



NOTICE OF PUBLIC HEARING

CITY OF ALBANY
PLANNING COMMISSION
City Council Chambers, 333 Broadalbin Street SW
Monday, January 31, 2011
5:15 p.m.

AGENDA

1. CALL TO ORDER (Chair Faller)
2. PLEDGE OF ALLEGIANCE TO THE FLAG
3. ROLL CALL
4. ELECTION OF OFFICERS
5. HEARINGS BOARD APPOINTMENT
6. APPROVAL OF THE July 19, November 2, and November 15, 2010, MINUTES
7. GOAL 5 PUBLIC MEETING
8. ACTIVITY UPDATE
9. NEXT PLANNING COMMISSION MEETING DATE: Monday, February 7, 2011
10. ADJOURN

Rules of Conduct for Public Hearing

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.

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The location of the meeting/hearing is accessible to the disabled. If you need special accommodations to attend or participate, please notify the Human Resources Department in advance by calling 541-917-7500.

City of Albany Web site: www.cityofalbany.net



TO: Albany Planning Commission
VIA: Greg Byrne, Community Development Director
FROM: Heather Hansen, Planning Manager
DATE: January 24, 2011, for the January 31, Planning Commission Public Input Session
SUBJECT: Proposed implementation measures to comply with Statewide Planning Goal 5 for protection of significant wetlands, riparian corridors, and wildlife habitat.

Action Requested: Review proposed measures, seek public input, and give general direction to staff for the final draft to be presented at the March 7, 2011, Planning Commission public hearing.

Summary: Background information about the Goal 5 process is provided in the attached document in case you would like to review it; otherwise go directly to the draft recommended Goal 5 program description starting on page 10.

The proposed implementation measures in the attached document are preliminary and will need to be developed in more detail based on input from the Planning Commission and the public. They will also be reviewed by State agencies, and Linn and Benton counties.

We will return to the Planning Commission on March 7, 2011, with a draft ordinance that includes proposed amendments to the Comprehensive Plan and Development Code to implement Goal 5. A notice will be sent to all affected property owners three weeks prior. In the meantime, an interdepartmental team will complete revisions to the proposed implementation measures.

The proposed measures strike a balance between protecting significant resources and reasonable economic use of property. The impact of the proposed regulations on existing development is as limited as possible. Most normal residential activities are allowed. And there are provisions for adjustments and variances to address situations where the lot would be rendered unbuildable or a use is precluded that could be reasonably expected to occur in the zone.

Attachments: Detailed descriptions are provided in the attached document on the following aspects of the proposed Goal 5 program:

- Establishment of the significant natural resource overlay districts
- Land to which the regulations will apply
- How to refine the boundaries
- Activities subject to review and activities exempt from review
- General provisions for protecting significant natural resources
- Wildlife habitat assessment requirements
- Mitigation standards
- Adjustments and Variances

After the meeting on January 31, 2011, staff will complete a draft of the specific provisions for protecting the significant natural resources for each development activity subject to review (see page 12).

Also attached are three maps. Map 1 illustrates the land currently zoned Open Space that staff recommends changing to the adjacent zoning district (see description on page 10). Map 2 includes the three Significant Resource Overlay Districts that would be used to implement Goal

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5. Map 3 represents the "net impact" of Goal 5, i.e., land that was not already either floodway or zoned as Open Space.

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Attachments: Proposed Goal 5 Implementation Measures (January 24, 2011, Draft);
Map 1-Proposed Reduction in Land Zoned Open Space;
Map 2-Recommended Goal 5 Overlay Districts;
Map 3-Net Impact of Goal 5 Overlay Districts

ec: Emailed to Goal 5 Interested Parties List

BACKGROUND INFORMATION

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 (OARs) 660-23, establishes specific procedures and criteria for Goal 5 compliance. The Department of Land Conservation and Development (DLCD) currently requires Albany, through the periodic review work program, to comply with Goal 5 for wetlands, riparian corridors, and wildlife habitat. State law requires each city to adopt a comprehensive plan and development codes that are consistent with the statewide planning goals. This document describes the Goal 5 requirements and how the City is proposing to comply with them within the urban growth boundary (UGB).

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 an approved work program that includes mandatory tasks to complete periodic review. 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 quality and benefit), 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 quality/management, buildable land supply, drinking water supply, parks and recreation, economic vitality, health and safety, and livability.

Development Potential: 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. Additional

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development restrictions and requirements may increase development costs, decrease the amount of buildable land inside the UGB, restrain redevelopment potential of developed properties, and reduce the development area of individual properties.

Property Owner Costs and Opportunities: The protection of Goal 5 resources will allow 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 near wetlands or riparian corridors, 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 move their family or business to a location 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.

Complying with the requirements of Statewide Planning Goal 5 by protecting significant natural resources demands thoughtful consideration of the associated benefits and costs, and opportunities and challenges, both to individuals and the community as a whole, now and in the future.

Public Process: There have been a series of presentations and discussions with the Planning Commission, City Council, and the public regarding this phase of Goal 5:

- May 11, 2009 City Council Work Session – Staff gave a Goal 5 status report
- June 1, 2009 Planning Commission – Presentation and discussion of draft technical report by consultant
- August 18, 2009 Joint City Council-Planning Commission Work Session – Presentation of consultant's updated technical report and recommendations
- September 10, 2009 Open House – Presentation of consultant's recommendations; Four information stations
- November 19, 2009 Public Forum – Presentation of staff recommendations; Roundtable discussions
- February 1, 2010 Joint City Council-Planning Commission Work Session – Presentation and discussion of staff recommendations for general protection approaches; Direction to return with various typical property examples

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- March 29, 2010 Joint City Council-Planning Commission Work Session – Discussion of various property examples; Direction to proceed with developing implementation measures
- June 28, 2010 Planning Commission Public Meeting – Presentation of draft proposed implementation measures; Public input; Direction to staff on next draft
- August 9, 2010 Planning Commission Public Hearing – Ordinance to implement Goal 5; Recommendation to City Council
- Floodplain and Goal 5 regulations had been presented jointly, but it was too much information at once, so we split them apart so the floodplain regulations could be adopted by the September 29, 2010 FEMA deadline.
- August 25/September 8, 2010 City Council Public Hearings – Hearing on ordinance to implement floodplain regulations; Adoption
- November 2, 2010 Planning Commission Work Session to discuss a few course corrections made by staff.

Additional Resources:

The following documents provide additional information regarding the current regulations, and technical analyses done by the consultant that informed the recommendations. There is a link to the Albany Development Code and the Goal 5 documents on the Community Development Department webpage on the City's website. The Oregon Administrative Rules are available on the State's website.

- *Albany Development Code*, Article 3-Residential Zoning Districts, Open Space District Uses (3.060-3.070)
- *Albany Development Code*, Article 6-Special Purpose Districts, Floodplain (6.070-6.165); Wetlands (6.270-6.300); Willamette Greenway (6.310-6.370)
- *Albany Development Code*, Article 11-Land Divisions and Planned Developments, Cluster Development (11.400-11.510)
- *City of Albany Goal 5 Significant Natural Resources: Technical Report & Recommendations*, Pacific Habitat Services, Inc, June 30, 2009
- *Oregon Administrative Rules*, Chapter 660, Division 23 – Procedures and Requirements for Complying with Goal 5

GOAL 5 NATURAL RESOURCE PROTECTION AREAS

The first step in the Goal 5 process was to determine the location and extent of the *significant* wetlands, riparian areas, and wildlife habitat. *Significant* is a term that generally means that the resource is of high quality or provides the highest benefit or potential benefit to the ecosystem or community.

Goal 5 Requirements: Through the Goal 5 process, there are two general approaches that may be used to inventory the natural resources and determine which are significant. These are described in more detail in Oregon Administrative Rule 660-23:

- Standard Process: The State provides general procedures and requirements for the inventory and assessment of Goal 5 resources. This approach can be somewhat flexible and site-specific as long as it is reviewed and approved by the State.
- Safe Harbor Process: This is an option to the Standard Process with specific criteria provided by the State.

Technical Analyses: The City contracted with Pacific Habitat Services to conduct inventories and assessments of wetlands, riparian corridors, and potentially significant wildlife habitats within the City's urban growth boundary. The technical report, including recommendations, is available on the City's website.

WETLANDS

Wetlands must be inventoried using the *Local Wetland Inventory* process established by the Oregon Department of State Lands (DSL) per Oregon Revised Statute 167.674. The first step in determining whether a wetland is significant is to assess its quality using DSL's adopted *Oregon Freshwater Wetland Assessment Methodology (OFWAM)*. Once the quality of the wetlands is assessed using OFWAM, specific criteria are applied to determine whether the wetlands are significant. These criteria were adopted by DSL pursuant to ORS 197.279(3)(b).

Consultant Recommendation: The Local Wetland Inventory was originally completed in 2001. It was updated in 2009 to account for any development of wetlands that occurred since the original inventories, as well as any changes in State wetland regulations. During the update process 28 wetlands in the Oak Creek and Calapooia River drainages were added to the list classified as "significant." This was done because the waterways were listed by the DEQ as "water quality limited streams" since the original inventories were done; and one of the criteria for classifying a wetland as significant is whether or not it's within a ¼ mile of a water quality limited stream.

Staff Recommendation: Upon further review of the criterion for classifying a wetland as significant based on its proximity to a water quality limited stream, staff learned of the option of not classifying those streams as significant if they do not contribute to improving the conditions related to the

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DEQ listing. For example, Oak Creek is listed for temperature (too warm) and bacteria (E. coli). If the wetland is within a ¼ mile but is either a rye grass field or pasture, or is separated by a barrier such as a road, it is not helping to cool the water or reduce potential E. coli. In fact, protecting rye grass fields and pasture from development would continue to degrade the water quality of the DEQ-listed stream. For this reason, the staff recommendation is to exclude 16 of the 28 wetlands that were added during the 2009 LWI update. The remaining wetlands are immediately adjacent to the streams, or are functioning as a drainageway toward the streams, so those would remain on the significant wetland list. The consultant concurs with our staff recommendation and he will write a memo updating this aspect of his technical report.

Recommended Resource Area	Reason for Recommendation
<p><u>Significant Wetlands</u>: Local Wetland Inventory (LWI) boundary PLUS a 50-foot notice area to Division of State Lands (this is the same as the Safe Harbor riparian corridor width); Boundary will be adjusted whenever there is a DSL-approved wetland delineation.</p>	<p>A notice area would minimize the impact to significant wetlands since LWI boundaries are not considered precise.</p>

RIPARIAN CORRIDORS

Riparian corridors are the areas along rivers, lakes, or streams that include the water, fish habitat, wetlands, as well as the adjacent areas that mark the transition from an aquatic to a terrestrial ecosystem. DLCDC requires that cities determine riparian corridor widths using either the Safe Harbor Process or Standard Process. The Safe Harbor Process applies setbacks of either 50 feet or 75 feet depending on the volume of stream flow. As part of the Standard Process, Pacific Habitat Services conducted riparian inventories for all water bodies within the City using a methodology called the *Urban Riparian Inventory and Assessment Guide (URIAG)*. The methodology was approved by DSL in 1998. The URIAG methodology uses the height of the dominant tree species at maturity to define the width of the riparian corridor.

Consultant Recommendation: URIAG (60-120 feet) for Oak Creek and the Calapooia, and Safe Harbor (50-75 feet) for all other water bodies.

Staff Recommendation: Safe Harbor widths for all Goal 5 water bodies.

Recommended Resource Area	Reason for Recommendation
Safe Harbor – 75 feet for Willamette	Safe Harbor provision of OAR 660
Safe Harbor – 50 feet for all other fish bearing lakes and streams	<p>Safe Harbor provision of OAR 660.</p> <p>Goal 5 requires the riparian corridor to wrap around the adjacent wetlands. The Safe Harbor width (50 feet) is a reasonable balance between protecting the resource and minimizing the impact on property owners.</p>

WILDLIFE HABITAT

Both the Standard and Safe Harbor approaches were used to assess wildlife habitat, with the same result – only Thornton Lakes were deemed to be significant wildlife habitat due to the documented presence of two species listed by the State of Oregon as "sensitive-critical" – the western painted and northwestern pond turtles. For the Standard Process a wildlife habitat assessment was done of twenty seven habitat polygons inside the Albany UGB. Some of the polygons were a combined patchwork of individual tree groves at least five acres in size.

Consultant & Staff Recommendation: A 100-foot habitat assessment overlay measured from the ordinary high water mark of the Thornton Lakes.

Recommended Resource Area	Reason for Recommendation
<p>100-foot habitat assessment overlay around Thornton Lakes (note that the riparian corridor restrictions also apply within 50' of this overlay) measured from ordinary high water mark.</p>	<p>Thornton Lakes were identified as the only significant wildlife habitat in Albany. This is a minimal attempt to protect the turtle habitat in and around Thornton Lakes.</p> <p>To do a better job of protecting the turtles, more information is needed on the location of their critical habitat.</p> <p>Voluntary protection and enhancement efforts will be emphasized.</p>

RECOMMENDED MANDATORY IMPLEMENTATION MEASURES

The Goal 5 rule allows local jurisdictions to choose between two general methods for protection of the significant resources. Each approach has trade-offs in the subsequent analysis and policy steps. NOTE: Be aware that Oregon Administrative Rules use these same terms – Standard and Safe Harbor approaches – to identify the boundaries of significant resources. As used for protection of the resources, they refer to the following:

- The Standard Process is an analysis of specific sites of the environmental, social, economic, and energy (ESEE) consequences related to various levels of protection of the significant natural resources. The ESEE analysis provides the basis for determining whether to allow, limit, or prohibit conflicting uses near significant resource sites.
- The Safe Harbor Process is a standard set of protection measures that ensures limited future impacts to significant riparian corridors and significant wetlands.

WETLANDS

Consultant Recommendation: Adoption of a Safe Harbor ordinance is the recommended approach for the protection of significant wetlands. A Safe Harbor approach will restrict development within the wetland, but will include a variance for economic hardship and for parcels that would be rendered unbuildable by application of the ordinance.

Staff Recommendation: Conduct an ESEE analysis related to planned infrastructure improvements to support future development in South Albany. Use Safe Harbor protection measures for all other wetlands.

Recommended Implementation Measures	Reason for Recommendation
Adopt a safe harbor ordinance to protect significant wetlands consistent with this subsection, as follows: (A) The protection ordinance shall place <u>restrictions</u> on grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and (B) The ordinance shall include a variance procedure to consider hardship variances, claims of map error verified by DSL, and reduction or removal of restrictions under paragraph (A) of this subsection for any lands demonstrated to have been rendered not buildable by application of this ordinance.	Specific Safe Harbor protection requirements.
Allowances can be made for underground utilities if they are installed in an environmentally sensitive manner.	Verified by DLCD.
Allow areas zoned as Open Space to be counted toward natural area requirements for cluster development, if they are high quality; otherwise they would need to be enhanced. This is outside of Goal 5, but can be addressed at the same time.	Minimizes impact on property owners without degrading the resource; May actually enhance the resource; Need to define "high quality"

RIPARIAN CORRIDORS

Consultant Recommendation: The recommendation is to protect riparian corridors through adoption of a Safe Harbor ordinance for all riparian areas except those along the downtown waterfront, where an ESEE analysis (Standard Approach) will be used. A Safe Harbor ordinance will restrict some uses within the riparian corridors, but will include a variance for hardship and for parcels that would be rendered unbuildable by application of the ordinance.

Staff Recommendation: Per OAR 660-023-0240(2) the requirements of Goal 15 (Willamette River Greenway) supersede the Goal 5 requirements. This was not fully realized until 2010.

Recommended Implementation Measures	Reason for Recommendation
<p>Adopt an ordinance to protect a significant riparian corridor as follows:</p> <p>(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, <u>except for the following uses</u>, provided they are designed, constructed, and maintained to minimize intrusion into the riparian area:</p> <p>(A) Streets, roads, and paths;</p> <p>(B) Drainage facilities, utilities, and irrigation pumps;</p> <p>(C) Water-related and water-dependent uses; and</p> <p>(D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.</p> <p>(b) The ordinance shall contain provisions to control the removal of riparian vegetation, <u>except that the ordinance shall allow:</u></p> <p>(A) Removal of non-native vegetation and replacement with native plant species; and</p> <p>(B) Removal of vegetation necessary for the development of water-related or water-dependent uses;</p> <p>(c) [NOT APPLICABLE]</p> <p>(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</p>	<p>Specific Safe Harbor Process requirements.</p> <p>Provisions that comply with these regulations will be used for all areas <u>except</u> the Willamette, where Goal 15 (Willamette River Greenway) provisions will be used to protect the riparian corridor.</p>
<p>Allow areas zoned as Open Space to be counted toward natural area requirements for cluster development, if they are high quality; otherwise they would need to be enhanced (need to define "high quality")</p>	<p>Achieves intent of Goal 5; Minimizes impact on property owners without degrading the resource; may actually enhance the resource.</p>
<p>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 riverbank and to restore native vegetation within the riparian areas.</p>	

WILDLIFE HABITAT

Thornton Lakes were deemed to be the only significant wildlife habitat due to the documented occurrence of habitat for two species listed as "sensitive-critical" by the State of Oregon – the western painted and northwestern pond turtles. The recommendation to protect the turtles is to require, in some instances, a turtle habitat assessment within the 100-foot overlay prior to development. The assessment would need to be conducted by a qualified biologist. The habitat assessment would determine whether the proposed development will result in the long-term loss of one or more habitat requirements of the western painted or northwestern pond turtles. The normal use of most developed properties along the lakes would not require a turtle habitat assessment.

Consultant Recommendation: The consultant did not make any specific recommendations other than the habitat assessment.

Staff Recommendation: For undeveloped properties, and developed properties where more than 20% of existing backyards will be impacted, require a turtle habitat assessment.

Recommended Implementation Measures	Reason for Recommendation
<u>Developed Properties:</u> Allow up to 20% of yards to be impacted; Requirement for a turtle habitat assessment only kicks in when building permits are required, and if the development would impact more than 20% of the property.	Lots are already developed and restricting normal use of backyards would not be reasonable.
<u>Undeveloped Properties:</u> A turtle habitat assessment is required.	New development is likely to have the greatest impact on the turtle habitat.
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 lake and to restore turtle habitat.	Effective, yet minimizes impact on 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.

DRAFT RECOMMENDED GOAL 5 PROGRAM

The following is a description of a proposed protection program for significant natural resources within the City of Albany as designated under Statewide Planning Goal 5, while ensuring reasonable economic use of property. For each development activity that will be subject to review, more detailed descriptions of the regulations will be completed after the January 31st Planning Commission public meeting.

Description of Recommended Albany Goal 5 Program

Open Space Zoning (OS): While not directly related to the implementation of Goal 5, staff recommends removal of OS Zoning from any land zoned OS that does not include wetlands, riparian corridor, wildlife habitat, or floodplain.

This recommended revision would achieve the intent of the OS district by including only natural resource lands, but without rezoning additional property that might be included in the OS Zone.

Establishment of Significant Natural Resource Overlay Districts: The Significant Natural Resource Overlay districts include Riparian Corridors (/RC) and Wetlands (/SW) throughout the city, and a Wildlife Habitat Assessment area (/HA) designated specifically for turtle habitat in and around Thornton Lakes in North Albany. The intent of these supplemental 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:

Riparian Corridor Overlay District (/RC): To protect and restore 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 adverse effects of flooding.

Wetland Overlay District (/SW): To protect the integrity, function and value of Albany's significant wetlands. Wetlands provide valuable fish and wildlife habitat, including habitat for anadromous salmonids; improve water quality; reduce adverse effects of flooding.

Habitat Assessment Overlay District (/HA): To protect habitat for northwestern pond and western painted turtles in and around Thornton Lakes by 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 the State of Oregon as "sensitive, critical."

Lands to Which the Regulations Apply: The procedures and requirements apply to any property containing a Significant Natural Resource Overlay District as mapped in the Albany Comprehensive Plan. The majority of significant wetlands are within the Riparian Corridor Overlay District; therefore both overlay district regulations apply. The significant Wetland Overlay District is the most restrictive.

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 includes all or portions of a significant wetland, the district includes the significant wetland and extends upland 50 feet, measured horizontally from the edge of the significant wetland.

1. A 50-foot Riparian Corridor boundary applies to the following Albany water resources:
 - Calapooia River
 - Burkhart Creek

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Cathey Creek
Cox Creek, including Timber-Linn and Swan Lakes
Crocker Creek
Freeway Lakes
Horseshoe Creek/Lake
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 Willamette River Greenway regulations in ADC Article 6.

Wetland Overlay District (/SW): The Wetland Overlay District is comprised of the significant wetlands identified in the City's Local Wetland Inventory, as amended through wetland delineations approved by DSL.

Habitat Assessment Overlay District (/HA): This overlay district extends 100 feet from the Ordinary High Water mark upland from East and West Thornton Lakes.

District Boundary Refinements: The district boundaries for the Wetland Overlay District are based on the locations of the significant wetlands identified in the City's Local Wetland Inventory, as reflected in the Comprehensive Plan.

The Riparian Corridor Overlay and Habitat Assessment Overlay Districts are estimated by measuring from the edge of the water, which is based on an aerial photograph flown in March 2010. A district boundary refinement is an adjustment made, based on professional analyses, to refine the boundary of the Significant Natural Resource Overlay Districts based on Ordinary High Water (OHW) marks.

District refinements must be made in accordance with the provisions in this code and are specifically allowed to determine the location and extent of the following:

1. Wetland Overlay District by delineations of significant wetlands that are approved by the Oregon Department of State Lands. Delineations shall be used to automatically update and replace LWI mapping. No formal variance or plan amendment is needed for map corrections where approved delineations are provided.
2. 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 results in a change to the boundary of the significant wetland adjacent to the riparian corridor, the riparian corridor will be adjusted accordingly without need for a variance or plan amendment.

3. Habitat Assessment Overlay Districts as measured from the OHW mark of East and West Thornton Lakes.
4. 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. No formal variance or plan amendment

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is needed for map corrections where such supporting documentation is provided.

Oregon Administrative Rule (OAR 660) requires a procedure for claims of map error. In the case of wetlands, they need to be verified by DSL.

Activities Subject to Review: A *Natural Resource Impact Review* will be required of 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:

- (1) Land divisions
- (2) New structures, or exterior expansion of any structure
- (3) Increases in impervious surfaces
- (4) Site modifications, including grading, excavation, or fill
- (5) Installation of utilities
- (6) Construction of roads, driveways or paths
- (7) Removal of trees or the cutting or clearing of native vegetation

Activities Exempt from Review: The following activities do not require a *Natural Resource Impact Review* provided they are conducted in accordance with the standards of Article 6:

- (1) Temporary emergency procedures necessary for the 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 DSL, the U.S. Army Corps of Engineers or any other state or federal regulatory agency. Removal of fill must be consistent with State of Oregon Removal-Fill regulations.
- (3) Normal farming practices such as grazing, plowing, planting, cultivating and harvesting, that existed or occurred on the property prior to the date of adoption of these provisions and do not include new or expanded structures, roads, or other facilities involving placement of fill material, excavation, or new drainage measures.
- (4) Normal maintenance, repair, and use of existing buildings, roads, paths, utilities, bridges, culverts, fences, flood control structures, drainage facilities, and other structures that existed prior to the date of adoption of this ordinance, provided that such practices avoid sedimentation and other discharges into the Significant Natural Resource Overlay Districts and do not add impervious surface or remove additional native vegetation;
- (5) The maintenance and alteration of pre-existing landscaping and lawn is permitted, including perimeter mowing, so long as native vegetation is not disturbed and there is no excavation or filling or reduction of wetland area.
- (6) Planting native plants, provided that the species are appropriate to the site and planted at similar compositions and densities to native plant communities within the same drainage basin.

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- (7) In the Habitat Assessment Overlay District, up to 20% of existing backyards can be impacted by normal residential activities, such as construction of home additions, decks, patios, sheds, gardens, landscaping, etc. The Wetland or Riparian Corridor Overlay District provisions may also apply. Voluntary methods of turtle habitat protection and enhancement are encouraged.

General Provisions for Protection of Significant Natural Resources: Activities within the overlay districts will be reviewed to ensure that the significant natural resources are protected to the greatest extent feasible. The following general standards apply to activities in all Significant Natural Resource Overlay Districts:

- A. The proposed activity is allowed under the requirements of the base zone.
- B. No other practicable options or locations outside the Significant Natural Resource Overlay Districts are feasible for the proposed activity on the subject parcel.
- C. The proposed activity shall be 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 shall be located as far from rivers and streams, and use as little of the surface area of the Significant Natural Resource Overlay Districts, as practicable.

Additional Provisions will specifically address standards for the following: **[NOTE: This will be completed AFTER the public meeting on January 31st]**

- Land Divisions: This section will supplement the City regulations governing land divisions in Article 11. It will require that new subdivision and partition plats containing land partially situated in one of the City's natural resource districts be delineated so that the natural resource area is either a separate tract or part of a larger tract that meets certain requirements. Applicants may also elect to follow the Cluster Development standards for land divisions in Article 11. In any case, there needs to be sufficient land outside the overlay districts to establish a developable property.
- Existing Development: Some activities may be allowed with an approved Natural Resource Impact Review, provided they meet specific standards, and that any applicable state or federal permits are secured. Replacement or improvement of an existing permanent, legal, nonconforming structure with a structure in the same footprint will be allowed as long as it doesn't disturb additional surface area or vegetation, other than a minimum construction area around the existing footprint. Impacts of up to 20% of existing backyards in the Habitat Overlay District are exempt from review.
- New Structures or Impervious Surfaces: The placement of new structures or impervious surfaces is generally prohibited in the Significant Natural Resource Overlay Districts. Some activities may be allowed with an approved *Natural Resource Impact Review*, provided they meet the standards in this Code, and any applicable state or federal permits are secured. Development within 25 feet of the waterways will be avoided.
- Transportation Facilities: Transportation facilities and structures, including roads and driveways, bridges, bridge crossing support structures, culverts, and pedestrian, and bike paths *may* be allowed in riparian corridors if it is the only way to access the property and they are designed in an environmentally sensitive way.
- Utilities and Stormwater: Development standards shall apply to permitted crossing, trenching, or boring for the purpose of developing a corridor for communication, energy, or other utility lines within or crossing parcels in Significant Natural Resource Protection Districts.

Water, drainage and sewer systems shall be designed, located and constructed to avoid the infiltration of floodwaters into the system, and to avoid accidental discharges to rivers, streams and wetlands.

- South Albany Public Infrastructure Projects: Projects in South Albany, as defined in the South Albany ESEE analysis, and as described in approved City

Proposed Goal 5 Implementation Measures (January 24, 2011 DRAFT)

transportation, sewer, water and parks facility plans will be allowed through a Conditional Use process if they are shown to comply with standards intended to limit the impact on significant wetlands.

- **Site Modifications:** Land alteration by grading, excavation, or fill, are prohibited, unless necessary to carry out other approved development activities under this section of the Code, provided they are designed, constructed, and maintained to minimize intrusion into the Significant Natural Resource Districts.
- **Fencing:** Fencing needs to allow for the passage of wildlife. Fence construction cannot include mechanized land clearing or disturbance (excavation and fill combined) of more than 50 cubic yards.
- **Disposal and Storage:** The disposal or temporary storage of refuse, yard debris, or other materials is prohibited.
- **Vegetation:** Development activities shall not justify replacement of native vegetation with lawn or other non-native vegetation in the Significant Natural Resource Overlay Districts. Revegetation and vegetation management guidelines will be provided.
- **Construction Activity:** Standards shall apply when construction activity is proposed within or adjacent to a Significant Natural Resource Overlay District with the intent of reducing potential damage to trees and other native vegetation, and water quality.

Wildlife Habitat Assessments: A wildlife habitat assessment is required for all new development and all land divisions on property wholly or partially within the habitat assessment overlay district. If the proposed activity (addition of pavement, structures, fencing, and landscaping with non-native vegetation or impervious surfaces) is for developed sites, and will impact more than 20% of the yard of a developed property, a wildlife habitat assessment is required.

If the wildlife habitat assessment finds evidence of habitat for either the northwestern pond turtle or the western painted turtle on the property, the following standards apply. (Note: The Riparian Corridor standards also apply to land within 50 feet of the most upland of either OHW or a significant wetland.)

- (1) New development, expansion of existing development, landscaping and other ground disturbances shall be permitted when located outside of the designated turtle habitat areas as determined by the habitat assessment; and
- (2) The development/use has been proposed in a manner that will minimize the impact of the development on wildlife habitat; and
- (3) ODFW has approved the proposed development and any necessary mitigation or habitat restoration plans to offset any impacts of the development.

Mitigation Standards: When approved impacts to any identified Significant Natural Resource occurs, mitigation shall be required. For impacts to Wetland Overlay Districts, the standards and criteria of (1) and (3) shall apply. For impacts to Riparian Corridor and Habitat Assessment Overlay Districts, the standards and criteria of (2) and (3) shall apply.

- (1) When mitigation for impacts to a significant Wetland Overlay District is proposed or required, the mitigation plan shall comply with all Oregon Division of State Lands and U.S. Army Corps of Engineers wetland regulations. The City may approve a development but shall not issue a building permit until all applicable State and Federal wetland permit approvals have been granted and copies of those approvals have been submitted to the City.
- (2) When mitigation for impacts to a non-wetland riparian area is proposed or required, a mitigation plan prepared by a qualified professional shall be submitted to the review authority. The mitigation plan shall meet the following criteria:
 - (a) Mitigation for impacts to a non-wetland riparian area shall require a minimum mitigation area ratio of 1:1;

Proposed Goal 5 Implementation Measures (January 24, 2011 DRAFT)

- (b) The mitigation plan shall document the location of the impact, the existing conditions of the resource prior to impact, 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;
 - (c) Mitigation shall occur on-site and as close to the impact area as possible, or if this is not feasible, mitigation shall occur within the same drainage basin as the impact;
 - (d) All vegetation planted within the mitigation area shall be native to the region. Species to be planted in the mitigation area shall replace those impacted by the development activity at the same densities;
 - (e) Trees shall be planted at a density of not less than 5 per 1000 square feet. Shrubs shall be planted at a density of not less than 10 per 1000 square feet.
- (3) When restoration or enhancement is approved as mitigation, a report on the survival and health of planted vegetation shall be provided to the Community Development Department between 18 and 24 months from the initial planting. If 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.

Adjustments and Variances: The City may grant adjustments or variances to the standards in the overlay districts in order to avoid rendering a lot not buildable through application of this ordinance. Requests that cannot meet the provisions and review criteria for Adjustments will be processed as a Variance. Adjustments applications will be processed through the Type I-L land use process as outlined in Article 2. Variance applications will be processed through the Type III process as outlined in Article 2 using the criteria below. The proposed activity or use must be an allowed use within the base zoning district and would have been permitted prior to the effective date of this ordinance

Adjustments: In order for the Director to approve an adjustment application, the applicant shall demonstrate that all the following criteria are fully satisfied:

- (1) Existing legal lots on which the location of the Significant Natural Resource Overlay District(s) results in a building area depth of 50 feet or less; or a building envelope of 1600 square feet or less; and
- (2) The adjustment is the minimum necessary to allow a permitted use or achieve the minimum building envelopes outlined above, while at the same time minimizing disturbance to the significant natural resources; and
- (3) Removal of native vegetation and excavation has been avoided and if not feasible is the minimum amount necessary to allow for the development; and
- (4) Design options have been considered to reduce the impacts of development, including but not limited to multi-story construction, siting the residence close to the street to reduce driveway distance, maximizing the use of native landscaping materials, minimizing garage space, and other impervious surfaces, and minimizing hydrologic impacts; and
- (5) In no case shall the impervious surface area of a single family property exceed 3,000 square feet within an overlay district ; and
- (6) The encroachment does not result in a structure or impervious surface being located closer than 25 feet from the ordinary high water mark; and
- (7) Equal or better protection can be achieved through mitigation as demonstrated in a mitigation plan.

Proposed Goal 5 Implementation Measures (January 24, 2011 DRAFT)

Variations. For any existing lot or parcel whose hardship cannot be alleviated with an Adjustment application, the property owner may apply for a variance. In order to grant the variance request, the following review criteria must be satisfied:

- (1) Strict adherence to the applicable standards of the Significant Natural Resource Overlay District(s) would effectively preclude a use of the parcel that could be reasonably expected to occur in the zone, and that the property owner would be precluded a substantial property right enjoyed by the majority of the property owners within a 300-foot radius of subject property;
- (2) The applicant has exhausted all other reasonable options available under this Article and throughout the Albany Development Code to relieve the hardship, including the adjustment provisions;
- (3) The proposed development represents a reasonable and legal use of the property, considering the zoning and the variance will be in general harmony with the intent and purpose of the overlay district;
- (4) The variance is for the minimum amount necessary to allow use of the property, considering the nature and location of the natural resources, the location of the proposed structure and of other structures on the existing and abutting properties;
- (5) Any adverse impacts that will result from approval of the variance have been or will be mitigated to the greatest extent possible in accordance with an approved mitigation plan.
- (6) Granting the variance will not be materially detrimental to the public welfare or be injurious to property or improvements in the subject neighborhood.

ISSUES REMAINING TO BE RESOLVED/ QUESTIONS TO BE ANSWERED

Staff has some outstanding issues that need to be resolved and some questions to be answered by State agencies.

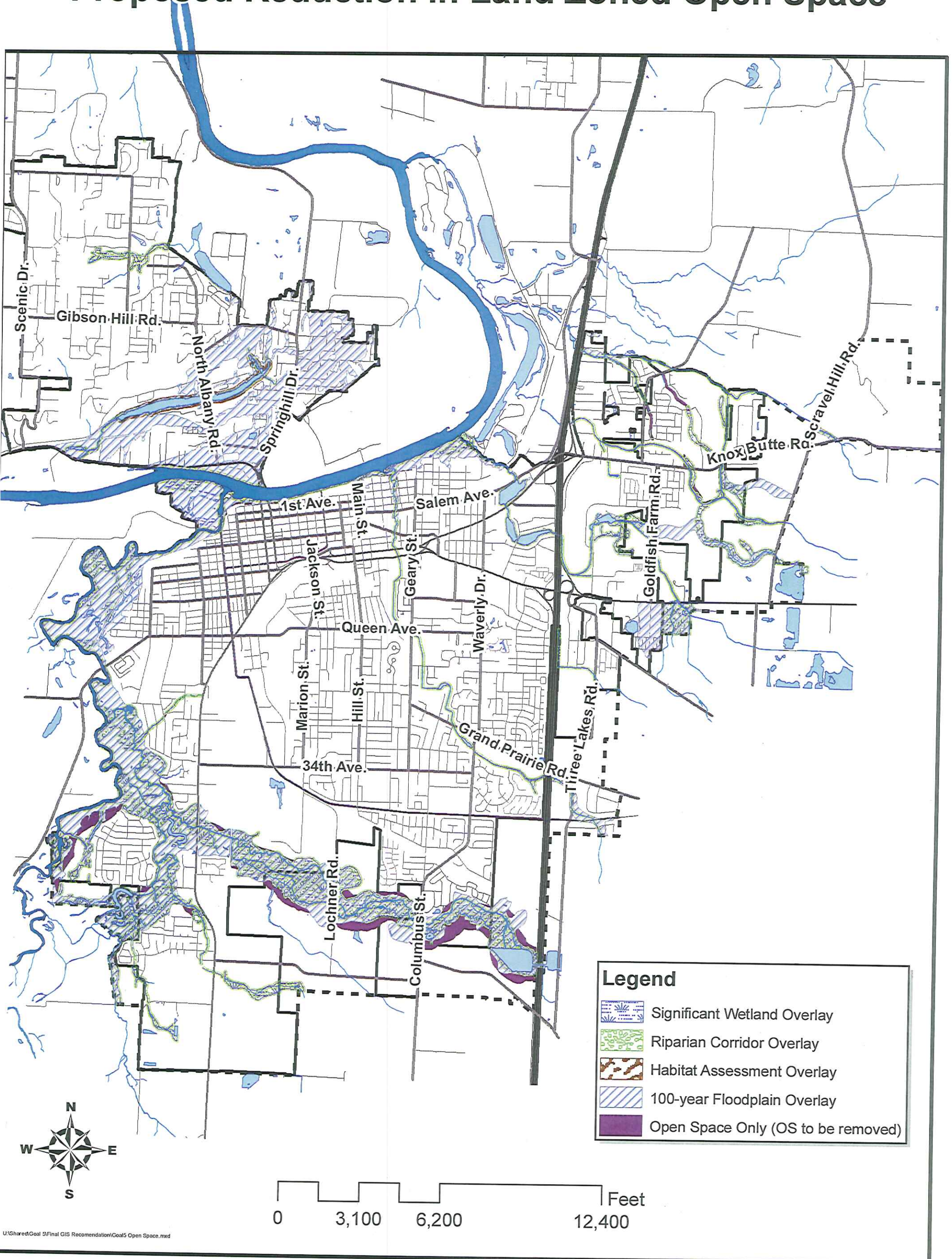
- (1) Mechanism for conservation and maintenance of significant natural resource areas that are required to be preserved. Private ownership by individuals or Home Owners Association has not been an effective way of protecting natural resources.
- (2) Are water-dependent and water-related uses allowed in significant wetlands?
- (3) What are the existing restrictions on the impacts to state-listed wildlife? Migratory birds? We want to cite these in our ordinance to property owners and developers are aware of them.
- (4) Fees. We want to keep them as low as possible, and in some cases not charge a fee.
- (5) Can we allow impact to 20% of yards that have riparian corridor? Or is a variance required?

RECOMMENDED VOLUNTARY IMPLEMENTATION MEASURES

Due to limited financial resources, and the City's desire to limit the impact on property owners to the extent possible, voluntary efforts will become critical to the success of any long-term natural resource protection inside the City. The following is a list of potential voluntary measures and programs that could be accomplished through coordination of existing and planned activities by several City departments and regional partners.

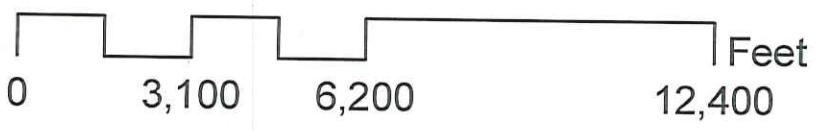
Resource	Recommended Measures	Notes
Significant Wetlands	Hold educational workshops on wetland restoration	Coordinate with Public Works Department; Department of State Lands; Wetland Conservancy; Oregon State University
	Distribute recommended maintenance practices, such as safe use of fertilizers and pesticides	
	Encourage participation in wetland restoration	
Riparian Corridors	Hold educational workshops on riparian corridor restoration	Coordinate with Public Works Department; Watershed councils; Oregon Department of Fish & Wildlife; Oregon State University
	Coordinate with Public Works on volunteer programs for planting native vegetation	
	Distribute recommended maintenance practices, such as safe use of fertilizers and pesticides	
	Encourage restoration of native vegetation	
	Develop linkages with programs at OSU, Linn & Benton counties, watershed councils, and others that may be interested in assisting	
Turtle Habitat	Develop "turtle friendly" design guidelines for structures and other development that does take place within the overlay;	Coordinate with Public Works Department; Oregon Department of Fish & Wildlife; Oregon State University
	Hold educational workshops about turtle habitat;	
	Develop linkages with programs at OSU, Benton County, watershed councils, and others that may be interested in assisting;	
	Encourage property owners to participate in voluntary turtle habitat enhancement program;	
	Distribute recommended maintenance practices, such as safe use of fertilizers	

MAP 1: Proposed Reduction in Land Zoned Open Space



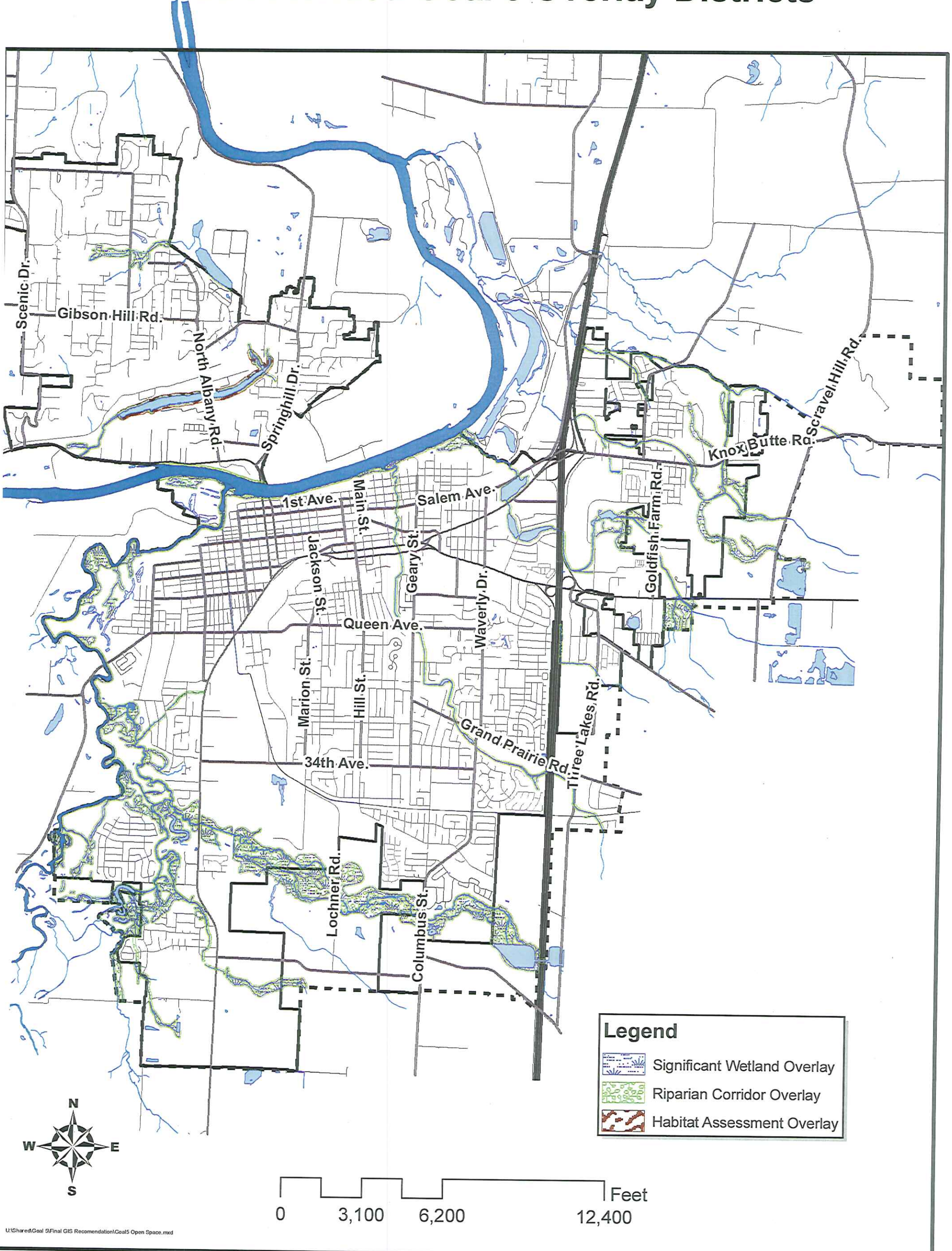
Legend

- Significant Wetland Overlay
- Riparian Corridor Overlay
- Habitat Assessment Overlay
- 100-year Floodplain Overlay
- Open Space Only (OS to be removed)



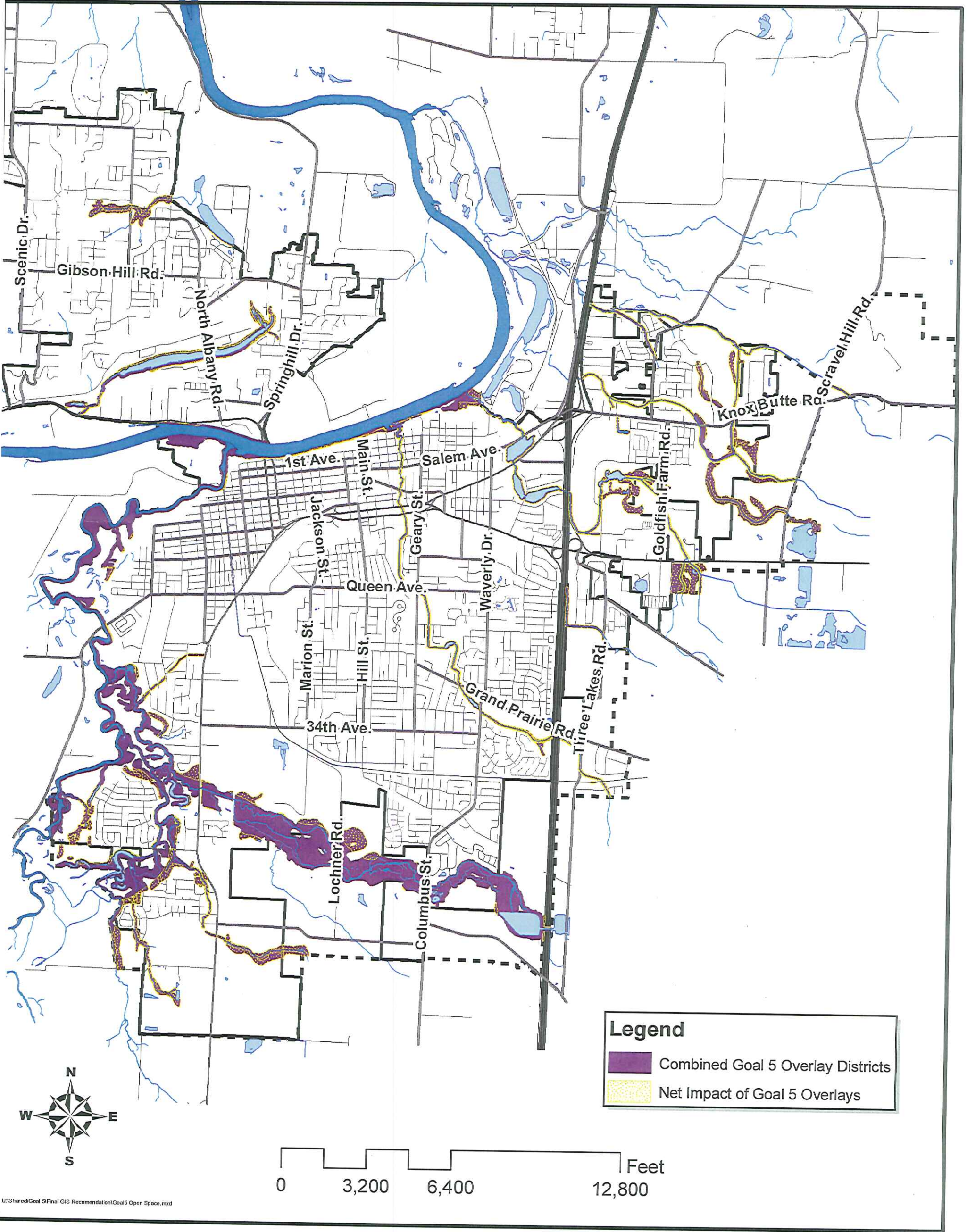
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MAP 2: Recommended Goal 5 Overlay Districts



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MAP 3: Net Impact of Goal 5 Overlay Districts (lands that weren't either Floodway or Open Space)

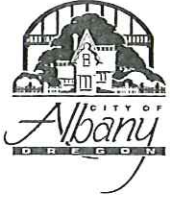


Legend
 Combined Goal 5 Overlay Districts
 Net Impact of Goal 5 Overlays

0 3,200 6,400 12,800 Feet



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APPROVED _____

**CITY OF ALBANY
PLANNING COMMISSION**
City Hall Municipal Court Room, 333 Broadalbin Street
Monday, July 19, 2010
5:30 p.m.

MINUTES

Planning Commissioners present: Paul Davis, Glenda Fleming, Bob Kish, Cordell Post, Dala Rouse, Michael Styler, Larry Tomlin and Dave Wood.

Planning Commissioners absent: David Faller (excused)

Staff present: Planning Manager Heather Hansen, Community Planner Janet Morris, Community Development Director Greg Byrne, Mike Leopard, Transportation Systems Analyst Ron Irish and Administrative Assistant I Sheena Dickerman

Others present: 12 in audience.

CALL TO ORDER

Vice-Chair Tomlin called the meeting to order at 5:30 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

APPROVAL OF THE MINUTES January 25, 2010, MINUTES

Commissioner Post moved to approve as written. Commissioner Rouse seconded it.

VOTE: Motion **passed** unanimously.

CONSOLIDATED QUASI-JUDICIAL PUBLIC HEARING, files SD-01-10 and SP-03-10: Subdivision Tentative Plat application that would divide 15.26 acres into 32 residential single-family lots and two open-space tracts. The subdivision has been designed using Cluster Development standards. A Site Plan Review-Tree Felling application to remove 17 trees that have trunks larger than 25 inches in circumference measured at 54 inches from the base of the tree.

Vice-Chair Tomlin opened the public hearing at 5:33 p.m.

Declarations: Rouse commented that she was on the Planning Commission (PC) when the subdivision came before them in past and approved. She noted that she had talked to Fran Brown, who had passed away, that said her children had found arrowheads.

Commissioner Styler commented that he had attempted a site visit.

Tomlin explained that for all those wishing to testify that they should be aware that they must raise an issue with enough detail to afford the Planning Commission and all parties an opportunity to respond to the issue if they later want to raise that issue on appeal to the Land Use Board of Appeals (LUBA). Testimony and evidence must be directed towards the approval standards staff will describe or other criteria in the plan or

development code which you believe apply to the decision. If additional documents or evidence are provided by any party, the PC may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by the applicant shall result in a corresponding extension to the 120-day limit. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with enough detail to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court.

Staff Report:

Community Planner Janet Morris explained that this was a subdivision being redone because the 2006 approval expired. It is in the same location and zoning. The previous application was a subdivision for 46 lots and a request to fell 23 trees. This application is requesting 4 phases, 32 lots and to have 17 trees removed. There will be 9.3 acres set aside for Open Space (OS) tracts, A and B.

The lots are not 6,500 square feet and the zoning, RS-6.5, generally means that lot sizes are 6,500 feet. The cluster development design allows for lesser size lots, this allows more acres to be set aside for the natural area. A majority of the site is located in the 100-year floodplain. The applicant will be obtaining permits to fill the property to bring the streets and buildings above the 100-year floodplain level. The applicant will also fill .83 acres of wetlands. The applicant plans to mitigate the fill on site. All the significant wetlands identified on the City's wetland inventory are set aside in the OS area. The Department of State Lands (DSL) is the agency that administers the fill and removal permits for wetlands, it is not a City permit.

Morris commented that there was a history of unapproved fill on the site. The applicant states this fill will be examined and reprocessed as engineered fill.

Thirteen Avenue has been selected, by the neighbors during the last application, as the designated construction route for the subdivision phases but not the houses there after. The City does not have method for enforcing 13th Avenue as the construction route thereafter.

The applicant will be making improvements to 13th Avenue. During the first phase the applicant will be placing a 2 inch asphalt overlay between the subdivision and Broadway Street. The pavement will be 28 feet wide and have two four-foot-wide striped shoulders on each side.

There are more than 76 trees within the subdivision. Most of the trees are located in the OS area that will be set aside. The applicant proposes to remove 17 trees that are within the site of the subdivision. Staff recommends approval with conditions.

Applicant's Testimony:

Mark Grenz, Multi-Tech Engineering, 1115 13th Street SE, Salem, representing the applicant. He shared that Multi-Tech was the project engineers on the project in 2006. They were unable to complete the process when the economy slowed down.

The project is different than the last time. In reevaluating the project land use regulations has changed. Also, the fill needed to construct the additional lots was not justified. They are creating 32 lots where they will not have to fill as much.

Grenz acknowledge that there was undocumented fill on the site. They are committed to being careful and if there is any contamination of fill to have it removed.

Grenz stated that an archeological study was done on the site and nothing of significance was found. They are committed to monitor the project during the reprocessing of the fill and excavation, in case artifacts are found. The issue that Commissioner Rouse brought up there is already a process in place.

Grenz stated that they do not have any issues with the conditions that are proposed. They believe that they have addressed the majority of concerns from the neighbors and staff. They had a neighborhood meeting a couple of months before this application was turned in. He shared that the applicant, Byron Hendricks, had cleaned up the site since buying the property. They have cooperated with the City on the sewer project, last construction season and will work with the City this year for the next stage.

Commissioner Kish asked if all 32 lots would be on fill. Grenz replied that approximately half of the lots would not be on fill. Some of the fill has been documented and some has not. An evaluation was done and they believe that they know where the good material is located. They have to do some fill due to the floodplain.

Kish asked if they planned on doing all the streets and utilities at one time or as each phase was built. Grenz answered that they would make the site improvements consistent with the phases.

Styler commented that he had tried to make a site visit but there was garbage in different portions. He asked if they were going to clean up the entire area. Grenz replied yes. He said that they have already removed material and part of it was because they were not monitoring the site before.

Commissioner Fleming asked if they planned to monitor the fill. Grenz replied that there would be a geotechnician on site that would monitor and they would remove all material deemed unusable.

Fleming asked for him to describe the catch basin. Grenz replied that the storm drainage from the southwest would be taken to the detention basin. On the northeast side of the property the pond will serve as a detention basin. The water will be treated by use of a bioswell. The detention will be done in the first phase. Over nine acres will be retained as Open Space.

Rouse asked about the storm drainage, page 23 of staff report, draining into the Calapooia River. Grenz replied that it drains into the detention pond. Currently all the water comes down the streets and goes toward the wetlands. All the water will end up at the same point that it currently does but it will be controlled through the detention pond.

Byron Hendricks, PO Box 12397, Salem, said the economic conditions allowed them to craft what was more in line what the neighborhood had previously wanted.

NEUTRAL TESTIMONY

Willie Hyde, 2020 15th, expressed concerns with the drainage off of 15th and 16th Streets. He said that water backs up and none of it is in the City's water drainage. He does not think that the drainage will affect those in the area positively. The area is part of the floodplain. Water comes up over the road now. The area is overgrown and he feels that the City has abandoned those streets.

Commissioner Fleming asked if Hyde thought this project would make the drainage worse on 15th Street. Hyde affirmed.

Hyde said that the City's drainage system is currently higher than the road. He asked if the requirements from the 2006 proposal would still stand. Tomlin replied that it was a different application. Hyde mentioned that there were a lot of letters submitted in 2006 by people that are not at this meeting. He thinks they should be included. Morris explained that everyone received a notice regarding the public hearing, and it was an expanded area. Hyde believed that people assumed that their previous letters and agreements would have still stood this application.

Commissioner Rouse asked for Hyde to show where he lived on the map.

Ephraim Hackett, 1889 12th, lives on the corner of 12th Avenue and Hop Street, in the new subdivision. He owns two lots behind his house that are also on Hop Street. He had a number of questions he would like answered.

Hackett's first question was regarding what would be the nature of the curb and gutter of 12th Avenue and Hop Street. He asked if Hop Street would completely end. He commented that from the map it looked like the paving would end at the end of Hop Street at the corner of 12th Avenue. He wanted to know where the storm sewer would be.

Hackett asked what the disposition of the vacant properties north of proposed lot #1. He asked if someone would be taking care of it.

Hackett asked what the fill would be on lot #1. He commented that lot #1 did not appear buildable as it currently exists. He is concerned because Lot #1 is adjacent to his property.

Hackett asked what the plan was for the open space and who would be responsible for it. He shared that currently it is acting like a junkyard. People drive down 13th Avenue and drop off their garbage and recently there was a fire at the location. There is an old construction shed at the location that kids use to play and is a home for the homeless that needs to be removed.

Hackett shared that the old fill has sidewalk and asphalt in it. He wanted to know what was going to happen to the old fill.

Hackett said that currently the storm water that was going to the pond was a cutoff channel before going to the Calapooia. He asked if the detention pond in the proposal was the existing pond or would the applicant be adding another pond. If the applicant is adding another pond, he asked where it would be.

Rouse asked if what street people used to dump. Hackett replied that it was mostly 13th Avenue but they also used 15th Avenue. He explained that 14th Avenue does not go all the way through and 12th Avenue had a gate:

Jason McAfee, 2380 Epping Avenue SW, said he is the farmer with 200 acres on the other side of the tracks. He asked if the runoff would be safe for human consumption as the water comes onto his property. He commented that he is in favor of the City's Goal 5 objectives.

APPLICANTS REBUTTAL

Grenz addressed Hyde's issues. This project will not exaggerate the water drainage on 15th Avenue. He explained that their drainage system will pick up all the water runoff and take it to the new water quality detention basin. This will reduce the water that goes down 15th Avenue. This is different than the floodwater from the Calapooia that backs up into the area. The applicant had Roger Sutherland, with Pacific Water Resources, who specializes in floodplain issues to review their project. Sutherland wrote a letter that says that this project will not have a negative impact on flood issues.

Kish asked if it was a requirement for them to have sidewalk, curb and gutter along the properties that abutting 15th. Grenz replied that they will along their frontage. Kish asked if phase one was the most northern part of the subdivision. Grenz affirmed. Kish commented that it would be a few years before the application will pick up water. Grenz affirmed. He stated that as the project develops they will be making improvements for drainage. By phase four all the water will be taken to the water facility, to be treated and controlled. Until then, they will not be making the situation worse.

Grenz said that they would not be making any curb and gutter on the east side of Hop Street. In terms of street improvements they portion will stop at the north edge of 12th Street. There will be a 20-foot-wide driveway

along Hackett's property to the north. He said that Condition 3.17 requires them to construct the access way to the south line of lot 8. They will be providing access way to Hackett's property and will be a paved access.

Grenz continued saying that the property north of lot 1 will become part of the open space they will be creating and controlled by the home owners association (HOA). The HOA will be responsible to maintain and ensure that it is not sued for illegal dumping.

Grenz said that that sheet 6 of the plans shows how they will be grading the site. They will be doing some filling on lot one but the majority of the lot will remain in the compressed area. The old fill, that is undocumented, will be reprocessed. Concrete and asphalt will be reprocessed and put back into the fill under the monitoring of their geotechnical consultant. If it is not suitable material it will be hauled away.

Grenz stated that the retention pond is located north of lot 1.

Grenz shared that the all the runoff from their site will be taken to the water detention facility, which is also a water quality facility. It will be treated before it is discharged into the open space area. All of the water will be treated, even the water that is currently untreated.

Fleming asked if detention pond would require any ongoing maintenance. Grenz replied that it should not. He added that the HOA will be responsible for the maintenance and the City may monitor the hydraulic portion. The type of bioswell and vegetation should be self manageable. There will be a maintenance document associated with it for the HOA.

Rouse asked for clarification on what phase the detention pond would be constructed. Grenz stated phase 1. Rouse asked how much fill is estimated in phase 1. Grenz replied that they would not be doing much. Rouse commented that the 100-year flood goes through to Hops Street (agenda, sheet 1) and their building would need to be above the 100-year flood. Grenz stated that a significant amount of the site is above the floodway (agenda, page 6). He noted that Lots 6, 7, 8, and 11 are above flood elevation and Lots 1, 2, 3, parts of 4, 5, 12, and 13 require some fill. An analysis was not done based on phases. Rouse clarified that they were going to reprocess the current fill and then build on the fill and they would not cause flooding for those on the other side of Hop Street. Grenz replied that they would improve the area. Currently there is a drainage way that comes up and they will be improving it. Rouse clarified that they were going to construct more than a half street of Hop Street. Grenz affirmed. Rouse asked the applicant if they would have an issue with cleaning up the property and putting a barricade up on 13th Street and 15th Street, before phase 1. Grenz stated that they could not barricade 13th Street because it was public access. McAfee stated that abutted his property and that he was the only one that need access and he was supportive of a barricade. Hendricks replied that he would not be taking down the shed at the beginning because it was a good construction staging area but it would be a secure location.

Staff Rebuttal

Morris stated that a barricade needs to be investigated before something is done. If it is a public right-of way they would need permission from the City's transportation department. Transportation Analyst Ron Irish explained that it was a public right-of-way and if there is only one property owner and if the property owner would not complain then it would not be a problem. If there are multiple property owners it would have to be agreed upon, plus the fire and police department may need to have access. Post stated that if the City grants permission than the applicant will put up a barricade. Hendricks will write a letter asking the City for permission.

Vice-Chair Tomlin closed the public hearing at 6:37 p.m.

PC Discussion

Post stated that he was on the Planning Commission when the previous application was approved and likes this application better. Rouse and Davis agreed.

MOTION: Rouse moved to approve with conditions files SD-01-10 and SP-03-10. Post seconded it.

VOTE: Motion **passed** unanimously.

Tomlin said that within five days of the decision the Community Development Director will provide written notice of the decision to the applicant and any other parties entitled to notice. A person with standing may appeal this decision to the City Council by filing a Notice of Appeal with the Planning Division within 10 days from the date the City mails the notice of decision.

NEXT MEETING DATE:

The next meeting of the Planning Commission is July 26, 2010.

ADJOURNMENT

Hearing no further business, Vice-Chair Tomlin adjourned the meeting at 6:40 p.m.

Submitted by

Sheena Dickerman
Administrative Assistant I

Reviewed by

Janet Morris
Community Planner

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APPROVED _____

**CITY OF ALBANY
PLANNING COMMISSION
Santiam Rooms, 333 Broadalbin Street
Tuesday, November 2, 2010
5:15 p.m.**

MINUTES

Planning Commissioners present: Paul Davis, David Faller, Glenda Fleming, Bob Kish, Cordell Post, Dala Rouse, Michael Styler, Larry Tomlin and Dave Wood.

Planning Commissioners absent: None

Staff present: Community Development Director, Greg Byrne, Planning Manager Heather Hansen, and Administrative Assistant I Sheena Dickerman

Others present: None

CALL TO ORDER

Chair Faller called the meeting to order at 5:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

APPROVAL OF the February 1, May 24, June 7 and June 21, 2010, MINUTES.

Commissioner Post pointed out that on the February 1, 2010, minutes that the Mayor's name was spelled wrong. That will be corrected on the minutes.

Post moved to approve all the minutes, with the correction on the February 1, 2010 minutes. Commissioner Rouse seconded it.

Vote: Motion **passed** unanimously.

GOAL 5 "COURSE CORRECTION"

Planning Manager Heather Hansen highlighted the four (4) items that have changed in the Goal 5 staff recommendation (Exhibit A).

One change is the removal of 16 wetlands of the 25 that were added to the significant wetland classification. Hansen pointing to map (Exhibit B) said that the brightly colored areas were the wetlands that had been added. These wetlands were classified as significant based on their proximity, within a ¼ mile, to a water quality limited stream as designated by the Oregon Department of Environmental Quality (DEQ). Staff learned of the option of not classifying streams as significant if they do not improve the conditions related to the DEQ listing. Also on Exhibit B the crossed out wetlands are the portions that would not be added.

Community Development Director Greg Byrne pointed to a large area that belonged to the Mennonite Village and shared that the Oregon Department of State Lands (DSL) had accepted a delineation that indicated that most of it is not a wetland. Post commented that it was not uncommon for delineations to cause a wetland to be less.

Byrne added that it was unnecessary to call it a significant wetland. Hansen said that it would still be a wetland and any disturbance of the wetland would need to be approved by DSL.

Hansen shared that the second change was from using the Standard Approach for riparian corridors to using the Safe Harbor approach. It became evident that it didn't make much of a difference using either one because Oak Creek is a braided channel. This will allow more land to be developable. Commissioner Styler asked how many acres more. Hansen replied that approximately 100 acres.

Hansen said that the next two changes dealt with protection. She said that for protecting the Willamette River it was found that Goal 15 (Willamette River Greenway) supersedes Goal 5. The City never had to do the ESEE analysis. The Willamette River Greenway District is about balancing the objectives along the waterfront, including recreation, wildlife habitat, access, and protection of the Willamette River area. The Development Code has regulations for the Willamette River Greenway already.

Hansen added that a majority of the significant wetlands in the City are owned by the City or are zoned Open Space.

Hansen added that for Oak Creek and South Albany area to be redeveloped it is hard to avoid significant wetlands. If the City does an ESEE analysis for infrastructure improvements in the Oak Creek corridor then a lift station and street alignments can happen in an environmentally safe manner.

SOUTH ALBANY AREA PLAN

Byrne went through a slideshow presentation regarding the City's South Albany Area Plan (Exhibit C).

Byrne explained that the next step in the process in the South Albany Area Plan is a work session with City Council in December.

Hansen explained that the City had purchased interactive software that will assist in the process of evaluating scenarios for transportation and land use. Staff will receive training in the use of the software.

Byrne stated that in the future Ellingson Road will be closed. A question the City must ask is if it should invest in Ellingson Road now until 53rd is built.

There was a discussion among the commissioners and staff about the importance and high cost of implementing the transportation improvements, the need for grocery-anchored neighborhood commercial, and the financial feasibility of the plan.

UPDATE

Byrne explained that the Senior Staff member will be sitting next to the chair during public hearings. He shared that the staff reports will now have an executive summary to highlight staff recommendations in one single report.

NEXT MEETING DATE:

The next meeting of the Planning Commission is November 15, 2010.

ADJOURNMENT

Hearing no further business, Chair Faller adjourned the meeting at 6:33 p.m.

Submitted by

Sheena Dickerman
Administrative Assistant I

Reviewed by

Heather Hansen
Planning Manager

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APPROVED _____

**CITY OF ALBANY
PLANNING COMMISSION
City Hall Council Chambers, 333 Broadalbin Street
Monday, November 15, 2010
5:15 p.m.**

MINUTES

Planning Commissioners present: Paul Davis, David Faller, Glenda Fleming, Bob Kish, Cordell Post, Dala Rouse, Michael Styler, and Larry Tomlin

Planning Commissioners absent: Dave Wood (excused)

Staff present: Community Planner Janet Morris, Planner II Evan Fransted and Administrative Assistant I Sheena Dickerman

Others present: 12 others in audience

CALL TO ORDER

Chair Faller called the meeting to order at 5:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

CONSOLIDATED QUASI JUDICIAL PUBLIC HEARING, CU-07-10 Conditional Use to construct a 14,390-square-foot 12-bed inpatient hospice and administrative facility on the RM zoned portion of the property and file SP-19-10: Site Plan Review – Tree Felling to fell 25 trees that have trunks larger than 25 inches in circumference when measured 54 inches up from the base of the tree. The applicant is Albany General Hospital Foundation.

Chair Faller opened the public hearing at 5:16 p.m.

Declarations:

Commissioner Tomlin stated that he drives by approximately 5 times a month.

Staff Report:

Community Planner Janet Morris summarized the legal requirements.

Planner II Evan Fransted summarized the written staff report. There are two applications for this project. The Conditional Use application to allow the construction of a 14,390-square-foot hospice facility that consists of a 12 bed hospice area, an administrative area, and a parking lot. The facility is designed to provide end-of-life care to patients who require care that can't be delivered in the home. The administrative area will provide space for the inpatient staff and for outpatient home-based hospice staff. The project will be developed in two phases. This review is for only Phase I of the project. The property is located on the corner of Del Rio Drive and Waverly Drive in SE Albany. The owner of the property and applicant is Albany General Hospital Foundation.

There are six review criteria that have to be met if a conditional use is to be approved. Staff anticipates that only Review Criterion 2, compatibility with existing or anticipated uses, being key to the review. The applicant has requested to be allowed to provide most of the required buffer and screening landscaping at the perimeter of the project area rather than at the perimeter of the property boundaries. The reason for this request is due to the location of existing protected wetlands and a 125-foot-wide Bonneville Power Administration (BPA) easement. The nearest

residential house is over 100 feet to the south from the proposed facility. This special separation by natural features seems to negate the need to provide the buffering and screening around the whole boundary of the site.

The other application is Site Plan Review application to remove 25 trees that are larger than 25 inches in circumference. Most of the trees are cottonwood. There are 5 ash trees. The trees that are to be removed range in size from about 19 inches in circumference to 314 inches in circumference. There are many trees not identified on the tree felling plan that will remain on the property, which are located outside the project area. There are three review criteria that have to be met if a site plan review for tree felling is approved.

Chair Faller read Exhibit A from the Union Pacific Railroad Company asking the City to mitigate measures such as sound walls, setbacks, fences and other barriers, public education and disclosure. Faller asked Fransted if he had looked at the letter and the consequences as the result of. Fransted replied he had read through it. He stated that it would be up to the PC what other mitigation requirements they would want to consider. Faller asked how many trains were going through the location. Fransted said 0 to 2 trains a day. Commissioner Rouse commented that the amount of trains could change in the future. She added that the intersection that the railroad company was referring to was Waverly Drive, and traffic would be backed up to Del Rio Avenue. Commissioner Post added that the PC needed to look at what the code requirements are for setbacks.

Applicant's Testimony:

David Triebes, 2878 NW Silktassel, Corvallis, the CEO of Albany General Hospital. He defined what hospice was, a program or facility that provides special care for people who are near the end of their life and their families. Hospice care can generally be delivered in the home or another facility or the hospital. He shared some hospice facts; 5,283 hospice programs are in the US, 450 inpatient hospice facilities in the US, 73 hospice programs are in Oregon. Oregon's certificate of need program governs a lot of health care facility construction, which limits the number of hospice houses in Oregon to 6. For the last 5 years Albany has had their name on the list to be one of the 6. Samaritan Evergreen Hospice served 661 patients in 2009. Forty percent of natural deaths in the US are under hospice care. Sixty percent of natural deaths in Oregon are under hospice care.

In May of 2010 the hospital foundation in Albany announced a 4.3 million capital campaign for a hospice house. It is a 12 bed inpatient facility and considered a small specialty hospital under Oregon regulations. The hospice house itself would provide nursing care to dying patients or respite care for up to 5 days under Medicare regulations. Medicare pays for either of these services. The nursing care is the same as what is given in the hospital or nursing home. It is for medically related care, medication control, pain control, etc.

Triebes stated that at this time the Albany General Hospital Foundation has raised 57 percent of the fundraising goal toward the 4.3 million dollars. He added that top 5 diagnoses for patients under Samaritan Evergreen Hospice care are dementia, congestive heart failure, lung cancer, chronic pulmonary disease, and breast cancer. It is anticipated that hospice care will be delivered to 700 people in 2010. Evergreen Hospice serves families within a 30 mile radius of Albany.

Triebes added that for construction it is anticipated that they will utilize local contractors and construction workers. The estimate is that there would be 85 workers that would be employed during the construction period. Payroll dollars is anticipated to reach 1.8 million dollars. There would be probably 6 new clinic positions at the hospice house.

The three key benefits of hospice care focuses on expert care for those that are in the dying process, providing a home like atmosphere to comfort patients and visiting family members, and significant cost savings for when the only alternative is hospitalization.

Triebes shared his personal experience with hospice care and his mother-in-law. He added that this type of facility would be very appropriate. The key phrase for hospice is that it is caring not curing. This is geared for the type of way people are cared for and not the end result as it would be in a hospital setting.

Commissioner Styler asked how many care facilities were in Oregon. Triebes stated that currently there were 3. Styler asked how much sound abatement would be put in the project because of the train. Triebes referred to the other colleagues.

Faller asked if he had any problems or issues with the City's conditions for approval. Triebes responded he did not.

Bob Young, Young & Wieprecht Architects, 330 Bush St. Salem, addressed the noise concern. He stated that there are trains and there has been discussion with the Mennonite Village and they have not had a problem with the trains. One of the conditions of approval for the conditional use is additional landscaping on the south side because of the trains. Styler commented that trains usually sound of at the crossings. He expressed concern for the patients. Young said that in early discussions with the hospice staff, they did not view the railroad as a negative because it was an element of life. The desire is to have patients not isolated from life but integrated. With the sound treatment that they will do with an exterior walls and windows will help mitigate the sound of the trains. Post mentioned that with the new construction, installation and decent windows, there will be some mitigation with the building.

Rouse reiterated that there could be more trains in the future and that the PC should be judging based on that, not just the current level of trains. Young stated that they would address with staff. He would not recommend building a big wall across the property. If it is a problem for the hospice staff or their patients they would ensure that it was taken care of. Commissioner Tomlin commented that he thought trees and shrubs would be a better mitigation than a wall. Young agreed.

Testimony in Favor:

John Robinson, 2550 Del Rio Court, Albany, said that he lives along the Del Rio Court, in the third house off Waverly Street towards the railroad tracks. He thinks the hospice is a good fit for the neighborhood. He shared that for as long as he has been there the train was quiet and goes slow through the area. He did not believe the train would be a concern for this applicant. He said that most of the trees are cottonwoods and should be removed.

Louis Lahman, 2524 Del Rio Court, Albany, commented that he was the former chaplain for the Mennonite Home. The railroad is a non issue for the neighborhood and said that he barely hears the horn of the trains.

Lahman added that his wife died in 1999, he was pleased to have Evergreen Hospice to help with the care of his wife in the last month. He is in favor of having them in his neighborhood.

Neutral Testimony:

Pattie Schiedler, 2035 47th SE, Albany, she stated her property is at the low point of the area and she wanted to make sure that with the building of this property that they didn't drain anything towards her property.

Schiedler added that her other concern was that the parking lot floodlights would be in her property. She commented that there was no existing fence on the property, as was stated in the staff report.

Schiedler shared that she likes looking at the trees that are being removed but she is not objecting to the building.

Applicant's rebuttal:

Brian Vandetta, 63 Ash Street, Lebanon, addressed Schiedler's concern saying that the project will improve the drainage within the area. The north portion of the project includes a drainage swell that discharges to the east into an existing storm water system. All the impervious areas of the site that are improved will be directed to landscape swells around the perimeter and interior of the parking lot. Those swells will infiltrate into the ground and whatever does not will be directed into a pipe storm water system. This will be metered as it is discharged from the site to predeveloped levels. The rates that exceed the predeveloped level will be backed up and stored in the storm water detention facility. He added that he believed Schiedler's low spot was induced by the elevated grade of the railroad. Post clarified that the railroad was between the hospice property and Schiedler's property, with an existing berm between. Vandetta affirmed. Post asked if the storm water would go into underground tanks and metered out. Vandetta explained that it will go into an underground pipe system and stored in above ground ponding facility when it above the levels. It will discharge to the north and go into a Waverly Drive storm drain system that then discharges into the Del Rio Avenue drainage system and proceeds east.

Vandetta addressed the issue of the parking lot lights and stated that the DC prohibits the glare. The onsite lighting will be designed with glare shields. The perimeter close to her property will have landscape buffering and shielding.

Rouse asked about finding 2.11 that says the site has an existing fence. Vandetta said there was not fence. Rouse thought that the information that was incorrect in the staff report should be removed.

MOTION: Post moved to remove the information of there being a fence on the property. Rouse seconded it.

VOTE: Motion **passed** unanimously.

Fleming asked if the glare shields on the lighting had any timing system. Vandetta said that the shields are permanently fixed to the light. At this time in the design they have not decided if the lights will have a timer or a light sensor. Fleming wanted to know whether the brightness would vary. Vandetta was unsure of what types of lights will be used but they would follow the DC to ensure that there will be no glare and will not create an adverse impact on the neighboring properties. Morris explained that the DC requires that all lighting remain on site. The lighting must go directly down.

Staff Rebuttal

Morris stated that Findings 2.11 will be excluded from the staff report. Fransted clarified that the staff report says that the site plan shows a six-foot fence. According to the key of the site plan it looked like there was a fence. The buffering and screening requirement requires a fence or something like it. This requirement was not added to the conditions because it was believed that there was a fence on site. He shared that if there is not a fence on site that it should be added to the condition. Commissioner Davis added that he thought it could be either a fence or a berm. Fransted agreed, the applicant has options but must provide one of them. Post asked if Fransted was informing the PC that they needed to include a condition that the applicant includes a six-foot-height fence. Rouse said it was part of the conditions already, on page 9.

Fransted explained that condition 2.2 requires that the landscaping be brought up to code and does not say anything about a berm or fence being required, which is a screening requirement. For screening there are choices of an evergreen shrubs, fencing, and a combination of both, the applicants have a choice. Morris added that the train track is elevated and the applicants may choose not to have a fence because it may not do anything.

Commission Discussion:

Rouse raised a concern about the exit from the facility. She said that when built to its maximum capacity sets 368 trips a day, coming and going. Her concern is with the driveway coming out on the curve, across from Evergreen Street. She suggested that the traffic engineer make sure that the parking is not too close to the driveway, for site clearance. Faller clarified that it was the parking on Del Rio Avenue. Rouse affirmed. She is not adding it as a condition but a concern that cars cannot see around when coming out on a curve. Morris noted that it didn't come up during the review process with the traffic engineer. Staff wanted the driveway at that location because it is opposite of the other driveway. Faller asked formally that traffic engineer, Ron Irish, take a look at this particular situation to see if it warrants review.

Commission Action:

MOTION: Post moved to approve with conditions the application for a 14,390-square-foot hospice facility based on the findings and conclusions of the staff report and testimony presented at the public hearing based on the motion of the staff report change as previously stated. Rouse seconded it.

VOTE: Motion **passed** unanimously.

Faller said, within five days of the decision the Community Development Director will provide written notice of the decision to the applicant and any other parties entitled to notice. A person with standing may appeal this decision to the City Council by filing a Notice of Appeal with the Planning Division within 10 days from the date the City mails the notice of decision.

ACTIVITY UPDATE

Morris explained that Goal 5 would be coming to the PC in January.

Morris gave an update on the Lowe's project.

NEXT MEETING DATE:

The next meeting of the Planning Commission is TBD.

ADJOURNMENT

Hearing no further business, Chair Faller adjourned the meeting at 6:17 p.m.

Submitted by

Reviewed by

Sheena Dickerman
Administrative Assistant I

Janet Morris
Community Planner

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