NOTICE OF PUBLIC MEETING
CITY OF ALBANY
CITY COUNCIL
Council Chambers
333 Broadalbin Street SW
Wednesday, September 28, 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. PROCLAMATION
   a. Oregon Days of Culture. [Page 1]
   Action: _____

5. SCHEDULED BUSINESS

   a. Business from the Public

   b. First Reading of Ordinance
      1) CP-02-10 and 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 becoming effective December 1, 2011. [Pages 2-170]
      Action:_____ ORD. NO._____

   c. Adoption of Consent Calendar
      1) Approval of Minutes
         a) June 22, 2011, City Council Regular Session. [Pages 171-176]
         b) July 13, 2011, City Council Regular Session. [Pages 177-183]
         c) July 25, 2011, City Council Work Session. [Pages 184-186]
         d) August 22, 2011, City Council Work Session. [Pages 187-190]
         e) August 24, 2011, City Council Regular Session. [Pages 191-196]
      2) Approving a liquor license for Sweet Red, Inc., D/B/A Sweet Red Coffee Bistro & Wine Bar, 208 First Avenue SW. [Page 197]
   Action: _____

   d. Reports
      1) Airport Advisory Commission recommendation on Fixed Base Operator proposals. [Pages 198-199]
      Action: _____
      2) W-01-04, Siemens equipment purchase settlement agreement. [Pages 200-209]
      Action: _____

6. BUSINESS FROM THE COUNCIL

7. NEXT MEETING DATE: Work Session October 10, 2011
Regular Session October 12, 2011

8. 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.

PROCLAMATION

OREGON DAYS OF CULTURE

OCTOBER 1-8, 2011

Whereas, culture draws us together in common purpose, understanding, and celebration; and

Whereas, Oregon's 1,300 arts, heritage, and humanities nonprofits—museums, libraries, theaters, historical societies, arts centers, and heritage sites—are the heart of our communities; and

Whereas, the Oregon Culture Trust presents Oregon Days of Culture, October 1-8, during National Arts and Humanities month, to encourage Oregonians to celebrate, participate, and give to Oregon culture; and

Whereas, October 8, 2011, marks the 9th anniversary of Oregon's innovative cultural tax credit, encouraging new public and private investment in Oregon culture; and

Whereas, the Oregon Cultural Trust is smart public policy, like vote-by-mail, the bottle and beach bills, that makes Oregon a proud thought-leader nationwide; and

Whereas, supporting culture, by giving to cultural nonprofits, is vital to preserving the past, sustaining the present and creating the future.

NOW, THEREFORE, be it resolved that I, Sharon Konopa, Mayor of the City of Albany, Oregon, do hereby proclaim October 1 – 8, 2011, to be

OREGON DAYS OF CULTURE

in Albany, Oregon, and I call upon residents, especially during these eight days, to participate in Oregon culture, to celebrate its vibrancy and depth, and to give to the arts, heritage, and humanities to ensure their future vitality.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Albany to be affixed this 28th day of September 2011.

_____

Sharon Konopa, Mayor

TO: Albany City Council

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

FROM: Heather Hansen, Planning Manager HH

DATE: September 22, for the September 28, 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: 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 maintenance and replacement 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*

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

Policy Direction:

Direction from Council

On August 24, 2011, the council decided to take some time to review the written input submitted the night of the hearing. At a work session on September 12, 2011, the Council reviewed and discussed much of the written input, and gave direction to staff to make a number of revisions that would not end up weakening the proposed Goal 5 program.

Revisions for Review in Agenda Packet

Proposed revisions in the agenda packet address the abovementioned direction given by City Council, as well as a request by the Parks & Recreation Department Director, Ed Hodney, to allow parks and recreation uses as permitted uses in the Open Space zone; they are highlighted in yellow in the following sections of the Comprehensive Plan (Exhibit A) and Development Code (Exhibit G):

- Comprehensive Plan – Chapter 1 – Open Spaces, Scenic and Historic Resources (Goal 5) – Wetland Resources. *Added reference to ORS definition of a wetland and struck a portion of a sentence related to Talking Water Gardens.*
- ADC Article 6
  - Natural Resource Districts – 6.010 Overview. *Changed 'most' to 'some.'*
  - Open Space Zoning District
    - 6.030 Uses Permitted. *Moved 'Parks and recreational facilities identified in the City's Parks, Recreation & Open Space master plan' from conditional to permitted use.*
    - 6.050 Exempt Uses
      - (1) *Removed the word 'Temporary' from in front of emergency procedures.*
      - (7) *Changed language so it's clear that new farming practices that don't further impact the resource would be allowed.*
    - 6.065 District Boundary Refinements. *Revised language so previously filled wetlands and floodplain are eligible for an administrative boundary refinement.*
  - Significant Natural Resource Overlay Districts
    - 6.260 Overview. Added the Albany Native Plant List to the section contents.
    - 6.280 Lands to Which These Regulations Apply. B. Significant Wetland Overlay District (/SW). *Slight revision to wording. Does not change meaning.*
    - 6.290 Exempt Activities
      - (1) *Removed the word 'Temporary' from in front of emergency procedures.*
      - (7) *Changed language so it's clear that new farming practices that don't further impact the resource would be allowed.*
    - 6.310 Natural Resource Impact Review Standards B. Additional Requirements, Limitations, and Exceptions for Specific Activities in Riparian Corridor and Significant Wetland Overlay Districts. (2) Structures and Land Altering Activities.
      - (b) Permanent Alteration Within the Riparian Corridor. (iii). *Added language clarifying that improvements could be within 25 feet if otherwise allowed or exempted.*

  - (d) Private Construction of Public Non-Master Planned Transportation Facilities and Privately Owned Transportation Facilities (v). *Added 'or other design that meets ODFW fish passage requirements.'*
  - (e) Private Construction of Non-Master Planned Utilities and Privately Owned Utilities. (ii). *Added 'where reasonably feasible' regarding common trenches.*
- 6.400 Mitigation Standards.(2) Local Mitigation Standards (a) *Removed 'in all instances' and added 'unless the activity is otherwise exempted per this Section of the Code.'*
- Added 6.420 Albany Native Plant List. *Modifications of the list will be processed administratively.*
- 6.440 District Amendments. *Changed 'must be based on a specific development proposal' to 'must be based on new site-specific information.'*

- ADC Article 22 – 22.400 Definitions.
  - Unbuildable Land. *Added 'under the same ownership.'*
  - Undeveloped Property. *Minor revision. Doesn't change meaning.*
  - Noxious Weeds. *Removed sentence. Superfluous.*
  - Significant Wildlife Habitat Areas. *Added 'and shown on Plate 3 of the Albany Comprehensive Plan.'*

Budget Impact:

The planning application fees cover 10-15% of the actual cost, therefore, implementing Goal 5 will further increase staff workload without sufficient budget to support increased staffing levels.

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 EFFECTIVE DECEMBER 1, 2011. (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, continued the public hearing to July 27, 2011, 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, one of the specific issues identified by the City Council was providing an alternative to onsite enhancement in riparian corridors for properties encumbered by easements or rights-of-way; and

WHEREAS, one of the revisions to the proposed amendments includes an "in-lieu-of-payment" option for properties encumbered with easements and rights-of-way that would preclude onsite enhancement; and

WHEREAS, funds received by the City as "in-lieu-of-payments" will be dedicated for riparian corridor enhancements on City-owned property consistent with the requirements in Article 6 of the Albany Development Code; and

WHEREAS, on July 27, 2011, the City Council opened and continued the public hearing to August 24, 2011, to enable the newly appointed City Councilor to participate in the Goal 5 adoption process; 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 closed the hearing to allow time to review the written testimony submitted at the hearing; and

WHEREAS, on September 12, 2011, the City Council held a work session, reviewed much of the written testimony from the August 24, 2011, then directed staff to revise some of the proposed amendments and bring them to the September 28, 2011, City Council meeting; and

WHEREAS, on September 28, 2011, the City Council held a public hearing, reviewed the revisions to the amendments proposed by staff based on their direction, 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 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.

Section 11: A City fund is established to receive "in-lieu-of-payments" that will be dedicated for riparian corridor enhancement on City-owned property consistent with the requirements in Article 6 of the Albany Development Code.

Section 12: IT IS HEREBY adjudged and declared that this ordinance will be in full force and effect on December 1, 2011.

Passed by the Council:_____

Approved by the Mayor:_____

Effective Date: December 1, 2011

_____
Mayor

ATTEST:

_____
City Clerk

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 Reports**:**

~~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~~**R**ecreational 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 **in ORS 196.800(16)** 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 Analysis: 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 ~~the~~**a** 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~~WWG): 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.**

REPLACEMENT of
PLATE 3-Natural Vegetation and Wildlife Habitat

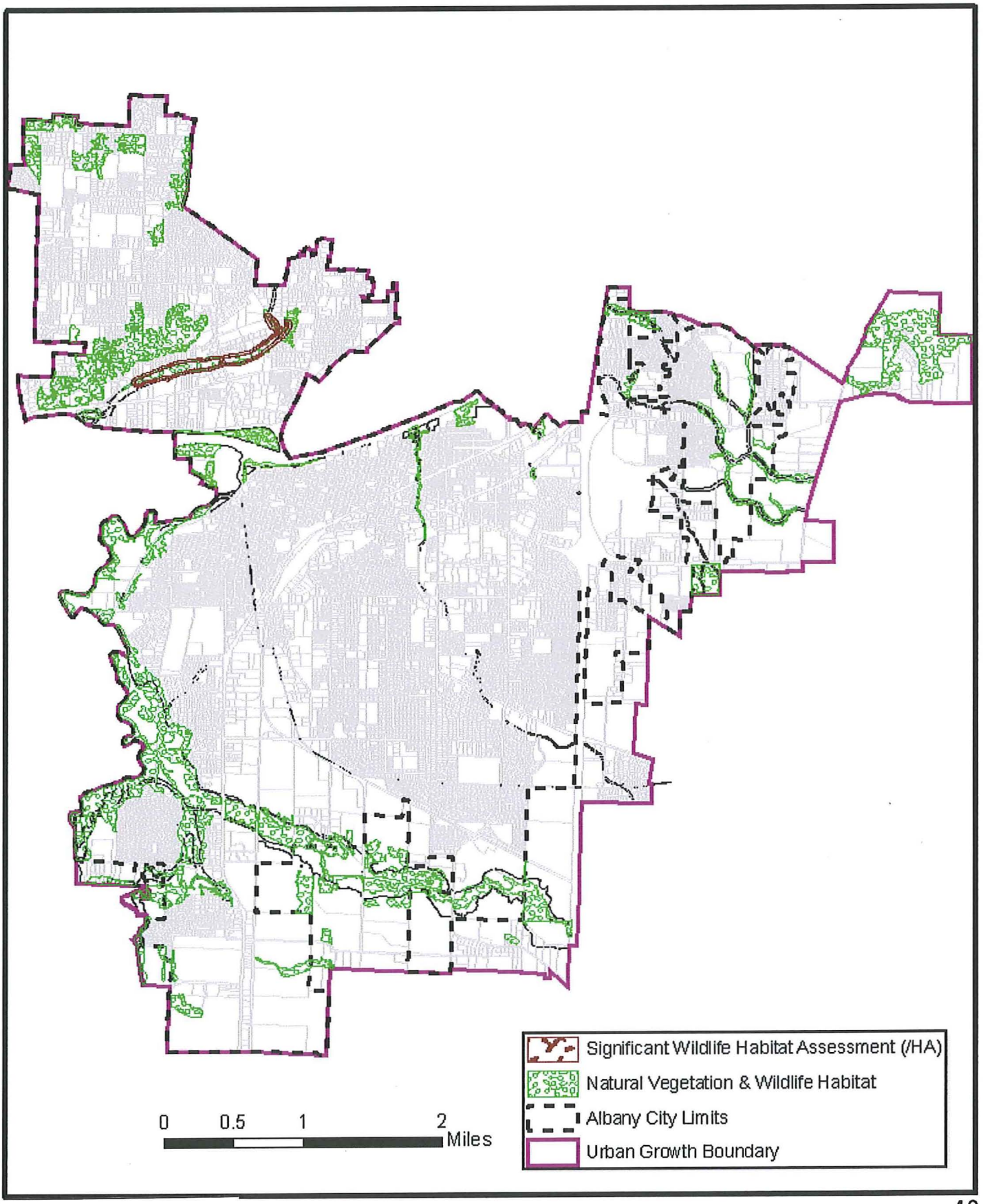


EXHIBIT B

REPLACEMENT of
PLATE 4-Streams, Rivers and Lakes

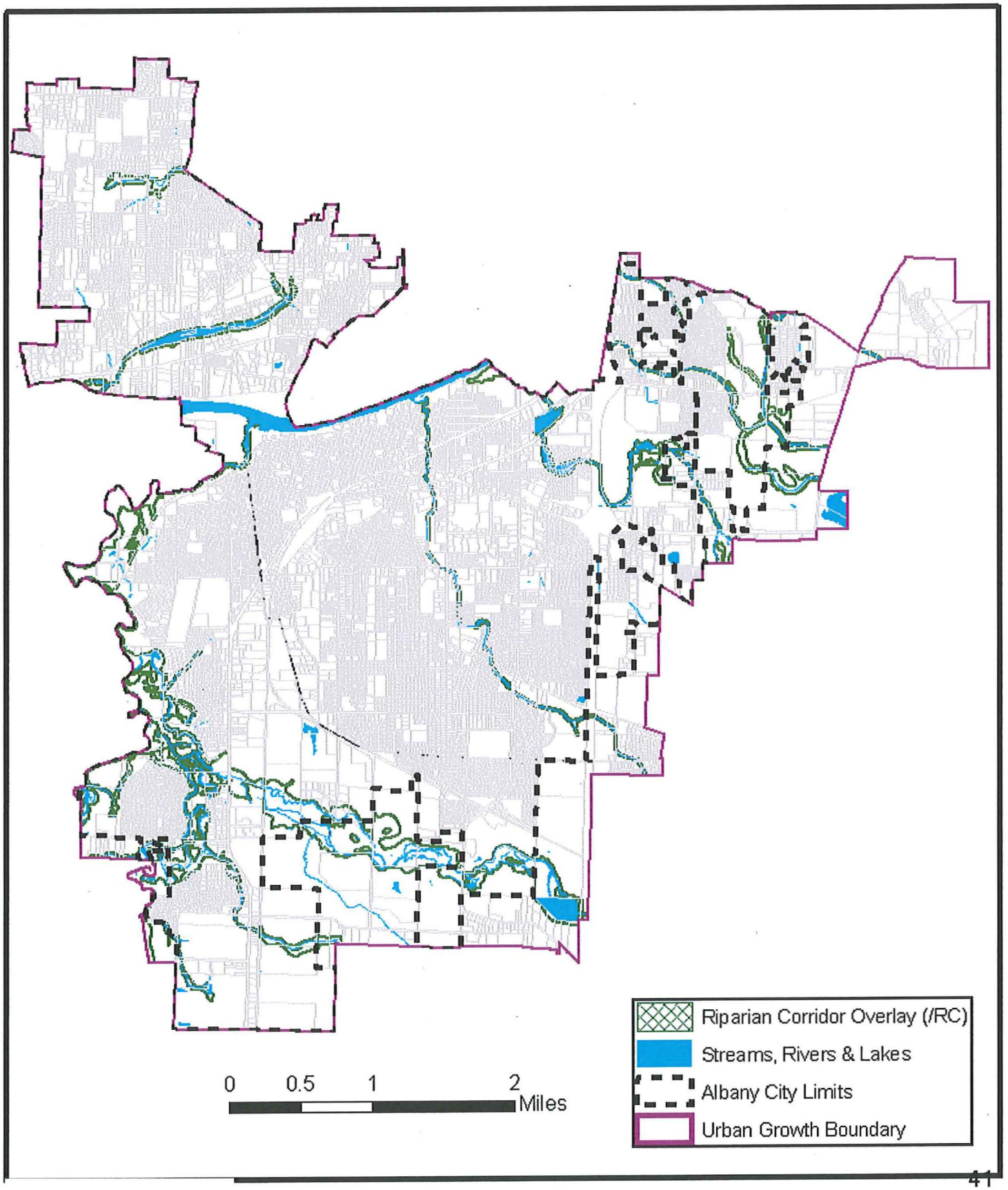


EXHIBIT C

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

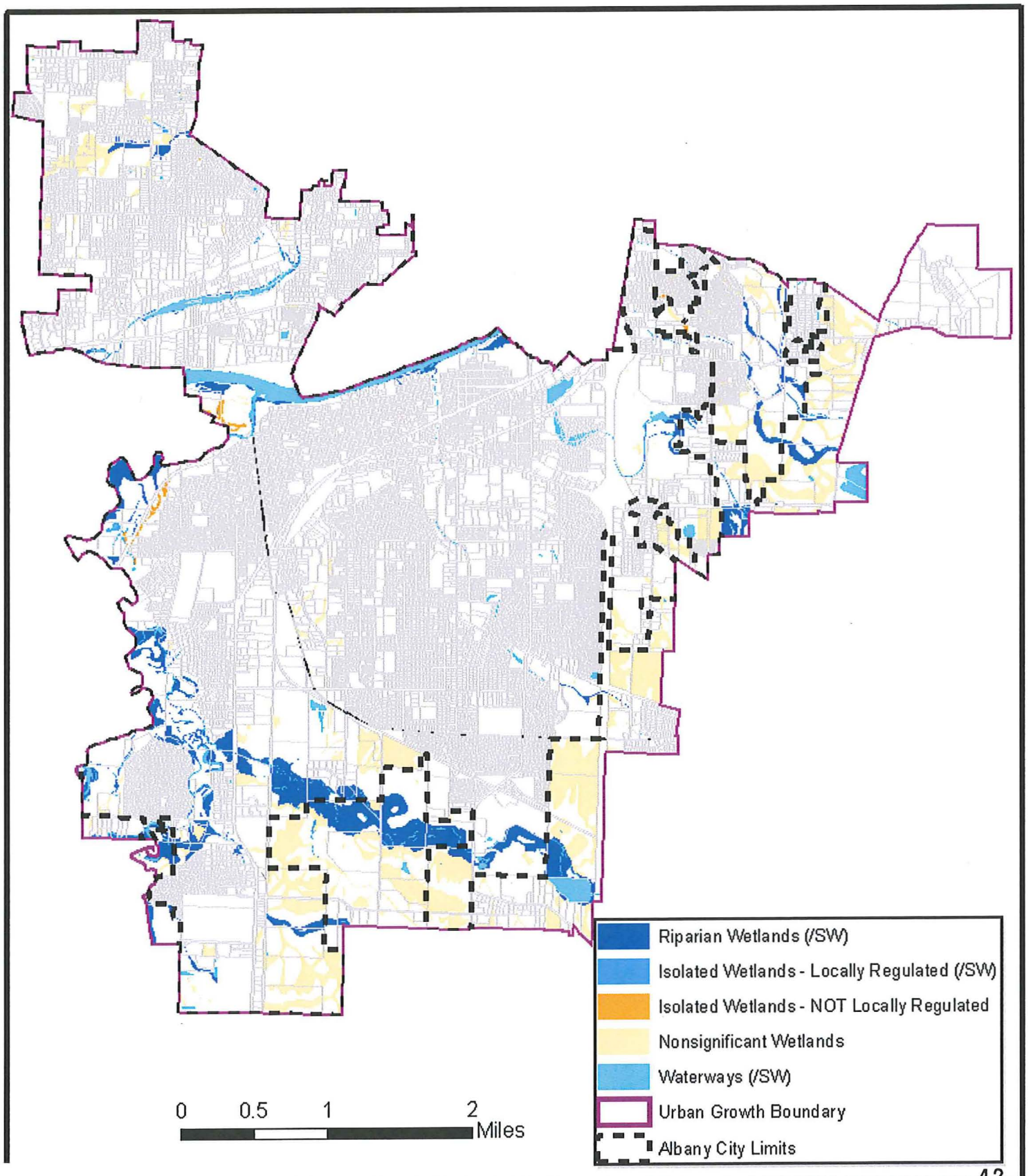
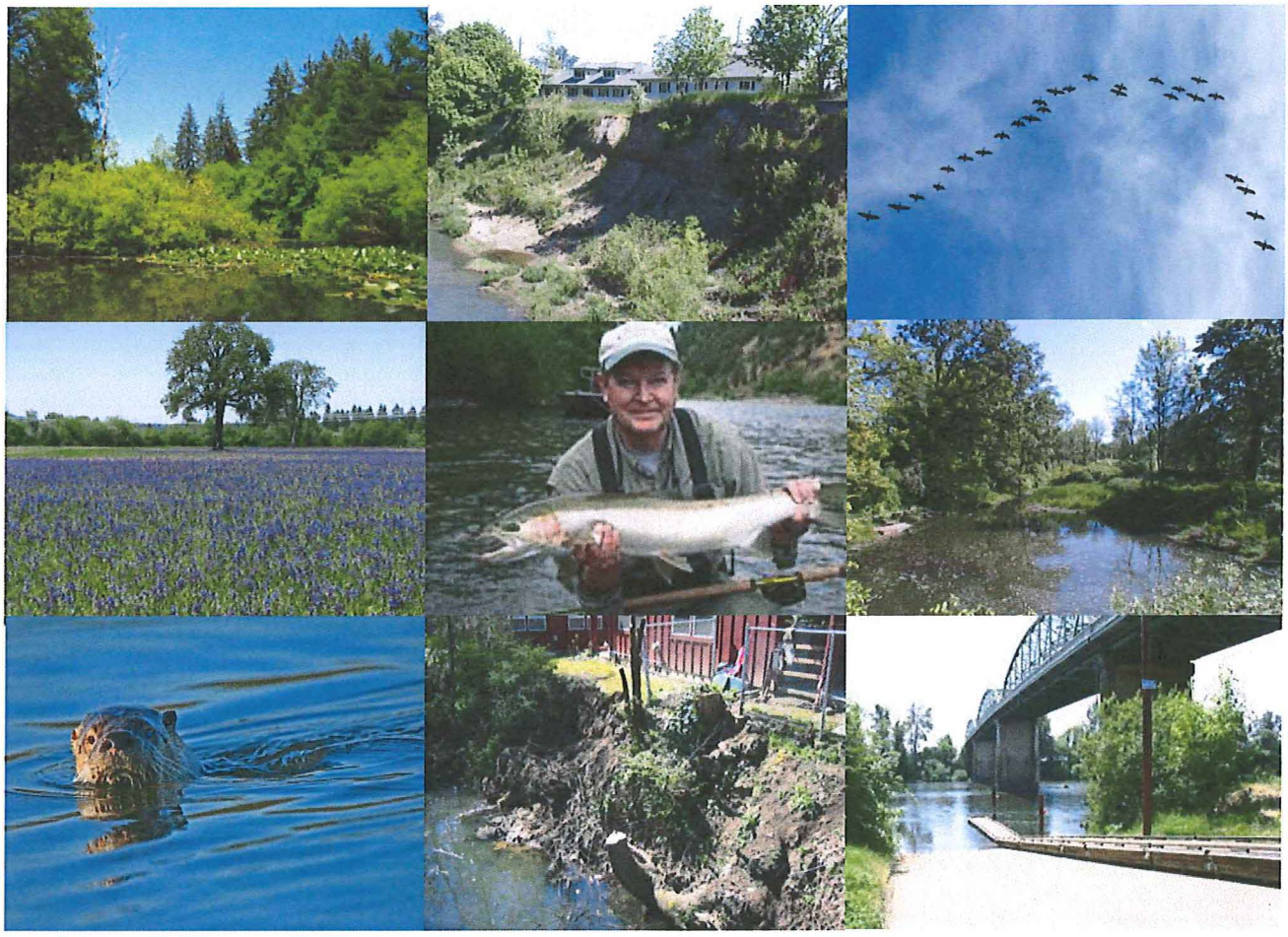


EXHIBIT D

Citywide Goal 5 ESEE Analysis

Riparian Corridors and Significant Wetlands

September 28, 2011



City of Albany, Oregon

With assistance from:
Greg Winterowd, Winterbrook Planning
Rich Catlin, Reece & Associates

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;

[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 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. However, construction of new impervious surface area and native vegetation removal are prohibited within the stream or associated wetland. This encroachment into the riparian corridor only is designed to minimize adverse social impacts from regulating existing residential back yards. The City will encourage voluntary compliance with the Goal 5 provisions.

Figure 1: Existing residential development along Periwinkle Creek



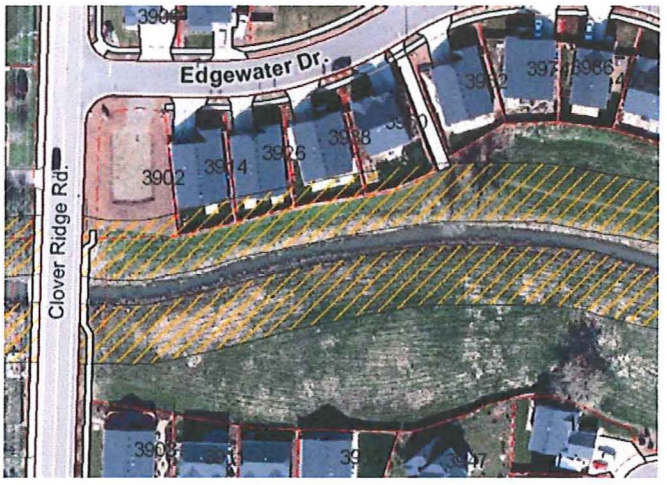


Figure 2: Existing residential development along Burkhart Creek

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;
  - 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 up to 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.

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 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

[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).

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 encroachment up to 25 feet into the riparian corridor 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**
- **Allowing encroachment up to 25 feet into the riparian corridor for existing residential lots less than 20,000 square feet that can't be further divided without the requirement for onsite restoration; 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 (Source: LWIs)

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***

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 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 less than 20,000 square feet that cannot be further divided 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:

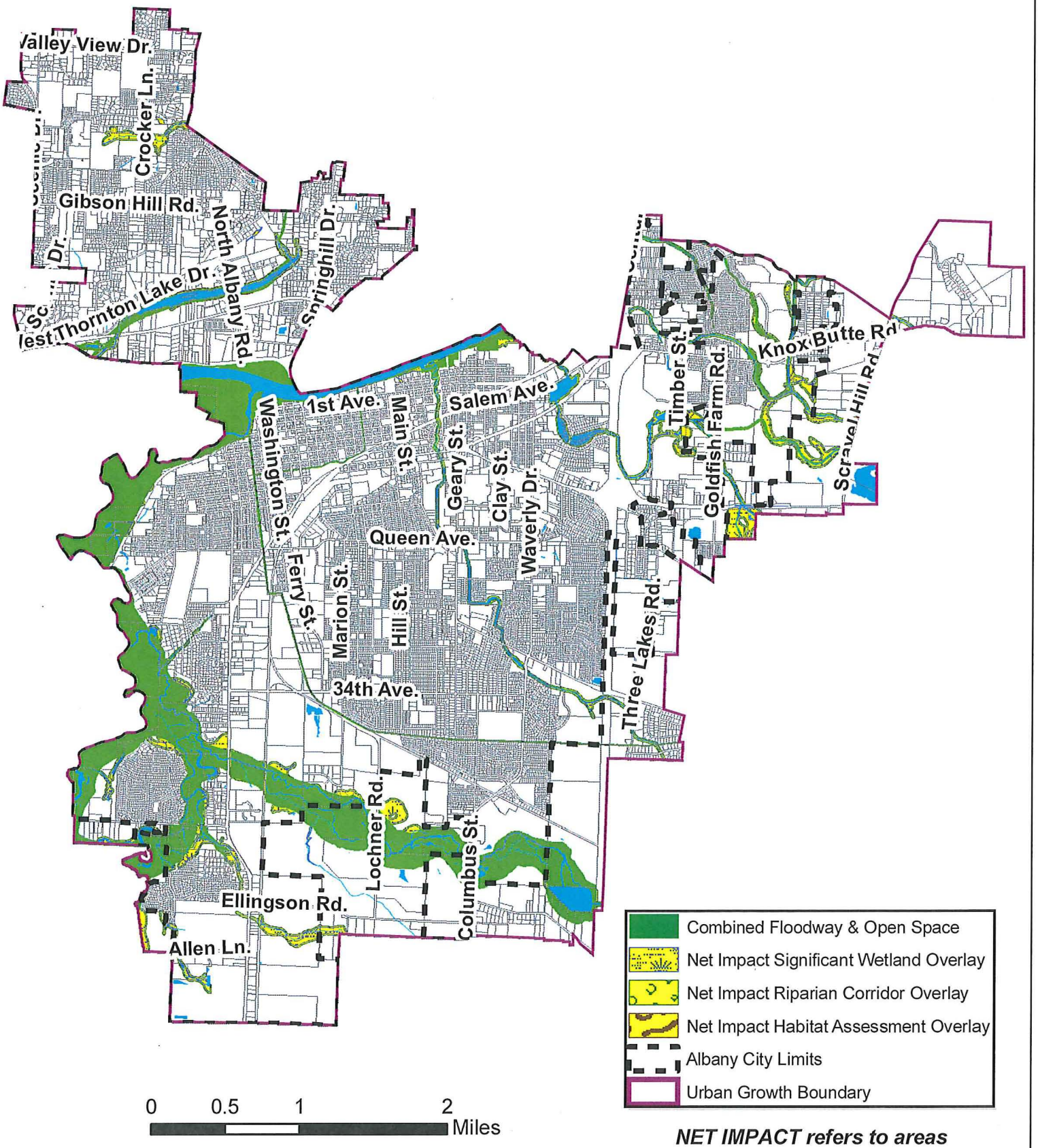
- **Except for public transportation and utility facilities, restricts grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and**

- **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		

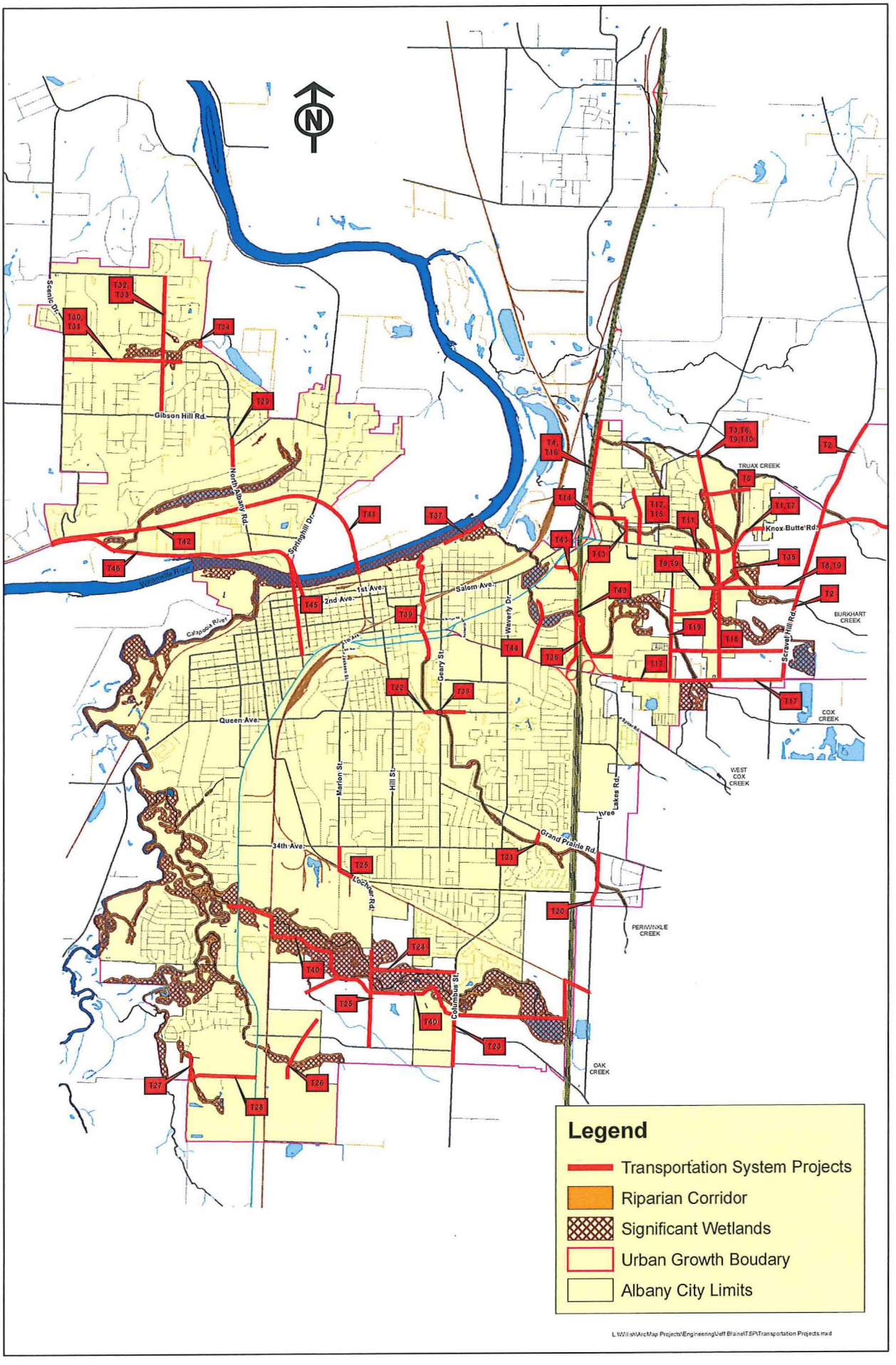
Water Projects		
ID	**Water Body**	**Project Description**
W1	Truax Creek	P27 Water main extension along Scravel Hill Road
W2	Burkhart Creek overflow, wetland	P36 Water main extension along Somerset Drive.
W3	Burkhart Creek overflow	P27 Water main extension along Knox Butte Road
W4	Burkhart Creek	P33 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		

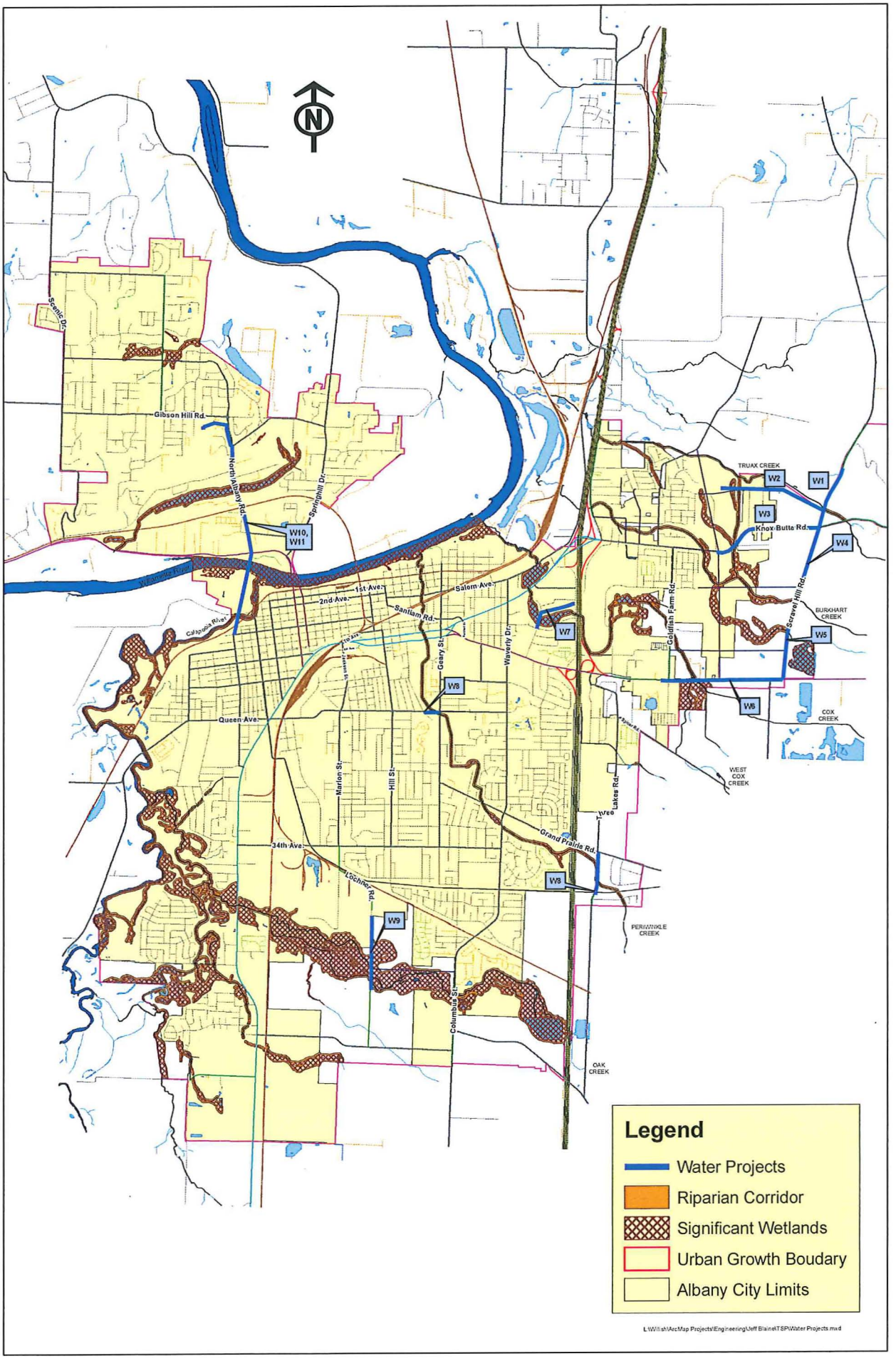
Stormwater Projects		
ID	**Water Body**	**Project Description**
D1	Cox Creek, Willamette River	New storm drain to Willamette River
D2	Periwinkle Creek	Additional culvert near Juan Way
D3	Periwinkle Creek	Additional culvert under 40th Avenue
D4	Periwinkle Creek	Additional culvert under Albany-Lebanon 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		

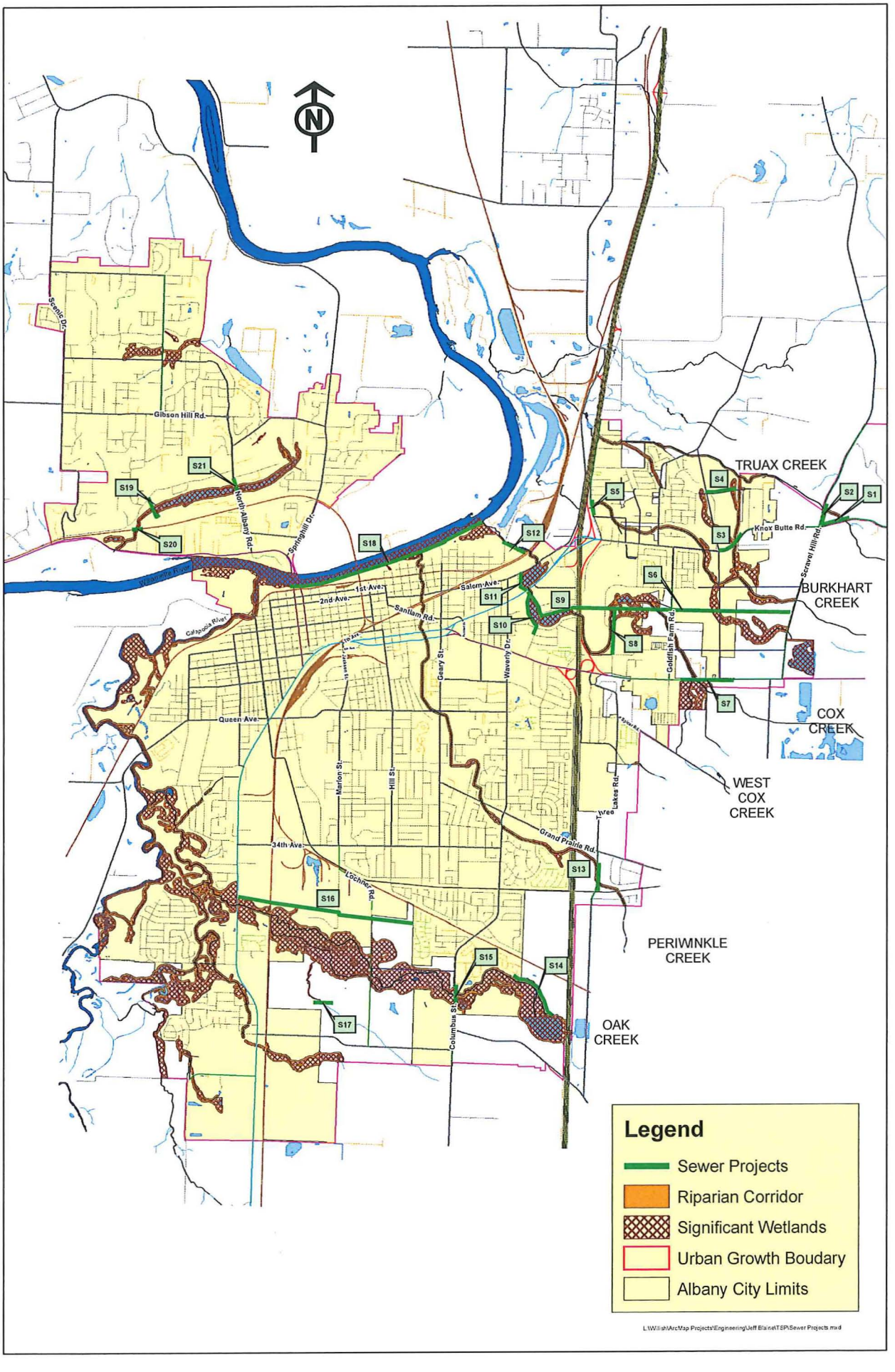
Transportation System Plan Projects and Goal 5 Resources



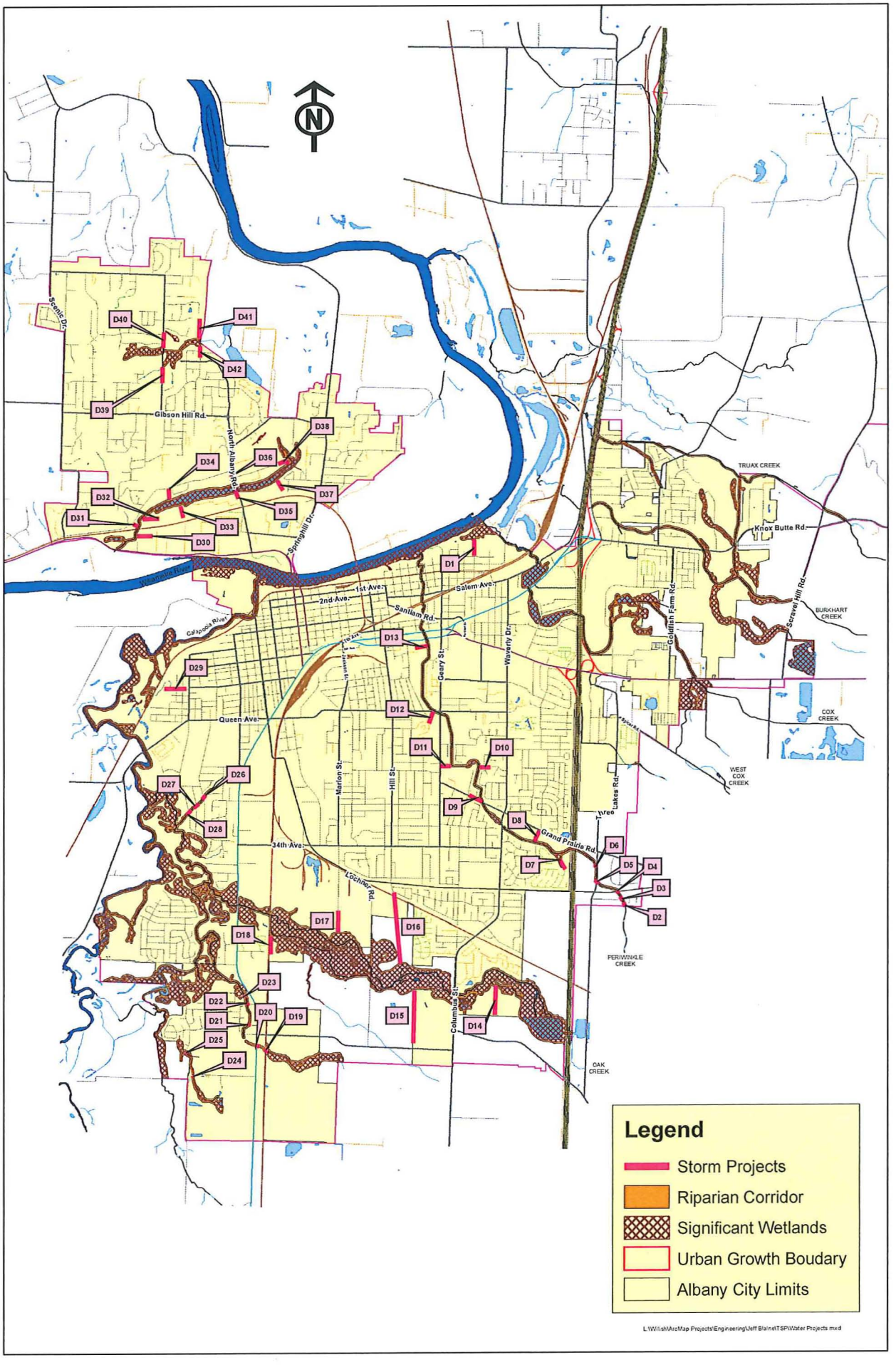
Water Facility Plan Projects and Goal 5 Resources



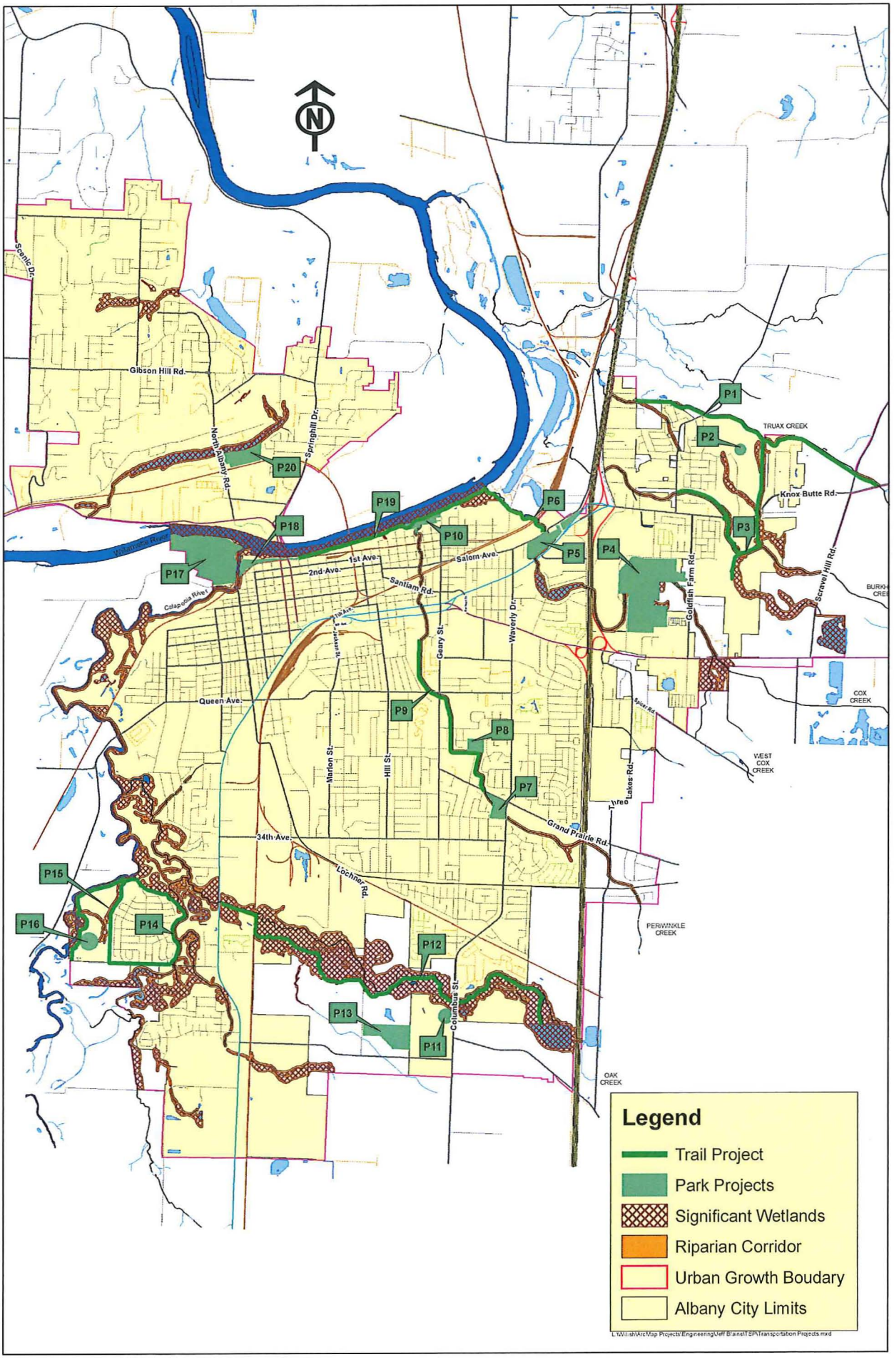
Sewer Facility Plan Projects and Goal 5 Resources



Storm Water Facility Plan Projects and Goal 5 Resources

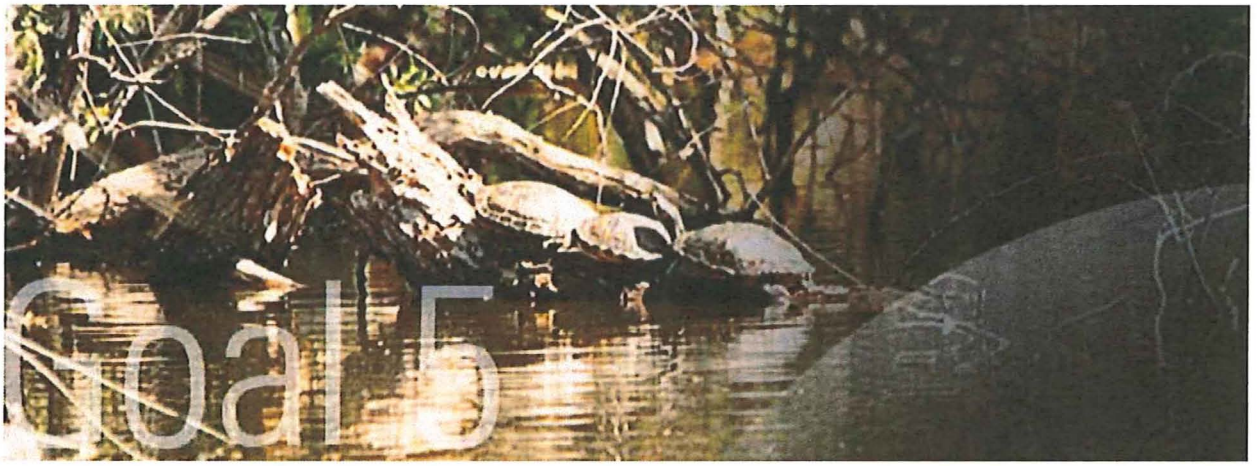


Parks Master Plan Projects and Goal 5 Resources



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

THORNTON LAKES
SIGNIFICANT TURTLE HABITAT



City of Albany
Community Development Department
September 28, 2011

EXHIBIT F

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.

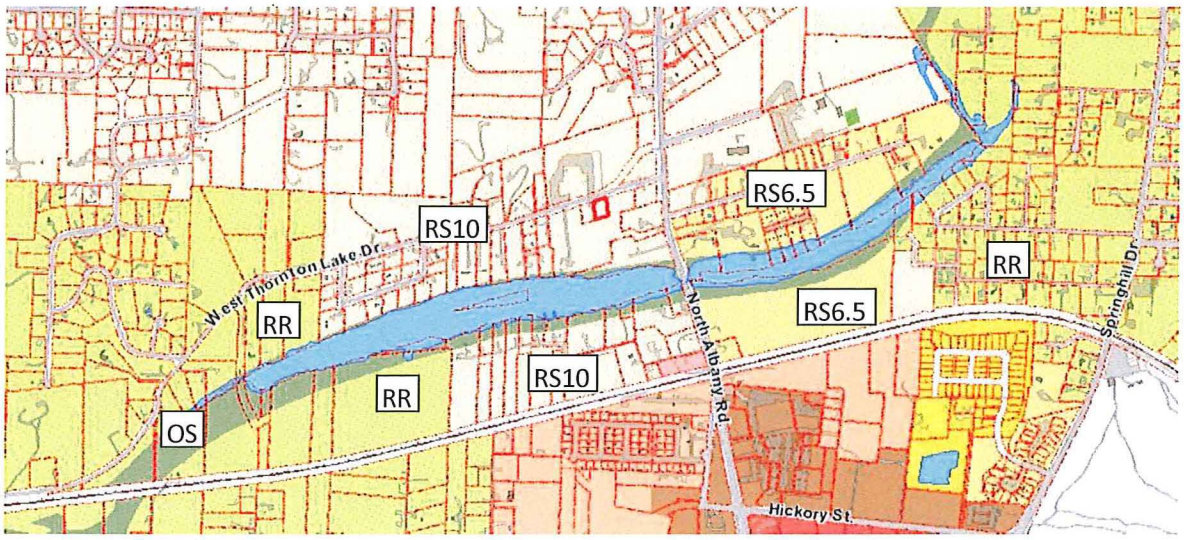
The **impact area** for the resource (sensitive/significant habitat for two listed turtle species) is defined as the area between the ordinary high water mark of Thornton Lakes to 75 feet from the ordinary high water mark of the lakes or the upland edge of an adjacent wetland. It is shown on the map 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 ~~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 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 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, 1 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~~ona~~:

(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~~.

(ef) Springs.
(fg) **Land with natural s**Slopes 12 percent or greater **as designated by the Hillside Development Overlay District (/HD).**
(gh) 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.
(hi) 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.
(ij) Other features of the site unique to Albany, if approved by the Director.

(23) 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.

(34) 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]ent 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*

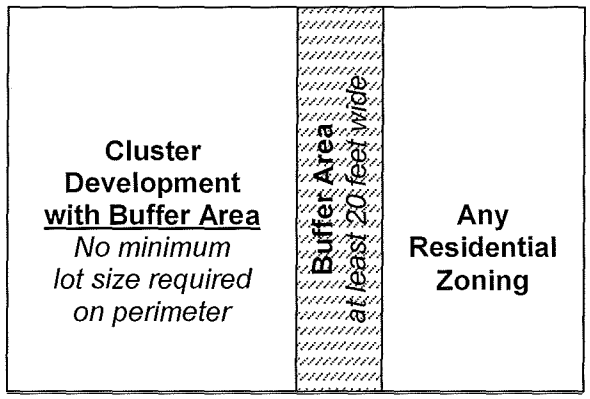
(2) Exceptions. The Perimeter Lot Compatibility standards do not apply in the following cases:

(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 under the same ownership.

Undeveloped Property: Land in its natural state ~~prior to any current or~~ with no 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, and shown on Plate 3 of the Albany Comprehensive Plan.

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.

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~~ some 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,~~ **c**ontinuation and preservation of existing agricultural uses, park and recreation areas, wildlife habitat~~s~~, 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) Parks and recreational facilities identified in the City's Parks, Recreation & Open Space master plan.

(4) New agricultural uses, where trees and native vegetation are not removed and where no buildings are constructed.

(5) Water-dependent and water-related uses.

(6) 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) Private construction of transportation facilities and utilities not identified in master plans that meet a public need.

(6) 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 e~~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 f~~Farming practices such as grazing, plowing, planting, cultivating and harvesting, that either existed ~~or occurred~~ on the property prior to the date of adoption of these provisions ~~and~~or 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 or floodplain areas that were unlawfully filled, or filled after [INSERT DATE], 2011 are not eligible. ~~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)**
- **Albany Native Plant List (6.420)**
- **District Boundary Corrections and Refinements (6.430)**
- **District Amendments (6.440)**
- **Adjustments and Variances (6.450)**
- **Compliance with State and Federal Regulations (6.460)**
- **Violations (6.470)**

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 not locally~~ regulated by DSL or ACE.

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 e~~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.

(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.

(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 f~~Farming practices such as grazing, plowing, planting, cultivating and harvesting, that either existed ~~or occurred~~ on the property prior to the date of adoption of these provisions ~~and~~or 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 on the City's native plant list.

(d) Felling of trees planted as Christmas trees or orchard trees.

(10) 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 [INSERT DATE], 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 be any closer than 25 feet from the Ordinary High Water mark or upland edge of the wetland, unless the improvements are otherwise allowed or exempted per this Section of the Code.

(c) Vegetation Removal. Removal of live vegetation that is not exempt under 6.290(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 or other design that meets ODFW fish passage requirements.

(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 where reasonably feasible 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, 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~~ when the 50-foot area of the Riparian Corridor Overlay District is impacted per 6.310(B)(2)(b), unless the activity is otherwise exempted per this section of the Code.

(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 performance bond, cash, negotiable security deposit, letter of credit, or other guarantees approved by the City Attorney that is equal to 120% of the value of the improvements installed pursuant to the plan for a 2-year period. The assurance shall be in place before the issuance of development permits to ensure the success of mitigation improvements and the survival of the plants. The assurance 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 period, the 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 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 wetland assessment by a qualified professional. City staff will verify existing condition.	Preserve or enhance per approved mitigation plan; 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.	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.

City staff will verify existing condition.	
Riparian Corridor Overlay	
Good Quality: Combination of native trees, shrubs, and groundcover are at least 80% of the overlay area, and there will be more 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 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.

6.420 Native Plant List. The City shall maintain a native plant list, which includes plants that were historically found in the area at the time of European contact. Any modifications to the list will be processed administratively as a Type I process. If a modification is requested, the Director will determine if the modification is warranted based on consultation with knowledgeable people with backgrounds in botany or landscape architecture, as well as scientific documents.

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 new ~~a~~ site-specific information ~~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.

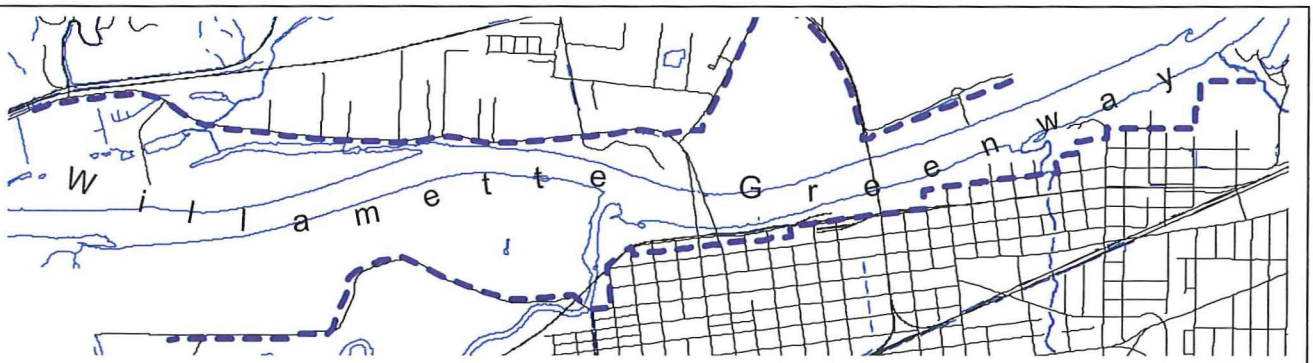


Figure 6-**24** Willamette **River** Greenway **District**

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.

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, September 28, 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 – Replaces Plate 3-Updates Natural Vegetation and Wildlife Habitat: Adds habitat assessment overlay.

EXHIBIT C – Replaces 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 public hearings on May 25, 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 City's Comprehensive Plan was reviewed by the City and State and a work program to update the Comprehensive Plan under Periodic Review was approved by the City Council in 1997.

D. The proposed amendments to satisfy the City's requirements to implement Goal 5, and the City's Goal 5 tasks identified in the approved Periodic Review Work Program, have been reviewed by other state agencies.

E. 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.

F. 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.

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 22, 2011
7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Konopa called the meeting to order at 7:19 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

SCHEDULED BUSINESS

Public Hearing

ST-06-06, Infrastructure Improvements – School to Knox Butte, determining the assessments against the properties specifically benefited by street improvements, and declaring an emergency.

Staff Report

Civil Engineer II Chris Goins explained how the properties would be assessed and the final cost totals.

Public Hearing

Konopa opened the public hearing at 7:22 p.m.

No one wished to speak.

Konopa closed the public hearing at 7:22 p.m.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE TO DETERMINE THE ASSESSMENTS AGAINST THE PROPERTIES SPECIFICALLY BENEFITED BY STREET IMPROVEMENTS FOR ST-08-06, INFRASTRUCTURE IMPROVEMENTS-SCHOOL TO KNOX BUTTE; AND DECLARING AN EMERGENCY."

MOTION: Councilor Coburn moved to have the ordinance read a second time in title only. Councilor Johnson seconded the motion and it passed 5-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Coburn moved to adopt the ordinance. Johnson seconded the motion.

Councilor Collins asked if these assessments are intertwined with the school's project (North Timber Ridge). City Engineer/Assistant Public Works Director Mark Shepard said they can be handled separately.

VOTE: A vote was taken on the motion and it passed 5-0, and was designated Ordinance No. 5760.

Business from the Public

Committee to Save Blue – DVD presentation.

Cheri Holverson, 608 Alpine Meadow, explained that they would be unable to show the video because of mechanical issues. She suggested the Council look on the Albany Pet Hotel website to watch it. She read a sheet of information that the committee was providing (in agenda file) regarding Blue and asked the Council to review the Blue situation. She said Blue doesn't fit the ordinance. She thanked Councilor Dick Olsen for visiting Blue and Collins and the Mayor for viewing the video tape. She submitted more signatures on Blue's behalf (in the agenda file).

Susan Jones, 3471 Earl Avenue, manages the facility where Blue is currently residing. She said that they gave him basic aggression tests that they give to screen dogs for temperament. He wasn't aggressive. They have only seen him wanting to play and be with people. He has been integrated into doggie play groups and they also have a video on www.Albany Pet Hotel.com.

Delapoer was concerned that Jones may have violated the court order by integrating him into the dog population. He asked Lieutenant. Dorland will provide a copy of the court order to Jones.

Other Business form the Public

Evan Abernathy, 1312 8th Avenue, would like park lights to turn off at midnight on the weekends rather than at 10:00 p.m. as they currently do, especially in the summer time. Kids would have more time to ride or skateboard.

Bill Root, 2634 NW Valley View, said he recently returned from Washington DC and some states have reader boards on their highways. They had information regarding motorcycle awareness month, and safely sharing the road. He thought the Public Works department could do something like that in Albany.

Candace Ribera, representing Scott Lepman, provided a hand out regarding information on Goal 5.

First Reading of Ordinances

Amending AMC Chapter 7.080.050 to clarify the ordinance and strengthen the City's ability to protect residents from unreasonable construction noise, and declaring an emergency.

Delapoer explained that this item was discussed on Monday, June 6. It is simply another tool the Council can use to protect unnecessary noise.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE CHAPTER 7.080.050 TO CLARIFY THE ORDINANCE AND STRENGTHEN THE CITY'S ABILITY TO PROTECT RESIDENTS FROM UNREASONABLE CONSTRUCTION NOISE, AND DECLARING AN EMERGENCY."

MOTION: Johnson move to have the ordinance read a second time in title only. Collins seconded the motion and it passed 5-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Johnson moved to adopt the ordinance. Collins seconded the motion and it passed 5-0 and was designated Ordinance No. 5761.

Amending AMC Chapter 7.28.010, 7.28.100, and 7.28.240, and repealing 7.28.102, relating to alcohol in parks and park hours.

The Council had a discussion regarding banning alcohol from all the City parks. There was concern that it wouldn't allow responsible citizens the opportunity to have a drink with their picnic.

Parks & Recreation Director Ed Hodney said one of the reasons they brought this AMC amendment to the Council was to assist the Albany Police Department (APD), because of what is perceived to be an abuse problem in Albany.

Olsen asked, is there a drunk and disorderly law in Albany? Delapoer said no. What Albany has is disorderly conduct laws.

Olsen commented that this amendment would not allow just taking a beer and a sandwich to the park.

Johnson asked, is this going to be enforceable? Lieutenant Casey Dorland, APD, said the amendment was meant to address the issues that they currently can't address. The calls the APD is receiving are complaints about drunken behavior. There is currently a piece meal approach regarding which parks allow drinking and which parks do not. He said, from an enforcement perspective it is not equal. The amendment standardizes the ordinance. They can deal with all of the parks on an equal basis. They are getting the calls, but don't have the tools to address it.

Coburn said the problem is individuals drinking too much in the park. Dorland said yes, currently Albany doesn't have a drunk in public law. Most complaints are about Waverly Park.

Delapoer suggested this item go to a work session to kick around the options. There are no easy solutions. Ultimately the policy creates a loss of personal freedom in exchange for protection.

City Manager Wes Hare agreed that the issue is a reflection of the community standard. There has not been much interest in the ordinance.

Konopa would like to see this go to a work session and include information regarding park hours.

The Council agreed. This ordinance will be brought to a work session for discussion.

Communication

Considering a proposal from Robinson Construction to perform construction-related work on the Wal-Mart site between the hours of 6:00 p.m. and 7:00 a.m. for four months.

Coburn declared his company is a subcontractor for Robinson Construction, but basically has no conflict of interest because he has no economic interest in the project.

Assistant Public Works Director/City Engineer Mark Shepard said the construction contractor that is performing all of the on-site and off-site improvements for the Wal-Mart improvements has submitted a request to work through the night for four months (late June through mid October). The Albany Municipal Code outlines the limitations on actions that create noise and generally prohibits construction activities after 6:00 p.m. and before 7:00 a.m. in order to protect community residents from loud, disturbing, and unnecessary noise unless the Council authorizes an exemption. This contractor is required by the Oregon Department of Transportation (ODOT) to complete the Highway 20/I-5 interchange improvements between 7:00 p.m. and 7:00 a.m. in order to minimize the disruption of traffic. The contractor would like to use the Wal-Mart site on Goldfish Farm Road as a staging area for this nighttime construction. The contractor would stockpile gravel and other material on the Wal-Mart site and retrieve the material during the night work hours. This would require construction traffic such as dump trucks and loaders to operate on the Wal-Mart site during the night.

Shepard said the Wal-Mart site is north of the Coastal Crossing subdivision. Staff is concerned that allowing the Wal-Mart site to be used as a staging area for the night work will impact the homes in Coastal Crossing with significant noise during the night and is requesting Council denial of the proposal as presented. The contractor has not demonstrated that he has explored all other alternatives that will have less of an impact on residential properties. In addition, the proposal does not provide enough detail and certainty regarding the mitigation plan to minimize noise impacts.

Ryan Tuttle, 21360 Northwest Amberwood Drive, Hillsboro, Oregon, Project Manager for Robinson Construction, apologized for not providing enough detail. The difficulty with supplying that detail is that the nature of the project has many facets especially on the highway work on the I-5 interchange; and the access to the materials on site have safety requirements for back-up beepers, for lighting, etc., and it is difficult to put a specific on how those will be used as the variables of the project are going to require different uses at different times. ODOT restrictions require night work. They can work in ODOT right-of-ways during daytime hours as long as they don't affect any lane closures. The night work is the time that lanes can be closed. They need access to materials. Those materials are stockpiled on site. It's his understanding that nearby sites have the same restrictions of access hours. Areas they have looked at have been under the same hour limitations. Knife River, further down Hwy 20, is affected by the same hour restrictions. They have a significant amount of backfill material that was crushed on site and to pull that material from the Wal-Mart site to another site may cause some issues. He said that included in the Council packet is an email from ODOT stating that there wouldn't be a work area stock pile place allowed within the work zone.

Hare explained that the issue for the Council is that the Wal-Mart site is adjacent to a sensitive neighborhood that will not be happy with back-up lights and whistles and bells, whereas another site would not have a neighborhood that close.

Tuttle said they do have a sound buffer in place on the southeast side of the site.

Konopa said that neighborhood was opposed to that site being rezoned from the beginning, and so the Council is sensitive to their needs.

Hare suggested staff meet with Robinson Construction to work out a plan and return to the Council with an updated request.

Coburn commented on changes such as disconnecting back-up alarms and lights aimed away from the residential neighborhoods. He said that's the kind of details staff would like.

Tuttle said he thought the details would be ironed out at the City Council meeting.

Adoption of Resolutions

Committing resources of special revenue funds and delegating authority to assign ending fund balances to the Finance Director.

Finance Director Stewart Taylor said in 2009 the Government Accounting Standards Board (GASB) issued Statement #54, regarding the reporting of fund balances. It establishes a hierarchy of classifications for fund balances. One of the provisions of the statement is that Special Revenue Funds, which are classified as governmental funds, fall into a classification of restricted or committed. Restricted would be those restricted by a third party such as a state statute or a grant covenant. Committed are actions of the City

Council that commit resources for specific purposes. The City's financial statements will reflect the changes starting June 30.

MOTION: Collins moved to adopt the resolution committing resources of Special Revenue Funds and delegating authority to assign ending fund balances to the Finance Director. Coburn seconded the motion and it passed 5-0, and was designated Resolution No. 6015.

Adopting the Fiscal Year 2010-2011 Supplemental Budget.

Taylor said the supplemental budget authorizes small transfers or actions by the Council that have happened throughout the year. A resolution is needed in order to comply with Oregon local budget law.

MOTION: Collins moved to adopt the FY 2010-2011 Supplemental Budget. Christman seconded the motion and it passed 5-0, and was designated Resolution No. 6016.

Adoption of Consent Calendar

1) Approval of Minutes
   a) May 11, 2011, City Council Regular Session.
   b) May 23, 2011, City Council Work Session.
2) Approving annual liquor license renewals.
3) Extending City of Albany's workers' compensation coverage to volunteers for policy year 2011-2012 (annual renewal). RES. NO. 6017
4) Accepting a franchised utility easement from Martin Family Trust. RES. NO. 6018
5) Accepting temporary extension of transit advertising services with Lamar Advertising.

MOTION: Coburn moved to adopt the Consent Calendar as presented. Johnson seconded the motion and it passed 5-0.

Award of Bid

WL-11-02, Shannon Drive water line replacement.

Collins clarified that the source of funding is funds derived from outside the corporate limits. Shepard said yes, it is not funding from the standard ratepayer.

Coburn asked if ODOT prequalification was used for an unfamiliar bidder. Shepard said for the City it is not so much ODOT prequalification as that the City is administrating the contracts appropriately.

Johnson asked, if the City has a low bidder that is questionable, does the City have the right not to contract with them? Shepard said a bidder needs to be both responsive and responsible, and a low bid is reviewed very carefully before being awarded the contract.

MOTION: Johnson moved to award the contract in the amount of $190,810.00 to the low bidder, Pacific Excavation, Inc., of Eugene. Coburn seconded the motion and it passed 5-0.

Appointment

City Council Representatives.

Albany-Millersburg Joint Water/Wastewater Management Committee

Bill Coburn — *Term expires: 12-31-2012*
(filling Reid's vacant seat)
Sharon Konopa — *Term expires: 12-31-2012*
(filling Coburn's vacant alternate seat)

Cascades West Area Commission on transportation (CWACT)

Dick Olsen — *Term expires: 12-31-2011*

Linn-Benton Loop Commission

Floyd Collins — *Term expires: 12-31-2012*

MOTION: Collins moved to approve the Councilor appointments to fill the unexpired terms resulting from the resignation of Ralph Reid, Jr. from the Council. Olsen seconded the motion and it passed 5-0.

Report

Greater Albany Public Schools (GAPS) final obligations for improvements and assessments associated with the Timber Ridge Local Improvement Districts (LID).

Hare said this item was discussed Monday night. The City over paid GAPS for the north segment of the Timber Ridge LID. The North segment of the project, which was school managed, came in over budget and

the South segment, which was City managed, came in under budget. Hare said since there was an error involving $36,000 and it is relatively small, he suggested, for political reasons, the City carry the error, by using the City's street construction funds. He said that basically GAPS and the City are serving the same folks. The good will and good partnership with GAPS is more important. This is not a point to draw a line in the sand.

Taylor said there is no difference of agreement on the actual number for the assessment of LID North and LID South. There were engineering costs that identified the total costs of the project and then the appropriate reimbursement was identified for the school district. The LID costs assessed to the other properties for the North project were reimbursed to the school district without recognizing that a portion of those costs were for costs the school district had not expended any funds towards, and so should not have been reimbursed. There is no error in the total assessment amount, and GAPS recognizes what their costs should have been. Taylor said that also the school district hasn't identified, as readily as they should that the construction excise tax can be used for the project. GAPS has received $857,000 of construction excise tax, 84% which has come from the City of Albany, and that could be used to reimburse the City.

There followed discussion about options for GAPS.

Collins said the school district wasn't entitled to the $36,660, and they received it. In his mind the only reason for the City to pay the $36,000 would be for a political, positive relationship with GAPS. He recognizes that the school district has financial concerns, but the City would be using Street Fund money that will in some form reduce funding available for City street projects. If this was a private company the City would be asking for the money to be returned immediately.

There followed notification issues and the school district's ability to pay back the funds.

MOTION: Coburn moved to not seek reimbursement funds on the North LID and that GAPS will be assessed their full portion of the roundabout on the South LID. Christman seconded the motion.

Shepard clarified that the result of this motion is that the City will cover the $36,660 difference.

VOTE: A vote was taken on the motion and it passed 4-1, with Johnson voting no.

BUSINESS FROM THE COUNCIL

Allied Waste Resolution

Hare said following the work session, staff created a resolution that they believe meets the intent of the discussion.

Delapoer said that this resolution transitions to a rate methodology that includes increments linked to the consumer price index. He pointed out that section five of the resolution reserves the authority of the Council to depart from this modification. The period in the resolution is basically an experiment, shifting to a default methodology, and both sides have the right to say it is not working out.

Christman asked if any changes would be reviewed annually by the Council. Delapoer said yes, what it gives the Council is a standard to go by.

Collins questioned that it says 7% in the resolution but 10% in Exhibit A. Delapoer said the 10% is really a cap. The 7% is the initial increase and any future increase cannot exceed 10%, but the Council is not locked into each additional step.

Mike Huycke, representing Allied Waste, agreed with Delapoer, saying yes, that is how they interpret the language.

MOTION: Coburn moved to adopt the resolution approving a rate modification for Albany-Lebanon Sanitation Company and providing that future rates are transitioned to a methodology generally reflective of changes in the Consumer Price Index, and repealing Resolution No. 5802. Christman seconded the motion.

Johnson said she will be voting no, as she is opposed to any automatic rate hike.

VOTE: A vote was taken on the motion and it passed 4-1, with Johnson voting no, and was designated Resolution No. 6019.

Other Business from the Council

Christman provided information on the use of the economic development funds by the City. He believes the Council should be working on what is the best use of the settlement funds for Albany. He was concerned that the Council may reduce the funds significantly, in small increments, without any real results. His process so far was to create a focus group, representing different facets of the community, and receive input and

suggestions from them. From that group, came the information he is presenting tonight. He would like staff to schedule a work session to review these possibilities and consider making decisions for the use of the funding.

Hare said it would be a good idea to start discussing economic development plans. Staff needs clarification from the Council in order to provide a basic plan. From that, the Council can get community and business input and participation. He emphasized that business participation should be a major component. He used "Talking Waters" with Allegheny Technologies Incorporated/Wah Chang's participation, as an example of business and the City working together on the same project, which solved both wastewater concerns.

Collins said it could dove tail into a policy on how the Council wants to spend all economic development money. He would like to see a possible work session in August.

Public Information Officer Marilyn Smith reminded the Council that there is a Goal 5 community meeting at 6:00 p.m., Monday, July 25, following the work session.

Parks & Recreation Director Ed Hodney invited the Council to a community BBQ on Sunday, June 26, from 12-3 p.m., in support of the North Albany East Thornton Lake project.

NEXT MEETING DATE

The next meeting of the Albany City Council is a Joint Work Session with the Benton County Commission on Monday, July 11, 2011, at 4:00 p.m., in the Municipal Court Room of City Hall. The next Regular Session is scheduled for Wednesday, July 13, 2011, at 7:15 p.m., in the Council Chambers at City Hall. A Joint Work Session with the Linn County Commission is scheduled for Monday, July 18, 2011.

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:25 p.m.

Respectfully submitted by,

Betty Langwell, MMC
City Clerk

Reviewed by,

Stewart Taylor
Finance Director

APPROVED:

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, July 13, 2011
7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Konopa led the pledge allegiance to the flag.

ROLL CALL

Councilors present: Councilors Jeff Christman, Bill Coburn, Bessie Johnson, Dick Olsen, and Floyd Collins.

Councilors absent: None.

SCHEDULED BUSINESS

Communication

Funding request from Linn-Benton Community College Small Business Development Center MicroEnterprise Program

City Manager Wes Hare said Barbara Bessey from Linn Benton Community College (LBCC) presented the MicroEnterprise Program to the Council during a work session. The program assists businesses get started in Albany. They have a budget of $60-70,000 and had been getting $25,000 of that from Corvallis from their Community Development Block Grant (CDBG) funds. Corvallis will no longer be funding them and that has prompted Bessey to ask the City of Albany to contribute. At the work session the Council requested data about the jobs created as a result of the program, and that information is in the agenda packet tonight. Hare said the program does not generate a large volume of jobs but it is a benefit for local residents.

This request was not anticipated in the Budget and it comes at a time when the Council plans to look at economic development more closely in the months ahead, so Hare's recommendation is to wait until September. Bessey wants a commitment sooner than that. Hare said that if the Council is interested in funding the program they will need to take action tonight so Bessey knows how to proceed.

Councilor Bill Coburn thinks there is value for the program but he is unsure about the request for funding. He supports Hare's recommendation to wait.

Councilor Floyd Collins said he agrees with Hare that we should wait and look at this in a bigger context. He has nothing against the program and it has merit, but wants to make sure the Council uses the PepsiCo settlement money appropriately.

Barbara Bessey, 25098 Pleasant Hill Drive, Corvallis, said she had hoped to run the program in Albany in the fall since the last one ran in Corvallis. She knows it can't be filled again in Corvallis, so that would mean she probably would not run the program even though she has four folks on the wait-list. She would have to wait until winter. It would also push the launch-a-business program back a year.

Konopa asked, is the Corvallis program just for Corvallis residents? Bessey said yes it was, because it was funded with Corvallis CDBG money. It was also restricted to low-income residents.

Hare said that the ongoing nature of the program is something they need to consider too. Albany has not yet received Metropolitan Planning Organization (MPO) status. It could happen as early as August, and that could provide for an additional funding source to consider.

Bessey said they are looking for a long-term funding strategy, now that the Corvallis CDBG money is gone. Given the economy and how slow jobs are coming back, people are really looking to start new businesses. It is a valuable program. She said, we not only launch businesses, but we also help folks decide not to launch a business. She will continue to look for funding. She will meet with the Council again in September. This is probably the best financial investment in this segment of the population.

Councilor Jeff Christman thinks this is one of the types of items that can be discussed as part of the bigger economic development picture.

Hare explained that the MPO is comprised of several cities, and granting funds would have to be for a purpose that is acceptable to all members of the Board.

Councilor Dick Olsen wants to consider allocating some of that MPO money to this program.

Bessey said that if Benton County gets money they can only commit it to one project, so they are committing it to the Monroe Library.

Collins said that in the 1970's the CDBG money was flowing freely and they used it for ongoing operational needs. Since then the money has dried up and we can no longer help to fund those ongoing operational needs. He said, we need to decide if we want to spend CDBG on capital needs or ongoing operations. He cautioned that we not rely too heavily on CDBG money for ongoing programs. That is exactly what is happening right now.

Konopa said it is a wonderful program but it does need more sustainable funds. Bessey said they are looking to foundations for a five-year strategy. She is looking now to not break service in the interim because folks in the community are depending on the program.

Konopa asked if the Chamber of Commerce in Albany and in Corvallis can help with fundraising. Bessey has not approached them. They may also get some funding from investors in the Willamette Valley in the way of philanthropic support.

Council consensus was to discuss this item as part of the larger economic development discussion in September 2011.

Public Hearing

Adjustments to system development charges and connection charges

Konopa called for a staff report.

Utility Services Manager Mark Yeager said this request is consistent with adopted System Development Charges (SDC) methodologies in the Albany Municipal Code (AMC). Each July the Council considers an annual adjustment to SDCs based on the Engineering News Record (ENR). The proposal represents a .074% increase. There is no change proposed for the Transportation System Development Charges (TSDC) or the sewer SDCs.

Christman asked about the Columbus Street Lift Station. In the agenda packet there is a map and a list of surrounding properties. He said it appears that some of them are outside the City limits but inside the Urban Growth Boundary (UGB). Yeager said yes. Christman asked, if they were to connect, would they pay the amount shown in Exhibit B on page 28? Yeager said yes, it-is-in lieu of an assessment that could have been levied at that time. This is a way for the City to recoup the money invested in the oversizing of the lift station. Not all the infrastructure is in place; this primarily focuses on the lift station. Konopa said they did this years ago to help out the Mennonite Village.

Konopa opened the public hearing at 7:39 p.m.

No one wished to speak.

Konopa closed the public hearing at 7:39 p.m.

Assistant City Attorney Andy Noonan said the Council can make one motion to adopt all the resolutions.

MOTION: Coburn moved to adopt all the Resolutions as presented. Christman seconded the motion and it passed 5-0. The Resolutions were designated Res. No. 6020 through Res. No. 6027, as follows:

a) Revising water system development charges, reaffirming an appeal fee, and repealing Resolution No. 5807. RES. NO. 6020
b) Revising connection charges for street connections to improved city streets of unassessed properties in the city of Albany and repealing Resolution No. 5810. RES. NO. 6021
c) Revising connection charges for sewer connections of unassessed properties in the city of Albany and repealing Resolution No. 5808. RES. NO. 6022
d) Revising connection charges for water connections of unassessed properties in the city of Albany and repealing Resolution No. 5811. RES. NO. 6023
e) Revising connection charges for storm connections of unassessed properties in the city of Albany and repealing Resolution No. 5809. RES. NO. 6024
f) Revising in-lieu-of assessment charges for the North Albany sanitary sewer basin and repealing Resolution No. 5812. RES. NO. 6025
g) Revising special connection charges for a portion of the Columbus Street sanitary sewer lift station project costs, which are allocated to unassessed properties within the lift station service area, and repealing Resolution No. 5814. RES. NO. 6026
h) Revising the improvement assurance charges for the non-oversized portion of future arterial and collector street improvements for streets located within the North Albany area and repealing Resolution No. 5815. RES. NO. 6027

Business from the Public

Bill Root, 2634 Valley View Drive, brought the pavers from the North Albany Neighborhood Association (NANA) fundraising project for East Thornton Lake Natural Area (ETLNA). Root said there are four sizes: 4 x 8", 8 x 8", 8 x 12", and 12 x 12". The cost is from $50 to $500 and they can be inscribed. Root showed a brochure regarding ETLNA (see agenda file). Root said the pavers have been made available at Saturday Markets, Monday's at Monteith, and River Rhythms. They will also be at the Benton County Fair and NANA plans to ask if they can be at the Linn County Fair also. They are also on the City's website.

Fred Hueglin, 942 North Albany Road, said there are also larger sizes, 16 x 16" or 24 x 24", being offered to corporate sponsors.

Root said the pavers are made and carved locally. They are also tax deductible donations.

Sandi Gordon, 1230 Linnwood Drive NE, is a Greater Albany Public Schools (GAPS) Board member. She is the current elected Director. She said she wanted to thank the Council personally for considering and adopting Local Improvement District (LID) charges when there was an error in the calculation. It is dire times for GAPS and they appreciate it, as every little bit helps. She also thanked the Council for the rubber track that will be put in place this summer at Timber Ridge School and invited them to the grand opening. She said, thank you for looking for any way the City can help GAPS at this time, such as the Timber Ridge gymnasium and Deerfield Park. She said, we can be a great community when the school district and the City are working together.

Adoption of Resolutions

Deferring sewer rate increase for July 2011 & reaffirming rates set forth in Resolution No. 5917

Konopa called for the staff report.

City Engineer Mark Shepard said that the Council took action during the budget process to defer the sewer rate increase for July 2011. This affirms that direction.

Collins said that this was the subject of much discussion following the PepsiCo settlement. The Council decided to give back part of the settlement to the citizens so they receive a portion in a timely way. This was the Council's way to help citizens with monthly bills. They also decided not to use the settlement towards operations and maintenance.

Christman asked if there needs to be a dollar amount assigned in the actual resolution. Finance Director Stewart Taylor said no, because the amounts are listed in the Fiscal Year 2011-12 Budget. Christman is concerned that it not be considered "open ended" with no dollars assigned, though he is supportive if the amounts are in the Budget.

Councilor Bessie Johnson asked, how much would the rate increase have cost customers? Sheppard said a 6-7% rate increase would have cost utility billing customers about $35 annually.

Olsen thinks it would be good to have the amount listed in the resolution so that folks are aware of what the City is doing.

MOTION: Collins moved to adopt the resolution. Coburn seconded the motion and it passed 4-1, with Johnson voting no. The resolution was designated Resolution No. 6028.

Repealing Resolution No. 5813, to eliminate special connection charges for properties near the Oregon Youth Authority benefited by construction of water and sewer lines

Shepard said this is a special district similar to the Lift Station. The Oregon Youth Authority (OYA) bore the cost in a capital recovery agreement. If someone connected, the City collected the money and then passed that money onto the OYA. The capital recovery agreement with the OYA has sunsetted. Now if someone connects, they pay the standard sewer or water connection fees. The City Attorney has advised that as these agreements sunset, the City close them.

MOTION: Collins moved to adopt the resolution and Coburn seconded it. The motion passed 5-0 and was designated Res. No. 6029.

Adoption of Consent Calendar

1) Approval of Minutes
   a) May 25, 2011, City Council Regular Session.
2) Approving annual liquor license renewals.
3) Accepting right-of-way dedication deeds from:
   a) Riverview Estates, LLC. RES. NO. 6030
   b) The First Church of God, Albany, Oregon. RES. NO. 6031

4) Accepting franchised utility easement from:
   a) The First Church of God, Albany, Oregon. RES. NO. 6032
5) Accepting franchised utility and access easement from:
   a) Ronald and Lynda Chadwick. RES. NO. 6033
6) Authorizing transfer from Street Capital to Street Transfers Out for $36,600. RES. NO. 6034

MOTION: Coburn moved to adopt the Consent Calendar as presented. Johnson seconded the motion and it passed 5-0.

Award of Contracts

Baldwin General Contracting for Fire Station 12 Seismic Upgrade

Fire Chief John Bradner asked for the Council's approval to award the contract for the seismic upgrade to Fire Station 12. He is pleased to report that it came in significantly lower than the engineer's estimate, which was $350,000. The bid came in at $216,000 plus some additions.

Coburn asked why some columns list zeros on the "Apparent Bid Results" (page 68). Bradner said some of the alternatives were listed as negatives, so since the bids came in low they added them back in. They may look like there was no bid but those alternates actually were bid on. Not all portions of the project are seismic-related, but the City will be picking up the other portions. A significant portion was seismic and will be picked up by the grant funds.

Konopa said it is nice that this is a local contractor and the dollars will stay in our community.

Olsen said the bids came in at 60%. He asked, how long will the state be interested in helping with seismic rehabilitation? Will it continue for several more years? Bradner said that he found out that the Governor's budget for June 30 included $1.5 million for the rehabilitation of seismic structures; but the next round is just for schools. In the future he hopes funds will continue for public safety facilities but he doesn't know. Olsen is concerned about Station 11 since they are undecided about whether to rehabilitate it or rebuild it. Bradner said it is too late to apply for funds now since the next two years are already earmarked for schools. Olsen said it may still be worthwhile to prepare the request.

MOTION: Collins moved to award a contract in the amount of $216,704 to the low bidder, Baldwin General Contracting of Albany. Christman seconded the motion and it passed 5-0.

PetroCard for commercial card-lock fuel

Management Systems Director Bob Woods said the Albany Police Department (APD) had a contract with PetroCard that expired last year. Using fleet management software across the City, Woods found that other departments also had been using card locks on occasion, such as Public Works, Parks & Recreation, and the Fire Department. Fire was using a different vendor. Staff decided to go out for a single contract. Police were getting 6 cents over wholesale, which is the same as this contract. The state contract is 16 cents over wholesale so this is a much better deal. This is a two year contract.

Hare said the primary fuel source for City vehicles is Linn County Fueling Facility because it has the best price in general. However, there are times when it may be more cost effective to get it from PetroCard because it is more convenient than driving across town. APD will most often use PetroCard and then will use Linn County the rest of the time.

Collins asked, do we pay state and federal taxes on fuel? Woods said, we are tax exempt.

Woods said APD primarily uses PetroCard because their mechanics have advised them to use it instead of the fuel from the Linn County Facility. They have high performance engines and have issues when there are fluctuations in fuel quality.

Woods said the City now has a single fuel tracking system. All fuel, repairs, etc. have been tracked for about one year and staff now has the ability to do some analysis. If they see some reoccurring repairs they will have hard data to justify decisions.

MOTION: Coburn moved to approve the resolution as presented and Johnson seconded it. The motion passed 5-0 and was designated Res. No. 6035.

Appointments

Albany Arts Commission

Konopa explained that she gave the Arts Commission the authority to recommend members to the group since she does not have expertise in art. Their two recommendations are Linda Herd and Billie Moore.

Johnson said that both are very qualified according to their applications.
Konopa is considering the creation of a "Friends of the Arts" group, for folks that want to be involved but not be committed to a Committee. She said, the Arts Commission is doing a great job.

MOTION: Johnson moved to appoint Linda Herd and Billie Moore to the Albany Arts Commission. Collins seconded the motion and it passed 5-0.

Reports

Request from contractor to perform night construction-related work on the Walmart site

Shepard said Robinson Construction's first request to perform night construction-related work on the Walmart site came to the Council with staff's recommendation for denial. This is work being done offsite on I-5 in association with the Walmart project. The state requires they work at night to limit impacts to traffic on I-5. The City rejected the first application because it was too vague and the contractor didn't demonstrate that they had exhausted other options for staging locations.

Shepard said that Project Manager Kevin Hamilton has worked with the contractor to get more detailed information, and today staff recommends the Council approve their request. The key issues are that the contractor has committed to doing most of the on site work between 7:00 p.m. and 11:00 p.m. From 4:00 a.m. to 6:00 a.m. they will be bringing back traffic control materials (in other words, cleaning up the site on I-5). Additionally, they will be restricted from dumping on the site to minimize noise from tailgates dropping. Shepard reminded the Council that they can rescind the permit at anytime, if Robinson Construction fails to fulfill their part of the agreement.

Johnson was worried about back up beepers and is pleased that they are not going to be used. She said it seems they have at least tried to find alternatives. Shepard agrees that Robinson Construction made a good faith effort. They are also committing extra resources, for example, by using spotters instead of back up beepers.

Hamilton showed pictures of the site (see agenda file). The primary buffer is 18-20 feet tall. Sound is greatly mitigated by the buffer for those in the Coastal Crossing subdivision. This stockpile exceeds the amount they will need so there will be enough left to provide a buffer throughout the life of the project. There are a series of rock stock piles that the trucks will be traveling through. ODOT says they have to be gone from I-5 by 6:00 a.m. They will be entering and exiting from the construction exit on the east side of the property where the piles are.

Konopa is concerned about the damage to Goldfish Farm Road. Hamilton said they will be making improvements to that road through the Site Improvement (SI) permit.

Collins said this is a clean worksite compared to many he has seen. He said to keep in mind that it is not going to be pristine and will be noisy to some degree because of the nature of the work.

MOTION: Collins moved that the City Council approve Robinson Construction's request to work nights in accordance with the plan and restrictions provided in the Council packet; and that this approval may be terminated at any time upon the recommendation of the City Engineer. Johnson seconded the motion.

Coburn said that from personal experience, turning off beepers and using spotters can be done but it really increases the risk to the workers and is not ideal. Statistically ODOT reports that flaggers or spotters are most at risk for fatalities on worksites each year.

Olsen asked how long it will take to complete the project. Hamilton said the hand-off date is approximately Thanksgiving for Robinson Construction to complete the Walmart store construction and associated public improvements. The night time work should be done about mid-October, but they have asked for Thanksgiving just in case. All construction is dynamic and there could be something unexpected. Hamilton thinks it is a reasonable timeline.

Shepard said the work on the actual site is still regulated by the AMC.

Christman asked, can we distribute a letter to folks in the neighborhood so they know the restrictions that we have placed on Robinson Construction? Shepard said yes, staff can do that.

Rian Tuttle, 21360 SW Amberwood Drive, Hillsboro, is from Robinson Construction. He said they had already done some outreach with neighbors by sharing their work hours during Phase 1, which happened last fall and over the winter. They updated them again when hours changed in the spring. They passed out letters to neighbors and would be happy to do it again.

VOTE: A vote was taken on the motion and it passed 5-0.

Approving application for grant funds from Oregon Department of Fish and Wildlife for Thornton Lake Turtle Management Plan

Parks & Recreation Director Ed Hodney is asking for the authority to apply for a grant to the Oregon Department of Fish and Wildlife (ODFW) in order to do three things: conduct a turtle population study in and around ETLNA; develop a turtle management plan; and improve riparian habitat along the City's stretch of ETLNA. Acquiring the property was done in part to protect natural resources and this grant furthers that objective.

Hodney said the City was alerted after the budget process that ODFW had invited us to submit this proposal. We were advised recently that the proposal looks good and is eligible for funding; they are now asking if we are planning to apply.

Hodney showed a map with red dots (see agenda file). Each dot represents property owners that have decided to join the City on this project. They are interested if there is a current or viable turtle habitat. There have been 24 property owners who want to join in the study so far.

Community Development Director Greg Byrne said that the population study will help to establish a baseline for the City and also the adjacent property owners to pursue their own purposes on their own properties with less burden than we might otherwise be placing on them.

MOTION: Collins moved to authorize the Parks & Recreation Director to apply for grant funds from the Oregon Department of Fish and Wildlife for a Thornton Lake Turtle Management Plan. Olsen seconded the motion and it passed 5-0.

Request for funds from Greater Albany Public Schools

Hare said the Council requested a memo on the subject of the Greater Albany Public Schools (GAPS) request for funds. Hare recommends that the Council give authority to staff to negotiate with GAPS to purchase an interest in the Timber Ridge gym and complete the purchase of Deerfield Park. The two would pay approximately $500,000 to GAPS and would help them to have resources available. It would also benefit City residents by giving the Parks & Recreation Department the ability to expand their programs, and create savings by purchasing Deerfield Park at a lesser rate than in the current agreement. Staff is asking for Council action to approve the concept; then staff will bring back a firm proposal.

Coburn asked if the City currently maintains Deerfield Park. Hodney said yes; also the lease is $1,000 a year.

Collins said this fits his requirements to trade assets for cash.

Christman said it is important for folks to know that this is not a new concept. The City has been discussing an extra gym and completing the purchase of Deerfield Park for a long time. Konopa added that the extra gym space was in the Capital Improvement Program.

MOTION: Collins moved to proceed with negotiations for easement rights for space at the Timber Ridge gym and for the purchase of the Deerfield Park property and Christman seconded it.

Johnson asked where the money will come from. Hare said SDCs will be used for the gym and the Council will need to discuss the different sources that can be used for the park.

VOTE: A vote was taken on the motion and it passed 4-1, with Johnson voting no.

BUSINESS FROM THE COUNCIL

Coburn wants to see the City accelerate the process to build a new Police Station. He said, we have the reports and have been talking about it for a long time. He wants to know what a reasonable time frame might be. For him, what is driving the conversation is the economy and the value of construction jobs. For example, the bids for the Fire Station came in much lower than the engineer's estimate. This economy is not turning around and we are seeing lots of public money spent on transportation, universities, and health care. He spoke to an electrical contractor in Nebraska and he said it's the same there. Coburn thinks there is a tremendous opportunity for Albany to build a Police Station at a very affordable price and he would hate to see us miss the opportunity. However, the process takes time and if we wait too long we will catch the economy on the upswing and construction prices will go up.

Hare said that the consultant has been asked for a proposal for the next phase of the Police Station, which would be the cost to build on the site on Pacific Boulevard. After that, the speed at which the project moves forward will be determined by the Council.

Coburn said there are many components, such as if we should do a public safety levy or if we use the PepsiCo settlement funds for the project. Coburn said Collins wants to get the public to weigh in by a vote and he appreciates that point of view, but we have a good opportunity now from a construction-cost standpoint that we should be taking advantage of now.

Christman has also been working on some financing ideas. He thinks we can and should be considering how to fund it while it is being designed. He said, we don't need to know the exact dollar amount in order to discuss funding options. We need to discuss funding sooner rather than later and he thinks it can be done on a parallel track. Hare said, staff can bring back some funding concepts for the Council that would run concurrent with the design phase.

Coburn wants a flowchart type diagram so he knows at what point all the decisions would come together so they can determine when it is too late. Hare will come back with a timeline.

Konopa said this is a good time to invest in the economy. It does help to lower construction costs when the economy is down.

Collins said that he generally agrees with Coburn but still thinks the Council should be considering both public safety facilities.

Johnson said there were four Albany Firefighters in the news. There was a fire in the spring and a four year old boy lost his bed in the blaze. The four Firefighters were putting a bed in the shape of a fire truck together for him.

Collins thinks that our community does not see or understand the many contributions of City employees. He is on the Board of the Boys and Girls Club of Albany and sees what Police Officers and Firefighters do for Albany kids, though it is often unseen by the general public. He described Firefighters feeding hundreds of kids for Thanksgiving. Other City employees help in other ways too.

Hare said that for the Linn Benton Loop, the City is dependent on Business Energy Tax Credit (BETC) funding. BETC allows businesses looking to take advantage of energy efficiencies to purchase credits; but they have to find buyers for this tax credit and they are getting more difficult to find. The City may lose the Saturday Loop service as a result. Hare said there is a consultant looking for more BETC credits for the City. Also, staff accidently double-counted some federal revenues so those two deficits are working against Loop services levels.

NEXT MEETING DATE: Joint Meeting – City Council & Linn County Commission July 18, 2011
Work Session July 25, 2011
Regular Session July 27, 2011

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:52 p.m.

Respectfully submitted,

Mary A. Dibble, MMC
Deputy City Clerk

Reviewed by,

Stewart Taylor
Finance Director

APPROVED:

CITY OF ALBANY
CITY COUNCIL (WORK SESSION)
Municipal Court Room
Monday, July 25, 2011
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:04 p.m.

ROLL CALL

Councilors present: Councilors Dick Olsen, Bill Coburn, Floyd Collins, and Bessie Johnson.

Councilors absent: Councilor Jeff Christman was excused.

PROPOSAL TO BAN ALCOHOL IN CITY PARKS AND ESTABLISH PARK HOURS

Parks & Recreation Director Ed Hodney said that the memo in the agenda packet responds to the Council's questions. There was one question related to the Oregon Constitution which Police Captain Jeff Hinrichs will address.

Hodney handed out an inventory of parks (see agenda file). Parks where alcohol is restricted were highlighted in yellow. One of the common litter issues is broken glass; it occurs anywhere there is a hard surface. Broken glass is regularly becoming a clean-up issue for Parks Maintenance staff. The glass is mostly from alcoholic containers and prohibiting alcohol would mitigate this.

Regarding park hours, Hodney surveyed 14 parks from Portland Metro to Sandy. Most of them have uniform park hours and also prohibit alcohol unless permitted. He said, it seems to be the norm in Oregon cities. Albany's current ordinance permits the Parks & Recreation Director to establish park hours on a case by case basis, and they have done that with a couple of parks by posting park hours. Bryant and Bowman Parks are the exceptions since they were already regulated before Hodney started at the City. He also posted hours at Kinder Park to close at 10:00 p.m. Bowman Park was restricted in response to neighbor complaints about activity in the park after dark.

Hinrichs said that ORS 430.235 regulates conduct allowed in public. Years ago, Police could arrest for crimes like drunken and disorderly conduct, but now arresting for behaviors is considered unconstitutional, like drunken and disorderly. Now Police are restricted to arrests for violent behavior only. A person that is being difficult, loud, or even calling someone names, may not be acting in a "violent, tumultuous" manner. Having a ban on alcohol in the parks would make it much easier for Police to deal with all these types of behaviors, not just violent behavior.

Hinrichs said there is also inconsistency with the way parks are regulated in Albany. They have different hours or none at all, and whether alcohol is permitted varies too. Being consistent would be much easier for staff and citizens to deal with.

Hinrichs said he has been asked about the difference between warnings and citations. If for example the Police find a couple having a glass of wine in a park where alcohol is banned, they would talk to them and evaluate if it was a citable offense. If the couple just didn't know it was banned, then most often the Police would just give them a warning and the issue would be resolved. On the other hand if someone was being belligerent, the Police could actually enforce the law. Hinrichs assured the Council that officers would make a careful evaluation.

Hinrichs also pointed out that there is very little "good" that goes on after 10:00 or 11:00 p.m. in parks. Most activity the Police see after that time is drinking, drug use, or vandalism.

Hodney said the Parks & Recreation Commission voted 5-0 in support of the ordinance to prohibit alcohol in parks, and 4-1 in support of a change in park hours. One Commissioner was concerned about playing basketball in a park, for example, at 2:00 a.m. The only other comment was from a citizen at the last meeting about the skate park and its hours. Under curfew the skate park can be used until midnight on weekends for those under 18, or until 10:30 p.m. on week days. The new ordinance would close the park at 10:00 p.m. but the Parks & Recreation Director could consider, under the authority in the ordinance, the extension of hours at the skate park. He could also withdraw the extension if it became a problem.

City Attorney Jim Delapoer said this is a policy judgment for the Council. There is no "right" answer. Restricting the parks will have an undesirable affect on good, law-abiding citizens; but it will also have a beneficiary effect on other citizens. As a prosecutor, the appeal for the ban on alcohol is largely for ease of enforcement. Delapoer said, your law enforcement is bare bones as it is. Some of the conduct that does not cross the line now, like staggering or vulgar speech, is going to drive the users of the park away. In order to arrest someone for violence, the Police Officer has to have witnessed the behavior or a citizen that witnessed it will have to stay at the park until Police arrive, and then follow through as a witness in court. In most cases where someone is misbehaving in the park, the good citizen is going to just pick up their stuff and leave. As a prosecutor, Delapoer doesn't like those cases because they can fall apart.

Delapoer said a ban on alcohol in parks is easier to enforce. They don't need the citizen to follow through with the court process; the Police Officer doesn't have to witness the behavior; and in all cases, the Police Officers can exercise discretion. The balance is the ease of enforcement versus some people's legitimate rights being impacted. For park hours, it is a similar balance. There may be some who can't get to a park until after hours, but that would likely be a small number.

Councilor Bill Coburn asked, why is this coming to the Council now? Hodney said the larger conversation about transients in parks, and other areas like the train station, took place a few months ago. This decision is not time-critical, but it is timely given the other conversations the Council has had in recent months.

Konopa said the Council has talked about Takena Park. There are lots of kids that hang out there at night. Hodney said that in that case, staff heard from some that they are not closing the park early enough, and from others that they are closing it too early.

In regards to basketball being played at night in the parks, Hodney said to take into consideration the folks that live within hearing distance. Discussion followed.

Councilor Floyd Collins said it is a matter of risk and exposure. If they have just two or three cases a year, then he doesn't see the need to tighten up the regulations. If the frequency and magnitude is becoming more severe, then some sort of restriction would be useful.

Executive Assistant/Public Information Officer Marilyn Smith said that Albany Police Department (APD) ran the statistics for alcohol-related calls in all City parks for 2010. There were 46 complaints. For the first half of 2011, there were eleven. Although they do not track how many of those involved alcohol, Hinrichs said that typically, these calls would be the result of some sort of behavior that would warrant a call. Konopa also pointed out we don't know how many experience disruptions at the parks but don't call it in. She hears from folks that do not feel safe on the riverfront.

Councilor Dick Olsen asked, how many calls do you get outside of the parks about alcohol problems? Hinrichs said, the number is not significant because they are usually at a location such as their house or a park. They do not get too many calls, for example, from businesses. Discussion followed.

Coburn is concerned about unintended consequences. Limiting alcohol consumption in parks isn't going to make it go away, they will just move and drink somewhere else. Some feel we do too much for the downtrodden, and then we hear that among those people, Albany is the place to go and hang out. Maybe we would rather that they were in the parks than in other places.

Konopa said it would be consistent to have the ban. It would make it easier to enforce for both alcohol and park hours. She thinks that charging a $20 permit fee is reasonable. Hodney noted that the Council can change the fee.

Councilor Bessie Johnson said it is unfortunate that a few can ruin it for everyone.

Hodney said the Council does not have to make a change. They could continue to address specific parks as they come up. One that will be coming to the Council very soon is Waverly Park. APD is under pressure from the neighbors to make a change.

There was discussion about the cost of signs.

Johnson agrees that they should set park hours.

Coburn is willing to try both limitations for a short period of time. He is not happy about it but is sympathetic to staff so he is leaning towards trying it.

Hodney said that at River Rhythms events, alcohol is permitted. Signage at the entrance makes that clear.

Collins asked, for the parks that do not have restrictions, how many problems are there? Hinrichs used Periwinkle Park as an example and read the offenses. There were about 5-6 where he suspects the activities were related to alcohol. Collins said, if we are not having a problem there, then why regulate it? He said, we should wait until staff brings a park to the Council's attention due to problems, such as Waverly Park which will be considered in the near future. He supports setting hours for the parks, but not prohibiting alcohol.

Staff will bring back a revised ordinance to establish park hours.

COUNCILOR APPLICANT INTERVIEWS

Konopa said the City got six applicants for the vacant Council position. Discussion followed about how to conduct the interviews.

The meeting will start at 5:45 p.m., with interviews beginning at 6:00 p.m. Each applicant will be given 30 minutes. The interviews will be selected in random order by drawing names from a hat.

COUNCILOR COMMENTS

Collins commented that Hare's decision not to install the fence at the underpass across from the train station was a good decision; however, the local newspaper printed misinformation about it. Discussion followed.

Konopa commented regarding the newspaper article about her comments on whether or not to ban plastic bags.

CITY MANAGER REPORT

There was no report.

ADJOURNMENT

There being no further business, the Work Session adjourned at 5:11 p.m.

Respectfully submitted,

Mary A. Dibble, MMC
Deputy City Clerk

Reviewed by,

Stewart Taylor
Finance Director

APPROVED:

CITY OF ALBANY
CITY COUNCIL (WORK SESSION)
Municipal Court Room
Monday, August 22, 2011
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:00 p.m.

ROLL CALL

Councilors present: Councilors Dick Olsen, Floyd Collins, Bessie Johnson, and Ray Kopcynski. Councilor Bill Coburn arrived at 4:56 p.m.

Councilors absent: Councilor Jeff Christman.

BUSINESS FROM THE PUBLIC

There was no business from the public.

JOINT PARKING AGREEMENTS

City Attorney Jim Delapoer explained that current practice under the Albany Development Code (ADC) is for the City Attorney to approve joint-use parking agreements between private parties. Such agreements are becoming more frequent, so staff wanted to get input from the Council at this juncture.

Delapoer used the agreement between the Linn County Courthouse and a neighboring church as an example of a joint-use parking agreement that works well for both parties. This one parking lot essentially has two uses, with heavy use by Linn County during the week and heavy use by the church on the weekend. For many years this type of agreement was the exception, not the rule, since most businesses were required to build their own parking lot. Now, however, property owners are seeking joint-use agreements instead of building their own lots much more often. Delapoer is concerned about this trend.

Delapoer explained that the agreements only work if the uses of both buildings remain the same long-term, such as in the example of the Linn County Court and the church. For commercial uses of shorter duration, however, it may no longer work when one of the businesses change. There can be parking conflicts as a result and by that time, the land use permits have already been granted so there is no way to go back and require changes to the parking. The result is that one of the entities will suffer for lack of parking. He thinks they should consider changing the ADC.

Delapoer said a current compromise he is working out is for the Boys & Girls Club of Albany, which is expanding and is proposing to satisfy increased parking requirements with a joint-use parking agreement with a neighboring business. The business would unlikely want to make it a permanent agreement, since it could impact their ability to sell the business later on. In this case, Delapoer is crafting an agreement that must be recorded with the property and is irrevocable for 10 years; but the City can cancel the agreement if the Boys & Girls Club can substitute it with another agreement with a business in the same proximity. Delapoer cautioned that if the Council were to move to this new process, there would always be pressure on the City to accept less than satisfactory alternatives. Once the land use is allowed though, there is not much leverage. The current compromise Delapoer is working on is less than perfect and he welcomes additional suggestions from the Council. Right now the Planning Commission reviews the time frames and if they are compatible, they will approve the parking agreements; but this will not work if uses change and the ones who suffer are the citizens nearby, whose residential street parking may be compromised.

Discussion followed about if within 100 feet is the appropriate distance to require for an alternative parking lot. Konopa shared with the Council complaints she has heard.

Delapoer said he is trying to strike a balance. If they require a permanent parking solution it would be too restrictive, but likewise allowing an agreement to be in place so long as it is convenient, isn't going to work either. Instead Delapoer is suggesting that a new developer provide a substitute parking agreement.

Councilor Ray Kopcynski asked, can it be set up for a five-year review? Delapoer said it is already set for ten years in the ADC.

Community Development Director Greg Byrne said there are also concerns about the functional process. Currently, the ADC says parking can be up to 500 feet, and the Planning Commission or the Hearings Board considers it. In fact staff is currently reviewing an agreement for parking that is within 500 feet, so it meets the ADC, but functionally will not work because customers can't see the business from the proposed parking lot. Staff will be looking more carefully at conditions of approval. The burden should be on the applicant to monitor the use.

Councilor Floyd Collins asked, how are the number of parking lot spaces that are necessary determined? Byrne said the ITE Manual and the ADC dictate how much parking is required.

City Manager Wes Hare said the City has been using joint-use parking permits for awhile and has not had many problems, though he does anticipate the numbers may increase.

Collins said, if we don't address parking issues then folks may not establish businesses downtown and the result could be blight as businesses move to the fringes of the city. He thinks it behooves the Council to find a middle ground.

Councilor Dick Olsen asked, do they count -street parking? Byrne said, it depends on the use. They don't count residential parking spaces.

Delapoer will continue handling the cases status quo, on a case by case basis. In the future staff may introduce ADC changes.

Konopa said that Woodland Square may need additional parking in the future.

Collins said they should also allow some flexibility in cases such as the Boys & Girls Club, where most users come in by bus; so they don't really need as much parking as the ADC may require.

AIRPORT INSTRUMENT APPROACH UPDATE

Public Works Director Mark Shepard said that Oregon Department of Transportation (ODOT) will be meeting with the Council in September to discuss the I-5 interchange design. The big picture is that what the City does at the Airport impacts the interchanges and private property, and vice versa. There are policy items that will be in conflict that need to be balanced. Shepard said, we also need to keep in mind far reaching impacts for the interchange and future development.

Airport & Transit Manager Chris Bailey said that at the May 23, 2011, Work Session the Council discussed the Airport Advisory Commission's recommendation to develop a better instrument approach. Bailey and Transportation Systems Analyst Ron Irish are looking at interchange design in terms of instrument approach and runway extension. The purpose today is to give the Council the big picture concepts in preparation for the meeting with ODOT in September.

Bailey explained how the trapezoid of air space that must be protected is in conflict with the interchange signalization. She said, the further away things can get from the center line of the runway, the better.

Bailey said that a true non-precision approach would be difficult to accomplish. It would require shifting the runway to the right or left, which would conflict with Price Road on one side and with buildings on the other. The other possibility is GPS capabilities, but staff is still investigating that with the Federal Aviation Administration (FAA.) The runway extension seems to be more feasible, especially if we keep the approaches as they are. Both Airport improvements projects need to be in the Airport Master Plan.

Collins asked, what is the impact on the runway extension and non-precision instrument on the community commercial zoning? Bailey said the runway extension to the north will make the Knox Butte building height drop 20 feet. Currently they have slope easements and may need to require more. Collins is concerned that there may be a significant impact.

Bailey said that Irish came up with a table and map of properties that would be impacted. The impact would be significant, with over 25 properties. Some could be mitigated, and others could not.

Collins asked, what is the value of a non-instrument precision approach? Bailey said it allows more types of aircrafts to use the Airport and allows more flights in less than ideal weather conditions. It provides more options to land. Collins asked, but how many times will that happen? And, is it worth the impact to I-5 and the commercial businesses in the area?

Bailey said the Airport Master Plan process will help to answer some of these questions. Also, FAA won't provide funds if they deem the cost versus the increased use is not worthwhile.

Olsen thinks the Airport has been whittled away at over the years and we should hang onto as much as we can.

Dan Miltenberger, 2825 Jackson Street SE, explained how the pilot makes a decision to land or not, based on their height and weather conditions.

Shepard said that ODOT has indicated that in order to do what the City wants, which is to keep the traffic signals as close together as possible, it would cost $15 million more and is not their preference.

Collins said that this could be a big decision package and he wants to have more information. He said, if we can achieve flexibility at a lesser cost that would be ideal. He wants to know how it would impact the zoning for community commercial, which will already be impacted by Goal 5 restrictions. Collins will meet with staff to discuss the issue further.

Councilor Bill Coburn arrived at 4:56 p.m.

PROPOSED CHANGES TO ALBANY MUNICIPAL CODE TITLE 2

Hare said the Public Information Officer/Management Assistant Marilyn Smith, Delapoer, and he have been reviewing the Albany Municipal Code (AMC) for areas needing updates. The proposed changes are outlined in the staff report. Hare thinks they can eventually reduce the size of the AMC.

Delapoer said the changes are non-controversial and not substantive. They either clean up language or they bring the AMC in line with current City practice.

Kopcynski noted that Chapter 2.04.050 says the Council shall be guided by Roberts Rules, but are not bound by them. He asked why it should be mentioned at all. Hare said it is so that they have a model to follow for meetings.

Kopcynski asked if for Chapter 2.100, a proposed addition to the AMC that gives the City Manager authority to delegate, Council approval should be involved in the event the City Manager and the Council are not getting along. Delapoer said the City Manager does this routinely already, as do most City Managers. As Chief of Staff he delegates authority to Department Directors. This protects the City from a legal challenge by giving the City Manager power to delegate.

There was discussion about Chapter 2.04.060 and the City Clerk repeating a vote.

Regarding Chapter 2.28.010, Johnson asked what the role of the Council is in the event of an emergency. Hare said, the Council can help to ensure the accountability of staff. Also if they had to take an action that was beyond the City's authority, and there were time, they could get Council approval in order to invoke discretionary immunity under the law.

COUNCILOR COMMENTS

Johnson thanked the Department Directors for cooking at the City picnic. It was a fun event.

Johnson will be gone September 14 and will miss the Regular Session.

Kopcynski said he was invited by the Albany Downtown Association to the VIP dinner at the NW Art & Air Festival (see agenda file). He asked if he can attend the event in terms of ethics now that he is a Councilor. Hare said that he can attend, but if he brings a spouse then he may have to reimburse for their meal.

Collins wants the proposal that Scott Lepman made in regards to the Draper house and System Development Charges (SDCs) to come back to the Council for discussion in September. He said, one issue is if a house is demolished and thus some use goes away, could the City keep those SDCs to use for affordable housing; and if so, could it be transferred from property to property within certain restrictions. They should become an asset and a tool to achieve the objectives of the Council.

CITY MANAGER REPORT

Hare addressed the article in the newspaper about the Wastewater Treatment Plant producing unusable sludge. Hare said this is not a new issue and the Millersburg/Albany Joint Management Committee have been discussing it for some time. The plant produces very good effluent but is creating more sludge than it should and it is not the quality they were promised, so they are taking it to the landfill instead. Staff has been working with Siemens, the vendor who sold the equipment, to correct the issue. The Committee is holding an Executive Session this week. Hare said, this is not unlike the issues with the Water Treatment Plant, where there were problems with equipment that took time to get corrected. He is optimistic they will be able to do the same in this scenario.

Shepard said that in order to land-apply sludge, and let farmers use it, the sludge must be treated to a certain quality.

Hare said if they cannot reach a solution with Seimens they have a backup plan to ensure that the citizens of Albany get value for this investment.

Collins said the two-year test period began in July 2011. They have two years for testing and it has only been two months. Only one component can be tested at a time. If the City incurs greater costs during the two year period, there are ways to be compensated.

Kopcynski asked for an update on the Hydropower Plant. Shepard said the Operations Manager just gave the information to the local newspaper and there will be an article printed tomorrow. Shepard will send a staff report to Kopcynski.

Hare will be at the International City Managers Association (ICMA) Conference in Milwaukie and on vacation in September. He will be gone September 10 -20.

ADJOURNMENT

There being no further business, the Work Session adjourned at 5:26 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 24, 2011
7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon 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, Ray Kopczynski, Floyd Collins, Dick Olsen, Bill Coburn, and Bessie Johnson

SCHEDULED BUSINESS

Continued Consolidated Legislative Public Hearing

CP-02-10/DC-05-10, Goal 5.

Konopa reopened the Consolidated Legislative Public Hearing at 7:17 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.

No Council members wished to abstain nor did any wish to declare a conflict of interest, or report any significant ex parte contact.

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). 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 they testified at the hearing on June 8, please restrict testimony tonight to new information.

Staff Report

Planning Manager Heather Hansen explained that the Goal 5 program is part of the Periodic Review work program that was adopted by the City Council for wetlands, riparian corridors, and wildlife. Since the last hearing in June a special meeting with the public was held on July 25. From that meeting there was direction from the Council to make revisions to the proposed amendments to address density bonuses, on-site stormwater, inability to mitigate on-site due to easements and rights-of-way, and alternatives to bonding for mitigation. Also, for the City to reconsider the outright exemption from the riparian corridor overlay for residential lots less than 20,000 square feet, and strengthen the Economic, Social, Environmental, and Energy (ESEE) Analysis Report.

Hansen reviewed the revisions (highlighted in yellow in agenda packet) to the ESEE Analysis Report and Articles 3 and 6 (page 2 of agenda packet).

Hansen introduced Greg Winterowd from Winterbrook Planning, the consultant that assisted in writing the ESEE Analysis Report, and Amanda Puntin and Ed Moore from the Oregon Department of Land Conservation and Development (DLCD).

Testimony

Konopa explained to the audience that 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.

Kris Richardson, 2002 Waverly Drive SE, was concerned about the exemptions for the 20,000 square foot lots because accumulation of lots can make a big impact. The City has the responsibility to protect resources and she is concerned about the environmental impact.

Scott Lepman, 100 Ferry Street NW, was concerned about section 6.065 District Boundary Refinements (page 134 in agenda). He has a property in south Albany, in which he created a large wetland anticipating the use of some upland. That was the agreement he had with the Division of State Lands and the Army Corps of Engineers. He believes this section prevents him from using the upland in the future. He submitted a letter from his lawyers, Perkins Coie, outlining his concerns (in agenda file). He was also

concerned that some items in the proposed Goal 5 implementation hadn't been changed. He said if the Council continues this process, he would like to review the document in more detail.

Councilor Coburn asked, what would you like done? Lepman said strike the sentence "Wetlands that are filled, or lands removed from the floodplain through fill, are not eligible." or include fill after a certain date, like the adoption date of Goal 5. If the sentence is struck, he will still have to abide with open space provisions.

Councilor Kopczynski asked, what would happen if that sentence is struck? Planning Director Greg Byrne answered that this paragraph is intended to deal with the open space zoning district and the reduction of the application of that designation, through an administrative review, in places where natural resource overlays don't exist. The reasoning was that the open space district was applied loosely years ago before accurate mapping of the area and before the City had good Geographic Information System (GIS). So there are places with uplands with no natural resource value at all that currently have open space zoning on them. It is an attempt to say that in those places the City is not meeting the purpose of that district, staff is suggesting the City reduce the boundary of the open space district and allow that property to be developed, and do that administratively because it fits the purpose the Council set when they established open space districts. He said the Lepman property is not zoned in the City yet. Staff does not interpret the paragraph, nor do they intend the paragraph the way Mr. Lepman does. When brought into the City, it will be up to the Council to decide if his property will be zoned residential or open space. Staff anticipates it to be residential and this paragraph will not apply.

Lepman was still concerned, because he feels it could be changed.

Hansen said it is proposed as "administrative" because it is a map correction.

Councilor Johnson asked, can it be changed if the property owner wants? Hansen said yes. Johnson asked, why can't the City get the maps right before going on? Lepman's property is in the Urban Growth Boundary (UGB), the open space would take some of the space where he wants to build. It sounds like two different things. She doesn't want it pushed aside. She said, let's get it taken care of.

Councilor Collins said in the future if that parcel is annexed, it will go to an election. If passed, the Council will establish zoning. If the upland has been created, there would have to be a Comprehensive Plan amendment that would change the current designation of open space to an alternative zone. He asked, under the Comprehensive Plan amendment, is that a greater in-depth process and is the burden of proof higher, than if that sentence was struck? Byrne answered that it is not. The current Comprehensive Plan has an open space designation that runs through Mr. Lepman's property. A portion of it is indicated to be open space and a portion of it is indicated to be residential development. The Council will decide, when that time comes, where the line will be.

Collins asked, when dealing with property in the UGB, and designation and development was created with Linn County permits, what happens when annexed into the City? Byrne said generally, it is taken into the City as it exists.

Lepman commented that the sentence states that he is not eligible to change the designation. Byrne feels this ordinance wouldn't apply when he is annexed into the City.

There followed more discussion regarding the Lepman property.

Natalie Janney, 1155 13th Street SE, Salem, representing Multi/Tech Engineering, submitted written testimony on their behalf (in agenda file). She mentioned the ability to use low impact stormwater techniques in order to mitigate wetland. She feels the code is silent on that option.

Councilor Christman said the staff report says there are adequate provisions to allow on-site stormwater. Hansen said it is allowed if it is a facility identified in the City plan, if City owned, or if City constructed. Otherwise, it would follow the same criteria as if it was any other impact; for instance, encroaching within 25 feet of a riparian area, concerns about forestation, etc. Hansen doesn't think it would be an issue.

Janney said the code doesn't provide clarity.

Diana Amos, 1030 North Albany Road, appreciated the help and guidance she has received from staff. She said her property is long and lean along Thornton Lake, and she continues to have concerns about the footage requirement for building. She thinks the burden is on the newer property owners.

City Manager Wes Hare said in the past people were allowed to develop right to the lake shore in North Albany, and that will no longer be possible. She is right, it applies to new development. It applies when the law is passed.

Candace Ribera, 100 Ferry Street, representing Scott Lepman, said she would defer to Mr. Schultz and Mr. Watson. She thanked the Council for taking time to reach a decision.

Ed Schultz, PO Box 667, Albany, attorney representing several property owners and the Grand Prairie Water Control District (GPWCD). He provided a packet (in agenda file) explaining that it included specifics of where they have suggested changes. The GPWCD wanted to identify the fact that for 45 years they have rearranged creeks to carry flow at high-water-mark times and during additional discharges from stormwater, roads, etc. Since there hasn't been any significant flooding from those streams during that time, their management has been successful. He encouraged the Council to take a look at the packet regarding the GPWCD. One of their concerns involves their easements along the four creeks and the limitations regarding plantings. They propose that the GPWCD be excluded from the Goal 5 limitations, and not be offered protection. They only want that changed within their boundaries. He reminded the Council that the district is also an additional water provider and serves the community for flood water control, aesthetics, and natural area preservation.

Schultz continued with the proposed changes his property owner clients would like to see to the Goal 5 ordinance. Konopa asked why changes were coming tonight and were not submitted earlier. Schultz said they had been, but felt they had not been discussed or addressed in the proposed ordinance.

Schultz reviewed pages 6-2 thru 6-20 in his submitted packet, and mentioned that on page 6-19 no penalties are identified for violations.

Schultz continued reviewing their proposed changes saying that the Council needs to consider economic and development issues as well. He said their suggestions represent practical solutions and consistency.

Dan Watson, 710 East Thornton Lake Drive, said he had contributed to code revisions submitted by Mr. Schultz. He said that, as proposed, Goal 5 would prevent people from using their properties as they are currently being used. He provided maps with pictures of various properties (in agenda file) and reviewed how the changes would affect those properties. He commented on turtle protection. He said the maps he was submitting included suggested changes. Watson would like to have time to refine the model.

Mark Azevedo, 1210 Skyline Drive NW, said the people that have spoken represent a small segment of the community. The Goal 5 process is way beyond economic interest. It is set up to recognize the natural resources in the community and maintain the functions of those resources. He commented on Multi/Tech wanting a credit by trading a stormwater wetland area. He said that a stormwater runoff purification area is not the same as riparian wetlands. A stormwater area concentrates heavy metals in the water, including copper, which he considers toxic and he doesn't believe one area can be substituted for the other. He said Schultz and Watson's review may have not been to make the Goal 5 ordinance user friendly but still meet some standard of protection for wetlands and waterways. Despite the bureaucracy involved, Goal 5 was set up to protect the natural resources. He mentioned that the East Thornton Lake Natural Area isn't just for turtles. For the long term there needs to be some protective law in place. He said they have been working with the Calapooia Watershed Council and the Benton County Soil & Water District regarding plantings on Thornton Lake. He said he hoped the Council would make a decision quickly. The City is playing catch up with the rest of the state of Oregon. Albany is the last municipality to adopt Goal 5.

Frank Amos, 1030 North Albany Road, read a handout (in agenda file) he gave to the Council. He wants habitat assessment changed to 50 feet, would like to see mitigation at 3,000 feet rather than 2,000, and is concerned about costs for property owners in order to comply with regulations. He asked the Council to balance what they want to protect and the costs of that protection.

No one else wished to speak.

Konopa closed the public hearing at 9:05 p.m.

RECESS

The Regular Session was recessed at 9:05 p.m. for a brief period.

RECONVENE

The Regular Session was reconvened at 9:15 p.m.

Goal 5 deliberation

The Council asked the City's consultant to give a response to the testimony.

Greg Winterowd, Winterbrook Planning, in Portland, said the ordinance drafted by the staff is the result of the meeting on July 25 and addresses the comments made at that and other meetings. He thought what the Council had, was on the weaker side of what is in other cities in Oregon. In his view, the position given by Mr. Schultz would change the significance of the ordinance and it would not comply with Goal 5. He reminded the Council that technical changes can be made as the ordinance is implemented. He thinks this ordinance is a good balance for this community right now. The suggested changes come from one segment of the community. His recommendation is for the Council to move ahead and adopt the ordinance. He is hearing the same issues now as a few months ago.

City Attorney Jim Delapoer addressed the violations section cited by Schultz, saying it complies with the Albany Municipal Code and state statutes. Every crime in Albany is a misdemeanor, every violation is $100. There are no other classifications.

Ed Moore, Regional Representative for DLCD, which covers Linn and Benton County, 635 NE Capital Street, Salem, commended the Council on their patience. He said Goal 5 is the last task in the Periodic Review program. He is feeling better about where the City of Albany is, but if anything is done to weaken the proposed ordinance it is likely it would be sent back to the City and the Council would have to go through this process again. When he thinks about Albany and the region, he sees the physical environment as a springboard for the future.

Johnson said she doesn't like Goal 5 the way it is written. It is complicated and cumbersome for home owners and she doesn't know how it will get enforced.

Hare said the staff enforces the laws of the City, and they routinely enforce the zoning code and other building and planning violations in the City.

Johnson feels the conditions are unrealistic and don't make sense. She thinks the overlay is a "taking". It is too much, costs people too much money, and they can't do with their property what they want. She also understands that the Planning Commission had grandfathered some properties in their version, but now it is gone. She would be in favor of keeping the overlay as it is. She commented on the western, painted, and pond turtles, disagreeing with the need for protection. She feels planting "natural plants" will encourage nutria. She feels Goal 5, as written, is a burden on the property owner. She feels it will benefit anti-development and will make it difficult for infill.

Collins suggested that on page 27 of the agenda, third paragraph from the bottom, the last sentence be changed to read, "Talking Water Gardens will become a destination for *outdoor recreation*." He asked, on page 31 of the agenda, under "3. Apply the Open Space Comprehensive Plan and Zoning Designation to the following areas: a. Local lakes, canals, streams, drainageways, and associated floodway", does that apply to the Santiam Canal, 8th Street, and Thurston Ditch? And if so, what does it do to the City's ability to develop walkways and other corridors that we have in other plans along those areas? Hansen said that it is existing language and she believes they are already zoned as open space. Collins asked, does having them designated as open space limit the City's ability to do the CALUTS Plan, which envisions walkways and development elements within open spaces? Staff will take a look at the code. He wants to make sure that question is answered and the City is not self limiting the 8th Street development.

Collins supports protecting the natural resources and said implementation is often in the details. He wants to have time to look over all of the suggestions.

Konopa doesn't think the suggestions provided tonight will satisfy the state. She asked the Council, how much longer do they want the process to take?

Collins said he wants to go page by page until he is comfortable with the information.

Coburn said he appreciates the work that Schultz did, and does see the value in some of the comments made. He sees a value in tying the tree ordinance with some of these regulations. He wants to make sure the Council is making the right decision for Albany and is concerned about any unintended consequences. There has been due-diligence by some citizens, and he needs to have time to look at all the materials. He would appreciate staff's comments on the information presented tonight.

Delapoer suggested the Council go through the document and debate among themselves and staff.

Konopa feels that if the Council changes the document they should reopen the public hearing as there were people who did not come tonight who would have if they knew changes could be made.

Collins said he is looking for language that clarifies and simplifies.

Christman agrees with Collins and Coburn. He doesn't think the Council needs to go page by page, but would like to hold off until the next Council meeting for a decision in order to make sure he totally understands the material. The Council will be making a decision that will affect the community for decades. It is not easy to change. The Council needs to be able to understand it.

Councilor Olsen suggested that staff review the comments made tonight and bring some suggested changes. He would like to look at the material as well.

Hare suggested that each Councilor look through the document and give to staff any changes they would like to see and then staff can come back with a redraft.

Delapoer said the Council could review, bring forward their concerns, and if there were four Councilors (the number needed for an issue to go forward) interested in the suggestion, add it to a list that comes back

to the Council with answers from staff. That may bring discussion before the Council in a more expedient way.

The Council agreed to the process.

Christman suggested that members of the Council submit their questions and list of items to staff before the Council meets again at the Work Session on September 12 in order for staff to gather information and be prepared with answers at the Council meeting on September 28. The Council agreed.

Business from the Public

Charlene Morrison, 1350 Springhill Drive, commented on an article that appeared in the *Parade* section of the Sunday newspaper, saying that it was about Michael Vick's dogs having been rehabilitated. She believes their rehabilitation was handled sensibly and intelligently. She said it was handled "sensibly", because the owner of the dogs was punished and "intelligently", because the dogs were retrained. She doesn't understand why the Blue case wasn't handled the same way. She asked the City attorneys to dismiss the case against the dog Blue.

Adoption of Consent Calendar

1) Approval of Minutes
   a) June 8, 2011, Regular Session.
   b) July 11, 2011, Work Session.
   c) August 10, 2011, Regular Session.
2) Authorizing appropriation of unappropriated beginning fund balance in the Justice Assistance Grant (JAG) fund. RES. NO. 6036
3) Transferring appropriation from the General Fund beginning balance to the Library. RES. NO. 6037
4) Authorizing the Library to sell surplus property.

MOTION: Coburn moved to adopt the Consent Calendar as presented. Olsen seconded the motion and it passed 6-0.

Approval of Agreement

Renewing intergovernmental ground lease agreement with the state of Oregon through its Military Department for the National Guard Armory property.

Hare explained that this was a request for a renewal of a lease by the Oregon National Guard for the Armory building near the Airport. They have sent a proposed lease that would be for 40 years. Hare said that Delapoer is concerned about the length of the lease. Hare is in favor of signing the lease because the state has closed several armories lately and he wouldn't like to see that happen in Albany. The City continues to have protections in the lease, it is a desired use, and there are benefits to the community.

Delapoer said by agreeing to this lease the Council would be giving an asset away for 30 years for $30. They expect to lease it for $1.00 a year. He is not critical of the National Guard, but would prefer a shorter term. He suggests a 5-year term or a 10-year term. Delapoer was especially concerned about language allowing the Guard to sublease the building, on page 200 of the agenda. He would like to protect the City's asset, clean up what they have suggested, and consider language regarding landscaping as well.

The Council directed Delapoer to bring back new lease language for the Council to review.

Appointments

City Council Representatives.

MOTION: Christman moved to approve the appointments of Councilor Ray Kopczynski to the Council Audit Committee, Police Chief Ed Boyd to the Linn County Local Public Safety Coordinating Council, and Councilor Dick Olsen to the Transient Lodging Tax Advisory Committee. Kopczynski seconded the motion and it passed 6-0.

BUSINESS FROM THE COUNCIL

Kopczynski had questions regarding the off ramps of I-5 being closed for a month. Hare suggested he contact Oregon Department of Transportation (ODOT), as the City has no jurisdiction.

Coburn asked for an update on the burn-damaged China Buffet Restaurant. Hare said they have been working with staff. It is a slow process with the insurance companies.

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

The Executive Session was canceled.

NEXT MEETING DATE

The next scheduled meeting of the City Council is a Work Session, on Monday, September 12, 2011, at 4:00 p.m. The next scheduled Regular Session is Wednesday, September 14, 2011, at 7:15 p.m.

ADJOURNMENT

There being no other business, the meeting was adjourned at 10:31 p.m.

Respectfully submitted by,

Betty Langwell, MMC
City Clerk

Reviewed by,

Stewart Taylor
Finance Director

ALBANY POLICE DEPARTMENT

TO: Albany City Council

VIA: Wes Hare, City Manager

FROM: Edward Boyd, Chief of Police

DATE: September 21, 2011, for September 28, 2011, City Council Meeting

SUBJECT: Limited On-Premises Sales, Off-Premises Sales, New Outlet Liquor License Application for Sweet Red, Inc., D/B/A Sweet Red Coffee Bistro & Wine Bar, 208 First Avenue SW.

Action Requested:

I recommend the Limited On-Premises Sales, Off-Premises Sales, New Outlet Liquor License Application for Sweet Red, Inc., D/B/A Sweet Red Coffee Bistro & Wine Bar, be approved.

Discussion:

Daniel and Cynthia Alire, on behalf of Sweet Red, Inc., D/B/A Sweet Red Coffee Bistro & Wine Bar, have applied for a Limited On-Premises Sales, Off-Premises Sales, New Outlet liquor license. Based on a background and criminal history investigation through Albany Police Department records, the applicants have no criminal record.

Budget Impact:

None.

MR

TO: Albany City Council

VIA: Wes Hare, City Manager
Mark Shepard, Public Works Director MWS

FROM: Chris Bailey, Airport and Transit Manager

DATE: September 22, 2011, for the September 28, 2011, City Council Meeting

SUBJECT: Airport Advisory Commission Recommendation on FBO Proposals

RELATES TO STRATEGIC PLAN THEME: • Effective Government

Action Requested:

Staff recommends City Council approve the recommendation of the Airport Advisory Commission to close the Request for Proposal for Fixed Base Operator Services without accepting either of the two proposals submitted.

Discussion:

The City issued a Request for Proposals (RFP) for Fixed Base Operator (FBO) Services on May 19, 2011. This was the second RFP for FBO Services issued. The first was issued in December of 2010. That RFP received one response which was determined to be nonresponsive to the RFP. The current RFP generated two proposals. A team from the Airport Advisory Commission reviewed both of the proposals and reported back to the Commission that their conclusion was that the RFP should be closed without accepting either proposal.

The two proposals are quite different from each other, and neither meets the expectations of the Commission. Specifically, the proposal from Dan Miltenberger requires that the City sell the FBO building and fuel system to him for $50,000 each; suggests that the City reduce operational expenditures at the airport to $8,000 to $10,000; and mentions that he would assume some unspecified management of the airport. The concept of selling City property to a private individual was not the expected result of the RFP; however the review team evaluated this proposal and ultimately determined it is probably not in the long-term best interest of the City or airport. The loss of fuel revenue and lease revenue under this proposal outweighs the benefits of a one-time revenue that is likely to be much lower than the $100,000 proposed.

The second proposal was from Peterman Air LLC. Their proposal was to run a more traditional FBO, leasing the FBO building from the City for $1,500 per month and establishing hangar rentals initially with the goal of adding additional aviation services each year. This proposal also had the City retaining the fuel concession and thus the revenue from fuel sales. However, they requested a payment from the City of over $8,000 per month in the first 26 months. They also requested lesser monthly payments out through the fifth year of the contract. Payment of $8,000 per month would put the airport operating budget in the negative in less than two years.

After reviewing both proposals, the review team requested additional, specific budget information from both parties. Mr. Miltenberger maintained his original proposal. Peterman Air submitted a second proposal in which they took over fuel sales, paying the City a fuel flowage fee of $0.05 per gallon, and reducing the amount of subsidy from the City to $1,228 per month. The net effect

of this proposal is a loss of approximately $20,000 per year in revenue as compared to the current operating conditions.

In light of two RFP advertisements that resulted in three unsatisfactory proposals, the Commission feels the City should re-evaluate what is in the best interest of the City with respect to the airport. Their discussion centered primarily on the economics of the proposals and the question of what the airport budget could afford. There is concern that any scenario that requires the City to pay a monthly subsidy to an FBO will drive the airport budget to be out of balance within two to three years. Similarly, the process required to sell public property would likely result in a much smaller net revenue to the City than the amount Mr. Miltenberger proposed and the long-term loss of revenue would cause the airport operating budget to be out of balance within a matter of years.

The Commission feels it is better to take additional time now to fully explore scenarios that would contribute to a sustainable airport budget, rather than enter into a contract which may have severe negative long-term impacts. For this reason, the Commission recommends the City Council authorize the cancelation of the RFP without awarding either proposer. Authority to cancel the RFP is contained in ORS 279B.100 which authorizes cancellation of the RFP when it is in the best interest of the City. This language was included in section V-3 of the RFP.

Budget Impact:

Cancelation of the RFP would have no significant impacts on the approved budget.

CB:prj

TO: Albany City Council

VIA: Wes Hare, City Manager
Mark Shepard, P.E., Public Works Director

FROM: Chip Ullstad, P.E., Utility Engineer

DATE: September 21, 2011, for the September 28, 2011, City Council Meeting

SUBJECT: Siemens Equipment Purchase Settlement Agreement, W-01-04

RELATES TO STRATEGIC PLAN THEME: • A Safe City

Action Requested:

Authorize the City Manager to execute the attached negotiated settlement agreement with Siemens.

Discussion:

The City purchased membrane filter modules and related treatment equipment from Siemens, Inc. separate from the construction contract for the Albany-Millersburg Water Treatment Plant. The equipment was placed in service in 2005 upon completion of the Plant. Over time the membranes have not performed as expected and the City has been in on-going negotiations with Siemens to resolve equipment performance issues.

The primary performance issue is premature loss of membrane integrity. This loss of integrity reduces the expected capacity and service life of the membranes. Siemens has tested and replaced membrane modules with the greatest loss of integrity. They have also installed pilot screening improvements to remove abrasive material in the raw water. Testing with the screening improvements has been successful in protecting the membranes and extending their service life.

Siemens and the City have negotiated the attached settlement agreement. The agreement includes permanent screening improvements and replacement of an additional 480 membrane modules. This equipment will be provided to the City at no cost. The proposed settlement agreement also establishes discounted purchase prices for a fixed number of additional membrane modules.

The settlement agreement has been reviewed with the City Attorney and presented to the Joint Water/Wastewater Management Committee at their August 25, 2011, meeting. The Joint Management Committee unanimously recommended Albany City Council authorize the City Manager to execute the agreement.

Budget Impact:

Authorizing the City Manager to execute the settlement agreement will not result in expenditures during the current fiscal year other than City staff assistance to install the screens and membrane modules. Execution of the agreement will provide for purchase of additional membrane modules at reduced prices through 2015.

CNU:kw
c: James Delapoer, City Attorney
Craig Massie, CH2M-Hill

MAINTENANCE AND RELEASE AGREEMENT

THIS MAINTENANCE AND RELEASE AGREEMENT is made and effective on this 11th day of October, 2011, (the "Effective Date") by and between Siemens Industry Inc., as successor in interest to U.S. Filter Wastewater Group, Inc. ("Siemens"), and the City of Albany, Oregon, a municipal corporation (the "City").

FACTUAL RECITALS

In February of 2003, Siemens and the City executed a contract whereby the City purchased a membrane filtration system from Siemens for the City's W-01-04, Albany-Millersburg Joint Water Supply project (the "Contract"). During the execution of the W-01-04 Albany-Millersburg Joint Water Supply project, certain claims and disputes arose among the parties with respect to the parties' performance in connection with the Contract. The parties now desire to enter into this Maintenance and Release Agreement in order to resolve all such disputes and claims.

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

AGREEMENT

1) **Equipment to be Furnished by Siemens**:

a) Scope of Supply: Siemens agrees to supply the City with the following equipment at no cost to the City:

i) Four Hundred and Eighty (480) model S10V PVDF membrane modules;

ii) One Hundred Thousand (100,000) pins for use in membrane module repairs; and

iii) Two (2) 24-Inch Stainless Steel Strainer baskets, final size to be determined as set forth below.

1. Strainer Basket Size Determination: Siemens will at its own expense arrange with the strainer manufacturer to field test two (2) 300-millimeter, 24-inch stainless steel strainer baskets at the Albany-Millersburg Water Treatment Facility. The field testing will be completed by December 31, 2011. The purpose of the testing is to determine whether the 300 millimeter strainer baskets will produce the specified flow capacity with a backwash cycle of no more than once per hour. The City will install the test baskets and participate in the field testing. Upon completion of the field testing, the City will, based upon the recommendations of Siemens, CH2M Hill, and the Strainer Manufacturer, either: (a) elect to take ownership of the 300-millimeter strainer baskets furnished by Siemens for field testing; or (b) elect to replace the 300-millimeter strainer baskets with two (2) new strainer baskets, that shall be provided by Siemens at no cost to the City. In the event the City exercises option (b) above, the City shall provide Siemens with written notification of the strainer baskets size(s) to be delivered. Upon delivery of the two (2) replacement strainer baskets,

Siemens' obligations under this Paragraph 1.a.iii) shall be deemed satisfied in full. The 300-millimeter strainer baskets shall be returned to Siemens upon Siemens written request. Siemens shall be responsible for arranging for and paying all costs for the return of the 300-millimeter strainer baskets.

b) Delivery Schedule and Freight Terms: The equipment identified in Paragraph 1.a above shall be delivered to the City within twelve (12) weeks of the earlier of: (a) the City providing Siemens with written notice to release shipment of the equipment; or (b) the date occurring ninety (90) days after the Effective date of this Maintenance and Release Agreement. Siemens shall be responsible for arranging and paying for transportation of the equipment specified in Article 1.a above to the destination. As the delivery terms are "F.O.B. 33883 Berry Dr. NE, Albany, Oregon", the parties agree that delivery of the equipment will occur when it is delivered into the possession of the City at the destination named in the F.O.B. term. Risk of loss shall also transfer from Siemens to the City when the equipment is delivered as specified above.

c) Installation: Installation of the equipment specified in Paragraph 1.a above shall be the responsibility of the City.

d) Warranties:

i) Pin and Strainer Warranty: Siemens warrants to the City that the pins and basket strainers provided in Paragraph 1.a.ii and 1.a.iii above shall be free from defects in material and workmanship. If the City gives Siemens prompt written notice of breach of this warranty within 1 year from delivery (the "Warranty Period"), Siemens shall, at its sole option and as the City's sole remedy, replace the defective pins or basket strainers.

ii) Membrane Module Warranty: Siemens shall warrant the membrane modules described in Paragraph 1.a.i above in accordance with the warranty terms set forth in paragraphs 6.a and 6.b of Exhibit A to this Maintenance and Release Agreement.

iii) DISCLAIMER: THE WARRANTIES SET FORTH IN PARAGRAPHS 1.d.i AND 1.d.ii ABOVE ARE SIEMENS SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO THE MODULES, PINS AND BASKET STRAINERS DESRIBED IN ARTICLE 1.a ABOVE AND ARE SUBJECT TO PARAGRAPH 1.d.iv BELOW. SIEMENS MAKES NO OTHER WARRANTIES OF ANY KIND WITH RESPECT TO THE MODULES, PINS AND STRAINERS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

iv) Limitation of Liability: Notwithstanding anything else to the contrary, Siemens shall not be liable for any consequential, incidental, special, punitive or indirect damages and Siemens' total liability arising at any time from the sale or use of the equipment described in paragraph 1.a shall not exceed Two-Hundred and Twenty Eight Thousand Dollars ($228,000.00). These limitations apply whether the liability is based on contract, tort, strict liability or any other theory.

2) **Pricing and Supply Terms for Future Membrane Module Procurement:**

a) Scope of Supply: The parties hereby agree that, during the Term defined in paragraph 2.b below, Siemens shall supply S10V Membrane Modules to the City, at the prices specified in paragraph 2.c below, upon receipt of purchase orders from the City that reference this Agreement and reflect the provisions hereof.

b) Term: The Pricing and Supply terms set forth in this Paragraph 2, and related subparagraphs, shall be made effective on the above described Effective Date and continue in force until November 15, 2025 (the "Term").

c) Price, Delivery and Shipment Schedule:

i) Price: With the exception of modules supplied pursuant to paragraph 1a.i above, the price for S10V Membrane Modules ordered pursuant to this Maintenance and Release Agreement is per Table 1 below entitled "Membrane Module Pricing". Pricing for Membrane Modules is in U.S. Dollars and exclusive of all applicable government charges and sales or use taxes.

Table 1: Membrane Module Pricing

Date of Purchase Order Receipt	Price (Per Membrane Module)	Shipment Schedule (Shipment after acceptance of order from the City)
Calendar year 2011	$298.00	To be determined by Siemens but in no case less than 14 weeks or in excess of 26 weeks.
Calendar year 2012	$260.00	To be determined by Siemens but in no case less than 14 weeks or in excess of 26 weeks.
January 1, 2013 – November 15, 2015	$222.00	To be determined by Siemens but in no case less than 14 weeks or in excess of 26 weeks.
November 15, 2015 – November 15, 2025	$475.00 (as adjusted per paragraph 2.c.i(1) below or Siemens' list price at the time of order, whichever is lower).	To be determined by Siemens but in no case less than 14 weeks or in excess of 26 weeks.

(1) Price Adjustment: The membrane module prices set forth in Table 1 above, for the period of November 15, 2015, through November 15, 2025, shall be subject to adjustment in accordance with the change in the Consumer Price Index (CPI) – All Urban Consumers (US City Average). The base point for the CPI adjustment calculation will be the CPI index published by the U.S. Bureau of Labor Statistics, updated on June 15, 2011, for March 2003 of 184.2. The comparison point for the CPI adjustment calculation will be the latest CPI index published as of the date when a replacement membrane module order is placed

(2) Pricing Limitation: The membrane module prices set forth in Table 1 above, for the period of Calendar Year 2011 through November 15, 2015, shall be limited to an aggregate purchase quantity of Nine Hundred and Sixty (960) membrane modules. If the total quantity of membrane modules purchased by the City between the Effective Date and November 15, 2015, reaches 960 total modules, any subsequent purchase of modules, except for the purchase of improved membrane modules per paragraph 2.e) below, shall be subject to the pricing specified in Table 1 for the period of November 15, 2015 through November 15, 2025.

ii) Delivery: Siemens shall arrange, and the City shall pay for, transportation of the membrane modules under this Paragraph 2 from Siemens' Colorado Springs, Colorado facility to the City's facility located at 33883 Berry Dr. NE, Albany, Oregon. As the delivery terms are "F.O.B. Shipping Point, Freight Prepay and Add", the parties agree that delivery of the equipment will occur when it is delivered into the possession of the City at the destination named in the F.O.B. term. Risk of loss shall also transfer from Siemens to the City when the equipment is delivered into the possession of the carrier at the shipping point.

iii) Shipment Schedule: Shipment of membrane modules will be per the Shipment Schedule in Table 1 above following acceptance of a purchase order from the City.

d) Terms of Sale: Any purchase of membrane modules pursuant to this Maintenance and Release Agreement shall be subject to the "Terms and Conditions of Sale", which are attached hereto as "Exhibit A" and incorporated herein by this reference.

e) Future Membrane Improvements: The parties agree that Siemens will supply the City with S10V membrane modules through the Term of this Maintenance and Release Agreement. During the Term of this Maintenance and Release Agreement, Siemens may develop new membrane module technologies. The City may elect, under the following conditions, to purchase the new membrane module technologies:

i) If prior to the expiration of the Term of this Maintenance and Release agreement, Siemens discontinues the manufacture of the S10V membrane module, Siemens will advise the City of such change. The City may purchase new technology membrane modules under this agreement at the prices set forth in Table 1 above up to, but not to exceed, the Nine Hundred and Sixty (960) module purchase quantity limit specified in Paragraph 2.c.i(2) above. Once the total quantity of membrane modules purchased by the City under this agreement reaches an aggregate of Nine Hundred and Sixty (960) modules, any subsequent purchase of new technology membrane modules may be made pursuant to this agreement but at Siemens' then current list price for the improved membrane modules.

ii) If prior to expiration of the Term of this Maintenance and Release Agreement, Siemens develops new technology membrane modules and the S10V membranes are still available for purchase, Siemens will advise the City of such change. The City may elect to either: (1) purchase the new technology membrane modules under this agreement at the prices set forth in Table 1 above; or (2) continue to purchase S10V membrane modules. However, the purchase of new membrane modules pursuant to the prices specified in Table 1 above shall be

subject to the Nine Hundred and Sixty (960) module purchase quantity limit specified in Paragraph 2.c.i(2) above. Once the total quantity of membrane modules purchased by the City under this agreement reaches an aggregate of Nine Hundred and Sixty (960) modules, any subsequent purchase of new technology membrane modules may be made pursuant to this agreement but at Siemens' then current list price for the improved membrane modules.

f) Installation: The City shall have sole responsibility for the installation of any membrane modules purchased pursuant to this Maintenance and Release Agreement.

3) **Release of Siemens:**

a) As consideration for the obligations undertaken by Siemens in Paragraphs 1 and 2 above, the City agrees, for itself and its successors and assigns, to hereby unconditionally discharge and release Siemens and its affiliates, subsidiaries, divisions, and its respective officers, employees, agents, assignees or heirs and sureties from any and all obligations, claims, costs, causes of action, suits, accounts, covenants, or other liability of any nature, known or unknown, in law or in equity, arising out of or in any way related to: (i) the equipment described in Paragraph 1.a above; and (ii) the Contract and the design, labor, material, equipment, fixtures, subcontracts, insurance policies and payment and performance bonds furnished thereunder.

b) Notwithstanding the foregoing release, Siemens shall not be released from its warranty obligations, under paragraph 6 of Exhibit A hereto, for any warranty claims arising in connection with modules purchased under Section 2 of this Maintenance and Release Agreement after the Effective Date.

4) **Confidentiality:**

a) This Maintenance and Release Agreement is confidential and shall not be disclosed except as provided herein. The parties agree not to disclose the terms of this Maintenance and Release Agreement except as may be required by applicable State or Federal law. A party may, if asked by a third party, acknowledge that the parties have resolved any claims or disputes under the Contract and are satisfied with the outcome. Notwithstanding the foregoing, a party may disclose the existence and terms of this agreement as follows: (i) as required by subpoena or other compulsory legal process; (ii) to the party's legal counsel for purposes of facilitating legal services; (iii) to a party's parent or affiliate(s) upon agreement by such entities to abide by this confidentiality provision; and (iv) to a party's accountant, auditor and tax advisor(s). If a party receives a subpoena or other compulsory document request or legal process requiring disclosure of this agreement, the party from which disclosure is sought shall promptly notify the other party of such subpoena/request in order to give the other party an opportunity to review the subpoena/request and seek appropriate relief from the relevant authority if desired. The confidentiality provisions of this paragraph will not apply to any action brought by a party against the other for breach of this agreement.

5) **General Provisions:**

a) Maintenance and Release Agreement Not an Admission of Liability: Nothing in this Maintenance and Release Agreement, including the obligations undertaken by the parties pursuant to

paragraphs 1 and 2 above, or the covenants and release contained in paragraph 3 above, shall be construed as an admission of any liability, negligence, breach of duty, breach of any agreement or contract, misconduct, violation of statute, unfair or deceptive trade practice or wrongdoing of any kind whatsoever, but are to be construed strictly as a compromise and settlement of claims between Siemens and the City for the purpose of avoiding litigation and expense.

b) Complete Agreement: This Maintenance and Release Agreement constitutes the full and final agreement between the parties on the subject hereof and replaces any prior negotiations and agreements between the parties whether written or oral. This Maintenance and Release Agreement shall not be amended except by a written agreement executed by each of the parties.

c) Choice of Law: This Contract Amendment shall be construed in accordance with the laws of the State of Oregon (without giving effect to its conflict of laws provisions).

The parties hereto have executed this Maintenance and Release Agreement effective on the day first above written.

Siemens Industry, Inc.

Lutz Kraus

Signature

Lutz Kraus

Name

EVP Municipal Segment

Title

City of Albany, Oregon

Signature

Name

Title

EXHIBIT A

TERMS AND CONDITIONS OF SALE

1) Applicable Terms
   a) These "Terms and Conditions of Sale" shall govern the purchase and sale of S10V Membrane Modules (the "Modules") referred to in Purchase Order No. _____(the "Order") submitted by the City in connection with the "Maintenance and Release Agreement", dated October 11, 2011, as executed between the Cityand Siemens.

2) Payment
   a) The City shall pay Siemens the full Order price as determined per the pricing schedule set forth in paragraph 2.c of the Maintenance and Release Agreement executed between the parties. All freight, storage, insurance, taxes, duties or other governmental charges relating to the Modules shall be paid by the City. If Siemens is required to pay any such charges, the City shall immediately reimburse Siemens. One Hundred Percent (100%) of the Order price is due on receipt of delivery; net 30 days. The City shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Siemens's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid.

3) Delivery
   a) Delivery of the Modules shall be in material compliance with the schedule set forth in paragraph 2.c of the Maintenance and Release Agreement executed between the parties. Delivery terms are "F.O.B. Shipping Point, Freight Prepay and Add".

4) Ownership of Materials
   a) All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Siemens, and all related intellectual property rights, shall remain Siemens's property. Siemens grants the Citya non-exclusive, non-transferable license to use any such material solely for the City's use of the modules. The City shall not disclose any such material to third parties without Siemens's prior written consent.

5) Changes
   a) Siemens shall not implement any changes in the scope of work described in the Order unless the City and Siemens agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes necessitated by a change in applicable law occurring after the effective date of any order including these terms.

6) Warranty
   a) Siemens warrants to the City that the Modules shall be free from defects in material and workmanship as defined in paragraph 6.b below. If the City gives Siemens prompt written notice of breach of this warranty within 1 year from delivery (the "Warranty Period"), Siemens shall, at its sole option and as the City's sole remedy, replace the defective module(s).

b) An individual module shall be deemed to be exhibiting defects in material or workmanship if the module is: (i) identified as being in need of repair; and (ii) cannot be pin repaired by the City. An individual module shall be identified as needing repair when a stream of air bubbles is released from the module during the air leak test. A module is considered the be irreparable by the City when one of the following occurs:

i) The potting material of the module has cracked causing the feed water to by-pass into the filtrate compartment; or

ii) During a single pin repair event, more than 25 pins are inserted into a group of adjacent or abutting fibers and, during air leak testing conducted in the pin repair vessel immediately following insertion of the pins, air bubbles continue to be seen escaping from the module.

c) THE WARRANTY SET FORTH IN THIS SECTION IS SIEMENS' SOLE AND EXCLUSIVE WARRANTY AND IS SUBJECT TO PARAGRAPH 10 BELOW. SIEMENS MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

7) Indemnity

a) Siemens shall indemnify, defend and hold the City harmless from any claim, cause of action or liability incurred by the City as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Siemens's negligence. Siemens shall have the sole authority to direct the defense of and settle any indemnified claim. Siemens's indemnification is conditioned on the City (a) promptly, within the Warranty Period, notifying Siemens of any claim, and (b) providing reasonable cooperation in the defense of any claim.

8) Force Majeure

a) Neither Siemens nor the City shall have any liability for any breach (except for breach of payment obligations) caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war or civil disturbance, delay of carriers, failure of normal sources of supply, act of government or any other cause beyond such party's reasonable control.

9) Cancellation

a) If the City cancels or suspends the Order for any reason other than Siemens's breach, the City shall promptly pay Siemens for work performed prior to cancellation or suspension and any other direct costs incurred by Siemens as a result of such cancellation or suspension.

10) Limitation of Liability

a) NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SIEMENS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SIEMENS'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE MODULES SHALL NOT EXCEED THE TOTAL

PURCHASE PRICE PAID FOR THE ORDER. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

11) Miscellaneous

a) These "Terms and Conditions of Sale" comprise the complete and exclusive statement of the terms and conditions that will govern the purchase and sale of the S10V Membrane Modules identified in the Order. No part of these "Terms and Conditions of Sale" may be changed, cancelled or added to unless such change, cancellation or addition is separately signed by Siemens and the City. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify these "Terms and Conditions of Sale". If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. The City may not assign or permit any other transfer of the Order without Siemens' prior written consent. The Order shall be governed by the laws of the State of Oregon without regard to its conflict of laws provisions.