornton Lakes is close to schools and employment, reducing travel distances.

In conclusion, the proposed turtle habitat protection program will have little impact on the state's planning goals.

ARTICLE 1
ADMINISTRATION AND PROCEDURES

New text is shown in **bold** *and removed text in* ~~*strikethrough*~~.

No changes are proposed to Sections 1.000 to 1.060.

1.070 When Land Use Applications Are Not Required. Activities and developments listed below **that occur outside of overlay districts** do not require a land use application but are nevertheless subject to the provisions of the Code**. Activities and developments within special purpose districts must comply with the regulations described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable, and may require a land use application as described in each respective section**:

(1) Agricultural uses permitted outright in Articles 3, 4 and 5.

(2) Detached single-family dwelling or a two-unit dwelling.

(3) Residential accessory buildings up to 750 square feet and walls not greater than 11 feet tall. [See Section 3.080(9).] [Ord. 5728, 1/27/10]

(4) Non-residential accessory buildings of any size in the NC, CC, RC, IP, LI, HI and PB zones and non-residential accessory buildings up to 750 square feet in the CB, HD, ES, LE, MS, MUC, MUR, OP and WF zoning districts. [Ord. 5728, 1/27/10]

(5) Landscaping and routine property maintenance.

(6) Improvement of existing or new parking areas containing less than 1,000 square feet that meet the provisions of this Code. [Ord. 5728, 1/27/10]

(7) A change internal to a building or other structure or use of land that does not constitute a change of use as listed in Articles 3, 4 or 5.

(8) An emergency measure necessary for the safety or protection of property when authorized by the City Manager with written notice to the City Council.

(9) Any temporary use of land of up to a 30-day duration (such as a promotional event, festival, carnival, or outdoor sale) that conforms with all other requirements of this Code and other applicable City regulations, public health, and safety requirements, some of which may further limit such uses in terms of location, scope, and duration.

(10) The establishment, construction, alteration, or maintenance of a public facility authorized by the Director of Public Works, including streets, highways, traffic control devices, drainage ways, sanitary and storm sewers, pump stations, water lines, electrical power or gas distribution lines, or telephone or television cable systems. This includes construction of staging areas of less than six months' duration but does not include major substations, treatment facilities, storage tanks, reservoirs, and towers.

(11) Excavation and fill for foundations and all other excavation or filling of land involving 50 cubic yards or less that does not adversely affect drainage patterns~~ and is not located within a floodplain or slope area. See also Article 6~~. [Ord. 5728, 1/27/10]

1.073 Change of Use and Minor Additions. A change of use within an existing structure**,** ~~and~~/or building additions up to 500 square feet**,** are reviewed through the Site Plan Option C process. See criteria in ADC 2.550 to 2.580. **Additions within special purpose districts must comply with the regulations described in Articles 4, 6, and 7, as applicable.**

[Ord. 5728, 1/27/10; Ord. 5742, 7/14/10]

No changes are proposed to Sections 1.075 to 1.660.

ARTICLE 2
REVIEW CRITERIA

New text is shown in **bold** *and removed text in* ~~*strikethrough*~~.

No changes are proposed to Section 2.010 to 2.240.

CONDITIONAL USES

2.250 Review Criteria. Requests for conditional uses will be approved if the review body finds that the application meets all of the following criteria, either outright or with conditions that bring the proposal into compliance:

(1) The proposed use is consistent with the intended character of the base zone and the operating characteristics of the neighborhood.

(2) The proposed use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal mitigates difference in appearance or scale through such means as setbacks, screening, landscaping or other design features.

(3) The transportation system can support the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety. [Ord. 5720, 08/12/09]

(4) Public services for water, sanitary and storm sewer, water management, and for fire and police protection, can serve the proposed use. [Ord. 5720, 08/12/09]

(5) The proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to:

(a) Noise, glare, odor, litter, or hours of operation.

(b) Privacy and safety issues.

(6) ~~Special features of the site, (such as topography, floodplains, wetlands, vegetation, historic sites,) have been adequately considered and utilized.~~ **Activities and developments within special purpose districts must comply with the regulations described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable.**

No changes are proposed to Section 2.010 to 2.240.

No changes are proposed to Sections 2.260 to 2.440.

SITE PLAN REVIEW

2.450 Review Criteria. A site plan approval will be granted if the review body finds that the application meets all of the following criteria that are applicable to the proposed development.

(1) Public utilities can accommodate the proposed development.

(2) The transportation system can safely and adequately accommodate the proposed development.

(3) Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid congestion.

(4) The design and operating characteristics of the proposed development are reasonably compatible with surrounding development and land uses, and any negative impacts have been sufficiently minimized.

(5) ~~Any special features of the site, (such as floodplains, hillsides, wetlands, riparian corridors, topography, hazards, vegetation, wildlife habitat, archaeological sites, historic sites, etc.) considered and utilized~~ **Activities and developments within special purpose districts must comply with the regulations described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable.**

No changes are proposed to Sections 2.260 to 2.680.

VARIANCES

2.690 Review Criteria. The review criteria for sign variances are stated in Sections 13.710 and 13.711 of the Sign Code. All other variance requests will be approved if the review body finds that the applicant has shown that all of the following criteria have been met:

(1) The property has unique or peculiar physical circumstances or conditions such as, irregular shape, width or depth; or exceptional natural or physical conditions such as topography, trees, **native vegetation,** wetlands, **riparian areas, wildlife habitat,** or drainage ways. [Ord. 5720, 08/12/09]

(2) The proposal will be consistent with the purpose, overview, and description for the zone in which the property is located, **and with the purpose of the Significant Natural Resource District(s), if applicable**; and [Ord. 5720, 08/12/09]

(3) If more than one variance is requested, the cumulative effect of the variances results in a project that is still consistent with the purpose, overview and description of the zone; and

(4) The requested variance is the minimum necessary to address the peculiar or unusual conditions of the site; and [Ord. 5720, 08/12/09]

(5) Any impacts resulting from the variance are mitigated to the extent practical; or

(6) Application of the regulation in question would preclude all reasonable economic use of the site.

No changes are proposed to Sections 2.700 to 2.730.

ZONING MAP AMENDMENTS

2.740 Review Criteria. Zoning Map amendments will be approved if the Council finds that the applicant has shown that all of the following criteria are met:

(1) The proposed base zone is consistent with the Comprehensive Plan map designation for the entire subject area unless a Plan map amendment has also been applied for.

(2) Existing or anticipated transportation facilities are adequate for uses permitted under the proposed zone designation.

(3) Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development in the subject area without adverse impact on the affected service area.

~~(4) Any unique natural features or special areas involved such as floodplains, slopes, significant natural vegetation, or historic districts, will not be jeopardized as a result of the proposed rezoning.~~

(~~5~~4) The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.

(~~6~~5) The land use and transportation pattern recommended in any applicable City-contracted or funded land use or transportation plan or study has been followed, unless the applicant demonstrates good cause for the departure from the plan or study. [Ord. 5635, 1/11/06]

No changes are proposed to Sections 2.750 to 2.760.

ARTICLE 3
RESIDENTIAL ZONING DISTRICTS

New text is shown in **bold** *and removed text in ~~strikethrough~~.*

No changes are proposed to Sections 3.010 to 3.020.

[MOVED TO ARTICLE 6:]

~~3.025 Establishment of the Open Space (OS) District. The OS District is intended for the establishment, continuation, and preservation of agricultural uses, park and recreation areas, wildlife habitats, wetlands, natural areas, and other uses that do not involve the construction of structures other than minor facilities that might be required to conduct the principal use. Uses that are allowed in the OS district are listed following the Schedule of Permitted Uses and do not appear in the Schedule.~~

3.030 Establishment of Special Purpose Districts. Special purpose districts are overlay districts that may be combined with a major zoning district. The regulations of a special purpose district are supplementary to the regulations of the underlying major zoning district. The regulations of a special purpose district and the major zoning district shall all apply to any site that has both designations. Where the regulations and permitted uses of a major zoning district conflict with those of a special purpose district, the more restrictive standards shall apply. The special purpose districts and the additional regulations that apply in such districts are summarized below:

Special Purpose District	Applicable Articles
Airport Approach	Article ~~64~~
Floodplain	Article 6
Hillside Development	Article 6
Significant Wetlands	Article 6
Riparian Corridors	**Article 6**
Wildlife Habitat	**Article 6**
Willamette Greenway	Article 6
Historic Overlay	Article 7

No proposed changes to Sections 3.040 to 3.050

MOVED TO ARTICLE 6:

~~OPEN SPACE (OS) DISTRICT USES~~

~~3.060 Uses Allowed Outright. The following uses are permitted outright in the OS district:~~

~~(1) Crop production generally.~~

~~(2) Alleys, streets, highways, bridges, sidewalks, bikepaths, and related transportation facilities, subject only to the Special District regulations of Article 6.~~

~~(3) Neighborhood utilities, including pump stations, electric substations less than 5,000 square feet and all local utility lines.~~

~~(4) Raising of animals and livestock, subject also to Albany Municipal Code Section 6.10.~~

~~(5) One single-family dwelling on a legally created lot that existed prior to July 1, 1991, and where the floodplain standards of Article 6 can be met. No additional land divisions will be approved.~~

~~3.070 Conditional Uses. The following uses are permitted with Conditional Use approval.~~

~~(1) Detached residential accessory buildings, garages and carports.~~

~~(2) Non-residential accessory buildings and uses.~~

~~(3) On-site retail sales of site-produced seasonal goods exceeding 30 days duration.~~

~~(4) Plant nurseries and greenhouses.~~

~~(5) Mining, quarrying, oil and gas extraction and asphalt concrete batch plants including on-site sales of products.~~
~~(6) Temporary staging areas for Public Works construction projects in excess of 6 months duration.~~
~~(7) Removal of five or more trees in excess of eight inches in diameter (see Special Condition 10.)~~
~~(8) Development within a wetland, as designated on Plate 6 of the Comprehensive Plan.~~
~~(9) Outdoor recreational facilities (e.g. golf and country clubs, driving ranges, swimming or tennis clubs, equestrian trails, etc. not constructed as a part of planned residential development).~~
~~(10) Public parks and recreational facilities located in a public park. See special condition 14.~~
~~(11) Fairgrounds.~~
~~(12) On-site parking lots for approved uses (parking lots not listed as permitted in other categories.)~~
~~(13) Regional/community utilities including treatment plants, major power generation, major storage facilities, regional transmission facilities, major overhead power lines requiring tower support structures, etc. [Ord. 5673, 6/27/2007]~~

SPECIAL CONDITIONS

3.080 General. Where numbers appear in the column labeled "special conditions" or in a cell in the Schedule of Permitted Uses, the corresponding numbered conditions below shall apply to the particular use category as additional clarification or restriction:

No proposed changes to (1)-(9)
(11)-(21) need to be renumbered

(NOTE: The following special condition is not needed since the same language and requirements are also in Article 9.)

~~(10) Site Plan Review approval is required for the felling of five or more trees larger than 25 inches in circumference (approximately 8 inches in diameter) on a lot or property in contiguous single ownership in excess of 20,000 square feet. For review criteria, see Section 9.208. [Note: A permit is required from the City Forester to remove any tree that is six and one-half feet in circumference, approximately 25 inches in diameter, or greater. See AMC 7.98.040.] [Ord. 5673, 6/27/2007]~~

~~The following activities are exempt from Site Plan review:~~
~~(a) The action of any City official or of any public utility necessary to remove or alleviate an immediate danger to life or property, to restore utility service, or to reopen a public street to traffic.~~
~~(b) Felling of any tree that is defined as a nuisance under the Albany Municipal Code.~~
(c) ~~Any felling necessary to maintain streets or public or private utilities within a public right-of-way or utility easement provided the Tree Commission or City Forester approves the proposed tree felling. [Ord. 5445, 4/12/2000]~~

No proposed changes to Sections 3.085 to 3.190.

3.200 Lot Size Variation Within a Land Division. Up to 50 percent 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 **accounting for** ~~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. [Ord. 5673, 6/27/07]

No proposed changes to Sections 3.210

3.220 Bonus Provisions for Reduction in Standard Lot Size Requirements. The following standards may be applied to development sites resulting in allowed reductions in the average minimum lot size and area per unit requirements as indicated. In no instance shall the combined total of all bonus provisions applied to a development result in an overall reduction of more than 30 percent in the standard site size or lot area per unit requirements, or result in a density that exceeds the allowed density in the zone by more than 20 percent. Some bonuses are available for lot design only, with additional bonuses available due to building design or construction. [Ord. 5338, 1/28/98; Ord. 5673, 6/27/07]

Relationship to Transportation

(1) A 10 percent reduction in the average minimum lot size required in a zoning district is allowed for proposed lots that meet the following qualifications:

- At least 50 percent of the lot area is located within 200 feet of a designated collector or arterial street; and
- The lot will not have direct access to an arterial.

For example, if the average minimum lot size for the zone is 10,000 square feet, the average lot size may be 9,000 square feet for those properties within 200 feet of the collector or arterial. The remaining lots in the development must average 10,000 square feet.

[Ord. 5673, 6/27/07]

(2) For multi-family developments, condominiums, and townhouses; when any portion of a building is located within 200 feet of a designated arterial, the area per unit requirements in those buildings can be reduced by 10 percent. [Ord. 5673, 6/27/07]

Significant Natural Resource Overlays. A transfer of development density from undeveloped buildable land within the Significant Natural Resource Overlay Districts to other property within the development proposal site under the same ownership is allowed if it meets the following standards:

(1) Development Density to Transfer from Overlay Districts. The land area that density can be transferred from excludes developed and unbuildable areas, such as water bodies, areas below ordinary high water mark, floodways, slopes 12% or greater, and easements.

- **Residential Zoning – Up to 50 percent of the development density can be transferred. For example, if the base zoning would have allowed 8 single-family units (net), 4 units can be transferred; if it would have allowed 20 multi-family units (net), 10 units can be transferred.**
- **Open Space Zoning – If the lot was legally created prior to July 1, 1991, and the area is of sufficient size and dimension to comply with the development standards for a single-family home, one single-family unit can be transferred.**

(2) Development Density in Receiving Area. Up to a maximum 20 percent reduction in average minimum lot size, or lot area per unit requirements, is allowed in order to accommodate the density transfer.

~~Design Factors~~

~~(1) Protection of Natural Features. A density bonus of up to 5 percent can be granted when it is shown that minimal disturbance will be made to existing features. The amount of bonus is related to both the amount of protection and the importance of features on the site.~~

Energy Conservation

(1) Solar Access Protection. If buildings are sited (either by site design or defining buildable areas) and covenants or other mechanisms are established that protect solar access of south building walls from shading by structures and vegetation, a bonus of 10 percent may be allowed. The amount of bonus depends on the restrictiveness of the covenant and the percentage of units affected. In subdivisions, a covenant or other mechanism that provides and protects solar access for the southerly building area of 80 percent or more of the lots from 9:30 a.m. to 2:30 p.m. on December 21 shall be given the full 10 percent bonus. In multiple unit developments, if 80 percent or more of the units receive this same protection for south facing walls, and south facing glass of those units totals at least 7 percent of the conditioned area, the full bonus may be allowed. (South facing is defined as being within 25 degrees of true south.)

Moderate-Cost Housing

(1) Provision of Moderate-Cost Housing. If 50 percent of the units meet the following performance standards, a density bonus may be permitted as follows:

(a) Affordable for persons whose income is 1.2 times the median income for Linn or Benton Counties - 5% density increase.
(b) For projects that are affordable for persons whose income is equal to the median income for Linn or Benton Counties – 10 percent density increase.
(c) For projects that are affordable for persons whose income is equal to, or less than, .8 times the median income for Linn or Benton Counties – 15 percent density increase.

[Ord. 5673, 6/27/07]

Affordable means that the annual mortgage payments, with no more than a 10% down payment required, or the annual rent for a unit equals no more than 28 percent of the income level for which the density bonus points are being applied. Projects must have a guaranteed sale price, interest, or rental price, and include contractual obligations for continued availability to low- and moderate-income persons.

Alley Access. Lots with alley access may be up to 10 percent smaller than the minimum lot size for the zone.

[Ord. 5338, 1/28/98; Ord. 5445, 4/12/00]

No proposed changes to Sections 3.230 to 3.410.

ARTICLE 4
COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

New text is shown in **bold** *and removed text in ~~strikethrough~~.*

4.010 Overview. The zones created in this article are intended to provide land for commercial, office and industrial uses. The differences among the zones, in the permitted uses and development standards, reflect the existing and potential intensities of commercial and industrial development. The site development standards allow for flexibility of development while minimizing impacts on surrounding uses. The regulations in this article promote uses and development that will enhance the economic viability of specific commercial and industrial areas and the city as a whole. Development may also be subject to the provisions in Article 8, Design Standards, Article 9, On-Site Development and Environmental Standards, and Article 12, Public Improvements. Sites within overlay districts are also subject to the provisions in Article 6, Special Purpose Districts, and Article 7, Historic Overlay Districts. [Ord. 5555, 2/7/03]

The following list is a summary of the topics covered in this article:

- Zoning Districts
- Schedule of Permitted Uses
- Development Standards
- **Airport Approach Overlay District**

No changes are proposed to Section 4.020.

4.030 Special Purpose Districts. Special purpose districts are overlay districts that may be combined with a major zoning district. The regulations of a special purpose district are supplementary to the regulations of the underlying major zoning district. The regulations of a special purpose district and the major zoning district shall both apply to any site that has both designations. Where the regulations and permitted uses of a major zoning district conflict with those of a special purpose district, the more restrictive standards shall apply. The special purpose districts and the additional regulations that apply in such districts are summarized below:

Special Purpose District	Applicable Articles
Airport Approach	Article ~~6~~**4**
Floodplain	Article 6
Hillside Development	Article 6
Significant Wetlands	Article 6
Riparian Corridors	**Article 6**
Wildlife Habitat	**Article 6**
Willamette Greenway	Article 6
Historic Overlay	Article 7

No proposed changes to Sections 4.035 to 4.320.

The Airport Approach Overlay District is being moved here from Article 6. No changes are proposed to the text; only the references to figures.

AIRPORT APPROACH

4.350 Purpose. The Airport Approach **overlay** district is intended to protect the public from excessive noise and air traffic **and** from possible hazards on landing or takeoff.

4.360 Applicability. The regulations below apply to those areas indicated on Figures ~~64~~-1 and ~~64~~-2.

4.370 Height Restrictions. No structure, mast, antenna, or wire shall be erected, altered, or maintained, and no tree shall be allowed to grow to a height in excess of the height limit established within each of the following described zones (which are also graphically represented in Figure ~~64~~-1):

4.390 Noise Construction Standards. Within the designated airport noise contours indicated in Figure ~~64~~-2, the following regulations shall apply:

ARTICLE 6
~~SPECIAL PURPOSE DISTRICTS~~
NATURAL RESOURCE DISTRICTS

New text is shown in **bold** *and removed text in* ~~*strikethrough.*~~

~~6.010 Overview. Special purpose districts are overlay districts that are combined with a base zoning district. The special purpose districts are intended to regulate development in areas where topographic or natural features or proximity to an airport require that specific limitations or requirements be imposed. The regulations of a special purpose district supplement the regulations of the zoning district. Both the zoning district and special purpose district regulations apply to sites within a special purpose district. Where the regulations and permitted uses of a zoning district conflict with those of a special purpose district, the more restrictive standards apply, except as noted below.~~

~~The following is a list of the overlay districts created in this article.~~

6.010 Overview. The natural resource districts are intended to protect valuable natural resources within the City of Albany while allowing reasonable economic use of property.

The Open Space zoning district is a base zone that specifies allowed land uses adjacent to most water resources in Albany.

The Natural Resource overlay districts address development activities within specific natural resource areas and are applied over a base zone. The overlay district requirements are in addition to the requirements of the base zone and other City of Albany ordinances.

The following zoning and overlay districts are included in this article:

- **Open Space Zoning District (OS)** *[Moved from Article 3]*
- ~~**Airport Approach**~~ *[Moved to Article 4]*
- **Floodplain Overlay District (/FP)** *[No changes proposed]*
- **Hillside Development Overlay District (/HD)** *[No changes proposed]*
- **Significant Natural Resource Overlay Districts**
  - **Riparian Corridor Overlay (/RC)**
  - **Significant Wetland Overlay (/SW)**
  - **Habitat Assessment Overlay (/HA)**
- **Willamette River Greenway Overlay District (/WG)** *[No changes proposed]*

[Moved from Article 3]

OPEN SPACE ZONING DISTRICT (OS)

6.020 ~~Establishment of the Open Space (OS) District.~~ **Purpose and Intent.** **The** ~~OS District~~ **Open Space zoning district** is intended for the ~~establishment,~~ continuation and preservation of existing agricultural uses, park and recreation areas, wildlife habitats, wetlands, natural areas, flood conveyance, and uses that do not involve the construction of structures other than minor **accessory** facilities required to conduct the principal use. ~~Uses that are allowed in the OS district are listed following the Schedule of Permitted Uses and do not appear in the Schedule.~~

~~OPEN SPACE (OS) DISTRICT USES~~

~~3.060 Uses Allowed Outright. The following uses are permitted outright in the OS district:~~

~~(1) Crop production generally.~~

~~(2) Alleys, streets, highways, bridges, sidewalks, bikepaths, and related transportation facilities, subject only to the Special District regulations of Article 6.~~

~~(3) Neighborhood utilities, including pump stations, electric substations less than 5,000 square feet and all local utility lines.~~

~~(4) Raising of animals and livestock, subject also to Albany Municipal Code Section 6.10.~~

~~(5) One single-family dwelling on a legally created lot that existed prior to July 1, 1991, and where the floodplain standards of Article 6 can be met. No additional land divisions will be approved.~~

~~3.070 Conditional Uses. The following uses are permitted with Conditional Use approval.~~

~~(1) Detached residential accessory buildings, garages and carports.~~

~~(2) Non-residential accessory buildings and uses.~~

~~(3) On-site retail sales of site-produced seasonal goods exceeding 30 days duration.~~

~~(4) Plant nurseries and greenhouses.~~

~~(5) Mining, quarrying, oil and gas extraction and asphalt-concrete batch plants including on-site sales of products.~~

~~(6) Temporary staging areas for Public Works construction projects in excess of 6 months duration.~~

~~(7) Removal of five or more trees in excess of eight inches in diameter (see Special Condition 10.)~~

~~(8) Development within a wetland, as designated on Plate 6 of the Comprehensive Plan.~~

~~(9) Outdoor recreational facilities (e.g. golf and country clubs, driving ranges, swimming or tennis clubs, equestrian trails, etc. not constructed as a part of planned residential development).~~

~~(10) Public parks and recreational facilities located in a public park. See special condition 14.~~

~~(11) Fairgrounds.~~

~~(12) On-site parking lots for approved uses (parking lots not listed as permitted in other categories.)~~

~~(13) Regional/community utilities including treatment plants, major power generation, major storage facilities, regional transmission facilities, major overhead power lines requiring tower support structures, etc.~~ ~~[Ord. 5673, 6/27/2007]~~

[The language in 6.030 through 6.065 is new; it updates the information moved from Article 3.]

6.030 Uses Permitted. The following uses are permitted outright in Open Space Zoning Districts if they meet the requirements of any applicable Natural Resource Overlay Districts:

(1) One single-family dwelling on a lot legally created before July 1, 1991, or on a lot that meets the requirements of 6.310(B)(1) and other standards in Article 6.

(2) Paths and bridges for pedestrians and bicycles.

(3) New agricultural uses, where trees and native vegetation are not removed and where no buildings are constructed.

(4) Water-dependent and water-related uses.

(5) Removal of native vegetation in conjunction with an approved use.

6.040 Conditional Uses. The following uses are permitted with Conditional Use Type II approval if they are located outside of the Riparian and Significant Wetland Overlay districts:

(1) Accessory buildings.

(2) Temporary on-site retail sales of site-produced seasonal goods up to 119 days.

(3) Plant nurseries and greenhouses.

(4) Low impact outdoor recreational facilities (e.g. equestrian trails, etc.), and parks and related facilities, where trees and native vegetation removal are minimized and where no buildings are constructed.

(5) Parks and recreational facilities identified in the City's Parks, Recreation & Open Space master plan.

(6) Private construction of transportation facilities and utilities not identified in master plans that meet a public need.

(7) Development within wetlands not locally regulated as designated in the Local Wetland Inventories adopted by the City and on Plate 6 of the Comprehensive Plan, if approved by the Oregon Department of State Lands, U.S. Army Corps of Engineers, and other applicable federal or state agencies.

6.050 Exempt Uses.

(1) Temporary emergency procedures necessary for the immediate safety or protection of life or property, including removing hazardous trees and stream bank stabilization.

(2) Removal of refuse or any fill that is in violation of local, state or federal regulation and in-channel erosion and sedimentation control measures approved by the City of Albany, Oregon Department of State Lands (DSL), US Army Corps of Engineers (ACE) and any other applicable local, state or federal regulatory agency.

(3) City construction of public infrastructure, such as transportation, stormwater, sewer, and water utilities. This exemption requires unimproved but disturbed areas to be replanted with native vegetation, provided that the species are appropriate for the site and are planted at similar compositions and densities to native plant communities within the same drainage basin.

(4) Private construction of public infrastructure. The location and construction of public transportation and utility facilities and structures as identified in a City-adopted master plan. This exemption requires that unimproved but disturbed areas are replanted with native vegetation, provided that the species are appropriate for the site and are planted at similar compositions and densities to native plant communities within the same drainage basin.

(5) The use of pre-existing right-of-way or easements for public infrastructure, franchise utilities, and railroads. Planting and maintaining native vegetation is encouraged.

(6) Implementation of erosion prevention or flood control measures provided the measures have received any required approvals and permits from local, state or federal regulatory agencies with jurisdiction over the proposed activity.

(7) Continuance of farming practices such as grazing, plowing, planting, cultivating and harvesting, that existed or occurred on the property prior to the date of adoption of these provisions and do not include new or expanded structures, roads, or other facilities involving grading, excavation, fill, native vegetation removal, or new drainage measures.

(8) Maintenance of existing structures, impervious surfaces, and landscaped areas as described below:

(a) Ongoing maintenance of pre-existing landscaped areas, including perimeter mowing, as long as natural vegetation is not disturbed and there is no excavation, filling or reduction of natural resource area. Use of integrated pest management methods is encouraged.

(b) Ongoing maintenance of existing development, such as repair, replacement, and use of existing buildings, roads, paths, utilities, bridges, culverts, fences, flood control structures, drainageways or facilities, detention facilities, water quality facilities, and other structures and impervious surfaces, provided that such practices avoid sedimentation and other discharges into streams, lakes, or wetlands and do not add impervious surface or remove additional vegetation.

(9) Removal of live vegetation for the following purposes:

(a) Restoration and enhancement projects that have received required approvals from the appropriate local, state, or federal agency.

(b) Removal of non-native and invasive plants, including noxious weeds if consistent with local, state, and federal regulations, and replanted with species on the City's native plant list.

(c) Planting native vegetation, per the City's native plant list, provided that the requirements in the Significant Natural Resource Overlay Districts are met.

(d) Felling of trees planted as Christmas trees or orchard trees.

6.065 District Boundary Refinements. **An amendment to the boundary of the OS zoning district may be requested for land that does not include any of the following: the Significant Wetland (/SW), Riparian Corridor (/RC), Habitat Assessment (/HA), Willamette River Greenway (/WG), or Floodplain (/FP) overlay districts; waterways; or shown as wetlands on the Local Wetland Inventory. Wetlands that are filled, or lands removed from the floodplain through fill, are not eligible. District boundary refinements will be processed administratively; no formal variance or plan amendment is needed.**

FLOODPLAIN

[No changes are proposed to district standards.]

6.070 Purpose. The ~~f~~**F**loodplain **overlay district (/FP)** standards are intended to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes the economic loss and social disruption caused by impending flood events.

HILLSIDE DEVELOPMENT

[No changes are proposed to district standards.]

6.170 Purpose. The Hillside Development **overlay** district **(/HD)** is intended to regulate the development of potentially hazardous terrain, minimize public and private losses due to earth movement hazards in specified areas, and minimize erosion and related environmental damage. It is not the intent of Hillside Development standards to transfer density within a development.

~~WETLANDS~~

~~6.270 Purpose. The Wetland district is intended to ensure that wetland sites within the City, as defined on Plate 6 of the Comprehensive Plan, are developed with all due sensitivity to the vital role these areas play in the environment.~~

~~6.280 Applicability. The wetland area regulations apply to those areas meeting Department of State Lands criteria, identified as wetlands on Comprehensive Plan Plate 6, and designated as Open Space in the Comprehensive Plan. Precise wetland boundaries may vary from those shown on the Comprehensive Plan Map exhibit if on-site inspection and other City-approved documentation indicate more accurate boundaries. Those more precise boundaries can be identified, mapped, and used for review and development without a change to the Comprehensive Plan Plate 6. All developments proposed within a designated wetland area are subject to the provisions of Conditional Use Review and the wetland area regulations. If the development area is within the floodplain district, then the floodplain district regulations of 6.070 to 6.165 shall also apply.~~

~~6.290 Restrictions on Development Within Wetlands. No development shall result in the elimination of a wetland area, in eventual elimination of wetland characteristics, or be located totally within a wetland area without permit approval from federal and state regulatory agencies and the City of Albany and, where necessary, amending the open space plan and zoning designation. Development may not infringe upon any designated wetland unless the review authority finds the following criteria have been met:~~

~~(1) The development cannot be located outside the wetland area, or the wetland is proposed to be reconfigured so that the proposed total area is at least equal in size and quality to the wetland area existing prior to the proposed development. If the wetland area has not been substantially relocated, it is not necessary to remove the Open Space designation for such a modification.~~

~~(2) The encroachment into the wetlands is the minimum required to complete the development.~~

~~(3) Any encroachment or change in drainage that would adversely impact favorable wetland~~

~~characteristics in the short- or long-term has been mitigated.~~

~~(4) Development review is coordinated with the Division of State Lands and any other applicable agencies and other required permits have been obtained.~~

~~(5) The applicable floodway or floodplain requirements of 6.070-6.160 have been met.~~

~~(6) The open space, vegetation, and wildlife protection policies of the Comprehensive Plan have been addressed.~~

~~6.300 Floodplain District and Wetlands Density Calculation. Residential lands located in a Floodplain District or Wetland area may not be used in calculating total project density except as follows:~~

~~(1) Land that has been approved for development features (structures, roads, required yard areas, etc.) under the provisions of Section 6.130 or 6.290.~~

~~(2) In Planned Developments, land in a flood fringe or wetland area shall be calculated at 50% of the allowed density provided that the additional units can be incorporated harmoniously into the Planned Development without adverse impacts on adjoining projects and provided that the floodplain lands and wetlands can be effectively utilized within the Planned Development or dedicated for public use under the provisions of 11.340.~~

The following pages replace the Wetlands section of Article 6 in its entirety.

[The language in 6.260 through 6.470 is new.]

SIGNIFICANT NATURAL RESOURCE OVERLAY DISTRICTS

6.260 Overview. The Significant Natural Resource Overlay districts include Riparian Corridors (/RC) and Significant Wetlands (/SW) and fish-bearing waterways throughout the city, and a Habitat Assessment area (/HA) designated specifically for turtle habitat in and around Thornton Lakes in North Albany.

- **Purpose and Intent (6.270)**
- **Land to which these Regulations Apply (6.280)**
- **Exempt Activities (6.290)**
- **Activities Subject to Natural Resource Impact Review (6.300)**
- **Natural Resource Impact Review Standards (6.310)**
- **Mitigation Standards (6.400)**
- **Local Mitigation Plans (6.410)**
- **District Boundary Corrections and Refinements (6.420)**
- **District Amendments (6.430)**
- **Adjustments and Variances (6.440)**
- **Compliance with State and Federal Regulations (6.450)**
- **Violations (6.460)**

Per OAR 660-023-0040, two studies were conducted that analyze the Economic, Social, Environmental, and Energy (ESEE) consequences of allowing, limiting, or prohibiting conflicting uses within the three resource areas. The protection programs for the three significant resources are informed by these two ESEE Analyses.

6.270 Purpose and Intent. The intent of these supplemental Significant Natural Resource Overlay Districts is to protect significant natural resources within the City of Albany as designated under Statewide Planning Goal 5 and the provisions of the Goal 5 administrative rule (OAR 660, Division 23), while ensuring reasonable economic use of property.

More specifically, the purpose and intent of each Significant Natural Resource Overlay district is as follows:

A. Riparian Corridor Overlay District (/RC): To protect and enhance Albany's riparian areas, thereby protecting and restoring the hydrologic, ecological, and land conservation functions these areas provide. Significant riparian corridors support valuable fish and wildlife habitat; improve water quality by regulating stream temperatures, trapping sediment, and stabilizing streambanks; and reduce the effects of flooding.

A healthy riparian corridor is comprised of a multi-storied forest of native species of trees, shrubs, and ground cover. Many riparian corridors in Albany have the potential to be restored to higher function and value.

B. Significant Wetland Overlay District (/SW): To protect and enhance the integrity, function and value of Albany's significant wetlands and fish-bearing waterways. Wetlands and waterways provide hydrologic and ecologic functions; and reduce adverse effects of flooding. The vast majority of significant wetlands are in riparian areas. There are a small number of isolated significant wetlands. The higher quality isolated wetlands will be regulated locally (as identified in the Citywide ESEE Analysis); and the lower quality isolated wetlands will not be regulated locally, but must comply with state and federal wetland regulations.

C. Habitat Assessment Overlay District (/HA): To protect habitat for northwestern pond and western painted turtles in and around Thornton Lakes by reviewing and limiting the impacts of development activities on their habitat. This was the only area in Albany where there is a

documented presence of a species listed by either the federal government or the State of Oregon. The State lists the species as "sensitive, critical." The overlay identifies an area of high likelihood of turtle nesting, foraging, or migration routes. The overlay district regulations provide a limited level of protection (as identified in the Thornton Lakes ESEE Analysis). Voluntary methods of turtle habitat protection and enhancement are encouraged and essential.

6.280 Lands to Which These Regulations Apply. The procedures and requirements of this section apply only to property that is within a Significant Natural Resource Overlay District.

A. Riparian Corridor Overlay District (/RC): The Riparian Corridor Overlay District extends 50 feet upland from the Ordinary High Water mark, measured horizontally.

If the Riparian Corridor Overlay District area includes all or portions of a significant wetland, the district extends upland 50 feet, measured horizontally from the edge of the significant wetland. Fish-bearing waterways, and the significant wetlands associated with such waterways, are included in the Significant Wetland Overlay District.

(1) The Riparian Corridor boundary applies to the following Albany water resources (and in-stream lakes):
- Calapooia River
- Burkhart Creek
- Cathey Creek
- Cox Creek
- Crocker Creek
- Horseshoe Creek
- Oak Creek
- Periwinkle Creek
- Thornton Lakes
- Truax Creek

(2) The Willamette River Riparian Corridor is located within the Willamette River Greenway District boundary. All development on properties within the Willamette River Greenway District is subject to the regulations beginning in Section 6.500, but is not subject to the riparian corridor overlay regulations.

B. Significant Wetland Overlay District (/SW): The Significant Wetland Overlay District is comprised of fish-bearing waterways below the Ordinary High Water Mark, the wetlands associated with riparian corridors, and higher quality isolated significant wetlands, in the City's Local Wetland Inventory (LWI), and as amended through wetland delineations approved by the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (ACE), if applicable. Notice to, and potentially permits from, DSL and ACE are still required for potential impact to all wetlands, including those that are not locally regulated.

C. Habitat Assessment Overlay District (/HA): This overlay district extends 75 feet from the Ordinary High Water mark upland from East and West Thornton Lakes.

6.290 Exempt Activities. The following activities are exempt from Natural Resource Impact Review as would otherwise be required within the Significant Natural Resource Overlay Districts. Many of these exemptions are provided in recognition of the Albany ESEE analyses and pre-existing uses. Land use reviews as required by other sections of this Code and compliance with other local (floodplain, fill, encroachment, etc.), state, and federal regulations is still required. As a result, these activities should still be conducted in a manner that minimizes impact to Albany's significant natural resources.

(1) **Temporary emergency procedures necessary for the immediate safety or protection of life or property, including removing hazardous trees and stream bank stabilization.**

(2) **Removal of refuse or any fill that is in violation of local, state or federal regulations or in-channel erosion or flood control measures approved by City of Albany Public Works, DSL, ACE and any other applicable state or federal regulatory agency. Removal or placement of material in waters of the State must be consistent with State of Oregon Removal-Fill regulations (ORS 196.795-990) and the ACE fill regulations.**

(3) **City construction of public infrastructure, such as transportation, stormwater, sewer, and water utilities. This exemption requires unimproved but disturbed areas to be replanted with native vegetation~~, provided that the species are appropriate for the site and are planted at similar compositions and densities to native plant communities within the same drainage basin~~.** *[NOTE: Not clear and objective.]*

(4) **Private construction of public infrastructure. The location and construction of public transportation and utility facilities and structures as identified in a City-adopted master plan. This exemption requires that unimproved but disturbed areas are replanted with native vegetation~~, provided that the species are appropriate for the site and are planted at similar compositions and densities to native plant communities within the same drainage basin~~.** *[NOTE: Not clear and objective.]*

(5) **The use of pre-existing right-of-way or easements for public infrastructure, franchise utilities, and railroads. Planting and maintaining native vegetation is encouraged.**

(6) **Implementation of erosion prevention or flood control measures provided the measures have received any required approvals and permits from local, state or federal regulatory agencies with jurisdiction over the proposed activity.**

(7) **Continuance of farming practices such as grazing, plowing, planting, cultivating and harvesting, that existed or occurred on the property prior to the date of adoption of these provisions and do not include new or expanded structures, roads, or other facilities involving grading, excavation, fill, native vegetation removal, or new drainage measures.**

~~**(8) Existing residentially zoned lots that are less than 20,000 square feet are exempt from the Riparian Corridor Overlay District regulations. However, construction of new structures, other impervious surface area, and native vegetation removal are prohibited within the Significant Wetland Overlay District, as well as within the Habitat Assessment Overlay District unless it is either exempt under 6.290(11) or allowed per 6.310(B)(3).**~~ *[NOTE: Revised and moved to 6.310(B)(2)(b)]*

(8~~9~~) Maintenance of existing structures, impervious surfaces, and landscaped areas as described below:

(a) **Ongoing maintenance of pre-existing landscaped areas, including perimeter mowing, as long as natural vegetation is not disturbed and there is no excavation, filling or reduction of natural resource area. Use of integrated pest management methods is encouraged.**

(b) **Ongoing maintenance of existing development, such as repair, replacement, and use of existing buildings, roads, paths, utilities, bridges, culverts, fences, flood control structures, drainageways or facilities, detention facilities, water quality facilities, and other structures and impervious surfaces, provided that such practices avoid sedimentation and other discharges into streams, lakes, or wetlands and do not add impervious surface or remove additional vegetation.**

(9~~10~~) **Removal of live vegetation for the following purposes:**

(a) **Restoration and enhancement projects that have received required approvals from the appropriate local, state, or federal agency.**

(b) **Removal of non-native and invasive plants, including noxious weeds if consistent with local, state, and federal regulations, and replanted with species on the City's native plant list.**

(c) **Planting native vegetation on the City's native plant list~~, provided that the species are appropriate for the site and are planted at similar compositions and densities to native plant communities within the same drainage basin~~.** *[NOTE: Not clear and objective.]*

(d) **Felling of trees planted as Christmas trees or orchard trees.**

(1~~0~~1) **Residential development activities, such as construction of home additions, decks, patios, sheds, gardens, landscaping, etc., that impact no more than 2,000 square feet (cumulatively), or 20% of the Habitat Assessment Overlay District area within a property, whichever is less. Development activities will be reviewed at the time of application for building permits when applicable.**

Regardless of the exemption to the local Natural Resource Impact Review requirements, protection of the turtle species is regulated by the State of Oregon.

This exemption only applies to the Habitat Assessment Overlay District. If the proposed activity is also located within other Significant Natural Resource Overlay Districts the requirements of those Districts still apply.

6.300 **Activities Subject to Natural Resource Impact Review. A Natural Resource Impact Review will be required for proposed development activities in the Significant Natural Resource Overlay Districts that are not specifically exempted from review. The review will take place concurrent with any land use application or building permit. In instances when neither is required, the Natural Resource Impact Review will be conducted independently through either a Type I or I-L process as designated below. The standards for reviewing proposed development activities in the Significant Natural Resource Overlay Districts are found in Section 6.310.**

A. **Activities subject to review include:**

(1) **Land divisions;**

(2) **New structures, or exterior expansion of the footprint of any structure or driveways (Type I);**

(3) **Increases in impervious surfaces (Type I-L);**

(4) **Site modifications, including grading, excavation, fill or native vegetation removal (Type I-L);**

(5) **Private construction of public and privately owned transportation facilities and utilities not exempt through 6.290(4) (Type I-L); and**

(6) **Activities within the Habitat Assessment Overlay District not exempt under ADC 6.290 (Type I)**

B. **When a proposed use or activity requires a Natural Resource Impact Review, in addition to what is required for any concurrent land use applications or building permits, the applicant shall submit a scaled site plan to the City that that shows:**

(1) Topographic contours at two-foot intervals;

(2) Ordinary high water (OHW) mark of all lakes, streams, or other waterways;

(3) Location of Riparian Corridor and Habitat Assessment Overlay Districts based on OHW;

(4) Location of Significant Wetland Overlay District based on the LWI or DSL-approved delineation or determination;

(5) The 100-year flood boundary and elevation;

(6) Existing vegetative cover and species composition;

(7) Existing and proposed site improvements;

(8) How the requirements of the applicable review standards in ADC 6.310 will be met; and

(9) A mitigation plan if required per ADC 6.400-6.410.

6.310 Natural Resource Impact Review Standards

A. General Requirements for Significant Natural Resource Overlay Districts. A proposed activity will not be approved unless all of the following are true:

(1) The proposed activity is allowed under the requirements of the base zone.

(2) There are no other reasonably feasible options or locations outside the Significant Natural Resource Overlay Districts for the proposed activity on the subject parcel.

(3) The proposed activity is designed, located and constructed to minimize excavation, grading, structures, impervious surfaces, loss of native vegetation, erosion, and adverse hydrological impacts on water resources. All activities are located as far from the water resources, and use as little of the surface area of the Significant Natural Resource Overlay Districts, to the extent reasonably feasible.

(4) Any proposed impacts to significant natural resources will be mitigated per the standards in Sections 6.400 and 6.410.

(5) Any applicable local, state, and federal permits are secured.

(6) The additional requirements of ADC 6.310 (B) will be met.

B. Additional Requirements, Limitations, and Exceptions for Specific Activities in Riparian Corridor and Significant Wetland Overlay Districts. In addition to the general requirements listed above, the following requirements, limitations, and exceptions apply to development activities within the Significant Natural Resource Overlay Districts.

(1) Land Divisions. In addition to the regulations in Article 11, land partially situated in one of the City's natural resource districts can be divided only if there is sufficient land outside of any Significant Natural Resource Overlay District to establish a development site area and/or separate a developed area from the natural resource areas. Applicants may also elect to follow the Cluster Development standards for land divisions in Article 11.

(2) Structures and Land Altering Activities. The placement of structures and other impervious surfaces, as well as grading, excavation, placement of fill, and vegetation removal, are prohibited. Exceptions may be made for the purposes identified in items a-f of this Section, provided they are necessary to accommodate an approved activity and comply with any stated requirements for the activity or use.

(a) Water-Related and Water-Dependent Uses. Development of water-related and water-dependent uses.

(b) Permanent Alteration Within the Riparian Corridor. Disturbance or development within the Riparian Corridor Overlay District shall be allowed under the following circumstances:

(i) The resource is characterized as 'marginal' or 'degraded' using the standards found in 6.410(5).

(ii) Demonstration that equal or better protection will be ensured through riparian corridor restoration and enhancement within the remaining overlay district area per the mitigation requirements in Sections 6.400 and 6.410. If the site is encumbered by easements or rights-of-way that would preclude onsite restoration or enhancement, an "in-lieu of payment" may be made to the City in the amount equal to the cost of onsite mitigation.

Residentially zoned lots that were created prior to xx, 2011, that are less than 20,000 square feet and can't be further subdivided are allowed to encroach up to 25 feet into the Riparian Corridor Overlay District without the requirement for restoration or enhancement of the remaining 25 feet. The mitigation requirements in Section 6.400 still apply.

(iii) In no case shall the site improvements ~~occupy more than 50% (25 feet) of the width of the Riparian Corridor Overlay District~~ be any closer than 25 feet from the Ordinary High Water mark or upland edge of the wetland.

(c) Vegetation Removal. Removal of live vegetation that is not exempt under 6.290(~~10~~9) is only allowed to accommodate an approved use or development activity under this section of the Code.

(d) Private Construction of Public Non-Master Planned Transportation Facilities and Privately Owned Transportation Facilities. The location and construction of public non-master planned and/or private transportation facilities and structures, such as driveways, local streets, bridges, bridge crossing support structures, culverts, and pedestrian and bike paths. In addition to other City standards, the following standards shall apply to privately constructed transportation facilities and structures:

(i) The facility is designed to be the minimum width necessary to allow for safe passage of vehicles, bicycles and/or pedestrians, and to meet minimum width requirements.

(ii) Where reasonably feasible, crossings of significant natural resources shall be aligned to minimize impact area.

(iii) The number of crossings is the minimum amount necessary to afford safe and efficient access.

(iv) The number of crossings is minimized where reasonably feasible through use and creation of shared access for abutting lots and access through easements for adjacent lots.

(v) Crossing structures have a natural bottom.

(e) Private Construction of Public Non-Master Planned Utilities and Privately Owned Utilities. In addition to other City standards, the following standards shall apply to

permitted crossing, trenching, or boring for the purpose of developing a corridor for public non-master planned utilities and private utilities, within or crossing parcels in Significant Natural Resource Overlay Districts, as well as any above-ground utility structures.

In addition to other City standards, the following standards shall apply to privately constructed utility projects:

(i) Boring under the waterway, directional drilling, or aerial crossing is preferable to trenching. If trenching is the only feasible alternative, it shall be conducted in a dry or dewatered area with stream flow diverted around the construction area to prevent turbidity.

(ii) Common trenches for private utilities, to the extent allowed by the building code, shall be required in order to minimize disturbance of the protected resource.

(iii) Topsoil and sod shall be conserved during trench construction or maintenance, and replaced on top of the trench. Side-casting and storage of excavated material prior to replacement on top of trench is permitted. Any side-cast material not placed back on top of the trench shall be removed and may not be stored in the Significant Natural Resource overlay district after the construction or maintenance work is completed.

(iv) Hydraulic impacts on protected resources are minimized.

(v) Where reasonably feasible, crossings of significant natural resources shall be aligned to minimize impact area.

(vi) Above-ground utilities that cause ground disturbance in the Significant Natural Resource Overlay District and are not within an existing right-of-way or easement, and are not shown in an approved master plan, will only be allowed in limited circumstances, and if they meet the general requirements in 6.310(A).

(f) Adjustment or Variance. Development associated with an approved adjustment or variance.

(3) Activities within Habitat Assessment Overlay District. A wildlife habitat assessment is required if proposed development exceeds the minimum thresholds in 6.290(11). If the wildlife habitat assessment finds evidence of habitat for either the northwestern pond turtle or the western painted turtle within the overlay district ~~on the property~~, the following standards apply:

(a) New development, expansion of existing development, landscaping and other ground disturbances shall be located outside of the designated turtle habitat areas as determined by the habitat assessment; or

(b) If impacts are approved, the development/use has been proposed in a manner that will minimize the impact of the development on wildlife habitat. The Oregon Department of Fish and Wildlife (ODFW) will review and approve a mitigation plan for the proposed development. Local mitigation is not required in addition to that required by ODFW or other state and federal agencies.

6.400 Mitigation Standards. Mitigation is a way of compensating for adverse impacts to the functions and values of natural resources caused by development. In many cases, mitigation may result in resource area restoration or enhancement.

If a State or Federal agency has jurisdiction regarding development impacts within the Riparian Corridor and Significant Wetland Overlay districts, and they require mitigation for those impacts, the City will not impose additional mitigation requirements over the same area. Those portions of development impacts not mitigated through a State or Federal agency will be subject to local mitigation requirements. Mitigation for impacts to turtle habitat in the Habitat Assessment Overlay District will be solely managed by ODFW.

The need for mitigation, restoration, or enhancement will be determined during the Natural Resource Impact Review process. The Director may allow some degree of flexibility to the standards based on the specific location and level of impact.

(1) When Mitigation is Required: Mitigation will be required under the following circumstances:

- **(a) Removal of one or more native tree greater than 25 inches in circumference, which requires replacement per section (2)(b).**
- **(b) Disturbance of more than 2,000 square feet of vegetated surface area. This level of impact will require a mitigation plan per 6.420.**
- **(c) When a request is made to develop or impact the Riparian Corridor Overlay District area per 6.310(B)(2)(b), a mitigation plan will be required for enhancement of the remaining area per 6.420.**

(2) Local Mitigation Standards:

- **(a) On-site enhancement is required in all instances where the 50-foot area of the Riparian Corridor Overlay District is impacted per 6.310(B)(2)(b).**
- **(b) For other mitigation options, on-site mitigation shall occur within the relevant Significant Resource Overlay District as close to the impact area as reasonably feasible, taking into consideration the existing natural and human-made features of the site.**

  If on-site mitigation is not reasonably feasible, off-site mitigation shall be permitted in other locations inside the city in the following priority order:

  - **(i) Within the impacted Significant Resource Overlay District in the same drainage system; or**
  - **(ii) Outside the impacted Significant Resource Overlay District, but within 100 feet of a Significant Resource Overlay District in the same drainage system; or**
  - **(iii) Outside the same drainage system, but within a Significant Resource Overlay District.**

- **(c) Tree replacement requires planting a minimum 1½-inch caliper healthy and well-branched native deciduous tree or a 5-6 foot tall native evergreen tree for each tree removed. The replanted tree shall be of a species that will eventually equal or exceed the removed tree in size if appropriate for the new location.**
- **(d) Mitigation for impacts shall require a mitigation area ratio of 1:1; however if the quality of the resource is enhanced or restored per 6.410(5) the ratio may be lowered with Director approval.**
- **(e) Planting densities and species composition shall be consistent with native wetland and riparian-area plant communities currently or historically found in the drainage basin. Use of a reference site as guidance for developing a revegetation plan is recommended.**
- **(f) Any mitigation requirements resulting from a proposed land division, shall require a mitigation plan concurrent with the land division process.**

6.410 Local Mitigation Plan. When a local mitigation plan for impact to a significant natural resource is proposed or required as part of a development application, the applicant shall submit a mitigation plan prepared by a qualified professional with demonstrated experience in developing mitigation plans for the specific impacted resource.

(1) The mitigation plan shall document the location of the impact, the existing conditions of the resource prior to impact, presence of invasive species, the location of the proposed mitigation area, a detailed planting plan of the proposed mitigation area with species and density, and a narrative describing how the resource will be replaced, and how debris and invasive species will be removed.

(2) The mitigation plan shall comply with all applicable State and Federal regulations, in addition to the City's standards. The City may approve a development but shall not issue a building permit until all required State and Federal permit approvals have been granted and copies of those approvals have been submitted to the City.

(3) The applicant or property owner of a development subject to an approved mitigation plan shall provide assurance of completion in the form of a surety or ~~post a~~ performance bond, cash, negotiable security deposit, ~~or a~~ letter of credit, or other guarantees approved by the City Attorney ~~satisfactory to the City~~ that is equal to 120% of the value of the improvements installed pursuant to the plan for a 2-year period. The ~~bond~~ assurance shall be ~~posted~~ in place before the issuance of development permits to ensure the success of mitigation improvements and the survival of the plants. The assurance ~~bond or letter of credit~~ will be released by the City upon receiving satisfactory proof that the mitigation measures have been successfully implemented per (4) below. If mitigation improvements fail during the 2-year ~~bonding~~ period, the ~~bond~~ assurance shall either be forfeited and used by the City to correct the problem pursuant to the approved mitigation plan, or the bond period may be extended for a 2½-year period with Director's approval to allow for another replanting strategy. When the City of Albany, or another unit of government, is the applicant, it must adhere to the standards in this section, but an assurance ~~a performance bond~~ is not required.

(4) A report on the survival and health of planted vegetation, and the status of invasive species, shall be performed by a qualified professional at the expense of the applicant, and will be provided to the Community Development Department between 18 and 24 months from the initial planting that describes the health of all vegetation and shows pictures of the vegetation. The City may arrange an on-site inspection to verify information contained in the report. If the survival rate for tree and shrub species is below 80%, a replanting strategy shall be prepared, approved, and executed within 6 months of the report, with a subsequent report on survival provided to the Department between 12 and 18 months from the time of the second planting. At this point, if the survival rate is still below 80%, the bond described in (3) will either be forfeited or extended for a 2½-year period with Director's approval. If at the end of the extension period, the survival rate is still less than 80%, the bond will be forfeited.

(5) The following table summarizes the quality levels, mitigation requirements and expected condition of the significant wetlands and riparian corridor areas after successful completion of the mitigation plan; ODFW will solely determine the requirements for mitigation of significant wildlife habitat:

Existing Resource Quality	Mitigation Requirements/ Expected Future Resource Quality
Waterways & Significant Wetlands (riparian and isolated)	
Good Quality: Little enhancement potential per the Local Wetland Inventory assessment or other	Preserve or enhance per approved mitigation plan;

wetland assessment by a qualified professional. City staff will verify existing condition.	Invasive species are removed and are not persisting.
Marginal Quality: Moderate enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional. City staff will verify existing condition.	Restore to Good Quality per approved mitigation plan; Invasive species are removed and are not persisting.
Degraded Quality: High enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional; Farmed or otherwise converted. City staff will verify existing condition.	Enhance to at least Marginal Quality; A smaller ratio of 1.0 (impact area) to 0.5 (mitigation area) may be allowed for restoration to Good Quality.
Riparian Corridor Overlay	
Good Quality: Combination of native trees, shrubs, and groundcover are at least 80% of the overlay area, and there ~~is more~~ will be than 50% tree canopy coverage at maturity.	Preserve or enhance per approved mitigation plan; Invasive species are removed and are not persisting.
Marginal Quality: Combination of native trees, shrubs, and groundcover are at least 80% of the overlay area, and there ~~is more~~ will be 25%-50% tree canopy coverage at maturity.	Restore to Good Quality with an approved plan (mature overlay area coverage will be estimated); Invasive species are removed and are not persisting;
Degraded Quality: Less vegetation and canopy coverage than Marginal Quality, and/or greater than 10% coverage of any non-native species.	Enhance to at least Marginal Quality with an approved plan (mature overlay area coverage will be estimated); A smaller ratio of 1.0 (impact area) to 0.5 (mitigation area) may be allowed for restoration to Good Quality.

6.430 District Boundary Corrections and Refinements. The boundaries for the Significant Natural Overlay Districts are approximate.

The boundaries of the Significant Wetland Overlay District are based on the locations of the significant wetlands identified in the City's Local Wetland Inventory, as reflected in Plate 6 of the Comprehensive Plan. The Riparian Corridor Overlay and Habitat Assessment Overlay Districts were estimated by measuring from the edge of the water, which is based on an aerial photograph.

District boundary corrections and refinements will be processed administratively. District corrections will be made to correct map errors, such as when the map does not properly reflect the Local Wetland Inventory data. A district boundary refinement is an adjustment made, based on professional analyses, to refine the boundary of the Significant Natural Resource Overlay Districts. District refinements must be made in accordance with the provisions in this code to determine the location and extent of the following:

- Riparian Corridor Overlay Districts as measured from the Ordinary High Water (OHW) mark of rivers, lakes, and streams, and from the upland edge of adjacent significant wetlands. If a DSL-approved wetland delineation or determination results in a change to the boundary of the significant wetland adjacent to the riparian corridor, the Riparian Corridor Overlay Boundary will be adjusted accordingly.

- **Habitat Assessment Overlay Districts as measured from the OHW mark of East and West Thornton Lakes. If an ODFW-approved habitat assessment results in a change to the boundary of the habitat area, the habitat assessment overlay boundary will be adjusted accordingly.**
- **Ordinary High Water Mark: Changes to the Riparian Corridor or Habitat Assessment Overlay boundaries must be based on the location of the OHW that includes supporting information submitted by a qualified professional hydrologist or professional land surveyor.**
- **Significant Wetlands Overlay District by delineations of significant wetlands that are approved by the Oregon Department of State Lands (DSL) or by onsite wetland determinations by DSL when delineations are not needed for other purposes. DSL-approved delineations or determinations shall be required when development is proposed within 30 feet of the overlay district and will supersede the LWI mapping.**

6.440 District Amendments. To amend the resource inventories or the program to protect significant natural resources on land within any of the Significant Natural Resource Overlay Districts requires Comprehensive Plan and Development Code amendments per the requirements in Article 2. In all instances the amendments must be based on a specific development proposal. The proposed amendments are reviewed by the Oregon Department of Land Conservation and Development (DLCD), with consultation from other State agencies such as ODFW or DSL.

6.450 Adjustments and Variances. The City may grant adjustments or variances to the standards in the Significant Natural Resource Districts in order to avoid rendering a property not buildable through application of this ordinance. Requests that cannot meet the provisions and review criteria for Adjustments will be processed as a Variance. Adjustment applications will be processed through the Type I land use process using the criteria in Section 6.450(2) below. Variance applications will be processed through the Type II process using the criteria in Section 2.690. The proposed activity or use must be allowed within the base zoning district in order to be considered for an adjustment or variance.

(1) General Standard. In evaluating any Adjustment or Variance request, the decision maker may require the applicant to incorporate design options to reduce the impact on the protected resource. These may include, without limitation, multi-story construction, alternate siting of structures, limiting the length of impervious driveway and other surfaces, and maximizing the use of native landscape materials.

(2) Adjustments. In order for the Director to approve an adjustment application, the applicant shall demonstrate that all the following criteria are fully satisfied:

(a) It is an existing legal lot and there is insufficient space outside the resource area to construct a use permitted in the underlying zoning district.

(b) The development site area, including all structures and impervious surfaces, encroaches on the resource area a total of 3,000 square feet or less.

(c) The adjustment is the minimum necessary to allow a permitted use or achieve the minimum buildable area outlined above, while at the same time minimizing disturbance to the significant natural resources. The Director may require adjustments to site development standards to enable avoidance of the resource.

(d) The encroachment does not result in a new structure or impervious surface being located closer than 25 feet from the Ordinary High Water mark. Bridges are an exception to this requirement.

(3) Variances. For any existing lot or parcel whose hardship cannot be alleviated with an Adjustment application, the property owner may apply for a Variance per Section 2.690.

6.460 Compliance with State and Federal Regulations. Activities wholly or partially within the Significant Natural Resource Overlay District(s) are subject to all applicable federal and state regulations. The following regulations commonly apply within the resource areas. (Note: other regulations not listed may also apply; it is the property owner's responsibility to adhere to all applicable State and Federal regulations):

(1) Oregon Department of State Lands permit requirements under the Removal-Fill Law.

(2) U.S. Army Corps of Engineers permit for fill activities as required under Section 404 of the Clean Water Act.

(3) Department of Environmental Quality permit requirements for stormwater under the Clean Water Act and state water quality regulations.

(4) Oregon Department of Fish and Wildlife regulations may apply to development activities that could impact one of the sensitive, threatened, critical, or endangered species indigenous to the region.

(5) The federal Endangered Species Act prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife.

(6) The federal Migratory Bird Treaty Act prohibits taking, harming or moving any migratory bird, nest, or egg.

6.470 Violations. Activities within Significant Natural Resource Overlay Districts not authorized under this Article are unlawful. The City shall seek compliance with the requirements of this Article and the resolution of violations through the procedures below. These procedures are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under law; and may be exercised in any order.

(1) Voluntary cooperation to resolve violations is the preferred enforcement procedure when appropriate to the circumstances. Violations causing ongoing degradation of natural resources or repeated violations by the same individual, firm or corporation are not appropriate for voluntary enforcement procedures.

(2) Natural resource restoration shall be required for violations that result in unauthorized construction, grading, excavation, placement of fill material, or removal of native vegetation in a Significant Natural Resource Overlay District. The purpose of the restoration requirements shall be to mitigate impacts to vegetation, soils and hydrology and may include vegetation planting, fill removal, backfilling of excavated areas, restoration of ground surface contours, restoration of hydrological processes or other actions. Restoration recommendations shall be solicited from the Oregon Department of Fish and Wildlife and the Linn or Benton County Soil and Water Conservation Districts.

(3) Violations involving placement of fill material, excavation, grading or alteration of material within a stream or in a wetland shall be reported to the Oregon Department of State Lands and the U.S. Army Corps of Engineers, in addition to any local actions taken per this Section of the Code.

(4) Failure of an individual, firm, or corporation to remedy a documented violation may be processed in accordance with the Enforcement provision in Article 1.

(5) Criminal or civil sanctions.

WILLAMETTE **RIVER** GREENWAY

[No changes are proposed to the Willamette River Greenway standards, only renumbering of the sections and addition of "Willamette River" and (/WG).]

6.500~~310~~ Purpose. The **Willamette River** Greenway district **(/WG)** is intended to guide development along the Willamette River so as to preserve the existing scenic, use and natural features.

6.510~~320~~ Applicability. The area of the City within the Willamette River Greenway District is the area so designated by the boundary shown on Figure 6-24.

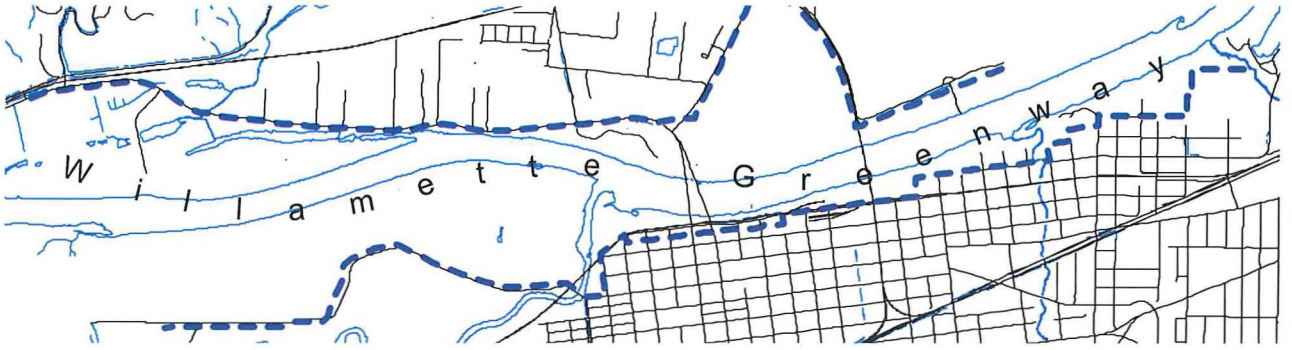


Figure 6-**24** Willamette **River** Greenway **District**

6.520~~330~~ Procedure. Except for land use developments and uses exempted in Section 6.340 below, an application for development approval in the Willamette River Greenway District (/WG) will be approved under the Type II procedure. Approval of a Greenway Use application will be granted only if the proposal complies with all applicable sections of this Code. In case of conflict between the provisions of this Article and the provisions of any other Article of this ordinance, the more restrictive provisions shall apply.

6.530~~340~~ Greenway Use Permit Exceptions. The following developments and uses are not subject to the provisions of this Article but shall comply with other applicable provisions of this Code:

(1) Customary dredging and channel maintenance conducted under a permit from the State of Oregon.

(2) Gravel removal from the bed of the Willamette River conducted under a permit from the State of Oregon or a seasonal increase in gravel operations.

(3) The placing by a public agency of signs, markers, aids, to serve the public.

(4) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses of public lands; except that a substantial increase in the level of development of existing public recreational, scenic, historical, or natural uses on public lands shall require review as provided by this Article.

(5) Agriculture as allowed within the subject major zoning district.

(6) Reasonable emergency procedures necessary for the safety or protection of property and not in conflict with the provisions of this Code.

(7) Maintenance and repair usual and necessary for the continuance of an existing use.

(8) Landscaping, construction of driveways, repair or maintenance of existing structures, and the construction or placement of accessory structures less than 250 square feet, provided that such activities are conducted in conjunction with uses already existing on the same property and that they are accomplished in a manner compatible with the purpose of this Article.

6.540~~350~~ Criteria. An application for a Willamette River Greenway Use development will be granted if the review body finds that the proposal conforms with the following applicable criteria:

(1) Lands designated on the Comprehensive Plan as Open Space are preserved and maintained in open space use.

(2) Significant air, water and land resources including but not limited to natural and scenic areas, viewpoints, vistas, fish and wildlife habitats, etc. in and adjacent to the Greenway are protected, preserved, restored, or enhanced to the maximum extent possible.

(3) Areas of annual flooding, floodplains, and wetlands are preserved in their natural state to the maximum possible extent to protect water retention, overflow, and other natural functions.

(4) The natural vegetative fringe along the river are maintained to the maximum extent that is practical in order to assure scenic quality, protection of wildlife, and protection from erosion.

(5) The harvesting of timber will be done in a manner which ensures that wildlife habitat and the natural scenic qualities of the Greenway are maintained or will be restored.

(6) The proposed development, change, or intensification of use is compatible with existing uses on the site and the surrounding area and provides the maximum possible landscaped area, open space, or vegetation between the activity and the river.

(7) Extraction of aggregate deposits shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety, and necessary reclamation will be guaranteed.

(8) Any public recreational use of facility will be developed, maintained, and operated in such a way as to minimize adverse effects on adjacent properties.

(9) Building setbacks from the floodway line shall be determined by the setback and height plane as defined in Sections 5.200 and 5.205 of this Code.

(10) Public access will be provided to and along the Willamette River by appropriate legal means for all development in conformance with plans approved by the City.

6.550~~360~~ Conditions of Approval. The review body has the power to impose conditions, restriction, or limitations upon any use proposed in the Willamette River Greenway District if such conditions, restrictions, or limitations are found to be necessary in order to satisfy the criteria of Section 6.350.

6.560~~370~~ Special Notification. Notification regarding requests for Willamette River Greenway Use Permits will be sent to the Oregon State Department of Transportation River Programs Section. Notification of the Oregon State Department of Transportation will be given by certified mail (return receipt requested) and sent within seven days of the receipt of the application for the conditional use. Notice of the decision on the Greenway use permit application will be mailed to the Department of Transportation River Programs Section within ten days of such decision.

ARTICLE 9
ON-SITE DEVELOPMENT AND ENVIRONMENTAL STANDARDS

New text is shown in **bold** *and removed text in ~~strikethrough~~.*

9.010 Overview. The City of Albany has established standards for on-site improvements and environmental protection. These standards are intended to foster high quality development throughout the City and to minimize adverse effects on surrounding property owners or the general public. This article contains the following standards:

- Off-Street Parking
- Landscaping
- Street Trees
- Tree ~~Felling~~**Protection**
- Buffering and Screening
- Environmental

[Ord. 5445, 4/12/2000]

No proposed changes to Sections 9.020 through 9.200.

TREE ~~FELLING~~PROTECTION

9.205 Purpose. Trees of significant size represent a visual and aesthetic resource to the community. **Trees provide benefits including shading, reduction in excess stormwater runoff, erosion control, and wildlife habitat**. These standards are intended to balance the preservation of significant trees as a benefit to the community with the individual right to use and enjoy property. [Ord. 5445, 4/12/2000]

9.206 Definitions. For the purposes of the following sections, these definitions apply:

(1) Fell: To remove or sever a tree or the intentional use of any procedure the natural result of which is to causes the death or substantial destruction of the tree. Fell does not in any context include normal pruning of trees.

(2) Tree: A living, standing, woody plant ~~having a trunk circumference of 24 inches or more~~.

(3) Tree, Circumference: The circumference of a tree is measured at 4-1/2 feet above mean ground level from the base of the trunk. To obtain the circumference of a tree with multiple trunks, add the individual trunk circumferences, which are greater than 6 inches in circumference. [Ord. 5445, 4/12/2000]

9.207 Applicability. Site plan review approval is required for the felling of 5 or more trees larger than 25 inches in circumference (approximately 8 inches in diameter) on a lot or property in contiguous single ownership in excess of 20,000 square feet in any zone.

The following activities are exempt from site plan review **if they meet the applicable requirements of the Significant Natural Resource overlay districts in Article 6**:

(1) The action of any City official or of any public utility necessary to remove or alleviate an immediate danger to life or property; to restore utility service or to reopen a public street to traffic.

(2) Felling of any tree that is defined as a nuisance under the Albany Municipal Code.

(3) Any felling necessary to maintain streets or public or private utilities within a public right-of-way or utility easement provided the Tree Commission or City Forester approved the proposed tree felling. [Ord. 5445, 4/12/2000]

(4) Felling of trees planted as Christmas trees. [Ord. 5635, 1/11/2006]

(5) Felling of trees on property under a Forest Stewardship Plan approved by the Oregon Department of Forestry. [Ord. 5635, 1/11/2006]

9.208 Tree Felling Criteria. The following review criteria replace the site plan review criteria found elsewhere in this code for the purposes of reviewing tree felling. A site plan review for tree felling will be processed as a Type I-L land use decision.

(2) For property where a site plan review, conditional use or land division application has been approved or is currently under review, the Community Development Director, City Forester, or his/her designee shall approve a site plan review for tree felling when the applicant demonstrates that all of the following review criteria are met:

(a) It is necessary to fell tree(s) in order to construct proposed improvements in accordance with an approved site plan review or conditional use review, or to otherwise utilize the applicant's property in a manner consistent with its zoning, this code, applicable plans adopted by the City Council, or a logging permit issued by the Oregon Department of Forestry.

(b) The proposed felling is consistent with State standards, City ordinances, and the proposed felling does not negatively impact the environmental quality of the area, including but not limited to: the protection of nearby trees and windbreaks; wildlife; erosion; soil retention and stability; volume of surface runoff and water quality of streams; scenic quality, and geological sites.

(c) The uniqueness, size, maturity, structure, and historic value of the trees have been considered and all other options for tree preservation have been exhausted. The Director may require that trees determined to be unique in species, size, maturity, structure, or historic value are preserved.

(d) **Tree felling in Significant Natural Resource Overlay Districts meets the applicable requirements in ~~Mitigation is provided for trees located in the Riparian Corridor Overlay District per~~ Article 6.**

(5) Precautions 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.

(a) Within the drip line of any protected existing tree, there shall be no cut or fill over a four-inch depth unless a qualified arborist or forester has evaluated and approved the disturbance.

(b) Prior to and during construction, an orange fence shall be erected around all protected existing trees that is a minimum of 4 feet tall, secured with metal T-posts, no closer than 6 feet from the trunk or ~~½ of~~ **within** the drip line, whichever is greater. There shall be no storage or movement of equipment, material, debris or fill within the fenced tree protection zone.

(c) During the construction stage of development, the applicant shall prevent the cleaning of equipment or material or the storage and disposal of waste material such as paints, oils, solvents, asphalt, concrete, motor oil or any other material harmful to the life of a tree within the drip line of any protected tree or group of trees.

(d) No damaging attachment, wires, signs or permits may be fastened to any protected tree.
(e) Large property areas containing protected trees and separated from construction or land clearing areas, road rights-of-way and utility easements may be "ribboned off," rather than erecting protective fencing around each tree as required in subsection (5)(b) above. This may be accomplished by placing metal t-post stakes a maximum of 50 feet apart and tying ribbon or rope from stake-to-stake along the outside perimeters of such areas being cleared.
(f) The installation of utilities, irrigation lines or any underground fixture requiring excavation deeper than 6 inches shall be accomplished by boring under the root system of protected existing trees at a minimum depth of 24 inches. The auger distance is established from the face of the tree (outer bark) and is scaled from tree diameter at breast height as described in the chart below. [Ord. 5445, 4/12/2000]

No changes are proposed to Sections 9.210 through 9.500.

ARTICLE 11
LAND DIVISIONS AND PLANNED DEVELOPMENTS

New text is shown in **bold** *and removed text in ~~strikethrough~~.*

No proposed changes to Sections to 11.000 through 11.020.

11.030 Relationship to Other Local Regulations. All proposed development governed by this article must meet the applicable on-site improvements of Article 9 (e.g., off-street parking, landscaping, buffering and screening) and the applicable **Natural Resource District** ~~environmental standards of~~ **requirements in** Article 6~~—Special Purpose Districts~~ (e.g., **open space,** floodplain, **steep** hillsides, **significant** wetlands, **riparian corridor,** and Willamette **River** Greenway).

No proposed changes to Sections to 11.040 through 11.170.

SUBDIVISIONS AND PARTITIONS

11.180 Tentative Plat Review Criteria. 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.

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

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

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

(5) ~~Any special features of the site (such as topography, floodplains, wetlands, vegetation, historic sites) have been adequately considered and utilized.~~ **Activities and developments within special purpose districts must comply with the regulations described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable.**

No proposed changes to Sections to 11.190 through 11.200

11.210 Tentative Plat Submittal. All applications for tentative partition or subdivision approval must include a complete application form and copies of a plat showing the following details. The tentative plat need not be a finished drawing but it should show all pertinent information to scale.

(1) When the land to be subdivided contains only part of the tract owned or controlled by the

subdivider, a sketch is required of a tentative layout for streets and utilities in the undivided portion indicating connections to existing or future improvements.

(2) If the tentative plat does not show the following information, a vicinity map at a scale of 400 feet to the inch shall be prepared showing:

(a) All existing subdivisions, streets and tract lines of acreage land parcels immediately adjoining the proposed subdivision and between it and the nearest existing arterial streets.
(b) Name of the record owners of all contiguous land parcels.
(c) How streets and alleys in the proposed subdivision may connect with existing or proposed streets and alleys in neighboring subdivisions or undeveloped property to produce the most advantageous development of the entire neighborhood area.

(3) The tentative plat shall be drawn to a standard engineer's scale where 1 inch equals 20 - 60 feet; or for areas over 100 acres, l inch equals 200 feet (1"=200').

(4) The name, if any, of the land division; this name must not duplicate or resemble the name of another subdivision in the same county or in the same area within six miles of Albany and must be approved by the Director and the County Surveyor.

(5) Date, north point, and scale of drawing.

(6) Location of the land division by section, township and range, and a legal description sufficient to define the location and boundaries of the proposed tract or the tract designation or other description according to the real estate records of the County Assessor.

(7) Names and addresses of the property owner(s), subdivider, surveyor, and engineer, if applicable.

(8) The location, widths and names of all existing or platted streets or other public ways within or directly adjacent to the tract; and other important features, such as railroad rights-of-ways, and City boundary lines.

(9) The location on the site and in the adjoining streets or property of existing and proposed sanitary sewers, storm sewers, and water mains and services, culverts, ditches and drain pipes, all other utilities such as electric, gas and telephone conduits with invert elevations of sanitary and storm sewers at points of proposed connections. [Ord. 5720, 08/12/2009]

(10) Contour lines having the following minimum intervals:

One foot contour intervals for ground slopes less than five percent.
Two foot contour intervals for ground slopes between five and ten percent.
Five foot contour intervals for ground slopes exceeding ten percent.

The elevations of all control points which are used to determine the contours. Contours shall be related to City of Albany datum.

(11) Approximate location of areas subject to storm water inundation or overflow with approximate high water elevation.

(12) Location, width, direction and flow of all water courses.

(13) Location of properties within the 100-year floodplain and other areas subject to flooding or ponding (see **the Floodplain standards in Article 6**~~Sections 6.130~~).

(14) Location of the following significant natural resources:
(a) Significant wetlands identified on the City's Local Wetlands Inventory;
(b) **Significant** riparian areas on the City's Riparian **Corridor** Inventory;
(c) Significant wildlife habitat, if known;
(d) Existing channels as shown ~~on Figure 7.1 of the draft North Albany Storm Water Master Plan~~**in the most current version of the City of Albany Stormwater Master Plan**, and
(e) Slopes greater than ~~25~~**12** percent.

(15) Location of the following natural features
(a) Non-significant wetlands identified on the City's Local Wetlands Inventory**, and other wetlands**;
(b) Wooded areas with 5 or more trees over 12 inches in diameter measured 4½ feet from the ground, and
(c) Springs.

(16) Existing uses of the property and adjacent property within 100 feet, including the location of all existing structures to remain on the property.

(17) Zoning of land adjacent to the tract.

(18) Any proposed streets: location, widths, names, approximate radii or curves. The relationship of all streets to any projected streets as shown on any development plan approved by the City.

(19) Existing and proposed easements on the site and any existing easements on adjoining properties, showing the width and purpose of all easements.

(20) Approximate dimensions of all lots, minimum lot size, proposed lot numbers, and block numbers [see Section 11.230 (11)].

(21) Sites, if any, allocated for multiple-family dwellings, shopping centers, churches, industry, parks, schools, playgrounds, or public or semi-public buildings.

(22) The following additional information must be submitted with the tentative plat:
(a) The names and addresses of all owners within 300 feet of the proposed land division.
(b) Total acreage in the subdivision and the percent of land dedicated to the public, not including easements.
(c) All public improvements proposed to be installed and the approximate time of installation including the method of financing.

(d) Special improvements to be made by the developer and the approximate time such improvements are to be completed (examples include entrance signs or walks, berms, bus stands, etc). Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of these regulations, State laws and other applicable City ordinances. If, however, the nature of the improvement is such that it is impractical to prepare all necessary details prior to approval of the tentative plat, the additional details shall be submitted at least 30 days prior to approval of the final plat.

(e) An urban conversion plan for large acreage subdivisions.

[Ord. 5562, 10/10/03; Ord. 5562, 10/10/03]]

No proposed changes to Sections to 11.220 through 11.390.

CLUSTER DEVELOPMENT

11.400 Purpose. Cluster development is intended to protect natural ~~features or~~ **and** other **special** features ~~unique to Albany~~ that **either** would not otherwise be protected, or **otherwise restored to good quality,** in the development of a site. In return ~~for this protection~~, the more flexible standards found in this section may supersede other more strict standards of this Code. Cluster developments may provide greater flexibility, reduced and/or varied lot sizes, and more variety in permitted uses. It is not the intent of cluster development to increase the overall housing density of property above the density that would have been allowed in a standard subdivision. Developments must satisfy high-quality master planning and design requirements. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.405 Optional Nature. Cluster development is an optional form of development. Cluster development proposals are reviewed as part of the land division, site plan, or conditional use application processes.

[Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.410 Eligibility. To be eligible to apply for cluster development, all of the following are required:

(1) Residential Zoning. The site must be located in a residential zoning district.

(2) Natural **and Other Special** Features. The site must contain one or more of the features listed in Section 11.460(1).

(3) Professional Designer. An applicant for cluster development approval must certify in writing that a certified landscape architect, site planner, or landscape designer, approved by the Director, will be used in the planning and design process for the proposed development. [Ord. 5668, 4/11/07]

11.420 Relationship to Other Regulations. If the applicant chooses the cluster development option, and the site is deemed eligible by the City, these standards will supplement other provisions of this Code. For example, a subdivision proposed as a cluster development is also subject to other provisions of Article 11 of the Development Code. Other types of residential development are subject to site plan review or conditional use review. These provisions apply to issuance of building permits in a cluster development and to ongoing uses and activities in a cluster development. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.430 Procedure. Cluster development proposals are reviewed as a Type III procedure. [Ord. 5562, 10/10/03, Ord. 5668, 4/11/07]

11.440 Review Criteria. The review criteria for a cluster development are those that apply to a particular type of development. For example, the tentative plat criteria in Article 11 apply to cluster land divisions. (See Section 11.420 for relation to the other requirements.) Also, the review body must find that the application meets the following additional criteri~~on~~**a**:

(1) The proposed development meets all of the requirements for cluster development.

(2) The proposed development preserves natural or unique features that normally would not be **either** preserved **or restored** under conventional development standards.

[Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.450 Natural Area Requirements. Cluster developments must provide a minimum of 20 percent of the site as permanent natural areas. Land ~~show~~ **designated** as Open Space on the Comprehensive Plan **or Zoning** maps may not be used to fulfill this requirement ~~only if the resource is good quality, or is enhanced to improve its quality in accordance with the enhancement guidelines in the table in Section 6.420~~. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.460 Designation of Permanent Natural Area. The required natural area may be public or private. The minimum 20 percent of the gross acreage of the development site set aside as natural area in a cluster development should be designated in the following priority order:

(1) The first priority for natural area designation is ~~the protection of environmentally sensitive areas, natural features, and scenic features of the site~~ **natural resources within the Significant Natural Resource Overlay Districts** ~~not shown as Open Space on the Comprehensive Plan Map~~ **that are of degraded or marginal quality and subsequently restored to good quality in accordance with the quality levels in ADC Section 6.410(5)**. This priority ~~is~~ **shall be** satisfied ~~by any of~~ **in** the following **order**:

(a) ~~Lake~~ **Habitat for western painted and northwestern pond turtles within the Habitat Assessment Overlay (/HA), as identified by a turtle habitat assessment, that is restored to good quality.**

(b) Wetland ~~identified~~ **within the Significant Wetland Overlay District (/SW)** ~~on the City's Local Wetland Inventory or by a delineation approved by the Oregon Department of State Lands~~ **that is restored to good quality**.

(c) Riparian area ~~identified~~ **within the Riparian Corridor Overlay District (/RC)** ~~on the City's Riparian Inventory~~ **that is restored to good quality**.

(~~1~~2) The second priority for natural area designation is protection of other environmentally sensitive areas, natural and scenic features of the site. This priority shall be satisfied in the following order:

(a) ~~Lake~~ **Good quality habitat for western painted and northwestern pond turtles near Thornton Lakes within the Habitat Assessment Overlay (/HA) as identified by a turtle habitat assessment.**

(b) **Good quality** ~~W~~wetland ~~identified~~ **within the Significant Wetland Overlay District (/SW)** ~~on the City's Local Wetland Inventory or by a delineation approved by the Oregon Department of State Lands~~.

(c) **Good quality r**~~R~~iparian area ~~identified~~ **within the Riparian Corridor Overlay District (/RC)** ~~on the City's Riparian Inventory~~.

(d) Other wetlands not within the Significant Wetland Overlay District, as shown on the City's Local Wetland Inventories or by a delineation approved by the Oregon Department of State Lands.

(e) ~~E~~existing channels identified in the **most current version of the** City of Albany Storm Water Master Plan ~~or the draft North Albany Storm Water Master Plan~~.

(~~e~~**f**) Springs.
(~~f~~**g**) **Land with natural s**~~S~~lopes 12 percent or greater **as designated by the Hillside Development Overlay District (/HD).**
(~~g~~**h**) Wooded areas with five or more healthy trees over 8 inches in diameter measured 4½ feet from the ground, if approved by the City Forester.
(~~h~~**i**) Land that will provide bike or walking trails that connect to existing or proposed parks or trails, inventoried natural features, or areas zoned Open Space or otherwise protected as permanent natural areas.
(~~i~~**j**) Other features of the site unique to Albany, if approved by the Director.

(~~2~~**3**) The ~~second~~ **third** priority for natural area designation is to create open spaces in and around neighborhoods. This priority is satisfied by any of the following:

(a) Continuity of adjacent open space corridors or parkways.
(b) A network of interconnected open space corridors.
(c) A buffer between neighborhoods.

(~~3~~**4**) The ~~third~~ **fourth** priority for natural area designation is to incorporate public parks, trails or open space designated in the Parks, Recreation and Open Space Plan and the North Albany Refinement Plan. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.470 Creation of Permanent Natural Areas.

(1) Natural areas in a cluster development may be set aside and managed in one or more of the following ways:

(a) Portions of one or more individual lots; or
(b) Common ownership by residents of the development; or
(c) Third party (non-profit organization) whose primary purpose is to hold or manage the open space, subject to a reversionary clause in the event of dissolution of the non-profit organization; or
(d) Dedicated to City of Albany, if the City agrees to accept ownership and maintain the space.

(2) Except for Subsection (1)(d) above, natural areas shall be subject to restrictive covenants and easements reviewed by the Community Development Director and recorded and filed when the subdivision plat for the project area is recorded. Except when allowed in 11.480, an easement shall include permanent provisions prohibiting the placement of structures or impervious surfaces, alteration of the ground contours, or any other activity or use inconsistent with the purpose of these provisions. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.480 Protection of Permanent Natural Areas.

(1) The development may encroach into permanent natural areas, only under the following circumstances:

(a) To meet transportation or utility infrastructure requirements, or

(b) To provide bike or walking trails that connect to existing or proposed parks or trails, inventoried natural features, or areas zoned Open Space or otherwise protected as permanent natural areas.

(2) Permanent alteration by grading may be authorized for the purpose of natural resource enhancement, such as wetland, riparian, or wildlife habitat restoration.

(3) Significant wetlands, riparian corridors, and intermittent streams preserved as natural areas in a cluster development may be used for conveyance of storm waters only when the applicant has demonstrated that the discharge is compatible with the protection of the natural resource. These natural features shall not be used for drainage improvements, such as detention or retention ponds, or any other utility improvement necessary for development of the lots.

(4) Areas set aside for permanent natural areas in a cluster development cannot be further subdivided.

(5) Fences are permitted in and around the natural areas if consistent with the expressed purpose of the natural areas.

(6) Provisions must be established to ensure the continued maintenance of areas designated as natural areas through Cluster Development. See Section 11.470. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.490 Development Standards. In a cluster development, the following development standards supersede the same standards in Section 3.190, Table 1. The number of allowable lots is based on the density range for the zone as specified in the following table.

Standard	RS-10	RS-6.5	RS-5	RM
Max. dwelling units per gross acre	4	6	8	20
Minimum Lot size (1)	None	None	None	None
Minimum Lot Width	None	None	None	None
Minimum Lot Depth	None	None	None	None
Minimum front house setback (2)	15 ft.	10 ft.	10 ft.	10 ft.
Maximum Lot Coverage (3)	70%	70%	70%	70%

(1) Lots on the perimeter of the cluster development shall meet the standards in 11.495.
(2) Except, when lots are adjacent to existing development on the same side of the street, the setback shall be within 5 feet of the adjacent house(s) setback(s).
(3) The maximum lot coverage may be up to 100 percent for lots that provide land only for the building footprint.

[Ord. 5562, 10/10/03, Ord. 5668, 4/11/07]

11.495 Perimeter Lot Compatibility. The following standards and exceptions will apply to the lots on the perimeter of a proposed cluster development:

(1) Standards. The term "standard minimum lot size" as used in this section, means the minimum lot size allowed in the underlying base zone without any reductions in size allowed elsewhere in this Code.

(a) When the proposed cluster development abuts developed property in a lower density residential zoning district, the size of lots on the perimeter of the proposed cluster development shall be at least the standard minimum lot size allowed in the zone underlying the cluster development.

Example:

Proposed Cluster Development **RS-6.5** *Perimeter lots must be at least 6,500 sf*	**Abutting Property w/ Lower Density Residential Zoning** *RS-10.0*

(b) W[illegible]nt abuts developed property in the same residential zoning district as the proposed cluster development, the size of lots on the perimeter of the cluster development shall be at least 70 percent of the standard minimum lot size of the underlying zoning district.

Example:

Proposed Cluster Development RS-10.0 *Perimeter lots must be at least 7,000 sf (70% of minimum lot size for underlying zoning)*	**Abutting Property w/ Same Residential Zoning** *RS-10.0*

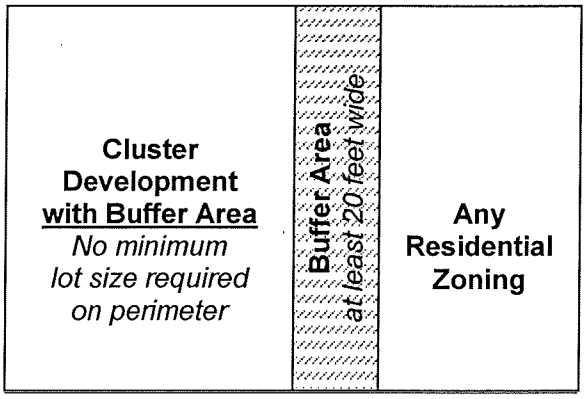
(2) Exceptions. The Perimeter Lot Compatibility standards do not apply in the following cases:

(a) Perimeter lots that are adjacent to land that is zoned for higher density housing, mixed-use or non-residential uses, or to residentially zoned property not in residential use (such as educational, institutional, religious or park uses).

(b) Where the same property owner owns the property abutting the proposed cluster development or when the perimeter lots share a property line with the Urban Growth Boundary.

(c) If a buffer area is created as a separate property along the perimeter and is at least 20 feet wide, the buffer area shall become a permanent natural area and shall meet the provisions in Sections 11.470 and 11.480.

Example:



(d) Cluster developments abutting property that is at least 1 acre in size.

[Ord. 5668, 4/11/07]

11.500 Permitted Uses. The uses allowed within cluster developments outside the permanent natural areas are determined by the underlying zoning district standards in Section 3.050, with the following exceptions:

(1) On development sites greater than 20 acres, up to 20 percent of the housing units in RS-6.5 and RS-10 may be attached single-family or condominium housing.

(2) On development sites greater than 50 acres, up to 2 acres may be developed with neighborhood commercial uses through a conditional use review. The maximum building footprint of commercial or office uses shall be 3,000 square feet. Commercial and office uses shall be limited to restaurants with no drive-through service, and convenience-oriented and personal service-oriented uses as described in Article 22. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.510 Street Standards for Cluster Development. All local streets in a cluster development may be constructed to the Residential Street Design for Constrained Sites as described in Section 12.122(6). If the City subsequently adopts street standards specifically designated for cluster development, those standards shall supersede and replace this section. [Ord. 5562, 10/10/03]

ARTICLE 22
USE CATEGORIES AND DEFINITIONS

New text is shown in **bold** *and removed text in* ~~*strikethrough*~~.

No proposed changes to Sections 22.010 to 22.370.

DEFINITIONS

22.400 Definitions. As used in this Code, the following words and phrases have the following meanings:

Alter or Alteration: ~~A change, addition, or modification in construction or occupancy of a building or structure.~~ Any human-induced physical change to the existing condition or occupancy of a building or structure, or to land including but not limited to clearing, grubbing, draining, removal of vegetation (chemical or otherwise), excavation, grading, placement of fill material, placement of structures or impervious surfaces or other construction.

Buildable Land: Property that is unconstrained by dimensional, locational, environmental, topographical, legal, or regulatory impediments that would otherwise render it unbuildable.

Developed Property: Property that has significant site improvements, such as utility installations, paving, and, in many instances, the construction of one or more structures.

Qualified Professional: A person with extensive knowledge in the relevant subject matter, and whose combination of training, education, certification and experience qualify him/her to perform services of a professional nature and to make credible findings and recommendations. The Director has the authority to accept or reject the qualifications of a professional if they are not deemed suitable to the relevant subject matter.

OAR: Oregon Administrative Rules.

ORS: Oregon Revised Statutes.

Reasonably Feasible: Means that, under the circumstances, reasonable efforts have been undertaken to comply with the regulation, that the costs of compliance clearly outweigh the potential benefits to the public or would unreasonably burden the proposed project, and reasonable steps have been undertaken to minimize any potential harm or adverse impacts resulting from noncompliance with the regulation.

Unbuildable Land: Property that due to its size, shape, frontage, location, topography, environmental constraints, easements, or regulations cannot be developed with site improvements even if assembled with adjacent property.

Undeveloped Property: Land in its natural state prior to any current or previous development activities or manmade changes.

NATURAL RESOURCE OVERLAY DISTRICT DEFINITIONS

The following definitions are specific to the Natural Resource Overlay Districts in Article 6.

Conflicting Use: A land use or other activity reasonably and customarily subject to land use regulations that could adversely affect a significant Goal 5 resource.

Development Site Area: The buildable portion of a property where the development of structures and other impervious surfaces is proposed.

ESEE Analysis: An analysis of economic, social, environmental, and energy consequences, positive or negative that could result from a decision to allow, limit, or prohibit a conflicting use per OAR 660-.

Fill or Filling: The deposition of organic or inorganic material in any amount, including the temporary stockpiling of fill material, by human action.

Function: A characteristic action or role provided by a resource. Wetland functions include fish and wildlife habitat, water quality improvement, hydrologic controls, and flood damage reduction. Riparian functions include water quality, thermal regulation, flood management, and wildlife habitat.

Impervious Surface: A surface that cannot be penetrated by water, such as pavement, rock, or a rooftop, and thereby prevents infiltration and generates runoff.

Invasive Species: The Oregon Invasive Species Council defines an invasive plant as a non-native species whose introduction does, or is likely to, cause economic or environmental harm or harm to human health. While not all non-native species are invasive, the few that are categorized as such threaten the habitat of native plants. An invasive plant can spread rapidly and displace other desired vegetation. The Oregon Invasive Species Council maintains a list of recognized invasive plants.

Local Wetlands Inventory (LWI): A systematic survey of an area to identify, classify, and map the approximate boundaries of wetlands over one half acre in size within the urban growth boundary, and supporting documentation required by OAR 141-086-0200. The inventories are approved by Oregon Department of State Lands (DSL) and adopted by the City. Any subsequent delineations or determinations approved by the DSL amend the LWI by reference.

Native Vegetation: A plant species that is indigenous to the area and identified as naturally occurring and historically found within the City of Albany. Lawn is not considered native vegetation regardless of the species used.

Natural Bottom: When a water crossing does not have a hard or paved surface. Naturally occurring soils and plants are at the bottom of the waterway.

Non-native Vegetation: A plant species that is not indigenous to the area.

Noxious Weeds: They include plants that are injurious to public health, agriculture, recreation, wildlife or any public or private property. In addition, some have become so thoroughly established and are spreading so rapidly on public or private land that they have been declared to be a menace to public welfare.

The State noxious weed list is the official list for the State of Oregon. Maintained by the Oregon State Weed Board and Noxious Weed Control Program, the weed list is part of the noxious weed policy and classification system. The State noxious weed list is used to prioritize activities at the state level and provide direction for development of county weed lists, local control programs and guide the use of limited resources.

Ordinary High Water Mark (OHW): A line on the bank to which the high water ordinarily rises each year and is the waterward limit of upland vegetation and soil (Source: ORS 274.005). It is generally recognizable by a visible change in the soil and vegetation.

Reference Site: A specific sampling site selected for its relatively undisturbed conditions. It is representative of the expected biological integrity of other localities along or near the same waterbody.

Riparian Corridor: A Goal 5 resource that includes the water areas, fish habitat, riparian areas, adjacent wetland and upland areas that serve to protect water quality and the habitat functions of the water body.

Safe Harbor Goal 5 Process: An optional course of action that satisfies certain requirements under the standard Goal 5 process. For example, a jurisdiction may choose to identify "significant" riparian corridors using the safe harbor criteria outlined in OAR 660-23-0090(5) rather than follow the general requirements of determining "significance" in the standard Goal 5 process outlined in OAR 660-023-0030(4). Similarly, a jurisdiction may adopt a wetlands ordinance that meets the safe harbor requirements of OAR 660-023-0100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.

Sensitive-Critical Species: A species classification created under Oregon's Sensitive Species Rule (OAR 635-100-040). The classification is applied to Oregon's naturally reproducing fish and wildlife species, subspecies, or populations that are facing one or more threats to their population and/or habitats. The subcategory critical has the following meaning: "Critical" sensitive species are imperiled with extirpation from a specific geographic area of the state because of small population sizes, habitat loss or degradation, and/or immediate threats. Critical species may decline to a point of qualifying for threatened or endangered status if conservation actions are not taken.

Significant Wetland: A wetland identified in the Local Wetland Inventory and determined to be locally significant wetlands using the criteria in OAR 141-86-0300. These criteria include fish or wildlife habitat, hydrologic control, water quality improvement functions, presence of rare plant communities or sensitive, threatened or endangered species, or direct water connection to habitat for salmon species.

Significant Wildlife Habitat Areas: A land or water area where sustaining the natural resource characteristics is important or essential to the production and maintenance of aquatic life or wildlife populations that are listed by the state or federal governments.

Standard Goal 5 Process: The standard Goal 5 process is outlined in OAR 660-023-0030 through 660-023-0050 and consists of procedures and requirements to guide local planning for all Goal 5 resource categories. This division also provides specific rules for each of the fifteen Goal 5 resource categories (see OAR 660-023-0090 through 660-023-0230). In some cases this division indicates that both the standard and the specific rules apply to Goal 5 decisions. In other cases, this division indicates that the specific rules supersede parts or all of the standard process rules (i.e., local governments must follow the specific rules rather than the standard Goal 5 process). In case of conflict, the resource-specific rules set forth in OAR 660-023-0090 through 660-023-0230 shall supersede the standard provisions in OAR 660-023-0030 through 660-023-0050.

Upland: Land not characterized by the presence of riparian area, water bodies or wetlands.

Wetland: Those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetland Boundary Delineation: A determination of wetland presence that includes marking the wetland boundaries on the ground and/or on a detailed map prepared by professional land survey or similar accurate methods. A delineation approved by the Division of State Lands is required for decision-making.

Wetland Determination: An identification of an area as wetland or non-wetland. A determination that is approved by DSL is required for decision-making.

City of Albany Native Plant List

Trees

Scientific Name	***Common Name***
Abies grandis	Grand Fir
Acer circinatum	Vine Maple
Acer macrophyllum	Big-leaf Maple
*Alnus rhombifolia**	White Alder
Alnus rubra	Red Alder
Arbutus menziesii	Madrone
Cornus nuttallii	Pacific or Western Dogwood
Corylus cornuta	Hazelnut
Crataegus douglasii	Black Hawthorn
Fraxinus latifolia	Oregon Ash
Malus fusca, Pyrus fusca	Oregon Crabapple
Pinus contorta	**Shore Pine**
Pinus ponderosa	Valley Ponderosa Pine
Populus balsamifera ssp. trichocarpa	Black Cottonwood
Prunus virginiana	Common Chokecherry
Pseudotsuga menziesii	Douglas Fir
Quercus garryana	Oregon White Oak
Rhamnus purshiana	Cascara
Salix geyeriana	Geyer Willow
Salix lucida ssp. lasiandra	Pacific Willow
Salix scouleriana	Scouler's Willow
Salix sessilifolia	Soft-leaved Willow, River Willow, Northwest Sandbar Willow
Salix sitchensis	Sitka Willow
Taxus brevifolia	Pacific/Western Yew
Thuja plicata	Western Red Cedar
Tsuga heterophylla	Western Hemlock

Shrubs

Scientific Name	***Common Name***
Amelanchier alnifolia	Serviceberry
Cornus sericea	Red-Osier Dogwood
Gaultheria shallon	Salal
Holodiscus discolor	Ocean spray
Lonicera involucrata	Black Twinberry
Mahonia aquifolium	Tall Oregon Grape
Mahonia nervosa / Berberis nervosa	Dwarf Oregon Grape

Oemleria cerasiformis	Indian Plum/Osoberry
Philadelphus lewisii	Mock Orange/ Syringa
Physocarpus capitatus	Pacific Ninebark
Polystichum munitum	Sword Fern
Prunus emarginata	Bitter Cherry
Ribes sanguineum	Red Flowering Currant
Rosa nutkana var.	**Nootka Rose**
Rosa pisocarpa	Swamp Rose/Clustered Rose
Rubus parviflorus	Thimbleberry
Rubus spectabilis	Salmonberry
Salex piperi	Piper Willow
Sambucus caerulea	Blue Elderberry
Spiraea douglasii	Douglas's Spiraea
Symphoricarpos albus	Common Snowberry

Herbaceous Plants and Flowers

Scientific Name	**Common Name**
Asarum caudatum	Wild ginger
Asclepias fascicularis	Narrow Leaved Milkweed
Asclepias speciosa	Showy Milkweed
Aster hallii	**Hall's Aster**
Camassia leichtinii	**Leichtlin's Camas**
Camassia quamash	**Common Camas**
Delphinium nudicaule	Red Larkspur
Dicentra formosa	**Pacific Bleeding Heart**
Fragaria vesca	Wood Strawberry
Fragaria virginiana	Mountain Strawberry
Geranium oreganum	Western Geranium
Helenium autumnale	Mt. sneezeweed
Heracleum lanatum	**Cow Parsnip**
Iris tenax	Oregon Iris
Lilium columbianum	Tiger Lily
Linnaea borealis	Twin Flower
Lonicera ciliosa	Orange Honeysuckle
Lupinus albicaulis	Sickle-keeled Lupine
Lupinus polyphyllus	**Large-leaved Lupine**
Lupinus rivularis	Streambank Lupine
Mimulus guttatus	**Seep-spring Money Flower**
Oenanthe sarmentosa	**Water Parsley**
Oxalis oregana	Oregon Oxalis
Polystichum munitum	Sword Fern
Potentilla gracilis	**Northwest Cinquefoil**
Ranunculus occidentalis	Western Buttercup
Rudbeckia occidentalis	Western Coneflower
Stachys cooleyae	**Hedge Nettle**
Tomiea menziesii	**Piggy-back Plant**
Urtica dioica	Stinging Nettle
Veronica Americana	**American Speedwell**

Wyethia angustifolia	Narrow-leaved Mules Ears
Wyethia mollis	Woolly Dwarf Sunflower

Grasses, Sedges and Rushes

Scientific Name	**Common Name**
Alopecurus aequalis var.	**Short-awned Foxtail**
Beckmannia syztgachne	**American Sloughgrass**
Bromis vulgaris	**Columbia Brome**
Carex densa	**Dense Sedge**
Carex obnupta	Slough Sedge
Carex stipata	Saw-beak Sedge, Prickly Sedge
Carex tumulicola	**Foothill Sedge**
Carex unilateralis	**One-sided Sedge**
Danthonia californica	**California Oatgrass**
Deschampsia caespitosa	Tufted Hair Grass
Eleocharis palustris	**Creeping Spikerush**
Elymus glaucus	**Blue wildrye**
Elymus trachycaulus	**Slender wheatgrass**
Festuca idahoensis var. roemeri	**Roemer's Fescue**
Glyceria occidentalis	**Western Mannagrass**
Juncus effusus	Soft Rush
Juncus ensifolius	**Dagger-leaf Rush**
Juncus tenuis	Slender Rush, Poverty Rush
Koeleria macrantha	**Prairie Junegrass**
Luzula comosa	**Pacific woodrush**
Scirpus acutus	**Hardstem Bulrush, Tule**
Scirpus microcarpus	Small -fruited Bulrush

Ferns

Scientific Name	**Common Name**
Athyrium filix-femina	**Lady Fern**
Dryoptera arguta	**Spreading Wood Fern**
Polystichum munitum	**Sword Fern**
Pteridian aquilinium	**Bracken Fern**

Community Development Department

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STAFF REPORT

Comprehensive Plan (CP-02-10) and Development Code (DC-05-10) Amendments

HEARING BODY	CITY COUNCIL
HEARING DATE	Wednesday, August 24, 2011
HEARING TIME	7:15 p.m.
HEARING LOCATION	Council Chambers, Albany City Hall, 333 Broadalbin Street SW

EXECUTIVE SUMMARY

Implementing Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources – is the last remaining task in the City's Periodic Review work program. The proposed regulations are intended to balance the protection of significant natural resources with reasonable economic use of property. They represent the minimum level of protection to meet our Goal 5 natural resource protection requirements. The impact of the proposed regulations on existing development is as limited as possible.

Many residential activities and properties are exempt from some or all of the regulations. There are provisions to address the rare situations where the lot would become unbuildable. Also there are provisions for changing the district boundary.

A *Natural Resource Impact Review* will be required for all development activities in the Significant Natural Resource Overlay Districts that are not specifically exempted from review. The review will take place concurrent with any land use application or building permit. In rare instances when neither is required, the Natural Resource Impact Review will be conducted independently. Activities subject to review include:

- Land divisions;
- New structures, or exterior expansion of the footprint of any structure or driveways;
- Increases in impervious surfaces;
- Site modifications, including grading, excavation, fill or native vegetation removal; and
- Private construction of public and privately owned transportation facilities and utilities that are not exempt.

Most of Albany's significant natural resources are zoned Open Space, which provides limited protection. To comply with Goal 5, the resources will be further protected through overlay zoning districts, which are applied over the base zone where there are wetlands, riparian corridors and wildlife habitat areas designated significant. Specifically the proposed Comprehensive Plan amendments and Development Code regulations will:

- *Open Space:* Update policies and limit some uses that are not consistent with the intent of the zone.
- *Wetlands:* Update policies that relate to wetlands, adopt the Local Wetland Inventories by reference, amend Comprehensive Plan Plate 6, and establish a significant wetland overlay district (/SW);
- *Riparian Corridors:* Update policies that relate to riparian corridors; amend Comprehensive Plan Plate 4, and establish a significant riparian corridor overlay district (/RC); and
- *Wildlife Habitat*: Update policies that relate to wildlife habitat; amend Comprehensive Plan Plate 3, establish a habitat assessment overlay district (/HA) around Thornton Lakes to protect documented sensitive-critical turtle species.

Staff recommendation: RECOMMEND that the City Council APPROVE the proposed Comprehensive Plan and Development Code amendments.

GENERAL INFORMATION

DATE OF REPORT: August 17, 2011

FILES: CP-02-10; DC-05-10

TYPE OF APPLICATION: Legislative amendments to the following:

Comprehensive Plan (CP-02-10)

EXHIBIT A – Text Amendments

- **Chapter 1**-Natural Resources: Updates background information about wildlife habitat, native vegetation, open space, riparian corridors, wetlands, and cites relevant background documents; **Chapter 2**-Special Areas: Relocates wetlands to Chapter 1; **Chapter 7**-Social Amenities: Relocates urban landscaping information from Chapter 1; **Chapter 8**-Urbanization: Adds policy language and implementation measures regarding natural resources in North Albany; **Chapter 9**-Land Use Planning: Adds new overlay district descriptions.

EXHIBIT B – Updates Plate 3-Natural Vegetation and Wildlife Habitat: Adds habitat assessment overlay.

EXHIBIT C – Updates Plate 4-Streams, Rivers, and Lakes: Adds riparian corridor overlay.

EXHIBIT D – Updates Plate 6-Wetland Sites: Replaces with map of the Local Wetland Inventory, including significant wetland overlay.

EXHIBIT E – Adopts Citywide Goal 5 ESEE as a supporting document.

EXHIBIT F – Adopts Thornton Lakes Significant Turtle ESEE as a supporting document.

Development Code (DC-05-10)

EXHIBIT G – Text Amendments

- **Article 1**-Administration and Procedures: Clarifies when land use application are not required; **Article 2**-Review Criteria: Updates review criteria related to special features; **Article 3**-Residential Zoning Districts: Relocates Open Space zoning district to Article 6 and adds provision for density transfer; **Article 4**-Commercial and Industrial Zoning Districts: Moves Airport Approach Overlay District from Article 6 to Article 4; **Article 6**-Natural Resource Districts: Amends the Open Space zone, and creates new wetland, riparian corridor, and habitat assessment overlay districts and regulations; **Article 9**-On-Site Development and Environmental Standards: Addresses tree protection in natural resource overlay districts; **Article 11**-Land Divisions and Planned Developments: Updates review criterion related to special features; **Article 22**-Use Categories and Definitions: Adds natural resource related definitions.

EXHIBIT H – Adopts new Albany Native Plant List.

REVIEW BODY: Planning Commission and City Council

APPLICANT: City of Albany, Planning Division

APPLICANT REP: Heather Hansen, Planning Division Manager

ADDRESS/LOCATION: Applies to all properties within a proposed natural resource overlay district and/or with the Open Space Comprehensive Plan or Zoning designation.

BACKGROUND INFO

Oregon's nineteen statewide planning goals provide the framework for planning within the state. Statewide Planning Goal 5 requires all Oregon cities and counties "to conserve open space and protect natural and scenic resources." The goal itself, plus Oregon Administrative Rules (OAR) 660-23, establishes specific procedures and criteria for Goal 5 compliance. State law requires each city to adopt a comprehensive plan and development codes that are consistent with the statewide planning goals.

Periodic Review & Goal 5: Periodic review is a process for local governments to examine and as necessary, update their comprehensive land use plans and development codes. The City is currently under periodic review, and has a work program approved by the Oregon Department of Land Conservation and Development. The final task in the work program requires us to address Goal 5 by inventorying wetlands, riparian corridors, and wildlife habitat inside the City's urban growth boundary (UGB), identifying which resources are significant (highest function and value), and adopting measures to protect the significant resources.

Multiple City Responsibilities: The vast majority of significant Goal 5 resources overlap in and along the creeks, rivers, and lakes inside the City's UGB. Protection of these Goal 5 resources directly relates to other municipal government responsibilities, such as floodplain management, stormwater management, drinking water supply, parks and recreation, economic vitality, health and safety, and livability.

Development Opportunities and Costs: Many of the significant Goal 5 resources inside the UGB are currently zoned as Open Space, which already limits potential development. The Federal Government and State of Oregon already regulate development activities in wetlands and waterways. The protection of Goal 5 resources will still allow for some level of development on all properties; however, it will result in additional development limitations on portions of some properties.

Cluster Development and Planned Development are options available that enable protection of natural resources on a portion of the property in exchange for increased development density on the remainder of the property. For example, if homes were clustered together on smaller lots, the wetlands and riparian areas could serve as parks and open space amenities for the residents. Preserving natural resources can also add value to property because many people would prefer to live or work in close proximity to protected natural areas.

Community Benefits: Beyond their own intrinsic value, high value/high functioning natural resources provide a variety of societal benefits. Examples of these include: regulation of river flow and groundwater levels; purification of air and water; provision of drinking water; climate control; waste absorption and breakdown; thermal regulation; nutrient cycling; recreation, education, research and spiritual opportunities; and aesthetic amenities.

Balancing Preferences & Priorities: Some community members feel strongly that the City should protect our natural resources beyond the minimum requirements of Goal 5, while others feel just as strongly that the City should do the minimum possible to comply with Goal 5. Ultimately, the City Council must decide how to balance competing points of view with multiple government responsibilities and public benefit.

NOTICE INFORMATION

A notice of public hearings was published in the *Albany Democrat Herald* May 20, 2011. Earlier in the Goal 5 process a notice of notice of public hearings was published in the *Albany Democrat Herald* on January 29, 2011. Notices of the Goal 5 process and planned public hearings were sent to over 1,000 potentially affected property owners on February 14, 2011. The proposed Comprehensive Plan and Development Code amendments have been posted on the City's website since February 15, 2010.

PROCESS SUMMARY

The proposed legislative amendments are intended to comply with the Goal 5 work tasks in the City's approved periodic review work program. The Planning Commission held public hearings on January 31, March 7, March 21, and April 4, 2011 and made a recommendation to the City Council. The City Council held a public hearing on June 8 and August 24, 2011 and will make the final decision on the Goal 5 work tasks.

Pursuant to Oregon Administrative Rule 660-25-0140 the Community Development Director will provide written notice of the City Council decision to persons who participated at the local level orally or in writing during the local process or who requested notice in writing.

Persons who participated at the local level orally or in writing during the local process leading to the final decision may object to the local government's periodic review work task submittal. To be valid, objections must:

(a) Be in writing and filed with the Oregon Department of Land Conservation and Development (DLCD)'s Salem office no later than 21 days from the date the notice was mailed by the City;

(b) Clearly identify the alleged deficiency in the work task sufficiently to identify the relevant section of the final decisions and the statute, goal, or administrative rule the task submittal is alleged to have violated;

(c) Suggest specific revisions that would resolve the objections; and

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

If you have questions about DLCD's review of this work task, contact Albany's regional representative, Ed Moore at 971-239-9453 or ed.w.moore@state.or.us.

STAFF ANALYSIS

Comprehensive Plan Amendment File CP-02-10

Amendments to the Albany Comprehensive Plan will be approved if the City Council finds that the following applicable review criteria have been met. NOTE: Code criteria are written in ***bold italics*** and are followed by the findings and conclusions.

(1) A legislative amendment is consistent with the goals and policies of the Comprehensive Plan, the statewide planning goals, and any relevant area plans adopted by the City Council.

The applicable Comprehensive Plan goals and policies are identified in *italic* type.

FINDINGS OF FACT

1.1 Statewide Planning Goals. The Oregon Administrative Rules 660, Division 23, outlines the State's procedures and requirements for complying with Statewide Planning Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. The objective of Goal 5 is to "protect natural resources and conserve scenic, historic, and open space resources for present and future generations." As part of Albany's periodic review work program requirements established by the DLCD, the City was required to inventory and establish protection programs for Albany's significant riparian corridors, wetlands and wildlife habitat.

The proposed amendments to the Comprehensive Plan are required to satisfy Goal 5 requirements, including updating the background text, goals, policies, and implementation methods related to vegetation and wildlife habitat, riparian corridors, open space, and wetlands. Three plates in the Comprehensive Plan will also be updated; Plate 3-Natural Vegetation and Wildlife will have the significant wildlife habitat of Thornton Lakes added; Plate 4-Streams, Rivers and Lakes will have the significant riparian corridors added; and Plate 6-Wetland Sites will be revised to reflect the updated local wetland inventory.

The proposed amendments also support state and federal environmental and flood management laws and Statewide Planning Goal 6: Air, Water, and Land Resource Quality; and Goal 7: Areas Subject to Natural Disasters and Hazards.

1.2 Wildlife Habitat. Albany Comprehensive Plan, Chapter 1–Natural Resources (Statewide Planning Goal 5), Vegetation and Wildlife Habitat:

Goal: *Ensure vegetation is and remains an integral part of Albany's environment.*

Policy 1: *Protect existing vegetation which possesses significant environmental, wildlife habitat, and aesthetic qualities, particularly along the Santiam Canal and the Willamette and Calapooia Rivers, their tributaries, and associated floodplains and drainageways.*

A. Policies are proposed to regulate the impacts of development within 75 feet of Thornton Lakes or require a wildlife habitat assessment in order to exceed threshold limits. The proposed amendments will help protect two species listed as "sensitive-critical" by the State in and around Thornton Lakes (the northwestern pond turtle and the western painted turtle).

B. Albany's wildlife habitat will also be supported through the proposed 50-foot "safe harbor" riparian corridor overlay district. Albany's riparian areas provide valuable habitat for wildlife and influence fish habitat. Riparian areas are particularly important migration corridors between upland and aquatic systems for a wide variety of species. It has been reported that most of Oregon's wildlife species, including amphibians and reptiles, use wetlands or riparian areas during some portion of their lifecycle.

1.3 Riparian Corridors and Open Space. Albany Comprehensive Plan, Chapter 1–Natural Resources, Open Space Resources:

Goal: *Ensure the provision of open space and the protection of natural and scenic resources.*

Policy 1: *Retain open space lands which provide the following: (d) Protection of natural hazard, wetlands, steep slopes, and other areas not suitable for development; and (e) Significant fish and wildlife habitat.*

A. The proposed Comprehensive Plan amendments will support protection measures for significant riparian corridors through policies and implementation methods.

B. The Plan amendments include retaining the Open Space zoning that includes Riparian Corridors, which contain most of Albany's water bodies and natural open spaces. The Open Space Comprehensive Plan designation is applied over natural resource lands in order to protect areas not suitable for development, Albany's rivers and tributaries, and areas where fish and wildlife habitat exist.

Implementation Method 6. *Apply the Open Space Comprehensive Plan and zoning designation to the following areas: (a) Local lakes, canals, streams, drainageways, and associated floodway; (b)Areas designated as wetlands by the City; and (c) Important vegetation and wildlife habitat areas located within the flood fringe areas.*

C. The proposed amendments will support the application of the Open Space designation on Albany's water bodies, drainageways, floodways, wetlands, riparian corridors and vegetation and wildlife habitat areas. However, no expansion of the Open Space designation is proposed.

1.4 Wetlands. Albany Comprehensive Plan, Chapter 2 – Special Areas, Wetlands (Statewide Planning Goal 5):

Goal: *Protect wetlands to ensure their continued contribution as natural areas, open space, wildlife and vegetative habitat, and storm water retention and conveyance.*

A. The proposed Comprehensive Plan amendments add background information on the functions and values of Albany's wetland inventories and significant wetlands. Proposed policies and implementation methods will strengthen existing protection measures for Albany's significant wetlands.

Policy 1: *Maintain wetland inventory information as part of the Comprehensive Plan which indicates areas within the Urban Growth Boundary which may be subject to state and federal regulations. Such information may be updated administratively as more precise information becomes available.*

Implementation Method 1: *Maintain a wetland inventory which identifies the following: (a)Wetland sites which are within the city limits, have been designated as open space and are subject to local, state, and federal land use regulations; (b) Sites which are within the city limits but are not designated as open space but may still be subject to federal and/or state land use regulations; and (c) Wetland sites within the urban fringe which will require additional information to determine the status of the resource and exact boundaries and may be subject to state and federal and future local regulation.*

B. The proposed Plan amendments will adopt Albany's updated Local Wetland Inventories by reference and Plate 6-Wetland Sites will be updated with the local wetland inventory information. The City's four Local Wetland Inventories – Southeast Industrial Area; East I-5; Willamette River, Calapooia and Oak Creek; and North Albany – are available on the Oregon Department of State Lands website: http://www.oregonstatelands.us/DSL/WETLAND/lwi.shtml

Policy 2: *Work with Linn and Benton Counties and applicable state and federal agencies to refine wetland inventory information and to develop local management measures. Until such measures are adopted, evaluate wetland characteristics and permit requirements on a case-by-case basis.*

C. The Plan amendments include policies to protect significant wetlands at the local level.

Policy 3: *Within the city limits, wetlands within the floodway shall receive maximum protection and any development proposed for these areas shall not degrade the resource.*

Implementation Method 3: *Apply the Open Space Comprehensive Plan and Zoning Designation to the following areas: Inventoried wetland sites within the city which exhibit wetland characteristics with the exception of the following types of sites: Lands committed to urban development where there are limited on-site opportunities for preservation or protection; and Lands where existing public improvements have significantly degraded the wetland characteristics.*

D. The combined restrictions on development in the floodway, which were adopted in September 2010, and those proposed for significant wetlands, provide greater protection of the resource than the Open Space designation.

1.5 Plan Updates, General. Chapter 9, Land Use Planning, Updating and Amending the Plan (Statewide Planning Goal 2):

Goal: *Undertake Periodic Review and update of the Albany Comprehensive Plan to ensure the Plan: (1) Remains current and responsive to community needs; (2) Retains long-range reliability; (3) Incorporates the most recent and reliable information; and (4) Remains consistent with state laws and administrative rules.*

A. The proposed amendments are required to satisfy a Periodic Review work task and state laws that require the City to comply with Statewide Planning Goal 5.

B. The proposed amendments will update the natural resource sections of the Plan with the most current information, and the proposed policies provide for a protection program, as required by state law and administrative rules.

Policy 2: *Base approval of Comprehensive Plan amendments upon consideration of the following: (a) Conformance with goals and policies of the Plan; (b) Citizen review and comment; (c) Applicable Statewide Planning Goals; (d) Input from affected governmental units and other agencies; (e) Short- and long-term impacts of the proposed change; (f) Demonstration of public need for the change; (g) Demonstration that the proposed amendment will best meet the identified public need versus other available alternatives; (h) Any additional information as required by the Planning Commission or City Council.*

C. The proposed amendments to satisfy Goal 5 requirements have been reviewed by other state agencies.

D. The proposed amendments were reviewed and discussed at a series of public hearings, and were available on the City's website for review and comment.

E. The proposed amendments to keep updated inventories of Albany's natural resources and establish a protection program have several short and long-term impacts in meeting other local, state and federal goals and regulations. For example, the proposed amendments will help improve water quality and temperatures and assist with floodplain and stormwater management. A healthy natural environment helps make Albany an attractive place to live and do business.

CONCLUSIONS

1.1 The proposed amendments are consistent with the goals and policies in Chapter 1, Natural Resources and Chapter 2 regarding wetlands.

1.2 The proposed amendments are consistent with the goals and policies in Chapter 9 regarding updating the comprehensive plan.

1.3 The proposed amendments to update the Plan text and to Plates 3, 4 and 6 will satisfy local requirements of Statewide Planning Goal 5.

(2) A legislative amendment is needed to meet changing conditions or new laws.

FINDINGS OF FACT

2.1 Statewide Planning Goal 5 requires all Oregon cities and counties "to conserve open space and protect natural and scenic resources." The goal itself, plus Oregon Administrative Rules (OAR) 660-23, establishes specific procedures and criteria for Goal 5 compliance. State law requires each city to adopt a comprehensive plan and implementation codes that are consistent with the statewide planning goals.

2.2 The final task in the City's periodic review work program requires us to address Goal 5 by inventorying wetlands, riparian corridors, and wildlife habitat inside the City's UGB, identifying which resources are significant (highest function and value), and adopting measures to protect the significant resources.

CONCLUSIONS

2.1 The amendment to the Comprehensive Plan text and policies are needed to comply with Statewide Planning Goal 5.

2.2 Updates to Plan Plate 3-Natural Vegetation and Wildlife Habitat; Plate 4-Streams, Rivers, and Lakes; and Plate 6-Wetland Sites reflect more current local inventory information.

Development Code Amendment File DC-05-10

Amendments to the Albany Development Code will be approved if the City Council finds that the following applicable review criteria have been met. NOTE: Code criteria are written in ***bold italics*** and are followed by the findings and conclusions.

(1) The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.

The applicable Comprehensive Plan goals and policies are identified in *italic* type.

FINDINGS OF FACT

1.1 Vegetation and Wildlife Habitat. Albany Comprehensive Plan, Chapter 1–Natural Resources (Statewide Planning Goal 5), Vegetation and Wildlife Habitat:

Goal: *Ensure vegetation is and remains an integral part of Albany's environment.*

Policy 1: *Protect existing vegetation which possesses significant environmental, wildlife habitat, and aesthetic qualities, particularly along the Santiam Canal and the Willamette and Calapooia Rivers, their tributaries, and associated floodplains and drainageways.*

Implementation Method 2 states, "*Recognize the importance of vegetation for sustaining wildlife habitat and, where possible, mitigate adverse impacts through design modifications. Especially consider the impacts on wildlife habitat when reviewing development in floodplains and vegetated hillside areas.*"

A. The current Development Code does not regulate impacts to significant wildlife habitat.

B. The proposed Habitat Assessment Overlay District (/HA) will regulate the impacts of development within 75 feet of Thornton Lakes or require a habitat assessment in order to exceed the threshold limits. This will help to protect the documented northwestern pond turtle and the western painted turtle that live in and around Thornton Lake.

1.2 Riparian Overlay Zoning District and Open Space Zone. Albany Comprehensive Plan, Chapter 1 – Natural Resources, Open Space Resources:

Goal: *Ensure the provision of open space and the protection of natural and scenic resources.*

Implementation Method 1: *Preserve floodplains and drainageways to provide basic open space framework for the community using the following guidelines: (b) designate the floodways of Oak Creek and the Calapooia River as open space.*

A. The majority of riparian areas are zoned Open Space, and the Open Space zoning has allowed impacts to the riparian area.

B. The proposed significant Riparian Corridor Overlay Zoning District (/RC) and the associated development regulations proposed in Article 6 will help to protect Albany's natural and scenic resources along Albany's rivers, lakes, and streams that include fish and other wildlife habitat.

C. The proposed amendments to further limit the uses allowed in the Open Space zoning district will help to preserve Albany's natural drainageways, riparian corridors and open spaces, including the floodways of Oak Creek and the Calapooia River.

1.3 Wetlands. Albany Comprehensive Plan, Chapter 2–Special Areas–Wetlands (Statewide Planning Goal 5):

Goal: *Protect wetlands to ensure their continued contribution as natural areas, open space, wildlife and vegetative habitat, and storm water retention and conveyance.*

Policy 3: *Within the city limits, wetlands within the floodway shall receive maximum protection and any development proposed for these areas shall not degrade the resource.*

A. The City has no local protection program for significant wetlands.

B. The proposed Significant Wetland Overlay District and regulations will provide local protection for Albany's significant wetlands.

Policy 5: *Review all land use applications to determine if wetland characteristics exist on the proposed development site. The actual extent and boundaries of wetland areas shall be determined on a case-by-case basis.*

B. The proposed Natural Resource Impact Review process will ensure proposed land use applications are evaluated for their impact on wetlands.

C. The regulations include provisions to modify the significant wetland overlay district based on state-approved wetland delineations and determinations.

Implementation Method 4: *Apply specific management measures and conditions of approval, consistent with state and federal regulations, to protect and enhance designated wetlands such as:*

a. Regulation of fill and drainage of wetland areas.
b. Limiting vegetation removal.
c. Establishing buffer and setback requirements for adjacent development.
d. Discouraging off-road vehicle use.

D. The regulations will limit fill and vegetation removal and other impacts to significant wetlands.

Implementation Method 5: *Ensure no development will result in the elimination or degradation of a wetland area which has been designated as open space, or be located totally within a wetland without acquiring permit approval from state and federal regulatory agencies and the City of Albany, and where necessary*

amending the Open Space Zoning and Comprehensive Plan designation. Also, ensure development does not infringe upon such a wetland, without meeting the following criteria:

a. The development cannot be located outside the wetland area, or the wetland is proposed to be reconfigured such that the proposed total area is at least equal in size and quality to the wetland area existing prior to the proposed development.

b. The encroachment upon the wetlands is the minimum necessary to complete the development.

c. Encroachment upon wetlands or change of drainage patterns or other actions which would adversely affect wetland characteristics have been mitigated.

d. Development review is coordinated with the Oregon Division of State Lands, the Army Corps of Engineers, and other applicable agencies and all other required state and federal permits have been obtained.

e. The applicable floodway or floodplain requirements of the Albany Development Code have been met.

f. Applicable Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resource policies of the Comprehensive Plan have been addressed.

E. The proposed wetland regulations will enhance the existing wetland regulations at the local, state and federal levels by identifying and protecting significant wetlands from development.

F. The proposed wetland regulations will bring the City into compliance with state law and administrative rules for inventorying and protecting wetlands, and will satisfy Goal 5 protection requirements.

CONCLUSIONS

1.1 The proposed amendments better achieve the goals and policies of Chapter 1 related to protecting Albany's significant natural resources by creating the overlay zoning districts, and regulations and development standards.

1.2 The proposed amendments better achieve the goals and policies of Chapter 2 related to wetlands by clarifying and strengthening existing regulations, ensuring the City is in compliance with state and federal laws and Planning Goal 5.

(2) The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.

The applicable Development Code policies and purposes are identified in *italic* type.

FINDINGS OF FACT

2.1 ADC Article 1–General Administration–Section 1.020 says *the general purpose of this Code is to set forth and coordinate City regulations governing the development and use of land. The Code is more specifically intended to do the following:*

(1) Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.

A. The proposed amendments intend to balance the welfare of Albany's citizens with the health and safety of the natural environment.

(2) Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.

B. The proposed amendments intend to satisfy the minimum state requirements to protect Albany's significant natural resources under Statewide Planning Goal 5. The amendments will also support relevant requirements of federal and state laws regarding protection for wetlands and will help to protect species listed as Threatened, Endangered, or "sensitive-critical" species.

(3) Facilitate prompt review of development proposals and the application of clear and specific standards.

C. The proposed amendments include clear and objective standards and a provision to process activities subject to review with concurrent applications or building permits.

(4) Provide for public information, review, and comment on development proposals that may have a significant impact on the community.

D. There have been several public meetings (open house, round table, public input sessions) with the Planning Commission and the City Council regarding the Goal 5 program requirements and recommendations. Notice was sent to over 1,000 owners of property potentially impacted by the proposed amendments.

(6) Establish procedures and standards requiring that the design of site improvements and building improvements (are) consistent with applicable standards and design guidelines.

E. The natural resource impact review process is proposed for many development activities within the natural resource overlay districts, which includes proposed standards as well as other applicable sections of the Code.

(8) Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards, as well as prevent the spread of blight, and help prevent crime.

F. The intent of the proposed amendments is to manage development in Albany's natural areas, which include areas within the floodplain, and steep slopes along Albany's waterways prone to erosion. The standards will manage native vegetation removal and will limit new impervious surfaces within the overlay districts in order to protect the many benefits of Albany's natural environment on human health and safety, and health of wildlife and fish.

(10) Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.

G. The impact to property owners of these amendments was designed to balance protection of Albany's natural resources, and protection of individual property rights. The proposed amendments include provisions to alleviate hardship cases, when application of the standards renders a property unbuildable.

2.2 ADC Article 3–Open Space zone purpose is: *The OS District is intended for the establishment, continuation, and preservation of agricultural uses, park and recreation areas, wildlife habitats, wetlands, natural areas, and other uses that do not involve the construction of structures other than minor facilities that might be required to conduct the principal use.*

A. The amendments would remove some of the allowed uses within the Open Space zoning district in order to better meet the purpose and intent of the Open Space zone. Uses proposed to be no longer allowed include golf and country clubs, driving ranges, swimming or tennis clubs, mining and quarrying, and fairgrounds. These amendments would not impact residential property owners with OS zoning.

B. The proposed amendments allow for property owners to amend the OS boundary at the time of proposed development to better reflect natural feature boundaries.

CONCLUSIONS

2.1 The proposed amendments are consistent Article 1–General Administration–Purpose by protecting public health and safety, complying with the state and federal environmental requirements, and strengthening existing regulations. The amendments provide standards for development in the proposed natural resource overlay districts, and notifying the public and property owners of the proposed amendments.

2.2 The proposed amendments are consistent with the purpose of the Open Space zoning district.

APPROVED: _____

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, June 8, 2011
7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Konopa called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Konopa led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Jeff Christman, Floyd Collins, Dick Olsen, Bill Coburn, and Bessie Johnson
Councilor absent Ralph Reid, Jr. (excused)

SCHEDULED BUSINESS

Proclamation for West Albany High School softball.

Konopa read a proclamation declaring June 10, 2011, as West Albany High School Girls Softball Day.

Communication

Accepting Mary Brock's resignation from the Senior Center Endowment Committee.

MOTION: Councilor Collins moved to accept the resignation of Mary Brock from the Senior Center Endowment Committee and send her a letter of thanks for her service. Councilor Johnson seconded the motion and it passed 5-0.

Continued Consolidated Legislative Public Hearing

CP-02-10/DC-05-10, amending Ordinance No. 4447, which adopted the City of Albany Comprehensive Plan and Map, and amending Ordinance No. 4441, which adopted the City of Albany Development Code by amending the Comprehensive Plan text and maps, and Development Code text relating to protection of Natural Resources (Statewide Planning Goal 5), adopting findings, and declaring an emergency.

Konopa reopened the Consolidated Legislative Public Hearing at 7:18 p.m., explaining that it is regarding legislative amendments to the Albany Comprehensive Plan, Chapters 1, 2, 7, 8, 9, and plates 3, 4, and 6; and amendments to Development Code Articles 1, 2, 3, 4, 6, 9, 11, and 22, to implement Statewide Planning Goal 5.

Collins mentioned that he attended the Work Session provided by staff for the parties interested in Goal 5.

Councilor Olsen attended the Work Session as well.

Konopa reminded those wishing to testify to please be aware that they must raise an issue with enough detail to afford the Council and parties an opportunity to respond to the issue if they later want to raise that issue on appeal or object to a periodic review work task submittal to the Oregon Department of Land Conservation & Development (DLCD). Testimony and evidence must be directed towards the approval standards staff will describe or other criteria in the Plan or Development Code which they believe apply to the decision. If additional documents or evidence are provided by any party, the City Council may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. If you testified at the hearing on May 25, please restrict testimony tonight to new information.

Staff Report

Planning Manager Heather Hansen explained that this is a legislative amendment under periodic review. The proposed amendments must achieve the City's approved Periodic Review Program and identified tasks that were approved by the Council and the state in 1997. The Goal 5 tasks include identifying the significant wetlands, riparian corridors, and wildlife habitat, and adopting a local program to protect them. She said that Oregon Administrative Rules 660-25-0140 require that the Community Development Director send written notice of the Council's decision to persons who participated at the local level during the process or who requested notice in writing. Also, persons who participate at a local level during the process leading to the final decision may object to the local government's periodic review work task submittal. To be valid, objections must:

- Be in writing and filed with the DLCD's Salem office no later than 21 days from the date the notice was mailed by the City; and
- Clearly identify the alleged deficiency in the work task sufficiently to identify the relevant section of the final decisions and the statute, goal, or administrative rule the task submittal is alleged to have violated; and
- Suggest specific revisions that would resolve the objections; and
- Demonstrate that the objecting party participated at the local level during the process.

Hansen reviewed elements of the Proposed Natural Resource Protection Program to implement Goal 5, including:

- Many land disturbing activities within the proposed overlay districts would require a natural resource impact review. Many activities are exempt, including maintenance and replacement of existing development and landscaping. There were other exemptions, but the City cannot exempt whoever asks to be exempted. That would not result in protection of the resources the City is required to protect.
- Riparian Corridor - 50-foot riparian corridor widths from ordinary high water or from upland edge of adjacent wetlands. Lower quality riparian areas can be reduced to 25-feet with enhancement of the remaining 25-feet adjacent to the resource. 321 residential properties less than 20,000 square feet are exempt; mainly existing backwards on properties that can't be further divided. This represents about 13.5 acres on these lots.
- Significant Wetlands - Most wetlands are identified as not significant. Some lower quality isolated wetlands will not be regulated locally.
- Habitat Assessment – More than 2,000 square feet of new land disturbing activity within 75-feet from ordinary high water mark around Thornton Lake would require a turtle habitat assessment.

Hansen introduced into the record three maps: Net Impact of Recommended Goal 5 Overlay Districts; Recommended Goal 5 Significant Natural Resource Protection Overlay Districts; and Local Wetland Inventory and Significant Wetland Overlay District (SW). She explained that the City already has regulations for the large majority of land within these overlay districts, mainly floodway and open space zoning. 403 acres (not including floodway or open space), or approximately 2.8% of the geographic area in the Urban Growth Boundary, not counting for the residential exemption. The net total of acres in the overlays is 1,442, which means 72% are already in open space or floodway. The breakdown is as follows: 657 acres-significant wetlands; 307 acres-waterways; 472 acres riparian corridor overlay; and 28 acres habitat assessment overlay (5 in Habitat Assessment only). She said that all significant wetlands and riparian corridors were deemed unsuitable for development and were not counted when they reviewed the impact on buildable employment land with the Economic Opportunity Analysis.

Hansen entered into the record a letter from Jim Brewer (in agenda file), the City's Attorney for any correspondence with the Grand Prairie Water Control District (GPWCD), who gave his opinion on GPWCD and Goal 5 including that special districts such as GPWCD are required to make land use decisions, and to have plans that are in compliance with statewide planning goals, including Goal 5, and therefore it is difficult to see how the City and GPWCD could have goals that are opposed in any significant manner, or how a blanket exemption from regulations that achieve Goal 5 could advance the goals of the water control district. Staff asked GPWCD to meet with them and have not received a response.

If the Council chose to do nothing about Goal 5, the consequences are outlined in ORS 197.636 and explained in Brewer's letter. Briefly, the State could require the City to use the goals and administrative rules in land use decisions until the work task is approved (this option would require more work for staff, more public hearing processes, and there would be less certainty for applicants); the State could require the City to forfeit grant money; the State could complete the work program or work task and require the City to pay the State for the work; and/or the State could require whatever other interim measures it deems necessary to ensure compliance with the statewide planning goals.

Community Development Director Greg Byrne summarized comments received from the Chamber of Commerce, emails from Mark Azevedo, an email from Bill Kinkley, a letter from the Willamette Association of Realtors, and a letter from Randy Barna (all in the agenda file). The Calapooia Watershed Council notified staff that they could provide additional information on the impacts on riparian areas, which will be part of the discussion at this meeting.

Johnson asked staff to repeat what happens if the Council does nothing. City Attorney Jim Delapoer explained what could happen if the City doesn't adopt a plan. He said that land use in Albany could be determined by statewide goals that are not familiar with our local land uses. The Land Use Board of Appeals (LUBA) could also impose goals. Appeals would not be based on the City's Comprehensive Plan. Goal 5 is the last part of the periodic review work program that the City needs to complete. If the Council just puts it off, the State may say that the City is not making a good faith effort.

Testimony

Konopa explained to the audience if anyone wished to enter an exhibit into the record as part of their testimony, please briefly describe the letter, photo, or map, and then present it to the City Clerk.

Mark Grenz, MultiTech Engineering, 1155 13th Street SE, Salem, OR, representing the Granada Land Company, said he had participated in the work session held Friday. He needs more time to work with staff to understand the impacts and to provide some alternatives to consider. He provided two photos and two site maps of the property he has been working with (in agenda file). He explained the photos indicate that with significant wetlands designation it makes it difficult to develop much in the area. He reviewed the pictures and how they were able to deal with wetlands within that development.

Councilor Christman asked, is that all one piece of property? Grenz said yes, but it is only being used as an example.

Christman said, you mentioned you have possible alternatives. He asked, have you given them to staff? Grenz said not yet.

Grenz continued by showing the site plans for the apartments and what the costs would have been if implemented with the proposed Goal 5 requirements. He asked the Council to consider giving them more time to make this work.

Jack Burrell, K&D Engineering, 276 Hickory Street NW, Albany, explained maps that represented areas affected by sensitive resource overlays and wetlands. He said wetlands make up 212 acres and their study indicated that 46% of the developable land acreage would be designated. It leaves "pods" of developable land. What is available is hard to get to. He used the Kennel property on the south side of Highway 20, near Coastal Farms, as an example of property that had wetlands that were mitigated. If the Council adopts the new rules that are being proposed, the Kennel property will have minor pieces that could be developable. He said the wetlands represent a large chunk of land in the Urban Growth Boundary and buildable lands inventory. He would like more time, as well, to give input.

Burrell also provided a map (in agenda file) of property west of the Mennonite Village and explained what happened before Scott Lepman owned the property. He said if the new rules are adopted there would be significant reduction to that developable property as well.

Councilor Coburn asked, what part would be developable if new rules are not adopted? Burrell explained what area could be developed. He added that they are on the verge of getting the wetlands mitigated.

Collins asked, have other communities adopted Goal 5? Burrell said he understands Lebanon and Salem have gone through their Periodic Review and it has been accepted.

Collins said Albany has current rules that lack the adoption of Goal 5, and other communities have already adopted their Goal 5. How do the standards in those communities compare to the standards Albany is proposing? Burrell said Candace Ribera may be able to speak to that more fully but his understanding is they do not have the overlays on top of the Division of State Lands' (DSL) present rule of authority.

Burrell said the Albany Planning Commission did not approve this plan; they passed it on to the Council. He feels that there hasn't been enough community involvement. The process should include a cross section of affected citizens. Some of the very people whose property is affected haven't had an opportunity to be involved. He asked the Council to put the brakes on the process to include and consider all ideas.

Candace Ribera, 100 Ferry Street NW, Albany, representing Scott Lepman, wanted to make it clear that neither she nor Scott was advocating abandoning Goal 5. She read a prepared report that included eight maps (in agenda file).

Ribera, commenting on Collins' question, said regulations are all over the board in other cities. They rely on DSL rules regarding wetlands.

Olsen asked, is the DSL regulations cast in stone? Hansen wasn't sure. She said it is to the City's advantage to have our own regulations.

Scott Lepman, 100 Ferry Street NW, read his letter (in agenda file).

Konopa asked the Council if they planned to make a decision tonight. Council discussion was to have testimony with a time limit, and continue the public hearing to a set date. The Council agreed to cease testimony at 10:00 p.m.

Janet Steele, 435 1st Avenue W, representing the Albany Area Chamber of Commerce, summarized a letter asking the Council to do the minimum required to comply with state law to reduce the negative economic impact of Goal 5. She recommended that the Council leave the record open.

Mark Azevedo, 1210 Skyline Drive NW, wanted to explain why these areas are important to protect. All areas have significant floodways. He explained the route of the Willamette River and why North Albany

has such a significant floodway area. All the flooded areas are where the diversity of wildlife exists. Biologically they are important; because of floods they are important. Even for economic development warnings are important. He used flooded areas along the Mississippi River as an example of people building where they shouldn't have and suffering the loss of their homes. He commented on turtles in North Albany and referred to his information that was provided in the previously mentioned emails. He commended the Planning staff for their diligence. He said they need to finish the Goal 5 process. Putting off the decision making process should be weighed with a diversity of opinions.

Diana Amos, 1030 North Albany Road, Albany, Oregon, and 14 El Molino Drive, Clayton, California, read a letter (in agenda file) dated May 28, 2011, from The Acker Group LLC, Wetlands & Forestry Consultants regarding their property. She was concerned about being able to build on her property. The buildable area seems to be getting smaller and smaller with the new rules. She needs more time to protect her property.

Frank Amos, 1030 North Albany Road, Albany, Oregon, and 14 El Molino Drive, Clayton, California said these are complicated regulations. They need more time to understand the effects on their property. He was concerned about the turtle habitat report not being accurate. Although they recognize the need for Goal 5, they would argue for doing the minimum requirement. He asked the Council for flexibility of the rules at a reasonable cost. They would like to coexist with the turtles and enjoy their property.

John Pascone, 435 West 1st. Street, urged the Council to have restraint on commercial lands and take care not to impact employment properties. He believes balance is in order.

Dan Watson, 710 East Thornton Lake Drive, submitted a letter with recommended additions to the Natural Resource Districts, Article 6, (in agenda file). He believes Goal 5 needs to provide planning flexibility and provide buffers. This is not a "no rules and no protection" versus some rules and some protection. Since the original proposal, he recognized that some extreme language has been taken out. He commented on Open Space, saying that regulations that exist are not for urban use but do contain some uses. The proposed revisions would be for no use. He asked the Council to keep the existing uses. The community should provide a base for manufacturing. He was concerned that the way the turtle regulations are written his entire property could be declared turtle habitat. He isn't sure, but would like that uncertainty about declaring turtle habitat taken out of the new code.

Ed Schultz, 130 West First Avenue, representing GPWCD, provided a letter to the Council with his comments (in agenda file). He said the District works quietly, effectively, and they provide water movement. Since being formed after the 1964 flood, the District has improved the Albany area streams and has armored, straightened, repaired, and constructed the streams to a design. That design, set by various federal agencies, was intended to keep the local creeks within their banks and provide for an additional amount of area within the banks of the creeks for flood waters. He said that in the City's evaluation of the natural resource, they are supposed to identify conflicts. One of those conflicts is the work of the GPWCD. Once identified, then there must be an analysis of whether the resource should be fully protected, partially protected, or not protected. They strongly recommend that the Council direct staff to amend provisions for the existence of the District and its beneficial impact. They also would like to remove language within the Comprehensive Plan and designation on the Zone Map that would overlay the water courses within the Grand Prairie Water Control District's jurisdiction. Simply put, the limitations that would apply in the limitations of work, vegetation removal, and gaining of access easements would not be allowed by the proposed regulations. They request that within the jurisdiction of the Grand Prairie Water Control District there be no overlay zones applied. The area would still be protected. They also had warm water concerns and suggested language changes to Article 6. Schultz thanked staff and the Council for meeting on Friday and suggested that they take one month off to allow interested parties to work with staff to try to resolve some of these issues.

Staff Response

Byrne responded that the map handed out by Grenz is inaccurate. The way the riparian corridor is depicted is not correct.

Byrne commented that the building concerns that the Amos family have may be unfounded as their permit would be reviewed under current regulations and the building application would not be affected.

Byrne said that Watson's entire property would not be affected by the changes. The turtle habitat is assessed in only the first 75 feet from water's edge.

Byrne said the Council heard two very similar numbers for wetland acreage in the community, both around 666 acres. If the City Council does nothing the City's wetlands will be regulated by DSL. If the Council does accept the proposed Goal 5 changes, DSL will still regulate the wetlands. The City is adding significant wetlands as a part of Goal 5. They are required to do so. He commented that the Council heard that Salem does not, but what he has read of their Goal 5 they do.

Byrne said staff met with Linn County, and they use a 50 foot buffer around all wetlands and a 50 foot buffer around all riparian areas, and permit no structures within those areas. What staff is proposing for Albany is less stringent than Linn County.

Byrne said it is true that DSL doesn't require the buffer, but the DLCD does, as a part of Goal 5. It is a different state agency with different administrative rules.

Public Process

The Council had a discussion regarding continuing the public hearing, and scheduling a work session for more citizen input and for staff to clarify issues.

MOTION: Collins moved to continue the public hearing to the July 27, 2011, Regular Council Session, at 7:15 p.m., and have staff meet with the interested parties. Johnson seconded the motion and it passed 5-0.

Recess

The meeting was recessed at 10.09 p.m. for a Council break.

Reconvene

The meeting was reconvened at 10:19 p.m.

Public Hearings

Supporting an application to the Community Development Block Grant Program for a Housing Rehabilitation Project.

Konopa explained that this public hearing is to hear public comment on several issues related to Albany's past and future participation in the Community Development Block Grant Program (CDBG). This hearing process allows the City to meet federal requirements that the City obtain comments from citizens and from agencies advocating for low-and-moderate income persons.

Staff Report

Planner II Anne Catlin explained that the reason for the hearing is to close out the 2009 CDBG grant, which was $400,000 that went to the Linn Benton Regional Revolving Loan Fund for housing rehabilitation for the Albany area and outlining Linn County cities. They have another request for Albany to continue to participate in the same program and to hear any requests from any other agencies that provide loans to low-income individuals.

Tom Hatley, 532 Calapooia Street, Community Services Consortium, said they served 19 households this past year. The majority of the loans were for housing repairs, roofing, and correcting substandard housing. The average loan was around $17,000 and 50% were female, head of household. The program has been funded the last four years, with the sponsored support of Benton County and the City of Albany. They have spent over $1.1 million for low income housing repair loans. They expect to serve 21 households with the new grant.

Konopa opened the public hearing at 10:26 p.m.

Testimony

No one wished to speak.

Konopa closed the public hearing at 10:27 p.m.

MOTION: Coburn moved to adopt the resolution in support of an application to the Community Development Block Grant Program for a Housing Rehabilitation Project. Olsen seconded the motion and it passed 5-0, and was designated Resolution No. 6003.

Adopting the 2012-2016 Capital Improvement Program (CIP).

Staff Report

Senior Accountant Jeff Babbitt said the CIP process started in November of 2010, and this is the final public hearing before the Council decides to adopt it. The public hearing was posted in the usual places and staff received no comments on any of the projects.

Konopa opened the public hearing at 10:28 p.m.

Testimony

No one wished to speak.

Konopa closed the public hearing at 10:28 p.m.

MOTION: Coburn moved to adopt the resolution calling for the adoption of the 2012-2016 Capital Improvement Program. Collins seconded the motion and it passed 5-0, and was designated Resolution No. 6004.

Declaring the City's eligibility to receive state shared revenues and the City's election to receive state shared revenues.

Konopa opened the public hearing at 10:30 p.m.

Testimony

No one wished to speak.

Konopa closed the public hearing at 10:30 p.m.

MOTION: Collins moved to adopt the resolution declaring the City's eligibility to receive state shared revenues. Olsen seconded the motion and it passed 5-0, and was designated Resolution No. 6005.

MOTION: Coburn moved to adopt the resolution declaring the City's election to receive state shared revenues. Johnson seconded the motion and it passed 5-0, and was designated Resolution No. 6006.

Adopting the FY 2011-2012 Annual Budget.

Konopa noted that there was a new budget resolution on the dais.

Konopa opened the public hearing at 10:32 p.m.

Staff Report

City Manager Wes Hare commented that Albany is in a relatively good position compared to other cities. The City is still able to provide all services despite the reduction in the number of employees, although some services have been decreased. He added that the Albany Rural Fire District has notified the City that it is going to contribute $400,000 towards the purchase of equipment.

Finance Director Stewart Taylor explained that the change between the resolution in the original agenda and the resolution on the dais is a grant that modifies the Budget Committee Approved FY 2011-2012 Budget by $5,000.

Testimony

No one else wished to speak.

Konopa closed the public hearing at 10:36 p.m.

MOTION: Coburn moved to adopt the FY 2011-2012 Budget resolution on the dais, which includes the $5,000 grant. Johnson second the motion and it passed 5-0, and was designated Resolution No. 6007.

Business from the Public

Charlene Morrison, 1350 NW Springhill Drive, submitted a petition with 357 signatures (in agenda file) to resolve the dog Blue Raymond's case. She read the contents of the petition, which included additional concerns about the Police report. She explained what she thinks is wrong with the current ordinance. She said they want the City to pardon Blue.

Cherie Holverson, 608 Alpine Meadow, read a letter (in agenda file) from Susan Jones, the Manager of the Pet Hotel where Blue is being housed, regarding his behavior.

First Reading of Ordinances

Levying a charge under the provisions of Chapter 10.16 of the Albany Municipal Code for an in-lieu-of assessment for interceptor sewer for property described as Tax Lot 1000, Parcel 10S-04W-35DB; and declaring an emergency.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE LEVYING A CHARGE UNDER THE PROVISIONS OF CHAPTER 10.16 OF THE ALBANY MUNICIPAL CODE FOR AN IN-LIEU-OF ASSESSMENT FOR INTERCEPTOR SEWER FOR PROPERTY DESCRIBED AS TAX LOT 1000, PARCEL 10S-04W-35DB; AND DECLARING AN EMERGENCY."

MOTION: Coburn moved to have the ordinance read a second time in title only. Johnson seconded the motion and it passed 5-0.

Delapoer read the ordinance a second time in title only.

MOTION: Johnson moved to adopt the ordinance. Coburn seconded the motion and it passed 5-0, and was designated Ordinance No. 5757.

Levying an assessment against property specifically benefited by sewer connections and the assessment of a Sewer System Development Charge for property described as Tax Lot 1000, Parcel 10S-04W-35DB and Site Address 1465 Scenic Drive NW; and declaring an emergency.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE LEVYING AN ASSESSMENT AGAINST PROPERTY SPECIFICALLY BENEFITED BY SEWER CONNECTIONS AND THE ASSESSMENT OF A SEWER SYSTEM DEVELOPMENT CHARGE FOR PROPERTY DESCRIBED AS TAX LOT 1000, PARCEL 10S-04W-35DB AND SITE ADDRESS 1465 SCENIC DRIVE NW; AND DECLARING AN EMERGENCY."

MOTION: Coburn moved to have the ordinance read a second time in title only. Christman seconded the motion and it passed 5-0.

Delapoer read the ordinance a second time in title only.

MOTION: Coburn moved to adopt the ordinance. Johnson seconded the motion and it passed 5-0, and was designated Ordinance No. 5758.

Amending Albany Municipal Code Chapter 2.88, Initiative and Referendum Procedures, relating to explanatory statements for proposed measure initiated or referred by petition.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE CHAPTER 2.88, INITIATIVE AND REFERENDUM PROCEDURES, RELATING TO EXPLANATORY STATEMENTS FOR PROPOSED MEASURES INITIATED OR REFERRED BY PETITION."

MOTION: Coburn moved to have the ordinance read a second time in title only. Christman seconded the motion and it passed 5-0.

Delapoer read the ordinance a second time in title only.

MOTION: Coburn moved to adopt the ordinance. Christman seconded the motion and it passed 5-0, and was designated Ordinance No. 5759.

Adoption of Resolutions

ST-08-06, Infrastructure Improvements – School to Knox Butte, accepting the Engineer's and Financial Investigation Reports and setting a public hearing.

Assistant Public Works Director/City Engineer Mark Shepard commented that the Engineer's Report and Financial Investigation Report in the agenda had been revised from those previously submitted on May 11, 2011. It was discovered that Timber Ridge Street construction costs expended by the Greater Albany Public Schools for the benefit of this project during the first Local Improvement District were not charged to this project. It has been corrected. The City is participating in the project by contributing water system development charge funds in the maximum amount identified in the Initial Engineer's Report. He said if the Council adopts the resolution, a public hearing will be set for June 22.

MOTION: Coburn moved to adopt the resolution accepting the Engineer's and Financial Investigation reports for ST-08-06, and to set a public hearing for June 22, 2011. Olsen seconded the motion and it passed 5-0, and was designated Resolution No. 6008.

Repealing Resolution No. 5919 and revising fees and charges for Parks & Recreation services for Fiscal Year 2011-2012.

Parks & Recreation Director Ed Hodney said only one fee has been changed.

MOTION: Johnson moved to adopt the resolution repealing Resolution No. 5919 and revising fees and charges for Parks & Recreation services for Fiscal Year 2011-2012. Coburn seconded the motion and it passed 5-0, and was designated Resolution No. 6009.

Rescinding Resolution No. 3402 establishing procedures for the billing of special assessments and providing for the notification and collection of delinquent assessment accounts.

Delapoer said the current process is cumbersome and staff wants to streamline the process to collect on some long term liens.
Taylor said staff would still come to the Council on a case by case basis.

MOTION: Coburn moved to adopt the resolution repealing Resolution No. 3402 establishing procedures for the billing of special assessments and providing for the notification and collection of delinquent assessment accounts. Johnson seconded the motion and it passed 5-0, and was designated Resolution No. 6010.

Entering into an intergovernmental agreement to accept a transportation and growth management grant from the state of Oregon, acting by and through its Department of Transportation, to complete the City of Albany, South Albany Area Plan.

MOTION: Coburn moved to adopt the resolution having the City enter into an intergovernmental agreement to accept a transportation and growth management grant from the state of Oregon, acting by and through its Department of Transportation, to complete the City of Albany, South Albany Area Plan. Johnson seconded the motion and it passed 5-0, and was designated Resolution No. 6011.

Adoption of Consent Calendar

1) Approval of Minutes
   a) May 9, 2011, City Council Regular Work Session.
   b) May 9, 2011, City Council Special Work Session.
2) Accepting right-of-way dedication deeds from:
   a) Kenneth G. Marshall 401(k) profit sharing plan. RES. NO. 6012
   b) Geary Street Partners, LLC. RES. NO. 6013
   c) David E. Smith and Martha H. Smith. RES. NO. 6014
3) Approving liquor license for Chanda Corporation, D/B/A Ciddici's Pizza, 133 Fifth Avenue SE.
4) Approving annual liquor license renewals.

MOTION: Coburn moved to adopt the Consent Calendar as presented. Johnson seconded the motion and it passed 5-0.

Award of Bid

ST-11-02, 20th and 21st Avenue Rehabilitation.

MOTION: Collins moved to award the contract for ST-11-02, 20th and 21st Avenues Rehabilitation, to the low bidder, Kerr Contractors, Inc. of Woodburn, Oregon, for $266,515. Johnson seconded the motion and it passed 5-0.

Appointment

Appointing Vicki Biggs to the Senior Center Endowment Committee.

MOTION: Johnson moved to appoint Vicki Biggs to the Senior Center Endowment Committee. Coburn seconded the motion and it passed 5-0.

BUSINESS FROM THE COUNCIL

Coburn noticed the taste of chlorine in the city water. Public Works Director Diane Taniguchi-Dennis will have staff check it out.

Johnson said she will be out of town June 29 to July 6.

NEXT MEETING DATE

A Special Work Session is scheduled for Monday, June 13, 2011, at 4:00 p.m., in the Municipal Court Room. The regular Work Session is scheduled for Monday, June 20, 2011, at 4:00 p.m., in the Municipal Court Room. The Regular Session is scheduled for Wednesday, June 22, 2011, at 7:15 p.m., in the City Council Chambers of City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 11:00 p.m.

Respectfully submitted by,

Betty Langwell, MMC
City Clerk

Reviewed by,

Stewart Taylor
Finance Director

APPROVED:

CITY OF ALBANY
CITY COUNCIL (WORK SESSION)
Municipal Court Room
Monday, July 11, 2011
Immediately following meeting with
Benton County Board of Commissioners

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 5:54 p.m.

ROLL CALL

Councilors present: Councilors Dick Olsen, Jeff Christman, Bill Coburn, and Bessie Johnson.

Councilors absent: Councilor Floyd Collins.

UPDATE ON 337 SIXTH AVENUE SE DEMOLITION

Konopa said this was added after the Joint Work Session with Benton County. It is not a public hearing, it is just an update on the situation at 337 6th Avenue.

City Manager Wes Hare said the complaints about this property date back to 2007. The City's ordinance does not call for a hearing before the City Council in order for the demolition to take place. There was a Linn County court hearing, but this case does not require any Council action. However, since there have been newspaper articles about the property and since the public perception may be that the Council is responsible for the demolition, staff thought it would be good to show the information that was not presented in the newspaper.

Hare said that Building Official Manager Melanie Adams has done an outstanding job dealing with cases like this. They are not easy to deal with and property owners are often unwilling to step forward and take responsibility. The City is not in the business of demolishing houses and has only demolished one other house, following an arson. Hare said it is a tribute to Adams that she has been able to resolve most of the cases.

Adams said, we are not anxious to tear down this house; but staff has worked this case for four years. Staff has spent a lot of time trying to resolve the issues with the property owner in many ways, to no avail. Staff is now proposing demolition because they are out of options. Buildings are often overlooked as a hazard to a community. This house and the one across the street from it can hurt tenants and destroy property values. It can also take lives.

Adams said the photos that were printed in the *Albany Democrat-Herald* depicted what appeared to be a clean interior of the house. The article did not note that prior to it being cleaned up, 17 people, including children, lived in this 1,700 square foot house. The pictures Adams will show in the PowerPoint presentation will show why this house is dangerous and is a hazard to the community.

Adams gave a PowerPoint presentation (see agenda file).

Adams pointed out that the only permit taken out on this property, despite all the changes made to it, is one that was required by the power company to get the power turned back on.

Adams pointed out that the bathroom in the basement was shared by those in units that did not have bathrooms and also by tenants that lived across the street.

Adams pointed out that some of the spaces the landlord rented to tenants had no windows, lights, or running water.

Adams said there are no smoke detectors or lights in the hallway. There is also mold throughout the house.

Community Development Director Greg Byrne passed out a document regarding the chronology of events at this property (see agenda file). Byrne reviewed the document, which spanned four years of contacts staff made with the property owner. It is important for the Council to understand this chain of events. He said, we used every tool in our tool box over the last four years and demolition is the last option available.

Also on the dais was a letter dated July 23, 2008, from Hackleman Neighborhood Watch Co-Leaders, to the Drapers, including more than five pages of signatures (see agenda file).

Adams said, we try hard to work with folks to make sure things are safe but we did not get cooperation from this owner. We have tried to get voluntary compliance, but without success. There has been recent press about getting someone to step in and rehabilitate the house, and while that would be great, no one has come forward. Staff believes that at this juncture, demolition is the best option.

Councilor Bill Coburn asked, is the house for sale? Adams said, not that she knows of. Byrne said they heard it mentioned but it has not been listed. Coburn asked, do we have someone ready to demolish it? Adams said yes, we have a crew ready to go this week.

Councilor Jeff Christman said the picture in the newspaper showed a different interior than what was in the PowerPoint. He asked what the owners did to the house from the date of the PowerPoint pictures, to the date the pictures were taken for the newspaper. Adams said they painted the inside. It may look cleaner because the house is vacant, but the hazards remain.

Christman asked how many electrical meters there are. Adams said there are three. She noted that the meters were not permitted.

Councilor Bessie Johnson said she took a tour of the house with the Linn County appraiser that works in the area. She said that she has seen houses in worse shape than this. Also, the sheet rocking has been done. Johnson thinks there has been some work done because it doesn't look as bad as that. She thinks there are some different stories going around. She can see that there are a lot of things wrong with the house. She too wonders if it is for sale.

Discussion followed about whether or not to take testimony from those in the audience, even though it was not advertised as a public hearing.

Coburn would like to get more information. He realizes that staff spent four years on this, but sometimes these things can come to a head and then folks take notice. If the right person came in, perhaps they could gut the house and start over.

Councilor Dick Olsen said he walked around the house and it feels like a solid structure to him. He also talked to Councilor Floyd Collins and Olsen said Collins agreed with Olsen that they should put off the demolition until they get some indication as to whether there might be a buyer.

Olsen said that when the article showed up in the paper, it was the first he had heard of it. He also disagrees with the timeline in which it is reported to have been built. He passed out three pages of historic properties (see agenda file). He thinks it was built before 1900. There needs to be more research as to the date of the house to see if it is historical. He wants to hold off on demolition and have a public hearing.

Management Assistant/Public Information Officer Marilyn Smith pointed out that this house has been on the Code Enforcement reports that staff presents to Council each quarter. It has been on the report for four years.

Christman is frustrated that this is the second time the Council is being asked to overturn a judge's ruling, and in this case it was a court decision. He said, we need to get to a decision quickly and then move on.

The Council directed staff to schedule a public hearing for July 27, 2011.

Byrne reminded the public and the Council that they are operating under a court order. If the public or the Council want access to the house they need to ask Building staff. The building is supposed to be secure and empty.

ADJOURNMENT

There being no further business, the Work Session adjourned at 6:43 p.m.

Respectfully submitted,

Mary A. Dibble, MMC
Deputy City Clerk

Reviewed by,

Stewart Taylor
Finance Director

APPROVED: _____

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, August 10, 2011
7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Konopa called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Konopa led the pledge of allegiance to the flag.

OATH OF OFFICE FOR NEW WARD II-A COUNCIL MEMBER

City Clerk Betty Langwell administered the oath of office to Ray Kopczynski, newly appointed Ward II-A Council member.

ROLL CALL

Councilors present: Jeff Christman, Ray Kopczynski, Floyd Collins, Dick Olsen, Bill Coburn, and Bessie Johnson

SCHEDULED BUSINESS

Communications

Accepting resignations from Roz Keeney and Heidi Overman from the Landmarks Advisory Commission.

MOTION: Councilor Johnson moved to accept the resignations of Roz Keeney and Heidi Overman from the Landmarks Advisory Commission, and send them a letter of thanks for their service. The motion was seconded by Councilor Coburn and passed 6-0.

Business from the Public

Richard Owen, 810 Cox Street, felt the City was corrupt by violating the 4th amendment of the Constitution of the United States. He felt the City had "seized" the Draper property at 337 6th Avenue. He said the City can't take a person's property and Albany should build Mr. Draper a new four tenant building.

Adoption of Consent Calendar

1) Approval of Minutes
   a) June 20, 2011, City Council Work Session.
   b) July 11, 2011, City Council Joint Meeting with Benton County.
   c) July 18, 2011, City Council Joint Meeting with Linn County.

MOTION: Coburn moved to adopt the Consent Calendar as presented. Johnson seconded the motion and it passed 6-0.

Award of Bids

W-08-01, Valley View Reservoir seismic improvements.

Public Works Director Mark Shepard said the Engineer's estimate was $553,000. All the bids came in higher than the estimate, primarily due to the addition of interior painting of the reservoirs. The painting was not identified in the original project scope but during design the need to paint the interior of the reservoirs was identified and included in the project. It will minimize the need to take the reservoirs out of service in the future and will realize some economy of scale for completing the work at one time. After discussion staff determined that the bid results were indicative of the actual projects costs.

Councilor Collins was concerned about the downward trend of revenue in the Water Fund and the funding of this project. Shepard explained that several projects were completed below their budgeted amount in FY 2010-2011 and estimated revenues were very conservative, which has resulted in a higher than anticipated beginning balance in the Water Capital Projects Fund. The higher beginning balance is available to cover the additional project cost of $255,600. He speculated that water revenues were down because of a wet and cold spring, residential and commercial water conservation, and a high volume of foreclosed property. But, having received more than had been budgeted provided the City with a larger beginning balance.

There followed discussion regarding comments in the paper about using water operating funds for capital projects.

MOTION: Collins moved to award W-08-01, Valley View Reservoir seismic improvements, in the amount of $591,000 to the low bidder, Legacy Construction Inc. Coburn seconded the motion and it passed 6-0.

WL-11-01-B, Broadway Reservoir mixing improvements.

Shepard explained that improvements to the City's largest reservoir are required to correct missing inadequacies and improve water quality. Improvements include modification to the existing inlet/outlet piping, installation of pipe supports, mixing valves, and other piping improvements. He said they anticipate it will come in under budget.

Coburn was concerned that the company would be responsible considering they bid so low. Shepard said they are considered responsive and responsible. Staff will be monitoring them carefully.

MOTION: Collins moved to award WL-11-01-B, Broadway Reservoir mixing improvements, in the amount of $150,670 to the low bidder, Elk Mountain Construction of Sandy, Oregon. Coburn seconded the motion and it passed 6-0.

Approval of Intergovernmental Agreement

ST-12-01 Jackson Street Reconstruction – Surface Transportation Program fund exchange.

Shepard explained that in this exchange the state gives "State of Oregon funds" to the City in exchange for Federal funds. The state funds have fewer strings attached and are easier to administer for the City. The percentage of exchange and terms were negotiated through the League of Oregon Cities with the Oregon Department of Transportation. He said due to the estimated cost of the project, the full amounts from 2008 and 2009, and a portion of the 2010 fund exchange programs will be used on the Jackson Street Reconstruction project.

City Manager Wes Hare said the cost of administering and conforming to federal requirements is much more than the 6% charge for the exchange.

MOTION: Coburn moved to authorize the City Manager to execute an intergovernmental agreement with the Oregon Department of Transportation (ODOT) to exchange Federal Surface Transportation Program (STP) funds for state funds. Johnson seconded the motion and it passed 6-0.

Reports

Receiving Code Enforcement Team Fourth Quarter Report for Fiscal Year 2010-2011.

Building Official Manager Melanie Adams reported on the demolition of the Draper house, thanking the Police for their help. She mentioned that as the house was demolished, they uncovered a lot of dry rot including in the main interior area of the house. Rehabilitation would have been more expensive than originally thought.

Hare mentioned that the Draper's were losing the house before the City stepped in; they were being foreclosed and their lender, Fannie Mae, had considered tearing it down themselves.

Johnson asked if there was any progress on Woodland Square. Konopa said there has been some movement and it looks like it may be sold. An offer has been received and accepted on the property.

November and December 2011 Council Meeting Dates.

The following meeting schedule was acceptable to the Council:

November 2011 Meeting Schedule

➢ Wednesday, November 2	7:15 p.m. Regular Council Meeting
➢ Monday, November 7	4:00 p.m. Work Session
➢ Wednesday, November 9	7:15 p.m. Regular Council Meeting
➢ Monday, November 14	No meeting
➢ Wednesday, November 16	5:15 p.m. CARA & ARA Meetings
➢ Monday, November 21	No meeting
➢ Wednesday, November 23	No meeting
➢ Monday, November 28	No meeting

December 2011 Meeting Schedule

➢ Monday, December 5	4:00 p.m. Work Session
➢ Wednesday, December 7	7:15 p.m. Regular Council Meeting

➢ Monday, December 12	4:00 p.m. Work Session
➢ Wednesday, December 14	5:15 p.m. CARA & ARA Meetings 7:15 p.m. Regular Council Meeting
➢ Monday, December 19	No meeting
➢ Wednesday, December 21	No meeting
➢ Wednesday, December 28	No meeting

Appointments

Landmarks Advisory Commission.

MOTION: Collins moved to appoint Kate Foster and Camron Settlemier to the Landmarks Advisory Commission. Councilor Kopczynski seconded the motion and it passed 6-0.

BUSINESS FROM THE COUNCIL

Dog ordinance work group update.

Konopa explained that this work group would be reviewing the Dangerous Dog Ordinance. She has appointed a cross section of citizens interested in the subject that could provide input for discussion. They will also be drawing on the expertise of consulting professionals from the medical field and a volunteer veterinarian from the Oregon State University Vet School. They could have gotten a local veterinarian but didn't want to put them in an uncomfortable position in the community.

Hare suggested the work group also draw on the expertise of staff, such as the Police and City Attorney.

Collins suggested the group's recommendation be back in front of the Council shortly after Labor Day.

MOTION: Collins moved to ratify the appointment of Councilors Dick Olsen and Floyd Collins, Mayor Sharon Konopa, lay members Larry Holverson, Max Frederick, and Mark Azavedo, to the Dangerous Dog Ordinance Work Group. Kopczynski seconded the motion and it passed 6-0.

Other business.

Johnson congratulated Mark Shepard on his promotion to Public Works Director. She also asked if Hare could check on getting air conditioning in the Audio/Video room, and if Council meetings are going to continue on past 9:00 p.m., that they take a short recess.

Collins said he heard from a constituent that a disabled lady living on 7th Street has a perpetual garage sale. He asked, can the City issue a permit if there is a hardship? What are the options? Staff will investigate.

Kopczynski said that because he is unfamiliar with local companies, could the construction company location be added to the Bid Tab in the agenda. Public Works will implement.

NEXT MEETING DATE

The next scheduled Work Sessions are Monday, August 15, 2011, and Monday, August 22, 2011, in the Municipal Court Room, at City Hall, at 4:00 p.m.

The next scheduled Regular Session is Wednesday, August 24, 2011, in the Council Chambers, at City Hall, at 7:15 p.m.

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:05 p.m.

Respectfully submitted by,

Betty Langwell, MMC
City Clerk

Reviewed by,

Wes Hare
City Manager

TO: Albany City Council

VIA: Wes Hare, City Manager

FROM: Edward Boyd, Chief of Police

DATE: August 5, 2011, for the August 24, 2011, City Council Meeting

SUBJECT: Justice Assistance Grant (JAG Grant) Funding

RELATES TO STRATEGIC PLAN THEME:
- A Safe City
- Effective Government

Action Requested:

By Resolution, approve the transfer from the JAG Grant Fund to the Capital Replacement Fund to reimburse grant expenditures mistakenly charged to the Capital Replacement Fund, Equipment Replacement Program, and appropriate the remaining balance of the grant proceeds.

Discussion:
In Fiscal Year 2009-10, the City received $120,600 from the Department of Justice-JAG Formula Distribution (Resolution No. 5866, dated November 9, 2009). Grants received under the JAG program are formula based and the allocation for each unit of government was predetermined under the Byrne Justice Assistance Grant (JAG) program. The total Linn County regional allocation was $120,700, to be shared between four agencies including the Linn County Sheriff's Office, the City of Albany Police Department, City of Lebanon Police Department and City of Sweet Home Police Department. The regional allocation for the Albany Police Department was $30,100.

During Fiscal Year 2009-10, $113,700 was expended through regional distribution. Of the Albany Police Department's $30,100 allocation, $23,300 was mistakenly charged to the Police Capital Replacement Fund (217), Equipment Replacement Program. This resolution will create authority to transfer $23,300 from the Grant Fund (203) to the Capital Replacement Fund to correct the error. It will also give authority to spend the remaining $6,900 of the grant proceeds that were not budgeted in the current fiscal year. As originally intended, all of the $30,100 allocated to the Albany Police Department has been used to improve our radio and communications systems.

Budget Impact:
The JAG grant allows improvement of the police radio and communications systems without spending additional City General Funds.

Grant Fund: Transfer $23,300 from Unappropriated Beginning Fund Balance to the Capital Replacement Fund, Equipment Replacement Program. Increase appropriations in the JAG Grant by $6,900.

AB:ndd
Attachment: Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING APPROPRIATION OF UNAPPROPRIATED BEGINNING FUND BALANCE IN THE JAG GRANT FUND.

WHEREAS, in Fiscal Year 2009-2010, the Albany City Council accepted funds from the Recovery and Reinvestment Act of 2009 for the Byrne Memorial Justice Assistance Grant (JAG); and

WHEREAS, during Fiscal Year 2009-2010, the City of Albany Police Department charged $23,300 of grant expenditures to the Capital Replacement Fund; and

WHEREAS, there is a balance remaining of $6,900 in the JAG Grant Program.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Albany authorizes a $30,200 increase in expenditures in the Grant Fund, JAG Grant Program and an increase in expenditures of $23,300 in the Capital Replacement Fund for Fiscal Year 2011-12.

BE IT FURTHER RESOLVED that the appropriation will be applied to the following account numbers:

	Fund/Dept/Prog/Object	Debit	Credit
Grant Fund	203-30-5078-49905		$30,200
	203-30-5078-91205	$23,300	
	203-30-5078-70005	$ 6,900	
Capital Replacement Fund	217-10-1010-49052		$23,300
	217-10-1010-70005	$23,300	

DATED AND EFFECTIVE THIS 24TH DAY OF AUGUST 2011.

_____
Mayor

ATTEST:

_____
City Clerk

TO: Albany City Council

VIA: Wes Hare, City Manager

FROM: Ed Gallagher, Library Director

DATE: August 18, 2011, for the August 24, 2011, City Council Meeting

SUBJECT: Transfer from Beginning Balance

RELATES TO STRATEGIC PLAN THEME: • Effective Government

Action Requested:

Adopt resolution increasing appropriations for the purchase of children's library books.

Discussion:

On January 14, 2011, the Library received a $10,000 bequest for Children's books from the estate of Irene Vandenburgh. The money was deposited into the Gifts and Donations line item of the General Fund. The Library did not spend the money last fiscal year, and would now like to purchase Children's books and materials in the current fiscal year.

Budget Impact:

Increase appropriations for 100-45-1701-61376 by $10,000. This would decrease the General Fund Contingency by the same amount.

EG/smd
Attachment: Resolution

RESOLUTION NO. _____

A RESOLUTION TRANSFERING APPROPRIATION FROM THE BEGINNING BALANCE TO THE LIBRARY

WHEREAS, on January 14, 2011, the Library received a bequest in the amount of $10,000 from the estate of Irene Vandenburgh dedicated for the purchase of children's materials; and

WHEREAS, the funds were not expended in the 2010-2011 fiscal year; and

WHEREAS, the funds were not appropriated in the 2011-2012 budget,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Albany authorizes a $10,000 increase in expenditures in the General Fund, Library Program for the current fiscal year.

BE IT FURTHER RESOLVED that the appropriation will be applied to the following account numbers.

	Fund/Dept/Prog/Object	Debit	Credit
General Fund	100-45-1701-61376	$10,000	
	100-10-1003-99005		$10,000

DATED AND EFFECTIVE THIS 24TH DAY OF AUGUST, 2011.

_____
Mayor

ATTEST:

_____
City Clerk

TO: Albany City Council

VIA: Wes Hare, City Manager

FROM: Ed Gallagher, Library Director

DATE: August 17, 2011, for the August 24, 2011, City Council Meeting

SUBJECT: Surplus Property Disposal

RELATES TO STRATEGIC PLAN THEME: • Effective Government

Action Requested:

Declare Library movie security cases surplus, and authorize sale to another public Library.

Discussion:

The Library continues to pursue cost-effectiveness in its operations, and the enhanced security RFID tags for DVD's has improved to such an extent that the hard plastic cases are no longer needed. Public Libraries throughout the country that do not employ RFID technology still utilize these cases. We have been adding cases for several years to accommodate our large movie collection, and will be selling approximately 3,200 cases. We will hold onto enough cases to use for multi-disc movies. We have listed the cases for sale on the Library listservs for several months, and currently have a buyer in Arkansas.

Budget Impact:

We anticipate recovering approximately $8,000, which will be used to offset continuing RFID maintenance costs.

EG/smd

STATE OF OREGON
INTERGOVERNMENTAL GROUND LEASE AGREEMENT

THIS LEASE AGREEMENT, effective October 1, 2013, is by and between the CITY OF ALBANY, OREGON (Lessor), and the STATE OF OREGON, acting by through its Military Department (Lessee).

Parties: LESSOR: City of Albany
333 Broadalbin Street SW
PO Box 490
Albany, Oregon 97321
ATTN: City Manager
Phone: (541) 917-7501; Fax: (541) 917-7511

LESSEE: State of Oregon acting by and through its
Military Department
P.O. Box 14350
Salem, Oregon 97309-5047
ATTN: Installations Division
Phone: (503) 584-3494, Fax: (503) 584-3584

Lessor hereby leases to Lessee and Lessee takes from Lessor the Premises together with any appurtenances thereto, described as follows:

The parties acknowledge and agree that time is of the essence with respect to all the terms, conditions and provisions of this Lease; therefore, the Lessor leases to the State and the State leases from Lessor the Premises described below under the following terms and conditions:

1. Premises. Approximately **4.92 acres of land** located at 3800 Knox Butte Road, Albany, Linn County, Oregon 97321, otherwise identified as Tax Account Number 831445 and as Tax Lot 104 on Tax Map 11S03W04D, as shown on the attached Exhibit A – Tax Map.

2. Term. The original term of this Lease shall commence **October 1, 2013,** and continue through **September 30, 2043.**

3. Rent. Lessee shall pay Base Rent in the amount of $1.00 annually, payable in advance within 10 days of the execution of this Lease.

4. Option to Extend. If Lessee is not in default, Lessee shall have the option to extend this Lease for one (1) additional extension term of ten (10) years. The extension term shall commence on the day following the expiration of the immediately preceding term. Notice exercising the extension option shall be delivered to Lessor in writing not less than one hundred and eighty (180) days prior to the expiration of the preceding term. If such notice is given, all terms and conditions of this Lease, except as expressly amended, shall apply during the extension term. Accordingly, the monthly Base Rent for the extension terms shall be $1.00 per year.

5. Use of Premises. Lessee may use the Premises for an armory/readiness center, business offices, training, storage, and other lawful purposes including but not limited to functions related to the conduct of its business as a state agency.

6. Lessor Covenants. Lessor covenants that it has the right to make this Lease and to lease the Premises to Lessee; that possession of the Premises will be delivered to Lessee free of other tenants and of conflicting claims; that the use of the Premises by Lessee for the specific uses set forth in the Section above titled "Use

of Premises" is not in violation of any federal, state or local statute, regulation or ordinance, including the acknowledged comprehensive land use plans and regulations of the city or county in which Premises are located, and that on paying the rent and performing its covenants of this Lease, Lessee may enjoy the rights granted by this Lease free from rightful interference by any third party.

7. Improvements and Alterations.

(a) Several buildings have been previously constructed on the Premises, by the Lessee under the prior Lease between the CITY OF ALBANY, OREGON, Lessor, and the MILITARY DEPARTMENT OF THE STATE OF OREGON, Lessee, dated October 1, 1973, as amended by Lease Extension Notice executed on August 16, 1993, in the locations shown on the attached Exhibit B – Improvements.

(b) Lessee may construct new improvements or alter existing improvements or place fixtures, partitions, personal property, and the like, on the Premises at its own expense. All construction, alteration or improvement must be completed in a good and workmanlike manner. Lessee agrees to limit the height of any structure on the Premises to a maximum of seventy (70) feet above finish grade level at that point on said Premises or ten (10) feet below the clear zone approach envelope as defined by the current Federal Aviation Regulations, whichever is lower.

8. Maintenance and Repair. Lessee shall maintain in good condition the Premises and all of the improvements or structures thereon.

9. Utilities and Services. Lessee shall promptly pay any utility charges for services and utilities incurred in connection with the use, occupancy, operation and maintenance of the Premises, including but not limited to electricity, gas, water, sewer, trash removal, janitorial services and supplies, window washing, premises security, and the future installation, current maintenance and repair of any Lessee required telephone and data services.

10. Taxes and Liens.

(a) Lessor and Lessee are currently exempt from real property taxes under the laws of the State of Oregon. In the event the taxing authority in the county where the Premises are located assesses real property taxes against the Premises, Lessee shall pay when due all taxes, if any, levied against the Premises and on any improvements made or placed on the Premises, whether due to a change in the tax classification of the Premises, or otherwise.

(b) Lessee shall keep the Premises free of all liens and encumbrances.

11. Insurance. The State of Oregon is self insured for its property and liability exposures, as subject to the Oregon Tort Claims Act, ORS 30.260 through 30.300. A Certificate of Self Insurance will be provided, upon request of the Lessor. Lessor shall provide for its own liability coverage for the Premises.

12. Default. Neither party shall be in default under this Lease until written notice of the unperformed obligation has been given and that obligation remains unperformed after notice for fifteen (15) days in the case of a payment or for thirty (30) days in the case of other obligations. If the obligation cannot be performed within the thirty-day period, there shall be no default if the responsible party commences a good faith effort to perform the obligation within such period and continues diligently to complete the performance. In case of a default the nondefaulting party may terminate this Lease with thirty (30) days prior written notice to the defaulting party, and it shall be entitled to recover damages or any other remedy provided by applicable law, or it may elect to perform the defaulting party's obligation and recover from the defaulting party the costs plus interest at the legal rate for judgment. If Lessee makes such expenditures as the nondefaulting party, those expenditures may be deducted from the rent.

13. Waiver of Subrogation. Neither Lessor nor Lessee shall be liable to the other for any loss arising out of damage to or destruction of the Premises or the building or the contents thereof, when such loss is caused by any of the perils which are or could be included within or insured against by a standard form of fire insurance with extended coverage, including sprinkler leakage insurance, if any. All such claims against one another for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Lessor or Lessee or by any of its respective agents, servants or employees. Each party shall fully provide its own property damage insurance protection at its own expense, and each party shall look to its respective insurance carriers for reimbursement of any such loss, and further, the insurance carriers involved shall not be entitled to subrogation under any circumstance.

14. Casualty Damage. If the Premises or improvements thereon are damaged or destroyed by fire or other casualty to such a degree that the Premises are unsuitable for the purpose leased, Lessee may restore the improvements to substantially the same condition existing prior to the destruction or damage or may terminate this Lease by giving written notice of termination within ninety (90) days after destruction of or damage to the improvements. If Lessee elects to restore the improvements, Lessee shall do so within one hundred and eighty (180) days after giving notice to Lessor of Lessee's election. If Lessee elects to terminate the Lease, Lessee shall remove the improvements within ninety (90) days after giving notice to Lessor of Lessee's election. Lessee is not entitled to any refund of prepaid rent if Lessee terminates the Lease under this section.

15. Assignment and Subletting. Lessee shall have the right to assign this Lease or sublet portions of the Premises and/or of the Improvements to another State agency, or sublet any parking spaces to state employees, at any time during the Term or extension term, so long as said sublet period does not exceed thirty (30) days at any one occurrence, without express approval of Lessor; and Lessee may rent any portion of the Premises to other parties as part of the Oregon Military Department Rental Program outlined in ORS 396.

16. Notices. Notices between the parties shall be in writing, effective when personally delivered to the address specified herein under "Parties" on Page 1, or if mailed, effective forty eight (48) hours following mailing to the address for such party specified above or such other address as either party may specify by notice to the other.

17. Right of Inspection. Lessee will allow Lessor, or Lessor's agent, to enter on the Premises at reasonable times, and in a reasonable manner so as to disturb the business of the Lessee as little as is reasonably possible, for the purpose of inspection.

18. Confidentiality of Business Information. Lessor and Lessee acknowledge that Lessee's permitted use of the Premises may include the creation, management and retention of business information of a personal or confidential nature, and that the unauthorized acquisition or disclosure of such information may be grounds for civil and/or criminal liability. Lessor and Lessee, for themselves, their agents, employees and contractors, agree that, subject to the Oregon Public Records Law, ORS chapter 192, they will refrain from any action that reasonably would be deemed to jeopardize the confidentiality of business information of the other party or to expose such information to disclosure, whether such information has been identified to the other party as confidential or otherwise, and will reasonably cooperate with each other to affirmatively protect the confidentiality of all information so designated as confidential or otherwise of a sensitive nature. Lessor and Lessee acknowledge and agree that violation of the provisions of this section, except when required under the Public Records Law, may constitute a material breach of the Lease, for which the non-violating party may terminate the Lease and for which additional remedies may also be available.

19. Holdover. With thirty (30) days prior written notice to Lessor Lessee may hold over this Lease for a period not to exceed two (2) months after the end of the lease term without obtaining prior consent of Lessor. If Lessee holds over the lease term, a tenancy from month to month shall be created at the same rental rate as the immediately preceding month's, and the holdover shall not be construed as an exercise of any renewal

option contained herein. Lessee holding over the Lease longer than the first two (2) months shall be subject to Lessor's consent.

20. Surrender at Expiration.

(a) Before expiration or earlier termination of the lease, Lessee shall remove all personal property, furnishings, and trade fixtures, leaving the Premises in good condition, normal and reasonable wear and tear excepted.

(b) The structures and improvements constructed and installed by Lessee on the Premises shall remain the property of Lessee until the termination of this lease. Upon termination of this lease, whether at the expiration of the term or earlier in the event of default, the structures and improvements shall become the property of Lessor.

21. Termination. At any time during the lease term, Lessee may terminate this Lease without further obligations or liability to Lessor, with not less than one hundred eighty (180) days prior notice to Lessor.

22. Counterparts. This Lease may be executed in two or more counterparts, by facsimile or otherwise, each of which is an original, and all of which together are deemed one and the same Lease, notwithstanding that all parties are not signatories to the same counterpart.

23. NO PRESUMPTION AGAINST DRAFTER. Lessor and Lessee understand, agree and acknowledge that: (a) This Lease has been freely negotiated by both parties; and (b) That, in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

24. Merger. THIS LEASE CONSTITUTES THE ENTIRE LEASE BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS LEASE SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS LEASE. THE PARTIES, BY THE SIGNATURE BELOW OF THEIR RESPECTIVE AUTHORIZED REPRESENTATIVES, HEREBY ACKNOWLEDGES THAT THE PARTIES HAVE READ THIS LEASE, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Lessee Initial & Date 8/10/11 Lessor Initial & Date _____

This Lease shall not become effective and shall not be binding upon the State of Oregon or any agency thereof until it has been executed, in the signature spaces provided below, by all parties to this Agreement, including those whose approval is required.

LESSOR: CITY OF ALBANY

By _____

Date _____

LESSEE: STATE OF OREGON acting by and through its Military Department

By _____

Date _____

APPROVAL: STATE OF OREGON acting by and through its Department of Administrative Services

By _____
Facilities Division

Date _____

EXHIBIT
1. Exhibit A – Tax Map (attached)
2. Exhibit B – Improvements (attached)

0187 ONG Albany KO 4/27/11 (5)

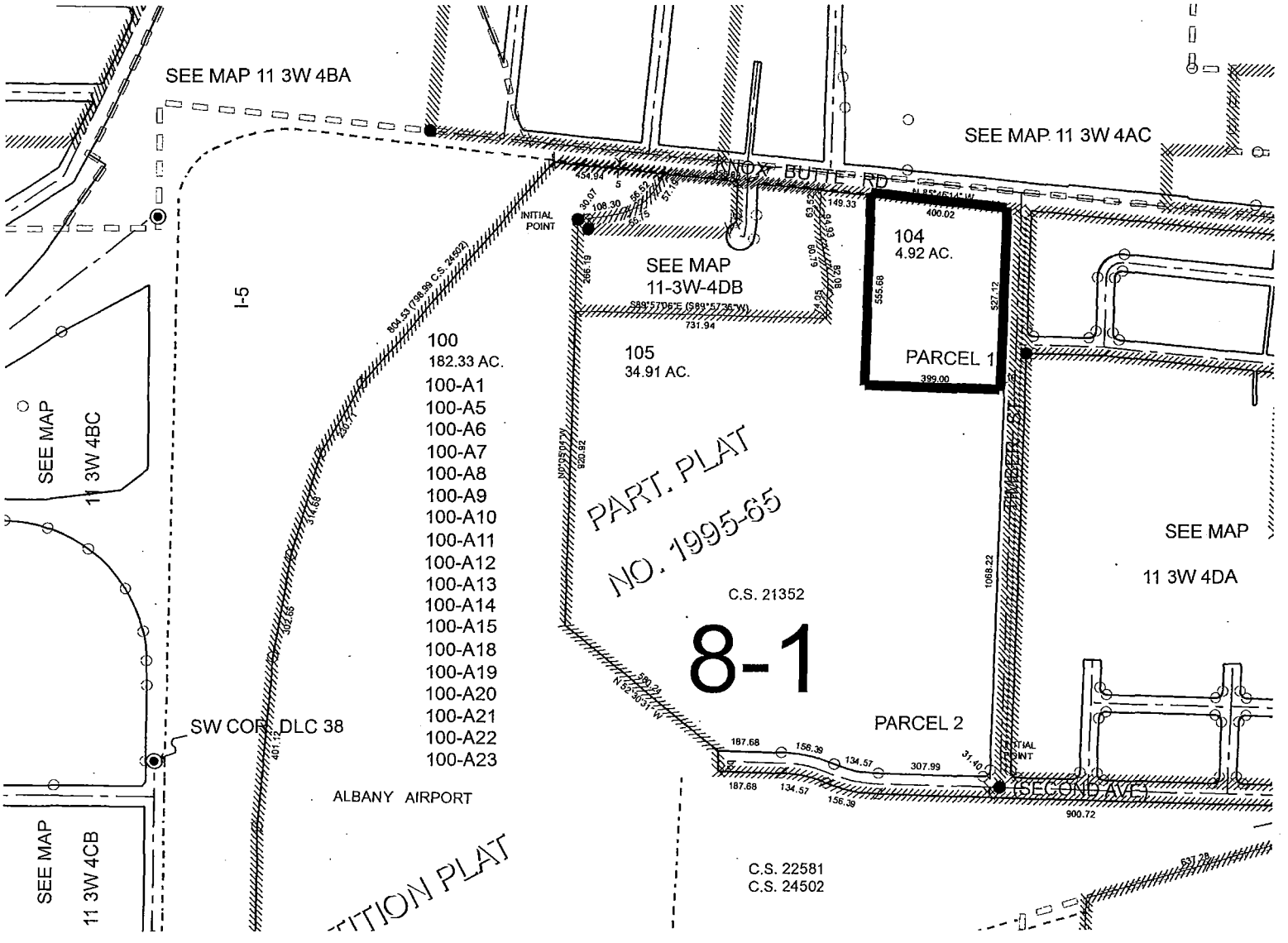


Exhibit A - Tax Map
Lease 0187

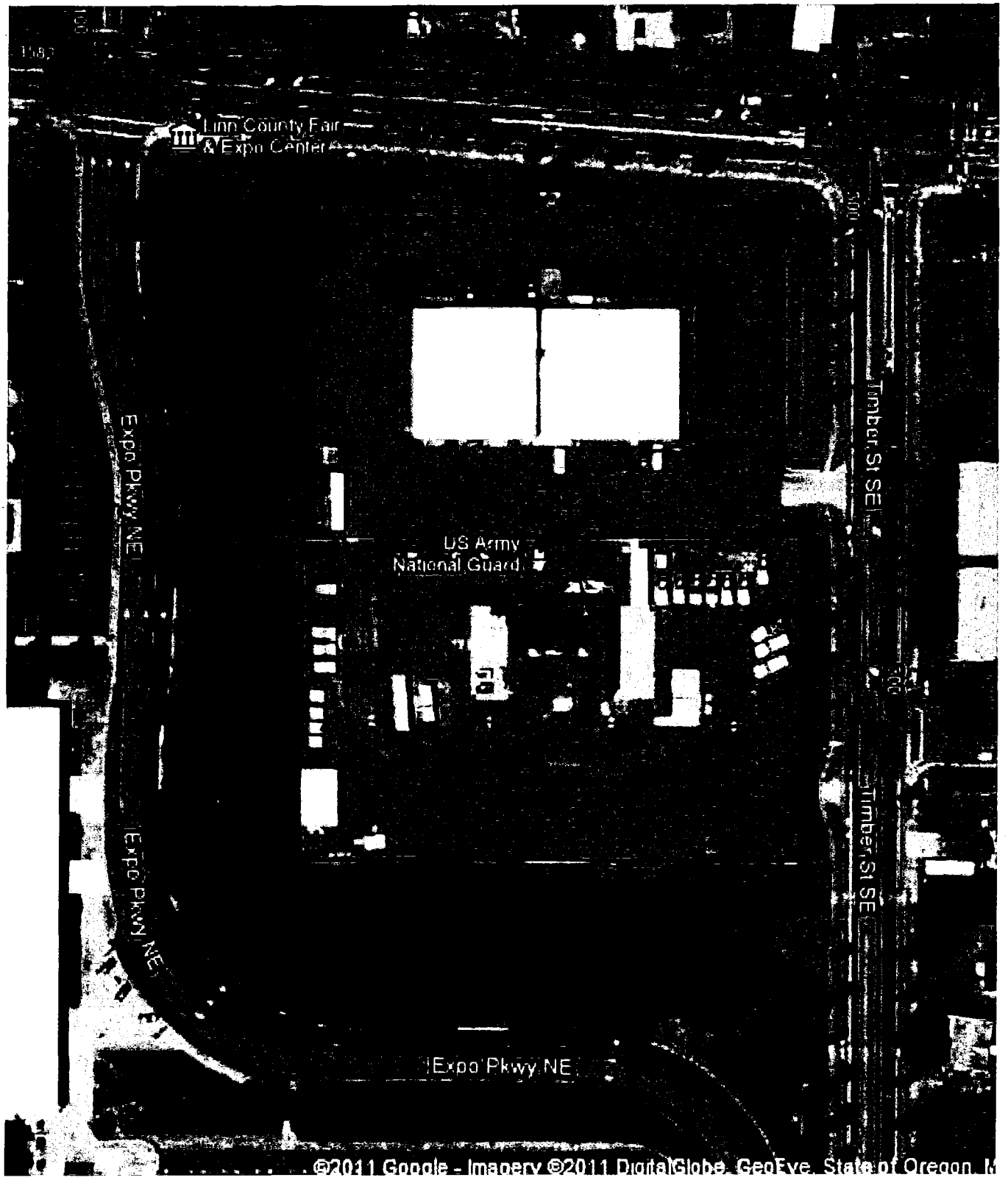


Exhibit B - Improvements
Lease 0187

TO: Albany City Council

FROM: Sharon Konopa, Mayor

DATE: August 16, 2011, for August 24, 2011, City Council Meeting

SUBJECT: Appointments as City Council Representatives

RELATES TO STATEGIC PLAN THEME: • An Effective Government

Action Requested:

Council approval of the following appointments to fill the unexpired terms:

Council Audit Committee

Ray Kopczynski *[City Council]* (vacant term expires: 12-31-2012)
(filling Ralph's vacant seat)

Linn County Local Public Safety Coordinating Council

Ed Boyd, Police Chief (4-year term expires: 08-31-2015)

Transient Lodging Tax Advisory Committee

Dick Olsen (vacant term expires: 12-31-2012)
(filling Ralph's vacant seat)

Discussion:

None.

Budget Impact:

None.

SK:ldh

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