



NOTICE OF PUBLIC HEARING

CITY OF ALBANY
PLANNING COMMISSION
City Council Chambers, 333 Broadalbin Street SW
Monday, March 21, 2011
5:15 p.m.

AGENDA

1. CALL TO ORDER (Chair Faller)

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ROLL CALL

4. APPROVAL OF THE June 28, 2010; July 19, 2010
PCWS; and the March 7, 2011, MINUTES

5. CONTINUED CONSOLIDATED LEGISLATIVE
PUBLIC HEARING

CP-02-10/DC-05-10 – Legislative Amendments to the
Comprehensive Plan Chapters 1, 2, 7, 8, and 9 and
Plates 3, 4, and 6; and changes to the Development Code Articles 1, 2, 3, 4, 6, 9, 11 and 22 to
implement Goal 5.

6. ACTIVITY UPDATE

7. NEXT PLANNING COMMISSION MEETING DATE: Monday, April 18, 2011

8. 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.

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: March 14, 2001 or the March 21, Planning Commission Public Hearing
SUBJECT: Revisions to Proposed Albany Development Code amendments to implement Goal 5;
Staff response to written testimony

Action Requested:

Reopen legislative public hearing regarding proposed amendments to the Comprehensive Plan and Development Code; Close public hearing and discuss proposed amendments; Consider need for additional Planning Commission meeting; Recommend amendments for adoption by the City Council.

Revisions to Proposed Amendments:

Exhibit A includes revisions to the proposed amendments based on public input, and input from other City departments and State agencies. The revisions are shown in **bold with yellow highlighting**. The majority of revisions are to Article 6. The following is a summary:

Open Space Zoning District: Some uses were added, and the requirement for site plan review was dropped. Development will be reviewed at the design phase and again at construction. Most land zoned as Open Space is also part of an overlay district and will be reviewed at that time as well.

Natural Resource Impact Review: The process and requirements for the review were enhanced. References and cross-references were added to clarify which standards apply to the review.

Mitigation Requirements: Much more detail is provided on the process and requirements for mitigation.

Public Infrastructure Projects: Public infrastructure is a necessary prerequisite to most new development in the City. Therefore, the City's ability to construct infrastructure in a timely manner is crucial. The proposed amendments include revisions that address public infrastructure projects that are included in adopted plans such as the Transportation System Plan. New Engineering standards will be proposed to City Council that will apply to these projects within riparian corridors and habitat assessment overlays. They will result in the same level of protection of the Goal 5 resources as the proposed ADC standards, without duplicating prior reviews.

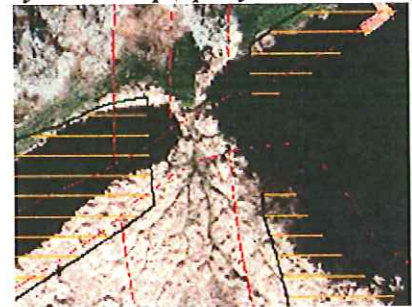
City Attorney Jim Delapoer recommended this approach in order to balance resource protection with timely construction of public infrastructure projects. We will discuss these revisions with State staff so we can verify that this will be an acceptable approach. We will report any potential revisions to you orally on the 21st.

Staff Responses to Written Testimony:

- A. Ralph and Diane Nauman (letter dated March 3, 2011 and submitted at the March 7 public hearing): The issues they raise relate to access and development of their property at the west end of West Thornton Lake, as well as the potential salmonella risk of turtles to children. The following are responses to their summary of ESEE inadequacies and the recommended changes to the proposed overlays, which are found on pages 1 and 2 of their letter:
1. **"Potentially eliminate several home sites..."** Exhibit B illustrates the existing *Open Space Zoning District*, which allows one single-family home per existing lot, but does not allow

further subdivision. In the proposed *Significant Natural Resource Overlay Districts*, development would need to be focused on the portion of the lots outside of the wetland and riparian corridor overlays. If there is not sufficient development area outside the overlay districts, then the Adjustment or Variance procedures could be used. On each lot where more than 1,000 square feet of development within the habitat assessment overlay is proposed, an assessment of turtle habitat would need to be done to ensure that the species would not be negatively impacted by the proposed development. It does not mean that development cannot proceed.

2. ***"Virtually eliminate any chance of getting a driveway to our property...."*** The Significant Wetland Overlay is the only overlay that could potentially restrain access to the property. The aerial photo to the right illustrates that there is sufficient area outside the wetland overlay district to pave the existing access way with gravel.
3. ***"Place entire burden of compliance with the new overlays on three property owners...."*** This is not true. The overlay districts apply to all properties along the lake. Some are undeveloped or have the potential for redevelopment at a higher density.
4. ***"Impose substantial additional costs for development on three property owners for environmental and habitat studies to test for the presence of turtles that have known to represent toxic risk to children."*** Development of the lots can proceed by avoiding the overlay districts without additional cost. If the development is proposed within the overlay districts, there would be the additional cost of a Natural Resource Impact Review, or an Adjustment or Variance if deemed necessary.



There are many species of wild plants and animals that have the potential to harm people if handled, ingested, or provoked, but none of the scientific citations presented are from Oregon nor do they include the two species of turtles native to Oregon. All of the citations are from other states and countries. And most relate to unspecified sources of salmonella, pet turtles, or drinking water sources. Some are repeated. As is always the case, children need to be made aware that they should not handle wildlife, ingest wild plants or mushrooms, or drink surface water.

5. ***"Use setbacks to penalize land owners in an attempt to boost turtle habitat, instead of exploring known effective alternatives to preserve turtle numbers."*** The northwestern pond and western painted turtles are both listed by the State of Oregon as "sensitive-critical." The proposed overlay district is a minimal attempt to avoid losing more turtle habitat, which includes areas for basking, nesting, hibernating, and a variety of food sources (plants, insects, and tadpoles). Protecting one type of habitat and not the others is not effective. Goal 5 addresses all types of habitat by requiring an assessment within 100 feet of the lake, and by regulating development within the wetlands and riparian corridor overlays adjacent to the lake. The City is exploring additional means of improving water quality in the lakes, as well as a voluntary program of habitat protection and enhancement.
6. ***"Changes to Proposed Overlays:"*** The Open Space zoning is already in existence. We cannot exempt specific properties from the Goal 5 overlay districts.

B. Scott Lepman (EXHIBIT C - letter submitted March 10, 2011):

1. **Open Space boundary:** Prior to illegal fill being placed on the property, the Open Space designation boundary more closely matched the floodplain and creek bed of Oak Creek.
2. **Approved wetland information provided to City:** Staff has never received any records of DSL-approved wetland delineations or determinations for the subject property. Staff contacted Janet Morlan of DSL in the past about this and she said that there was not an approved delineation for this property. On Friday March 11, staff contacted Heather Howard of DSL and again asked for any wetland delineations for the subject property. A wetland delineation was sent to us from 1994 that Mr. Lepman had submitted related to plans to build one single family home on the property. The delineation was rejected by DSL at the time. The letter from Janet Morlan of DSL emphasized "Please be sure that all fill activity in low-lying areas is halted!" (See EXHIBIT D). At that time, the northwestern section of property along Oak Creek had not yet been filled.

The "approved wetland information" referenced in EXHIBIT C is not a DSL-approved delineation or determination as required for amending the Local Wetland Inventory. The only "approval" from DSL relates to a required mitigation plan that is part of the 2006 Final Consent Order between DSL and Glorietta Bay, LLC that resolves their unlawful placement of fill within waters of the State without a permit.

A LOMF is also referenced in Mr. Lepman's letter. I have never received a FEMA-approved LOMR-F, nor is there a record of an approved LOMR-F for this property; however, it is not relevant since it relates to the floodplain boundary and has nothing to do with the wetland boundary.

3. **Properties with approved wetland or riparian fill and mitigation plans:** Under the Safe Harbor provisions of Goal 5, we cannot exempt properties from protection of significant resources. The status of fill permits or mitigation plans related to a Final Consent Order for illegal fill would not have bearing on this issue in any case.
4. **Where riparian areas and significant wetlands overlap:** The Safe Harbor riparian corridor width is 50-feet.
5. **Wetland delineations verified by DSL automatically update LWI:** This is already allowed in the proposed amendments to ADC Article 6 and would be handled administratively.

C. Jack Burrell (EXHIBIT E - letter dated March 10, 2011):

1. **Hillsides and floodplains - special features of the site:** The proposed language in Articles 2 and 11 amended the language from "adequately considered and utilized" to "avoided or the impact minimized to the extent feasible." Staff revised this to now read "evaluated and the impact minimized to an extent reasonably feasible."
2. **Notification process:** The City sent notice to all property owners potentially affected by the proposed amendments. The notice outlined the proposed changes, listed the scheduled public hearings, and included information about how to obtain additional information.
3. **Tree felling:** The City can set a minimal fee for reviewing the removal of trees in the overlay districts. Natural vegetation is an important component that achieves the purpose of natural resource protection. Staff changed the wording to refer back to Article 6. No site plan review is required.
4. **Fill permits:** It is true that we are "cleaning up" permits and development applications that have expired but were not formally closed out in our PermPlus (permit software) system.

Staff in Building, Planning, and Public Works have been sending notices to the applicants with expired permits and applications of all types. This has nothing to do with Goal 5.

5. **Wetland buffers:** The Safe Harbor provisions of Goal 5 stipulate that the 50-foot riparian corridor must go around adjacent wetlands that are partially within the riparian corridor.
6. **Riparian corridors:** The waterways were assessed at the time the Riparian Corridor Inventories were done. In some instances, these inventories are many years old and development has taken place. In cases where creeks have been piped, or the drainage is manmade for stormwater purposes, staff will remove those stretches from being considered significant.
7. **Natural resource impact review:** We have amended this so the process and requirements are more clear.
8. **Land divisions:** The "delineation" referred to means that the resource area needs to be shown on the plat so the area is defined. The ADC does not require that it be in a separate tract as long as it is protected. An HOA can be owner of the protected area. Or it can be part of people's backyards.
9. **Significant wetlands:** The Local Wetland Inventory documents include a description, as well as the consultant's Technical Report and Recommendations (June 2009). We will have copies of the Technical Report available at the hearing on the 21st.
10. **Adjustments and variances:** These are required as part of Goal 5 Safe Harbor. They only apply if a property is rendered unbuildable. We'd be happy to discuss this further.

hah

Attachments: EXHIBIT A-Revised ADC Amendments; EXHIBIT B-Map of Nauman property on West Thornton Lake; EXHIBIT C-3/10/11 Letter from Scott Lepman; EXHIBIT D-3/10/11 letter from Jack Burrell

ARTICLE 1 ADMINISTRATION AND PROCEDURES

New text is shown in bold and removed text in ~~strikethrough~~. Revisions since 3/7/11 are shown in bold with yellow highlighting.

No changes are proposed to Sections 1.000 to 1.060 (1.050 is provided for context).

- 1.050 Consistency with Plan and Laws. Actions initiated under this Code shall be consistent with the adopted Comprehensive Plan of the City of Albany and with applicable state and federal laws and regulations as these plans, laws, and regulations may now or hereafter provide. Since the City of Albany has a Comprehensive Plan and implementing regulations that have been acknowledged by the State of Oregon as being in compliance with statewide goals, any action taken in conformance with this Code shall be deemed also in compliance with statewide goals and the Comprehensive Plan. Unless stated otherwise within this Code, specific findings demonstrating compliance with the Comprehensive Plan are not required for land use application approval. However, this provision shall not relieve the proponent of the burden of responding to allegations that the development action requested is inconsistent with one or more Comprehensive Plan policies.
- 1.070 When Land Use Applications Are Not Required. Activities and developments listed below **that occur outside of overlay districts** do not require a land use application but are nevertheless subject to the provisions of the Code. **Activities and developments within overlay districts need to comply with the regulations described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable, and may require a land use application as described in each respective section:**
- (1) Agricultural uses permitted outright in Articles 3, 4 and 5.
 - (2) Detached single-family dwelling or a two-unit dwelling.
 - (3) Residential accessory buildings up to 750 square feet and walls not greater than 11 feet tall. [See Section 3.080(9).] [Ord. 5728, 1/27/10]
 - (4) Non-residential accessory buildings of any size in the NC, CC, RC, IP, LI, HI and PB zones and non-residential accessory buildings up to 750 square feet in the CB, HD, ES, LE, MS, MUC, MUR, OP and WF zoning districts. [Ord. 5728, 1/27/10]
 - (5) Landscaping and routine property maintenance.
 - (6) Improvement of existing or new parking areas containing less than 1,000 square feet that meet the provisions of this Code. [Ord. 5728, 1/27/10]
 - (7) A change internal to a building or other structure or use of land that does not constitute a change of use as listed in Articles 3, 4 or 5.
 - (8) An emergency measure necessary for the safety or protection of property when authorized by the City Manager with written notice to the City Council.
 - (9) Any temporary use of land of up to a 30-day duration (such as a promotional event, festival, carnival, or outdoor sale) that conforms with all other requirements of this Code and other applicable City regulations, public health, and safety requirements, some of which may further limit such uses in terms of location, scope, and duration.
 - (10) The establishment, construction, alteration, or maintenance of a public facility authorized by the Director of Public Works, including streets, highways, traffic control devices, drainage ways, sanitary and storm sewers, pump stations, water lines, electrical power or gas distribution lines, or telephone or television cable systems. This includes construction of staging areas of less than

six months' duration but does not include major substations, treatment facilities, storage tanks, reservoirs, and towers.

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

[Ord. 5728, 1/27/10]

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

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

No changes are proposed to Sections 1.075 to 1.660 (1.230 and 1.260 are provided for context).

CLARIFICATION OF LAND USE DECISIONS

ACTIONS INCLUDED AS LAND USE DECISIONS

- 1.230 Definition. A "land use decision" includes a final decision or determination made by the City that concerns the adoption, amendment, or application of:
- (1) The statewide planning goals.
 - (2) A Comprehensive Plan provision.
 - (3) An existing land use regulation.
 - (4) A new land use regulation.

ACTIONS NOT INCLUDED AS LAND USE DECISIONS

- 1.260 Definition. A "land use decision" does not include a decision of the City:
- (1) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;
 - (2) That approves or denies a building permit under clear and objective land use standards;
 - (3) That is a limited land use decision; or
 - (4) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the Comprehensive Plan and land use regulations.

[Ord. 5728, 1/27/10]

ARTICLE 2 REVIEW CRITERIA

New text is shown in **bold** and removed text in ~~strikethrough~~. Revisions since 3/7/11 are shown in **bold with yellow highlighting**.

No changes are proposed to Section 2.010 to 2.240.

CONDITIONAL USES

- 2.250 Review Criteria. Requests for conditional uses will be approved if the review body finds that the application meets all of the following criteria, either outright or with conditions that bring the proposal into compliance:
- (1) The proposed use is consistent with the intended character of the base zone and the operating characteristics of the neighborhood.
 - (2) The proposed use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal mitigates difference in appearance or scale through such means as setbacks, screening, landscaping or other design features.
 - (1) The transportation system can support the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety. [Ord. 5720, 08/12/09]
 - (2) Public services for water, sanitary and storm sewer, water management, and for fire and police protection, can serve the proposed use. [Ord. 5720, 08/12/09]
 - (3) The proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to:
 - (a) Noise, glare, odor, litter, or hours of operation.
 - (b) Privacy and safety issues.
 - (4) **Any** Special features of the site, (such as ~~topography, floodplains,~~ **steep hillsides, wetlands, riparian corridors, natural hazards, native vegetation, wildlife habitat, historic sites, and archaeological sites**), have been ~~adequately considered and utilized~~ **evaluated and avoided or the impact minimized to the an extent reasonably feasible**.

No changes are proposed to Sections 2.260 to 2.440.

SITE PLAN REVIEW

- 2.450 Review Criteria. A site plan approval will be granted if the review body finds that the application meets all of the following criteria that are applicable to the proposed development.
- (1) Public utilities can accommodate the proposed development.
 - (2) The transportation system can safely and adequately accommodate the proposed development.

- (3) Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid congestion.
- (4) The design and operating characteristics of the proposed development are reasonably compatible with surrounding development and land uses, and any negative impacts have been sufficiently minimized.
- (5) Any special features of the site, (such as floodplains, **steep** hillsides, wetlands, riparian corridors, ~~topography,~~ **natural** hazards, **native** vegetation, wildlife habitat, archaeological sites, and historic sites, etc.) ~~have been adequately considered and utilized~~ **avoided or the impact minimized to the extent feasible.**

No changes are proposed to Sections 2.460 to 2.730.

ZONING MAP AMENDMENTS

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

- (1) The proposed base zone is consistent with the Comprehensive Plan map designation for the entire subject area unless a Plan map amendment has also been applied for.
- (2) Existing or anticipated transportation facilities are adequate for uses permitted under the proposed zone designation.
- (3) Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development in the subject area without adverse impact on the affected service area.
- (4) Any unique natural features or special areas involved such as floodplains, ~~steep~~ hillsides, wetlands, riparian corridors, ~~significant natural~~ **native** vegetation, or historic districts, will not be jeopardized as a result of the proposed rezoning.
- (5) The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.
- (6) The land use and transportation pattern recommended in any applicable City-contracted or funded land use or transportation plan or study has been followed, unless the applicant demonstrates good cause for the departure from the plan or study.
[Ord. 5635, 1/11/06]

No changes are proposed to Sections 2.750 to 2.760.

ARTICLE 3 RESIDENTIAL ZONING DISTRICTS

*New text is shown in bold and removed text in ~~strikethrough~~. Revisions since 3/7/11 are shown in **bold with yellow highlighting**.*

No changes are proposed to Sections 3.010 to 3.020.

[MOVED TO ARTICLE 6:]

~~3.025 Establishment of the Open Space (OS) District. The OS District is intended for the establishment, continuation, and preservation of agricultural uses, park and recreation areas, wildlife habitats, wetlands, natural areas, and other uses that do not involve the construction of structures other than minor facilities that might be required to conduct the principal use. Uses that are allowed in the OS district are listed following the Schedule of Permitted Uses and do not appear in the Schedule.~~

3.030 Establishment of Special Purpose Districts. Special purpose districts are overlay districts that may be combined with a major zoning district. The regulations of a special purpose district are supplementary to the regulations of the underlying major zoning district. The regulations of a special purpose district and the major zoning district shall all apply to any site that has both designations. Where the regulations and permitted uses of a major zoning district conflict with those of a special purpose district, the more restrictive standards shall apply. The special purpose districts and the additional regulations that apply in such districts are summarized below:

<u>Special Purpose District</u>	<u>Applicable Articles</u>
Floodplain	Article 6
Significant Wetlands	Article 6
Riparian Corridors	Article 6
Wildlife Habitat	Article 6
Willamette Greenway	Article 6
Airport Approach	Article 64
Hillside Development	Article 6
Historic Overlay	Article 7

No proposed changes to Sections 3.040 to 3.050

MOVED TO ARTICLE 6:

OPEN SPACE (OS) DISTRICT USES

~~3.060 Uses Allowed Outright. The following uses are permitted outright in the OS district:~~

- ~~(1) Crop production generally.~~
- ~~(2) Alleys, streets, highways, bridges, sidewalks, bikepaths, and related transportation facilities, subject only to the Special District regulations of Article 6.~~
- ~~(3) Neighborhood utilities, including pump stations, electric substations less than 5,000 square feet and all local utility lines.~~
- ~~(4) Raising of animals and livestock, subject also to Albany Municipal Code Section 6.10.~~
- ~~(5) One single family dwelling on a legally created lot that existed prior to July 1, 1991, and where the floodplain standards of **Article 6** can be met. No additional land divisions will be approved.~~

~~3.070 Conditional Uses. The following uses are permitted with Conditional Use approval.~~

- ~~(1) Detached residential accessory buildings, garages and carports.~~
- ~~(2) Non-residential accessory buildings and uses.~~
- ~~(3) On-site retail sales of site-produced seasonal goods exceeding 30 days duration.~~

- ~~(4) Plant nurseries and greenhouses.~~
- ~~(5) Mining, quarrying, oil and gas extraction and asphalt-concrete batch plants including on-site sales of products.~~
- ~~(6) Temporary staging areas for Public Works construction projects in excess of 6 months duration.~~
- ~~(7) Removal of five or more trees in excess of eight inches in diameter (see Special Condition 10.)~~
- ~~(8) Development within a wetland, as designated on Plate 6 of the Comprehensive Plan.~~
- ~~(9) Outdoor recreational facilities (e.g. golf and country clubs, driving ranges, swimming or tennis clubs, equestrian trails, etc. not constructed as a part of planned residential development).~~
- ~~(10) Public parks and recreational facilities located in a public park. See special condition 14.~~
- ~~(11) Fairgrounds.~~
- ~~(12) On-site parking lots for approved uses (parking lots not listed as permitted in other categories.)~~
- ~~(13) Regional/community utilities including treatment plants, major power generation, major storage facilities, regional transmission facilities, major overhead power lines requiring tower support structures, etc. [Ord. 5673, 6/27/2007]~~

SPECIAL CONDITIONS

3.080 General. Where numbers appear in the column labeled “special conditions” or in a cell in the Schedule of Permitted Uses, the corresponding numbered conditions below shall apply to the particular use category as additional clarification or restriction:

No proposed changes to (1)-(9) or (11)-(21)

- (10) **Tree felling within natural resource overlay districts needs to meet the requirements in Article 6.** Site Plan Review approval is required for the felling of five or more trees larger than 25 inches in-circumference (approximately 8 inches in diameter) on a lot or property in contiguous single ownership in excess of 20,000 square feet. ~~Site Plan Review approval and mitigation is also required for the felling of any trees larger than 25 inches in circumference that are located in the Riparian Corridor Overlay District.~~ For review criteria, see Section 9.208. [Note: A permit is required from the City Forester to remove any tree that is six and one-half feet in circumference, approximately 25 inches in diameter, or greater. See AMC 7.98.040.] [Ord. 5673, 6/27/2007]

The following activities are exempt from Site Plan review:

- (a) The action of any City official or of any public utility necessary to remove or alleviate an immediate danger to life or property, to restore utility service, or to reopen a public street to traffic.
- (b) Felling of any tree that is defined as a nuisance under the Albany Municipal Code.
- (c) Any felling necessary to maintain streets or public or private utilities within a public right-of-way or utility easement provided the Tree Commission or City Forester approves the proposed tree felling. [Ord. 5445, 4/12/2000]

No proposed changes to Sections 3.085 to 3.410.

ARTICLE 4 COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

4.010 Overview. The zones created in this article are intended to provide land for commercial, office and industrial uses. The differences among the zones, in the permitted uses and development standards, reflect the existing and potential intensities of commercial and industrial development. The site development standards allow for flexibility of development while minimizing impacts on surrounding uses. The regulations in this article promote uses and development that will enhance the economic viability of specific commercial and industrial areas and the city as a whole. Development may also be subject to the provisions in Article 8, Design Standards, Article 9, On-Site Development and Environmental Standards, and Article 12, Public Improvements. Sites within overlay districts are also subject to the provisions in Article 6, Special Purpose Districts, and Article 7, Historic Overlay Districts. [Ord. 5555, 2/7/03]

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

The following list is a summary of the topics covered in this article:

- Zoning Districts
- Schedule of Permitted Uses
- Development Standards
- **Airport Approach Overlay District**

No changes are proposed to Section 4.020.

4.030 Special Purpose Districts. Special purpose districts are overlay districts that may be combined with a major zoning district. The regulations of a special purpose district are supplementary to the regulations of the underlying major zoning district. The regulations of a special purpose district and the major zoning district shall both apply to any site that has both designations. Where the regulations and permitted uses of a major zoning district conflict with those of a special purpose district, the more restrictive standards shall apply. The special purpose districts and the additional regulations that apply in such districts are summarized below:

<u>Special Purpose District</u>	<u>Applicable Articles</u>
Floodplain	Article 6
Significant Wetlands	Article 6
Riparian Corridors	Article 6
Wildlife Habitat	Article 6
Willamette Greenway	Article 6
Airport Approach	Article 6 4
Hillside Development	Article 6
Historic Overlay	Article 7

No proposed changes to Sections 4.035 to 4.320.

The Airport Approach Overlay District is being moved here from Article 6. No changes are proposed to the text. It is not shown in bold for easier reading.

AIRPORT APPROACH

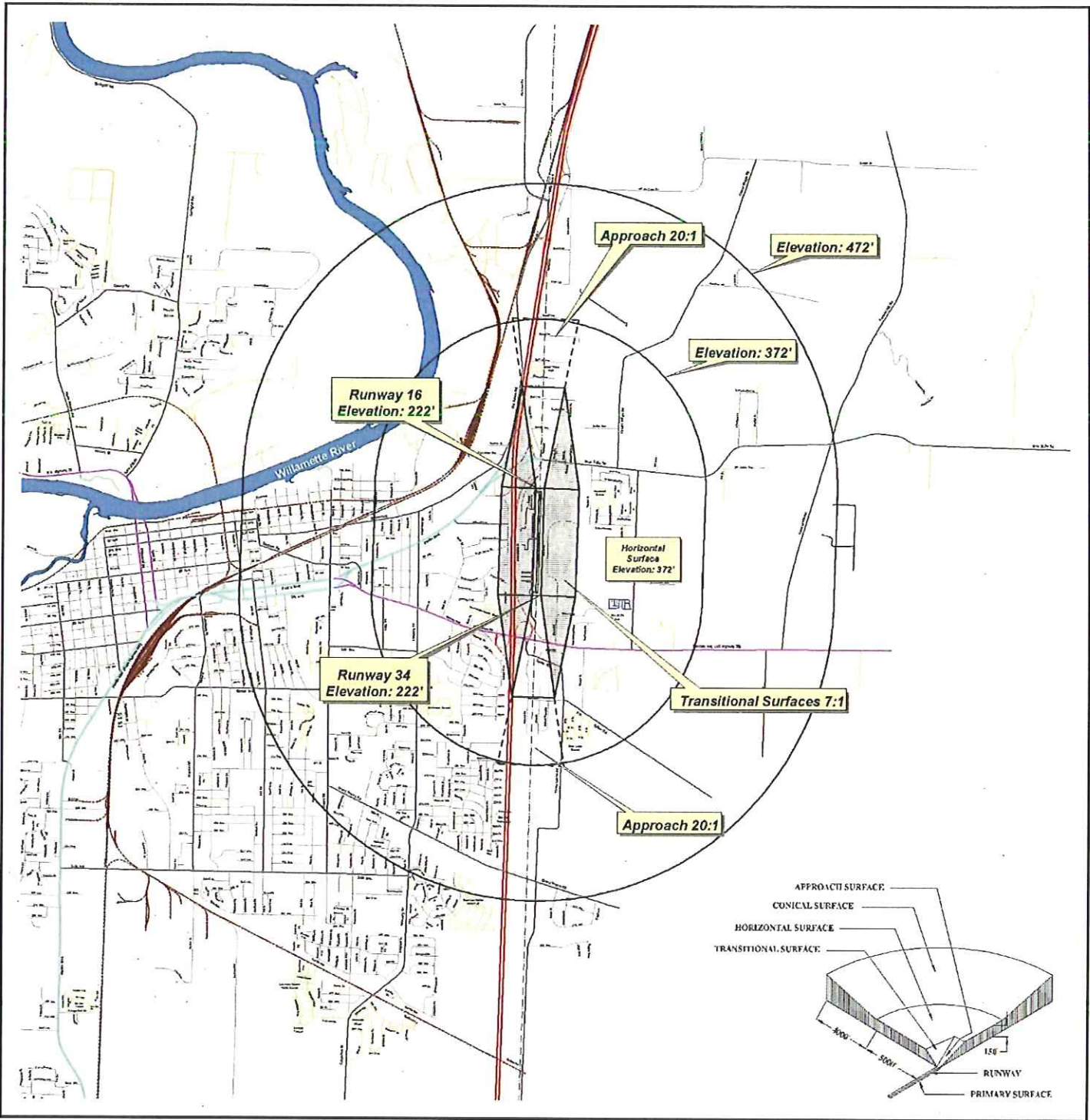
4.350 Purpose. The Airport Approach **overlay** district is intended to protect the public from excessive noise

and air traffic from possible hazards on landing or takeoff.

4.360 Applicability. The regulations below apply to those areas indicated on Figures 64-1 and 64-2.

4.370 Height Restrictions. No structure, mast, antenna, or wire shall be erected, altered, or maintained, and no tree shall be allowed to grow to a height in excess of the height limit established within each of the following described zones (which are also graphically represented in Figure 64-1):

- (1) Visual Approach Area. Slopes 20 feet outward for each foot upward beginning at the ends of the primary surface (200 feet from the end of the pavement) and at the same elevation as the primary surface, and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- (2) Transitional Areas. Slopes 7 feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation, which is 222 feet above mean sea level. In addition, there are height limits sloping 7 feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface.
- (3) Horizontal Area. One hundred fifty (150) feet above the airport elevation or at a height of 372 feet above mean sea level.
- (4) Conical Area. Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.



Albany Municipal Airport Approach and Clear Zone Plan



The City of Albany's infrastructure records, drawings, and other documents have been gathered over many decades, using differing standards for quality control, documentation, and verification. All the information we provide represents the current information we have in a readily available format. While the information we provide is generally believed to be accurate, occasionally this information proves to be incorrect, and thus we do not warrant its accuracy. Prior to making any property purchases or other investments based, in full or in part, upon the information provided, we specifically advise that you independently field verify the information contained within our records.

Geographic Information Services 917-7676
Planning Division 917-7550

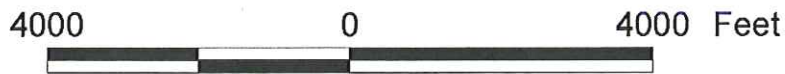


Figure 4-1.



Projected Year 2000 Ldn (Day and Night Sound Level)

Projected Year 2000 Loudness Contours
 Loudness Contour
 Runway



The City of Albany's Infrastructure records, drawings, and other documents have been gathered over many decades, using differing standards for quality control, documentation, and verification. All the information we provide represents the current information we have on a ready-to-use available format. While the information we provide is generally believed to be accurate, occasionally this information proves to be incorrect, and thus we do not warrant its accuracy. Prior to making any property purchase or other investments based, in full or in part, upon the information provided, we explicitly advise that you independently field verify the information contained within our records.

Geographic Information Services 917-7676
 Planning Division 917-7550

Figure 4-2.

- 4.380 Other Interference Prohibited. Notwithstanding any other provisions of this ordinance, no use may be made of land or water within any zone established by this ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.
- 4.390 Noise Construction Standards. Within the designated airport noise contours indicated in Figure 64-2, the following regulations shall apply:
- (1) In the 55 to 60 Day-Night Sound Level (ldn) area, a declaration of anticipated noise levels shall be attached to any land use application and recording of such declaration may be required for approval on each parcel within such area.
 - (2) Development of “noise sensitive property” (e.g. residentially zoned areas, group quarters used for sleeping, motels, hotels, schools, churches, hospitals, libraries) within the 55 to 60 ldn area and above shall be subject to the provisions of Site Plan Review outlined in Article 8 and may be required to include additional sound buffering features within the development as a condition of approval.

ARTICLE 6
SPECIAL PURPOSE DISTRICTS
NATURAL RESOURCE DISTRICTS

New text is shown in **bold** and removed text in ~~strikethrough~~. Revisions since 3/7/11 are shown in **bold with yellow highlighting**.

~~6.010 Overview. Special purpose districts are overlay districts that are combined with a base zoning district. The special purpose districts are intended to regulate development in areas where topographic or natural features or proximity to an airport require that specific limitations or requirements be imposed. The regulations of a special purpose district supplement the regulations of the zoning district. Both the zoning district and special purpose district regulations apply to sites within a special purpose district. Where the regulations and permitted uses of a zoning district conflict with those of a special purpose district, the more restrictive standards apply, except as noted below.~~

~~The following is a list of the overlay districts created in this article.~~

6.010 Overview. The natural resource districts are intended to protect valuable natural resources within the City of Albany's Urban Growth Boundary while ensuring reasonable economic use of property.

The Open Space zoning district is a base zone that specifies allowed **land** uses adjacent to **most** water resources in Albany. ~~It is applied on land uses adjacent to water resources in Albany.~~

The **Floodplain** ~~and~~ Natural Resource overlay districts address development activities within specific natural resource areas and are applied over the base zone. The overlay district requirements are in addition to the requirements of the base zone and other City of Albany ordinances.

The following zoning and overlay districts are included in this article:

- **Open Space Zoning District (OS)** [*Moved from Article 3*]
- **Airport Approach** [*Moved to Article 4*]
- **Floodplain Overlay District (/FP)** [*No changes proposed*]
- **Hillside Development Overlay District (/HD)** [*No changes proposed*]
- **Significant Natural Resource Overlay Districts**
 - **Significant Wetland Overlay (/SW)**
 - **Riparian Corridor Overlay (/RC)**
 - **Habitat Assessment Overlay (/HA)**
- **Willamette River Greenway Overlay District (/WG)** [*No changes proposed*]

[Moved from Article 3]
OPEN SPACE ZONING DISTRICT (OS)

6.020 ~~Establishment of the Open Space (OS) District.~~ **Purpose and Intent.** The OS District **Open Space zoning district** is intended for the establishment, continuation and preservation of **existing** agricultural uses, park and recreation areas, wildlife habitats, wetlands, natural areas, **flood conveyance**, and ~~other~~ uses that do not involve the construction of structures other than minor facilities that might be required to conduct the principal use. ~~Uses that are allowed in the OS district are listed following the Schedule of Permitted Uses and do not appear in the Schedule.~~

~~OPEN SPACE (OS) DISTRICT USES~~

~~3.060~~ Uses Allowed Outright. The following uses are permitted outright in the OS district:

- ~~(1) Crop production generally.~~
- ~~(2) Alleys, streets, highways, bridges, sidewalks, bikepaths, and related transportation facilities, subject only to the Special District regulations of Article 6.~~
- ~~(3) Neighborhood utilities, including pump stations, electric substations less than 5,000 square feet and all local utility lines.~~
- ~~(4) Raising of animals and livestock, subject also to Albany Municipal Code Section 6.10.~~
- ~~(5) One single-family dwelling on a legally created lot that existed prior to July 1, 1991, and where the floodplain standards of Article 6 can be met. No additional land divisions will be approved.~~

~~3.070~~ Conditional Uses. The following uses are permitted with Conditional Use approval.

- ~~(1) Detached residential accessory buildings, garages and carports.~~
- ~~(2) Non-residential accessory buildings and uses.~~
- ~~(3) On-site retail sales of site-produced seasonal goods exceeding 30 days duration.~~
- ~~(4) Plant nurseries and greenhouses.~~
- ~~(5) Mining, quarrying, oil and gas extraction and asphalt-concrete batch plants including on-site sales of products.~~
- ~~(6) Temporary staging areas for Public Works construction projects in excess of 6 months duration.~~
- ~~(7) Removal of five or more trees in excess of eight inches in diameter (see Special Condition 10.)~~
- ~~(8) Development within a wetland, as designated on Plate 6 of the Comprehensive Plan.~~
- ~~(9) Outdoor recreational facilities (e.g. golf and country clubs, driving ranges, swimming or tennis clubs, equestrian trails, etc. not constructed as a part of planned residential development).~~
- ~~(10) Public parks and recreational facilities located in a public park. See special condition 14.~~
- ~~(11) Fairgrounds.~~

- ~~(12) On-site parking lots for approved uses (parking lots not listed as permitted in other categories.)~~
- ~~(13) Regional/community utilities including treatment plants, major power generation, major storage facilities, regional transmission facilities, major overhead power lines requiring tower support structures, etc. [Ord. 5673, 6/27/2007]~~

[The language in 6.030 through 6.065 is new; it updates the information moved from Article 3. It is not shown in bold for easier reading.]

6.030 Uses Permitted through Site Plan Review. The following uses are permitted **outright** if they meet the requirements of ~~the any~~ applicable Significant Natural Resource Overlay Districts and the purpose and intent of the Open Space zone:

- (1) One single-family dwelling on a legally created lot that existed before July 1, 1991, or on one lot resulting from a partition or subdivision of a legal parent lot that existed prior to July 1, 1991, and where other standards in Article 6 can be met.
- (2) Paths and bridges for pedestrians and bicycles.
- (2)(3) Roads, bridges, sidewalks and related transportation facilities identified in the most current version of the City of Albany Transportation System Plan.**
- ~~(3)~~(4) Utilities, including detention facilities, water quality facilities, pump stations, electric substations less than 5,000 square feet and all local utility lines.
- ~~(4)~~(5) New agricultural uses, where trees and native vegetation are not removed and where no buildings are constructed.

6.040 Conditional Uses. The following uses are permitted with Conditional Use **Type II** approval if they are located outside of the Riparian and Significant Wetland Overlay districts and can meet the purpose and intent of the Open Space zone:

- (1) Accessory buildings.
- (2) On-site retail sales of site-produced seasonal goods up to 119 days.
- (3) Plant nurseries and greenhouses.
- (4) Low impact outdoor recreational facilities (e.g. equestrian trails, etc.), and parks and related facilities, where trees and native vegetation are not removed and where no buildings are constructed.
- (5) Roads, bridges, sidewalks, and related transportation facilities **not identified in the most current version of the city of Albany Transportation System Plan** that meet a public need.
- (6) Removal of native vegetation in conjunction with an approved use, **with on-site mitigation**.
- (7) Development within a non-significant wetland as designated in the Local Wetland Inventories adopted by the City and on Plate 6 of the Comprehensive Plan, if approved by the Oregon Department of State Lands, U.S. Army Corps of Engineers, and other applicable federal or state agencies.
- ~~(7)~~(8) Water-dependent structures such as a dock, pier, or floating marina.**

6.050 Exempt Uses.

- (1) Existing lawful uses.
- (2) Ongoing maintenance and best management practices of existing and allowed uses, including public water, sewer, street, and stormwater utilities.
- ~~(2)~~(3) **Removal of invasive species.**

6.060 Land Division. No land divisions will be approved, unless provisions are made to ensure that a total of only one single-family dwelling is allowed as a result of the land division. For example, if an existing lot zoned Open Space is subdivided into 6 lots, a single-family dwelling will be allowed on only one of the lots; and no additional residential development will be allowed on the remaining lots. **[NOTE: The existing code doesn't allow subdividing of land zoned OS and only allows a SF home outright. Most of the OS zoned land is subject to the provisions in the overlay districts, which limits land divisions, see 6.320.]**

6.065 District Boundary Refinements. An amendment to the boundary of the OS zoning district may be requested for land that does not include wetlands identified in the Local Wetland Inventory, Riparian Corridor Overlay (/RC), Wildlife Habitat Assessment Overlay (/HA), or Floodplain Overlay (/FP). Lands removed from the floodplain through fill are not eligible.

District boundary refinements will be processed administratively; no formal variance or plan amendment is needed for map corrections.

FLOODPLAIN

[No changes are proposed to district standards.]

6.070 Purpose. The Floodplain overlay district (/FP) standards are intended to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes the economic loss and social disruption caused by impending flood events.

[No changes proposed to 6.075 to 6.125.]

HILLSIDE DEVELOPMENT

[No changes are proposed to district standards.]

6.170 Purpose. The Hillside Development overlay district (/HD) is intended to regulate the development of potentially hazardous terrain, minimize public and private losses due to earth movement hazards in specified areas, and minimize erosion and related environmental damage. It is not the intent of Hillside Development standards to transfer density within a development.

[No changes proposed to 6.180 to 6.230.]

The following pages replace the Wetlands section of Article 6 in its entirety.

[The language in 6.270 through 6.470 is new. It is not shown in bold for easier reading.]

SIGNIFICANT NATURAL RESOURCE OVERLAY DISTRICTS

- Purpose and Intent
- Land to which these Regulations Apply
- Activities Subject to **Natural Resource Impact** Review
- Exemptions
- ~~Provisions for Protection of Significant~~ Natural Resource **Review Standards**
 - General Provisions (6.310)
 - Land Divisions (6.320)
 - New Structures, Expansions of Building Footprints, and Increases in Other Impervious Surfaces (6.330)
 - Transportation Facilities (6.340)
 - Utilities (6.350)
 - South Albany Public Infrastructure (6.360)
 - Site Modifications (6.370)
 - Fencing (6.380)
 - Protection During Construction Activities (6.390)
- **Other Standards**
 - Wildlife Habitat Assessments (6.400)
 - Mitigation Plans (6.410)
 - Mitigation Standards (6.420)
 - District Boundary Refinements (6.430)
 - District Amendments (6.440)
 - Adjustments and Variances (6.450)
 - Compliance with State and Federal Regulations (6.460)
 - Violations (6.470)

6.270 Purpose and Intent. 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; reduce the effects of flooding.

Riparian corridor vegetation should be comprised of a multi-storied forest of native species of trees, shrubs, and ground cover. Many riparian corridors in Albany have the potential for providing improved functions through restoration. **The City is protecting most riparian corridors through the safe harbor provisions in state law.**

- Significant Wetland Overlay District (/SW): To protect the integrity, function and value of Albany's significant wetlands. Wetlands improve water quality by regulating stream temperatures, trapping sediment, and stabilizing stream banks. They provide hydrologic and ecologic functions; and reduce adverse effects of flooding. The City is protecting most wetlands through the safe harbor provisions in state law.

In South Albany where future development will require new and extended public infrastructure, an ESEE (Environmental, Social, Economic, and Energy) analysis was conducted to consider the consequences of allowing infrastructure improvements to traverse wetlands in the area. Provisions designed to promote avoidance and minimization of impacts, while still allowing development of essential public infrastructure, area also included in this code.

- 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." The overlay district provides a minimum level of protection. Voluntary methods of turtle habitat protection and enhancement are encouraged.

The overlay identifies an area of high likelihood of turtle nesting, foraging, and migration routes. An ESEE analysis was conducted to consider the consequences of allowing development to continue as allowed, but conditioned to minimize loss of habitat elements.

6.280 Lands to Which These Regulations Apply. The procedures and requirements of this section 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 overlays 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
 - Cathey Creek, from the mouth to Liberty Street
 - Cox Creek, from the mouth to Highway 99E, and from the east side of I-5 upstream to the UGB
 - Crocker Creek
 - Horseshoe Creek
 - Oak Creek, including Freeway Lakes

- Periwinkle Creek, from the mouth to Highway 20/99E, and from Grand Prairie Road upstream to the UGB
- Thornton Lakes
- Truax Creek

2. The Willamette River Riparian Corridor is located within the Willamette River Greenway District boundary. All development on properties within the Willamette River Greenway District is subject to the regulations beginning in Section 6.500, **but is not subject to the riparian corridor overlay regulations.** [The Willamette Greenway is Section 6.310 in the current code and will be renumbered to 6.500 to 6.560.]

- Significant Wetland Overlay District (/SW): The Significant Wetland Overlay District is comprised of the locally significant wetlands identified in the City's Local Wetland Inventory (LWI), as amended through wetlands delineations approved by the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (ACE), if applicable. Notice to, **and potentially permits from, DSL and ACE are** still required for potential impact to **all** wetlands, **including those** that are not locally significant.
- Habitat Assessment Overlay District (/HA): This overlay district extends 100 feet from the Ordinary High Water mark upland from East and West Thornton Lakes.

6.290 Activities Subject to Natural Resource Impact Review. A Natural Resource Impact Review will be required for all development activities in the Significant Natural Resource Overlay Districts that are not specifically exempted from review. The review will take place concurrent with any land use application or building permit. In **rare** instances when neither is required, the Natural Resource Impact Review will be conducted independently **through either a Type I or I-L process as designated below. The standards for reviewing development activities in the Significant Natural Resource Overlay Districts are included in Sections 6.310-6.380.**

Activities subject to review include:

- (1) Land divisions;
- (2) New structures, or exterior expansion **of the footprint** of any structure **(Type I)**;
- (3) Increases in impervious surfaces **(Type I-L)**;
- (4) Construction of roads, driveways, paths, or bridges **or related transportation facilities, unless exempted under 6.300(5) (Type I-L)**;
- (5) Installation of utilities, **unless exempted under 6.300(6) (Type I-L)**;
- (6) Site modifications, including grading, excavation, fill or **native** vegetation removal **(Type I-L)**; and
- (7) Fences **(Type I)**

6.300 Exempt Activities. The following activities do not require a Natural Resource Impact Review provided they are conducted in accordance with the standards in this Section:

- (1) Temporary emergency procedures necessary for the immediate safety or protection of life or property, including removing hazardous trees and stream bank stabilization.

- (2) Removal of refuse or any fill that is in violation of local, state or federal regulations or in-channel erosion or flood control measures approved by DSL, the U.S. Army Corps of Engineers and any other applicable state or federal regulatory agency. Removal or placement of material in waters of the State must be consistent with State of Oregon Removal-Fill regulations (ORS 196.795-990) **and the U.S. Army Corps of Engineers 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, detention facilities, water quality facilities, and other structures, provided that such practices avoid sedimentation and other discharges into streams, lakes, or wetlands and do not add impervious surface or remove additional vegetation.
- (5) Roads, bridges, sidewalks and related transportation facilities identified in the most current version of the City of Albany Transportation System Plan and located within the Riparian Corridor or Habitat Assessment Overlay Districts. Facilities within the Significant Wetland Overlay District are not exempt. [STAFF NOTE: These will need to meet new Engineering Standards that will be adopted by City Council to protect the Goal 5 resources at the same level as the standards in this Article.]**
- (6) Utilities identified in the most current versions of the water, wastewater, or stormwater facility plans and located within the Riparian Corridor or Habitat Assessment Overlay Districts. Above-ground facilities that disturb land within the Significant Wetland Overlay District are not exempt. [STAFF NOTE: These will need to meet new Engineering Standards that will be adopted by City Council to protect the Goal 5 resources at the same level as the standards in this Article.]**
- ~~(6)~~(7) The maintenance of pre-existing landscaping and lawn is permitted, including perimeter mowing, so long as ~~nativ~~**natural** vegetation is not disturbed and there is no excavation or filling or reduction of natural resource area. Use of chemicals and pesticides is discouraged.
- ~~(7)~~(8) Removal of noxious or invasive plants consistent with state and federal regulations.
- ~~(8)~~(9) Removal of non-native vegetation, if replaced with native plant species, per **(108)** below.
- ~~(9)~~(10) 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, and are consistent with DSL and the U.S. Army Corps of Engineers standards. If the planting is part of a required mitigation plan, the requirements in Sections 6.410 and 6.420 apply.

NATURAL RESOURCE IMPACT REVIEW STANDARDS

6.310 General Provisions. Activities within the overlay districts will be reviewed to ensure that the significant natural resources are protected to the greatest extent feasible. **Additional standards for reviewing specific development activities are included in Sections 6.320-**

6.380. The following general standards apply to all activities in the Significant Natural Resource Overlay Districts:

- (1) The proposed activity is allowed under the requirements of the base zone.
- (2) No other practicable options or locations outside the Significant Natural Resource Overlay Districts are feasible for the proposed activity on the subject parcel.
- (3) 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.
- (4) Any approved impacts to the significant natural resources shall be mitigated per the standards in **Sections 6.410 and 6.420.** ~~The Director may choose to use a minimum threshold based on the specific location and level of impact.~~
- (5) Any applicable state and federal permits are secured.

6.320 Land Divisions. This section supplements the City regulations governing land divisions in Article 11. It requires 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 can be made either a separate tract or part of a larger tract that meets the requirements of subsection (3) of this section. Applicants may also elect to follow the Cluster Development standards for land divisions in Article 11.

- (1) Land that is partially located in one of the City's Significant Natural Resource districts may be divided according to the provisions in Article 11 if there is sufficient land outside of any Significant Natural Resource overlay district to establish a buildable site area and/or separate a developed area from the natural resource areas.
- (2) Before tentative plat approval, the significant natural resource area shall be shown either as a separate tract or part of a larger tract that meets the requirements of subsection (3) of this section, and shall not be a part of any parcel used for construction of a building.
- (3) Before final plat approval, ownership of a significant natural resource tract shall be identified to distinguish it from lots and areas intended for development. The tract must be owned, conserved and maintained by any one of the following methods:
 - (a) Protected in perpetuity through ownership and maintenance by a private non-profit association by conditions, covenants, and restrictions (CC&Rs) prescribing the restrictions on use on the plat and the private open space held by the association, subject to a reversionary clause in the event of dissolution of the non-profit association.
 - (b) Protected in perpetuity by a conservation easement recorded on deeds and plats prescribing the conditions and restrictions set forth and any imposed by state or federal permits. For residential land divisions, private open space subject to a conservation easement may be required to convey stormwater and surface water management rights to the city.
 - (c) Private open space transferred by deed to a willing private non-profit conservation organization with a recorded conservation easement, subject to a reversionary clause in the event of dissolution of the non-profit organization.

- (d) Public open space transferred by deed to a willing public agency with a recorded conservation easement.
- (e) Any other ownership, protection, and maintenance approved by the Community Development Director.

NOTE: We are also amending the Cluster Development standards in Article 11 to allow land zoned Open Space to count toward the natural area requirement. The natural resource would need to be high quality to qualify; otherwise it would need to be enhanced.

6.330 New Structures, Expansions of Building Footprints, and Increases in Other Impervious Surfaces. Transportation Facilities, Utilities, and South Albany Public Infrastructure Projects are addressed in other sections. The placement of new structures or impervious surfaces is generally prohibited in the Significant Natural Resource Overlay Districts.

- Significant Wetland Overlay District: Impacts to significant wetlands are only allowed through the Adjustment or Variance process in Section 6.450, **or through District Amendments in Section 6.440.**
- Riparian Corridor Overlay District: Water-related and water-dependent uses are allowed if they are designed, constructed, and maintained to minimize intrusion into the riparian area.
- Habitat Assessment Overlay District: The Wetland or Riparian Corridor Overlay District provisions may also apply on most properties.

~~On parcels with existing residential development,~~ Up to 1,000 square feet, or 20% of the overlay district area within a property, whichever is less, can be impacted by normal residential activities, such as construction of home additions, decks, patios, sheds, gardens, landscaping, etc. Development activities will be reviewed at the time of application for building permits. If cumulative development impacts exceed the limit described above, a turtle Habitat Assessment will be required.

~~On undeveloped parcels up to 3,000 square feet of total impact area (structures, pavement, and other land disturbance) is allowed on the portion of the property that is outside the overlay district. If any proposed development activity exceeds the limit described above, or is within the overlay district, a turtle Habitat Assessment will be required.~~

6.340 Transportation Facilities. In addition to other City standards, the following standards shall apply to transportation facilities and structures, including roads and driveways, bridges, bridge crossing support structures, culverts, and pedestrian, and bike paths in the Significant Natural Resource Overlay districts:

- Significant Wetland Overlay Districts For wetlands, not including wetlands in South Albany ESEE Analysis area, transportation-related impacts to significant wetlands are ~~only~~ allowed through the Adjustment or Variance processes in Section 6.450, **or through District Amendments in Section 6.440.**
- Riparian Corridor Overlay District: Transportation facilities are allowed where no other **practicable** locations outside the Riparian Corridor Overlay District exist to access buildable areas of property or to locate necessary transportation facilities, **and provided that they are designed to minimize intrusion into the district. The use of permeable surfaces is encouraged.**

Transportation facilities will be permitted if the following standards can be satisfied:

- (1) Demonstration that no other practicable method of access exists.
 - (2) The **access facility** is designed to be the minimum width necessary to allow for safe passage of vehicles, **bicycles** and/or pedestrians, **and to meet minimum width requirements in the City's Engineering standards and elsewhere in this Code.**
 - (3) **Where feasible, crossings of significant natural resources shall be aligned to minimize impact area.** ~~Crossings shall be at right angles to the water area, or as close to a right angle as possible, while preserving the existing natural water course to the greatest extent practicable.~~
 - (4) The number of crossings ~~will be~~ **is** the minimum amount necessary to afford connectivity between neighborhoods **safe and efficient access.**
 - (5) The number of crossings ~~shall be~~ **is** minimized where possible through use **and creation** of shared access for abutting lots and access through easements for adjacent lots.
 - ~~(6) The applicant shall where possible plan for the future extension of shared access, access easements, or private streets to access potential new building sites in order to avoid subsequent intrusion into the resource.~~
 - (6) Crossing structures shall have a natural bottom.
 - (7) In consultation with the Oregon Department of Fish and Wildlife, improvements shall be designed to permit the movement of fish and wildlife as necessary to meet state and federal requirements.
- **Habitat Assessment Overlay District: Up to 1,000 square feet, or 20% of the overlay district area within a property, whichever is less, can be impacted by transportation facilities for residential development. Development activities will be reviewed at the time of application for building permits. If cumulative development impacts exceed the limit described above, a turtle Habitat Assessment will be required.** ~~The same standards apply to transportation facilities as those for structures and impervious surfaces in the Habitat Assessment Overlay District in Section 6.330.~~

6.350 Utilities. In addition to other City standards, the following standards shall apply to permitted crossing, trenching, or boring for the purpose of developing a corridor for communication, energy, or other utilities, including public utilities and related facilities, within or crossing parcels in Significant Natural Resource Protection Districts, as well as any above-ground utility structures.

- (1) Underground utilities are allowed in all the Significant Natural Resource **Overlay** Districts if they meet the following standards:
 - (a) Boring under the waterway, directional drilling, or aerial crossing is preferable to trenching. If trenching is the only alternative, it shall be conducted in a dry or dewatered area with stream flow diverted around the construction area to prevent turbidity.
 - (b) Common trenches **for private utilities**, to the extent allowed by the building code, shall be required in order to minimize disturbance of the protected resource.

- (c) Topsoil and sod shall be conserved during trench construction or maintenance, and replaced on top of the trench. **Long-term s**Side-casting or storage of removed materials in the Significant Natural Resource overlay districts shall not be permitted. **Temporary side-casting and storage prior to replacement on top of trench is permitted.**
 - (d) Hydraulic impacts on protected resources are minimized.
 - (e) Where feasible, crossings of significant natural resources shall be aligned to minimize impact area.
- (2) Above-ground utilities **that disturb land within a Significant Natural Resource Overlay District** must meet the following standards:
- Significant Wetland Overlay District: Impacts to significant wetlands are only allowed through the Adjustment or Variance processes in Section 6.450, **or through District Amendments in Section 6.440.**
 - Riparian Corridor Overlay District: Utilities are allowed if they are designed, constructed, and maintained to minimize intrusion into the riparian area.
 - Habitat Assessment Overlay District: **Up to 1,000 square feet, or 20% of the overlay district area within a property, whichever is less, can be impacted by above-ground utilities that support residential development. Development activities will be reviewed at the time of application for building permits. If cumulative development impacts exceed the limit described above, a turtle Habitat Assessment will be required.** ~~The same standards apply to above-ground utilities as those for structures in the Habitat Assessment Overlay District in Section 6.330.~~

6.360 South Albany Public Infrastructure Projects. Projects in South Albany, as defined in the South Albany ESEE analysis, are allowed in the Significant Wetland Overlay if they comply with the following standards:

- (1) Transportation facilities shall meet the standards for Riparian Corridors found in Section 6.340.
- (2) Underground utilities shall meet the same standards as found in Section 6.350(1).
- (3) Above-ground utilities **that disturb land within a Significant Natural Resource Overlay District** will be allowed if they are designed, constructed, and maintained to minimize intrusion into the wetland and riparian corridor.

6.370 Site Modifications. Filling, grading, excavation, deposition of soils from off-site, and native vegetation removal are only allowed in the following circumstances:

- (1) When directly related to an approved activity under this Section of the Code.
- (2) They are necessary to accommodate an approved activity.
- (3) The natural grade, elevations, and drainage patterns of the land are not altered as a result of **construction-development activity.**
- (4) **Removal of naturally occurring native vegetation within an overlay district is discouraged. If approved through other sections of this Article, it must meet the relevant mitigation requirements of Section 6.410 and 6.420.**

6.380 Fences. Fences shall not obstruct the passage of wildlife. New fencing ~~may~~ **will** be permitted **allowed** in the Significant Natural Resource Overlay Districts when the applicant demonstrates that the following criteria are satisfied:

- (1) The fence is the minimum necessary to achieve the applicant's purpose.
- (2) The fence is designed to permit the free movement of wildlife. Fences shall be open at least ~~12-9~~ inches above ground, and the top of the fences no taller than four feet in height. Alternative wildlife-friendly fences may be approved by the Community Development Director.
- (3) Fence construction does not include mechanized land clearing.
- (4) ~~The fence is at least 25 feet from the Ordinary High Water mark.~~

OTHER STANDARDS

6.390 Protection During Construction Activity. A resource protection plan is required when construction and ground-disturbing activities are proposed within or adjacent to a Significant Natural Resource Overlay District. An approved and active Erosion Prevention and Sediment Control (EPSC) permit from the Public Works Department can satisfy this requirement. The plan shall include the following:

- (1) Methods ensuring that the resource is not disturbed during construction, which includes both physical barriers such as fencing and methods to ensure that stormwater runoff is retained onsite or directed to a public stormwater conveyance system, and that sediment and other pollutants are not deposited into waters of the State.
- (2) The plan shall be submitted and approved by the Director.
- (3) The approved plan shall be implemented and maintained until such time as the Director deems it is no longer necessary. Failure to implement and maintain the approved plan will result in an immediate stop work order.

6.400 Wildlife Habitat Assessments. A wildlife habitat assessment may be required for new development and land divisions on property wholly or partially within the habitat assessment overlay district per other sections of Article 6.

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 mark or a significant wetland.)

- (1) New development, expansion of existing development, landscaping and other ground disturbances shall be located outside of the designated turtle habitat areas as determined by the habitat assessment; or
- (2) If impacts are unavoidable, the development/use has been proposed in a manner that will minimize the impact of the development on wildlife habitat. A mitigation plan shall be required that results in no net loss of habitat and quality. The Oregon Department of Fish and Wildlife (ODFW) must review and approve the mitigation plan for the proposed development.

6.410 Mitigation Standards. Mitigation is a way of compensating for adverse impacts to the functions and values of natural resources caused by development. In many cases, mitigation may result in resource area restoration or enhancement.

The need for mitigation, restoration, or enhancement will be determined during the Natural Resource Impact Review process. The Director may allow some degree of flexibility to the standards based on the specific location and level of impact.

(1) Mitigation will be required under the following circumstances:

(a) Removal of one or more native tree greater than 25 inches in circumference.

(b) Disturbance of 2,000 square feet or more of vegetated surface area. This level of impact will require a mitigation plan per 6.420.

(2) On-site mitigation within the relevant Significant Resource Overlay District as close to the impact area is required where possible, taking into consideration the existing natural and human-made features of the site.

If on-site mitigation is not possible, off-site mitigation shall be permitted in other locations inside the urban growth boundary in the following priority order:

(a) Within the impacted Significant Resource Overlay District in the same drainage system; or

(c) Outside the impacted Significant Resource Overlay District, but within 100 feet of a Significant Resource Overlay District in the same drainage system; or

(d) Outside the same drainage system, but within a Significant Resource Overlay District.

(3) Tree replacement requires planting a minimum 1½-inch caliper healthy and well-branched native deciduous tree or a 5-6 foot tall native evergreen tree for each tree removed. The replanted tree shall be of a species that will eventually equal or exceed the removed tree in size if appropriate for the new location.

(4) Mitigation for impacts shall require a minimum mitigation area ratio of 1:1; however up to a bonus may be given for restoration of a resource from degraded quality to good quality per 6.420(5) with Director approval.

(5) Planting densities and species composition should be consistent with native wetland and riparian-area plant communities currently or historically found in the drainage basin. Use of a reference site as guidance for developing a revegetation plan is recommended.

6.420 Mitigation Plan. When a mitigation **plan for impact to** a significant natural resource is proposed or required as part of a development application, the applicant shall submit a mitigation plan prepared by **a landscape architect or scientist who have demonstrated experience in developing mitigation plans for the impacted resource.**

If the mitigation plan includes natural resources under the jurisdiction of state or federal agencies, the applicant shall submit copies of the original plan, and subsequent amendments, simultaneously to all applicable jurisdictions. The City will coordinate review of the mitigation plan to assure that all jurisdictions approve the same plan.

- (1) The mitigation plan shall document the location of the impact, the existing conditions of the resource prior to impact, **presence of debris and invasive species**, the location of the proposed mitigation area, a detailed planting plan of the proposed mitigation area with species and density, and a narrative describing how the resource will be replaced, **and how debris and invasive species will be removed.**
- (2) The mitigation plan shall comply with all applicable State and Federal regulations, in addition to the City's standards. The City may approve a development but shall not issue a building permit until all required State and Federal permit approvals have been granted and copies of those approvals have been submitted to the City.
- (3) The applicant or property owner of a development subject to an approved mitigation plan shall post a performance bond or a letter of credit to the City that is equal to 120% of the value of the improvements installed pursuant to the plan for a 5-year period. The bond shall be posted before the issuance of development permits to ensure the success of mitigation improvements and the survival of the plants. The bond or letter of credit will be released by the City after 5 years upon receiving proof that the mitigation measures have been successfully implemented **per (4) below.** If mitigation improvements fail during the bonding period ~~and the responsible party does not replace the required improvements,~~ the bond shall **either** be forfeited and used by the City to correct the problem pursuant to the approved mitigation plan, **or the bond period will be extended for a 2½-year period with Director's approval to allow for another replanting strategy. When the City of Albany is the applicant, a performance bond is not required.**
- (4) A report on the survival and health of planted vegetation, and the status of invasive species, shall be provided to the Community Development Department between 18 and 24 months from the initial planting that describes the health of all vegetation and shows pictures of the vegetation. The City may arrange an on-site inspection to verify information contained in the report. If survival rate for tree and shrub species is below 80%, a replanting strategy shall be prepared, approved, and executed within 6 months of the report, with a subsequent report on survival provided to the Department between 12 and 18 months from the time of the second planting. **At this point, if the survival rate is still below 80%, the bond described in (3) will either be forfeited or extended for a 2½-year period with Director's approval. If at the end of the extension period, the survival rate is still less than 80%, the bond will be forfeited.**
- (5) **The following table summarizes the requirements and expected condition of the resource within 5 years of planting:**

Existing Condition	Mitigation Requirements
Significant Wetland Overlay:	
Good Quality: Little enhancement potential	Preserve or enhance per approved mitigation plan (the City will defer to the mitigation standards set forth by DSL/ACE if applicable); Invasive species are removed and are not persisting.
Marginal Quality: Moderate enhancement potential	Restore to Good Quality per approved mitigation plan (the City will defer to the

	mitigation standards set forth by DSL/ACE if applicable); Invasive species are removed and are not persisting.
<i>Degraded Quality</i> : High enhancement potential; Farmed or otherwise converted	Enhance to at least Marginal Quality (the City will defer to the mitigation standards set forth by DSL/ACE if applicable).
Riparian Corridor Overlay:	
<i>Good Quality</i> : Combination of native trees, shrubs, and groundcover are at least 80% of the overlay area, and there is more than 50% tree canopy coverage.	Preserve or enhance per approved mitigation plan; Invasive species are removed and are not persisting.
<i>Marginal Quality</i> : Combination of native trees, shrubs, and groundcover are at least 80% of the overlay area, and there is 25%-50% tree canopy coverage.	Restore to Good Quality with an approved plan; Invasive species are removed and are not persisting
<i>Degraded Quality</i> : Less vegetation and canopy coverage than Marginal Quality, and/or greater than 10% coverage of any non-native species.	Enhance to at least Marginal Quality with an approved plan; A bonus may be given for restoration to Good Quality
Habitat Assessment Overlay:	
<i>Good Quality</i> : Turtle habitat present onsite per required Habitat Assessment.	The City will defer to the mitigation standards set forth by ODFW based on the habitat assessment.
<i>Marginal Quality</i> : Turtle habitat present onsite, per required Habitat Assessment, but opportunity for enhancement.	The City will defer to the mitigation standards set forth by ODFW based on the habitat assessment; Voluntary enhancement will be requested.
<i>Degraded Quality</i> : No habitat identified per required Habitat Assessment.	Voluntary enhancement will be requested.

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

The Riparian Corridor Overlay and Habitat Assessment Overlay Districts were estimated by measuring from the edge of the water, which is based on an aerial photograph. A district boundary refinement is an adjustment made, based on professional analyses, to refine the boundary of the Significant Natural Resource Overlay Districts.

District boundary refinements will be processed administratively for map corrections. 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:

- Significant Wetland Overlay District by delineations of significant wetlands that are approved by the Oregon Department of State Lands (DSL) or by onsite wetland determinations by DSL when delineations are not needed for other purposes. DSL-approved delineations and determinations shall be **required when development is proposed within 30 feet of the overlay district and will be** used to automatically update and replace LWI mapping.
- Riparian Corridor Overlay Districts as measured from the Ordinary High Water (OHW) mark of rivers, lakes, and streams, and from the upland edge of adjacent significant wetlands.
If a DSL-approved wetland delineation or determination results in a change to the boundary of the significant wetland adjacent to the riparian corridor, the riparian corridor will be adjusted accordingly without need for a variance or plan amendment.
- Habitat Assessment Overlay Districts as measured from the OHW mark of East and West Thornton Lakes.
- 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 is needed for map corrections where such supporting documentation is provided.

6.440 District Amendments. Any owner of property may apply for quasi-judicial comprehensive plan and development code amendments to amend the program to protect significant natural resources or a quasi-judicial comprehensive plan amendment to amend the resource inventory on land they own in any of the Significant Natural Resource Overlay Districts. Proposed amendments will need to identify changes in circumstances that would warrant an amendment, and specific findings to support a determination that the current resource protection measures should no longer apply. The amendments must also be based on a specific development proposal. The proposed amendments must be reviewed by the Oregon Department of Land Conservation and Development (DLCD), with consultation from other State agencies such as ODFW or DSL.

- (1) ESEE Analysis. To amend the protection program for significant resources on specific properties, the application must justify the proposed amendments by completing an Environmental, Social, Economic and Energy (ESEE) analysis prepared in accordance with OAR 660-23-040. The ESEE analysis shall be prepared by qualified professionals experienced in the preparation of Goal 5 analyses.

In order to approve the application, the review body must find that the application meets the following criteria:

- (a) The proposed use or activity was allowed prior to the effective date of this ordinance.
- (b) The proposed amendment provides a net environmental benefit.
- (c) The proposed amendment provides a public benefit.
- (d) The ESEE analysis must demonstrate that the adverse ESEE consequences of changing the uses allowed are sufficient to justify the loss, or partial loss, of the significant natural resource(s).

- (e) The application must demonstrate why the use cannot be located on buildable land outside of the significant natural resource district boundaries and that no other sites within Albany can meet the specific needs of the proposed use.
- (f) The applicant must demonstrate that there are changes in circumstances that would warrant an amendment, and specific findings to support a determination that the current resource protection measures should no longer apply.

If the plan amendment application is approved, the ESEE analysis will be incorporated by reference into the Albany Comprehensive Plan and Albany Development Code, and noted on the appropriate overlay district maps.

- (2) Amendment to the Resource Inventory. To amend the resource inventory to reclassify a resource from "significant" to "insignificant," the application must demonstrate that **all or a portion of** the resource does not meet the criteria for significance determination. The proposed amendments to the resource inventory shall be prepared by a qualified professional experienced in the development and execution of such inventories.

In order to approve the application, the review body must find that the application meets the following criteria:

- (a) The significant resource sites on their property do not meet the significance threshold defined in the applicable resource inventory.
- (b) Degradation of the resource site did not result from a violation of any federal, state, or local laws and codes, or incremental loss of function due to exempt activity on the site or its impact area since the effective date of this code.

If the application is approved, the revised inventory will be incorporated by reference into the Albany Comprehensive Plan, and the Significant Natural Resource Overlay district maps.

6.450 Adjustments and Variances. The City may grant adjustments or variances to the standards in the overlay districts in order to avoid rendering a property not buildable through application of this ordinance. Requests that cannot meet the provisions and review criteria for Adjustments will be processed as a Variance. Adjustment applications will be processed through the Type I land use process. Variance applications will be processed through the Type II process using the criteria below. The proposed activity or use needs to be allowed within the base zoning district.

- (1) General Standards. Adjustments and Variances must meet the following criteria, in addition to the relevant criteria in the following sections:

- (a) The proposed development represents a reasonable and legal use of the property, considering the base zoning, and the adjustment or variance will be in general harmony with the intent of the overlay district.
- (b) 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.
- (c) The encroachment does not result in a **new** structure or impervious surface being located closer than 25 feet from the Ordinary High Water mark, **where one did not previously exist. Bridges are an exception to this requirement.**

(d) Granting the adjustment or variance will not be materially detrimental to the public welfare or be injurious to property or improvements within 300 feet of the impact area, or within the drainage basin if applicable.

(2) Adjustments. In order for the Director to approve an adjustment application, the applicant shall demonstrate that all the following criteria are fully satisfied; otherwise the Variance procedure must be used:

(a) It is an existing legal lot and the location of the Significant Natural Resource Overlay District(s) results in a buildable area, including all structures and impervious surfaces, of 3,000 square feet or less.

(b) The adjustment is the minimum necessary to allow a permitted use or achieve the minimum buildable area outlined above, while at the same time minimizing disturbance to the significant natural resources.

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

(a) 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.

(b) 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.

(c) 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.

6.460 Compliance with State and Federal Regulations. Activities wholly or partially within the Significant Natural Resource Overlay District(s) are subject to all applicable federal and state regulations. The following regulations commonly apply within the resource areas. (Note: other regulations not listed may also apply; it is the property owner's responsibility to adhere to all State and Federal regulations):

(1) Oregon Department of State Lands permit requirements under the Removal-Fill Law.

(2) U.S. Army Corps of Engineers permit for fill activities as required under Section 404 of the Clean Water Act.

(3) Department of Environmental Quality permit requirements for stormwater under the Clean Water Act and state water quality regulations.

(4) Oregon Department of Fish and Wildlife regulations may apply to development activities that could impact one of the sensitive, threatened, critical, or endangered species indigenous to the region.

(5) The federal Endangered Species Act prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife.

- (6) The federal Migratory Bird Treaty Act prohibits taking, harming or moving any migratory bird, nest, or egg.

6.470 Violations. Activities within Significant Natural Resource Overlay Districts not authorized under this Article are a violation. The City shall seek compliance with the requirements of this Article and the resolution of violations through the following procedures:

- (1) Voluntary cooperation to resolve violations is the preferred enforcement procedure when appropriate to the circumstances. Violations causing ongoing degradation of natural resources or repeated violations by the same individual, firm or corporation are generally not appropriate for voluntary cooperation enforcement procedures.
- (2) Natural resource restoration shall be required for violations that result in unauthorized construction, grading, excavation, placement of fill material, or removal of native vegetation in a Riparian Corridor Overlay District. The purpose of the restoration requirements shall be to mitigate impacts to vegetation, soils and hydrology and may include vegetation planting, fill removal, backfilling of excavated areas, restoration of ground surface contours, restoration of hydrological processes or other actions. Restoration recommendations shall be solicited from the Oregon Department of Fish and Wildlife and the Linn or Benton County Soil and Water Conservation Districts.
- (3) Violations involving placement of fill material, excavation, grading or alteration of material within the bankfull stage of a stream or in a wetland shall be reported to the Oregon Department of State Lands and the U.S. Army Corps of Engineers.
- (4) Failure of an individual, firm, or corporation to remedy a documented violation shall be processed in accordance with the provisions of the Albany Municipal Code, Chapter 1.04.

WILLAMETTE RIVER GREENWAY

[No changes are proposed to the Willamette River Greenway standards, only renumbering of the sections and addition of "Willamette River" and (/WG).]

6.500340 Purpose. The **Willamette River Greenway district (/WG)** is intended to guide development along the Willamette River so as to preserve the existing scenic, use and natural features.

6.510320 Applicability. The area of the City within the **Willamette River Greenway District** is the area so designated by the boundary shown on Figure 6-24.

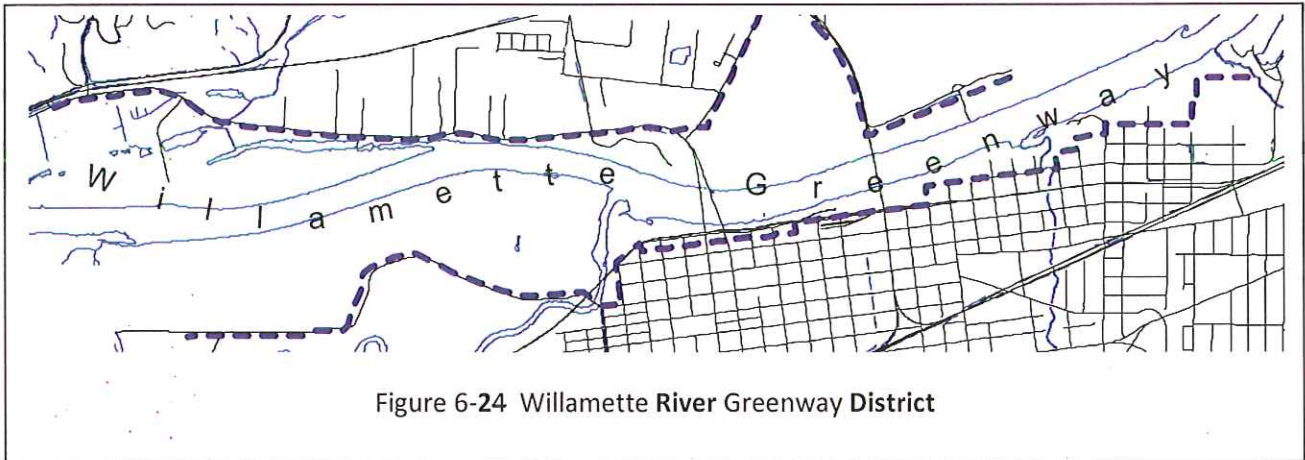


Figure 6-24 Willamette River Greenway District

6.520330 Procedure. Except for land use developments and uses exempted in Section 6.340 below, an application for development approval in the **Willamette River Greenway District (/WG)** will be approved under the Type II procedure. Approval of a Greenway Use application will be granted only if the proposal complies with all applicable sections of this Code. In case of conflict between the provisions of this Article and the provisions of any other Article of this ordinance, the more restrictive provisions shall apply.

6.530340 Greenway Use Permit Exceptions. The following developments and uses are not subject to the provisions of this Article but shall comply with other applicable provisions of this Code:

- (1) Customary dredging and channel maintenance conducted under a permit from the State of Oregon.
- (2) Gravel removal from the bed of the Willamette River conducted under a permit from the State of Oregon or a seasonal increase in gravel operations.
- (3) The placing by a public agency of signs, markers, aids, to serve the public.
- (4) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses of public lands; except that a substantial increase in the level of development of existing public recreational, scenic, historical, or natural uses on public lands shall require review as provided by this Article.
- (5) Agriculture as allowed within the subject major zoning district.
- (6) Reasonable emergency procedures necessary for the safety or protection of property and not in conflict with the provisions of this Code.

- (7) Maintenance and repair usual and necessary for the continuance of an existing use.
- (8) Landscaping, construction of driveways, repair or maintenance of existing structures, and the construction or placement of accessory structures less than 250 square feet, provided that such activities are conducted in conjunction with uses already existing on the same property and that they are accomplished in a manner compatible with the purpose of this Article.

6.540350 Criteria. An application for a **Willamette River** Greenway Use development will be granted if the review body finds that the proposal conforms with the following applicable criteria:

- (1) Lands designated on the Comprehensive Plan as Open Space are preserved and maintained in open space use.
- (2) Significant air, water and land resources including but not limited to natural and scenic areas, viewpoints, vistas, fish and wildlife habitats, etc. in and adjacent to the Greenway are protected, preserved, restored, or enhanced to the maximum extent possible.
- (3) Areas of annual flooding, floodplains, and wetlands are preserved in their natural state to the maximum possible extent to protect water retention, overflow, and other natural functions.
- (4) The natural vegetative fringe along the river are maintained to the maximum extent that is practical in order to assure scenic quality, protection of wildlife, and protection from erosion.
- (5) The harvesting of timber will be done in a manner which ensures that wildlife habitat and the natural scenic qualities of the Greenway are maintained or will be restored.
- (6) The proposed development, change, or intensification of use is compatible with existing uses on the site and the surrounding area and provides the maximum possible landscaped area, open space, or vegetation between the activity and the river.
- (7) Extraction of aggregate deposits shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety, and necessary reclamation will be guaranteed.
- (8) Any public recreational use of facility will be developed, maintained, and operated in such a way as to minimize adverse effects on adjacent properties.
- (9) Building setbacks from the floodway line shall be determined by the setback and height plane as defined in Sections 5.200 and 5.205 of this Code.
- (10) Public access will be provided to and along the Willamette River by appropriate legal means for all development in conformance with plans approved by the City.

6.550360 Conditions of Approval. The review body has the power to impose conditions, restriction, or limitations upon any use proposed in the **Willamette River** Greenway District if such conditions, restrictions, or limitations are found to be necessary in order to satisfy the criteria of Section 6.350.

6.560370 Special Notification. Notification regarding requests for **Willamette River** Greenway Use Permits will be sent to the Oregon State Department of Transportation River Programs Section. Notification of the Oregon State Department of Transportation will be given by certified mail (return receipt requested) and sent within seven days of the receipt of the application for the conditional use. Notice of the decision on the Greenway use permit application will be mailed to the Department of

Transportation River Programs Section within ten days of such decision.

CLUSTER DEVELOPMENT

6.570400 Cluster Development. See Article 11, Land Divisions and Planned Developments, Sections 11.400 to 11.510, for Cluster Development standards. [Ord. 5668, 4/11/07]

ARTICLE 9 ON-SITE DEVELOPMENT AND ENVIRONMENTAL STANDARDS

New text is shown in bold and removed text in ~~strikethrough~~. Revisions since 3/7/11 are shown in bold with yellow highlighting.

9.010 Overview. The City of Albany has established standards for on-site improvements and environmental protection. These standards are intended to foster high quality development throughout the City and to minimize adverse effects on surrounding property owners or the general public. This article contains the following standards:

- Off-Street Parking
- Landscaping
- Street Trees
- ~~Tree Felling~~**Protection**
- Buffering and Screening
- Environmental

[Ord. 5445, 4/12/2000]

No proposed changes to Sections 9.020 through 9.200.

~~TREE FELLING~~**PROTECTION**

9.205 Purpose. Trees of significant size represent a visual and aesthetic resource to the community. **Trees provide benefits including shading, reduction in excess stormwater runoff, erosion control, and wildlife habitat.** These standards are intended to balance the preservation of significant trees as a benefit to the community with the individual right to use and enjoy property. [Ord. 5445, 4/12/2000]

9.206 Definitions. For the purposes of the following sections, these definitions apply:

- (1) Fell: To remove or sever a tree or the intentional use of any procedure the natural result of which is to causes the death or substantial destruction of the tree. Fell does not in any context include normal pruning of trees.
- (2) Tree: A living, standing, woody plant ~~having a trunk circumference of 24 inches or more.~~
- (3) Tree, Circumference: The circumference of a tree is measured at 4-1/2 feet above mean ground level from the base of the trunk. To obtain the circumference of a tree with multiple trunks, add the individual trunk circumferences, which are greater than 6 inches in circumference. [Ord. 5445, 4/12/2000]

9.207 Applicability. Site plan review approval is required for the felling of 5 or more trees larger than 25 inches in circumference (approximately 8 inches in diameter) on a lot or property in contiguous single ownership in excess of 20,000 square feet in any zone.

~~Natural Resource Impact Review and Mitigation are required for trees felled in the Riparian Corridor Overlay District as defined in Article 6.~~ **Tree felling in natural resource overlay districts needs to meet the requirements in Article 6.**

The following activities are exempt from site plan review:

- (1) The action of any City official or of any public utility necessary to remove or alleviate an

immediate danger to life or property; to restore utility service or to reopen a public street to traffic.

- (2) Felling of any tree that is defined as a nuisance under the Albany Municipal Code.
- (3) Any felling necessary to maintain streets or public or private utilities within a public right-of-way or utility easement provided the Tree Commission or City Forester approved the proposed tree felling. [Ord. 5445, 4/12/2000]
- (4) Felling of trees planted as Christmas trees. [Ord. 5635, 1/11/2006]
- (5) Felling of trees on property under a Forest Stewardship Plan approved by the Oregon Department of Forestry. [Ord. 5635, 1/11/2006]

9.208 Tree Felling Criteria. The following review criteria replace the site plan review criteria found elsewhere in this code for the purposes of reviewing tree felling. A site plan review for tree felling will be processed as a Type I-L land use decision.

- (1) The Community Development Director or his/her designee shall approve a site plan review for tree felling when the applicant demonstrates that the felling of the tree(s) is warranted because of the condition of the tree(s) with respect to disease, hazardous or unsafe conditions, danger of falling, proximity to existing structures or proposed construction, or interference with utility services or pedestrian or vehicular safety. The Director may require the applicant to provide a Certified Arborist's report.
- (2) For property where a site plan review, conditional use or land division application has been approved or is currently under review, the Community Development Director, City Forester, or his/her designee shall approve a site plan review for tree felling when the applicant demonstrates that all of the following review criteria are met:
 - (a) It is necessary to fell tree(s) in order to construct proposed improvements in accordance with an approved site plan review or conditional use review, or to otherwise utilize the applicant's property in a manner consistent with its zoning, this code, applicable plans adopted by the City Council, or a logging permit issued by the Oregon Department of Forestry.
 - (b) The proposed felling is consistent with State standards, City ordinances, and the proposed felling does not negatively impact the environmental quality of the area, including but not limited to: the protection of nearby trees and windbreaks; wildlife; erosion; soil retention and stability; volume of surface runoff and water quality of streams; scenic quality, and geological sites.
 - (c) The uniqueness, size, maturity, structure, and historic value of the trees have been considered and all other options for tree preservation have been exhausted. The Director may require that trees determined to be unique in species, size, maturity, structure, or historic value are preserved.
 - (d) **The tree felling in natural resource overlay districts meets the requirements in Mitigation is provided for trees located in the Riparian Corridor Overlay District per Article 6.**
- (3) For property where tree felling has not been approved as part of a site plan review, conditional use, or land division application, the Community Development Director or his/her designee shall approve a site plan review application for tree felling, if the review criteria above are met, and the following criteria are met:

- (a) Trees shall be retained in significantly large areas and dense stands so as to ensure against wind throw.
 - (b) Wooded areas that will likely provide an attractive on-site amenity to occupants of future developments shall be retained.
 - (c) Wooded areas associated with natural drainage ways and water areas will be maintained to preserve riparian habitat and minimize erosion. The wooded area to be retained shall be at least 10 feet in width or as required elsewhere in this Code.
 - (e) Wooded areas along ridges and hilltops will be retained for their scenic and wildlife value.
 - (f) Tree felling on developable areas will be avoided to retain the wooded character of future building sites and so preserve housing and design options for future City residents.
 - (g) Wooded areas along property lines shall be retained at a minimum width of 10 feet to provide buffers from adjacent properties.
 - (h) The plan for tree felling shall be consistent with the preservation of the site's future development potential and zoning.
- (4) The Director may attach conditions to the approval of the site plan review for tree felling to ensure the replacement of trees and landscape or otherwise reduce the effects of the felling, and may require an improvement assurance to ensure all conditions are met.
- (5) Precautions shall be made to protect residual trees and tree roots from damaging agents during and after the removal process. The following tree protection specifications should be followed to the maximum extent feasible for all projects with protected existing trees.
- (a) Within the drip line of any protected existing tree, there shall be no cut or fill over a four-inch depth unless a qualified arborist or forester has evaluated and approved the disturbance.
 - (b) Prior to and during construction, an orange fence shall be erected around all protected existing trees that is a minimum of 4 feet tall, secured with metal T-posts, no closer than 6 feet from the trunk or $\frac{1}{2}$ of ~~of~~ **within** the drip line, whichever is greater. There shall be no storage or movement of equipment, material, debris or fill within the fenced tree protection zone.
 - (c) During the construction stage of development, the applicant shall prevent the cleaning of equipment or material or the storage and disposal of waste material such as paints, oils, solvents, asphalt, concrete, motor oil or any other material harmful to the life of a tree within the drip line of any protected tree or group of trees.
 - (d) No damaging attachment, wires, signs or permits may be fastened to any protected tree.
 - (e) Large property areas containing protected trees and separated from construction or land clearing areas, road rights-of-way and utility easements may be "ribboned off," rather than erecting protective fencing around each tree as required in subsection (5)(b) above. This may be accomplished by placing metal t-post stakes a maximum of 50 feet apart and tying ribbon or rope from stake-to-stake along the outside perimeters of such areas being cleared.
 - (f) The installation of utilities, irrigation lines or any underground fixture requiring excavation deeper than 6 inches shall be accomplished by boring under the root system of protected existing trees at a minimum depth of 24 inches. The auger distance is established from the face of the tree (outer bark) and is scaled from tree diameter at breast height as described in the chart below. [Ord. 5445, 4/12/2000]

No changes are proposed to Sections 9.210 through 9.500.

ARTICLE 11 LAND DIVISIONS AND PLANNED DEVELOPMENTS

New text is shown in bold and removed text in ~~strikethrough~~. Revisions since 3/7/11 are shown in bold with yellow highlighting.

No proposed changes to Sections to 11.000 through 11.020.

- 11.030 Relationship to Other Local Regulations. All proposed development governed by this article must meet the applicable on-site improvements of Article 9 (e.g., off-street parking, landscaping, buffering and screening) and the applicable **Natural Resource District environmental standards of requirements in Article 6—Special Purpose Districts (e.g., open space, floodplain, hillsides, significant wetlands, riparian corridor, and Willamette River Greenway).**

No proposed changes to Sections to 11.040 through 11.170.

SUBDIVISIONS AND PARTITIONS

- 11.180 Tentative Plat Review Criteria. Approval of a tentative subdivision or partition plat will be granted if the review body finds that the applicant has met all of the following criteria which apply to the development:

- (1) Development of any remainder of property under the same ownership can be accomplished in accordance with this Code.
- (2) Adjoining land can be developed or is provided access that will allow its development in accordance with this Code.
- (3) The proposed street plan affords the best economic, safe, and efficient circulation of traffic possible under the circumstances.
- (4) The location and design allows development to be conveniently served by various public utilities.
- (5) Any special features of the site, (such as ~~topography~~, floodplains, **steep hillsides**, wetlands, **riparian corridors, natural hazards, native vegetation, wildlife habitat, historic sites, and archaeological sites**), have been adequately considered and utilized ~~avoided or~~ **evaluated and the impact minimized to the an extent reasonably feasible.**

No proposed changes to Sections to 11.190 through 11.200

- 11.210 Tentative Plat Submittal. All applications for tentative partition or subdivision approval must include a complete application form and copies of a plat showing the following details. The tentative plat need not be a finished drawing but it should show all pertinent information to scale.

- (1) When the land to be subdivided contains only part of the tract owned or controlled by the subdivider, a sketch is required of a tentative layout for streets and utilities in the undivided portion indicating connections to existing or future improvements.
- (2) If the tentative plat does not show the following information, a vicinity map at a scale of 400 feet to the inch shall be prepared showing:

- (a) All existing subdivisions, streets and tract lines of acreage land parcels immediately adjoining the proposed subdivision and between it and the nearest existing arterial streets.
 - (b) Name of the record owners of all contiguous land parcels.
 - (c) How streets and alleys in the proposed subdivision may connect with existing or proposed streets and alleys in neighboring subdivisions or undeveloped property to produce the most advantageous development of the entire neighborhood area.
- (3) The tentative plat shall be drawn to a standard engineer's scale where 1 inch equals 20 - 60 feet; or for areas over 100 acres, 1 inch equals 200 feet (1"=200').
 - (4) The name, if any, of the land division; this name must not duplicate or resemble the name of another subdivision in the same county or in the same area within six miles of Albany and must be approved by the Director and the County Surveyor.
 - (5) Date, north point, and scale of drawing.
 - (6) Location of the land division by section, township and range, and a legal description sufficient to define the location and boundaries of the proposed tract or the tract designation or other description according to the real estate records of the County Assessor.
 - (7) Names and addresses of the property owner(s), subdivider, surveyor, and engineer, if applicable.
 - (8) The location, widths and names of all existing or platted streets or other public ways within or directly adjacent to the tract; and other important features, such as railroad rights-of-ways, and City boundary lines.
 - (9) The location on the site and in the adjoining streets or property of existing and proposed sanitary sewers, storm sewers, and water mains and services, culverts, ditches and drain pipes, all other utilities such as electric, gas and telephone conduits with invert elevations of sanitary and storm sewers at points of proposed connections. [Ord. 5720, 08/12/2009]
 - (10) Contour lines having the following minimum intervals:
 - One foot contour intervals for ground slopes less than five percent.
 - Two foot contour intervals for ground slopes between five and ten percent.
 - Five foot contour intervals for ground slopes exceeding ten percent.

The elevations of all control points which are used to determine the contours. Contours shall be related to City of Albany datum.
 - (11) Approximate location of areas subject to storm water inundation or overflow with approximate high water elevation.
 - (12) Location, width, direction and flow of all water courses.
 - (13) Location of properties within the 100-year floodplain and other areas subject to flooding or ponding (see **the Floodplain standards in Article 6 Sections 6.130**).
 - (14) Location of the following significant natural resources:
 - (a) Significant wetlands identified on the City's Local Wetlands Inventory;
 - (b) Riparian areas on the City's Riparian **Corridor** Inventory;

- (c) Existing channels as shown on Figure 7.1 of the draft North Albany Storm Water Master Plan, and
 - (d) Slopes greater than ~~25~~**12** percent.
- (15) Location of the following natural features
- (a) Non-significant wetlands identified on the City's Local Wetlands Inventory, **and other wetlands**;
 - (b) Wooded areas with 5 or more trees over 12 inches in diameter measured 4½ feet from the ground, and
 - (c) Springs.
- (16) Existing uses of the property and adjacent property within 100 feet, including the location of all existing structures to remain on the property.
- (17) Zoning of and adjacent to the tract.
- (18) Any proposed streets: location, widths, names, approximate radii or curves. The relationship of all streets to any projected streets as shown on any development plan approved by the City.
- (19) Existing and proposed easements on the site and any existing easements on adjoining properties, showing the width and purpose of all easements.
- (20) Approximate dimensions of all lots, minimum lot size, proposed lot numbers, and block numbers [see Section 11.230 (11)].
- (21) Sites, if any, allocated for multiple-family dwellings, shopping centers, churches, industry, parks, schools, playgrounds, or public or semi-public buildings.
- (22) The following additional information must be submitted with the tentative plat:
- (a) The names and addresses of all owners within 300 feet of the proposed land division.
 - (b) Total acreage in the subdivision and the percent of land dedicated to the public, not including easements.
 - (c) All public improvements proposed to be installed and the approximate time of installation including the method of financing.
 - (d) Special improvements to be made by the developer and the approximate time such improvements are to be completed (examples include entrance signs or walks, berms, bus stands, etc). Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of these regulations, State laws and other applicable City ordinances. If, however, the nature of the improvement is such that it is impractical to prepare all necessary details prior to approval of the tentative plat, the additional details shall be submitted at least 30 days prior to approval of the final plat.
 - (e) An urban conversion plan for large acreage subdivisions.

[Ord. 5562, 10/10/03; Ord. 5562, 10/10/03]]

No proposed changes to Sections to 11.220 through 11.390.

CLUSTER DEVELOPMENT

11.400 Purpose. Cluster development is intended to protect natural features or other features unique to Albany that would not otherwise be protected in the development of a site. In return for this protection, the more flexible standards found in this section may supersede other more strict standards of this Code. Cluster developments may provide greater flexibility, reduced and/or varied lot sizes,

and more variety in permitted uses. It is not the intent of cluster development to increase the overall housing density of property above the density that would have been allowed in a standard subdivision. Developments must satisfy high-quality master planning and design requirements. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

- 11.405 Optional Nature. Cluster development is an optional form of development. Cluster development proposals are reviewed as part of the land division, site plan, or conditional use application processes. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]
- 11.410 Eligibility. To be eligible to apply for cluster development, all of the following are required:
- (1) Residential Zoning. The site must be located in a residential zoning district.
 - (2) Natural Features. The site must contain one or more of the features listed in Section 11.460(1).
 - (3) Professional Designer. An applicant for cluster development approval must certify in writing that a certified landscape architect, site planner, or landscape designer, approved by the Director, will be used in the planning and design process for the proposed development. [Ord. 5668, 4/11/07]
- 11.420 Relationship to Other Regulations. If the applicant chooses the cluster development option, and the site is deemed eligible by the City, these standards will supplement other provisions of this Code. For example, a subdivision proposed as a cluster development is also subject to other provisions of Article 11 of the Development Code. Other types of residential development are subject to site plan review or conditional use review. These provisions apply to issuance of building permits in a cluster development and to ongoing uses and activities in a cluster development. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]
- 11.430 Procedure. Cluster development proposals are reviewed as a Type III procedure. [Ord. 5562, 10/10/03, Ord. 5668, 4/11/07]
- 11.440 Review Criteria. The review criteria for a cluster development are those that apply to a particular type of development. For example, the tentative plat criteria in Article 11 apply to cluster land divisions. (See Section 11.420 for relation to the other requirements.) Also, the review body must find that the application meets the following additional criterion:
- (1) The proposed development meets all of the requirements for cluster development.
 - (2) The proposed development preserves natural or unique features that normally would not be preserved under conventional development standards. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]
- 11.450 Natural Area Requirements. Cluster developments must provide a minimum of 20 percent of the site as permanent natural areas. Land ~~show~~ **designated** as Open Space on the Comprehensive Plan map may ~~not~~ be used to fulfill this requirement **if the resource is good quality, or is enhanced to improve its quality in accordance with the enhancement guidelines in the table in Section 6.420.** [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]
- 11.460 Designation of Permanent Natural Area. The required natural area may be public or private. The minimum 20 percent of the gross acreage of the development site set aside as natural area in a cluster development should be designated in the following priority order:
- (1) The first priority for natural area designation is the protection of environmentally sensitive areas, natural features, and scenic features of the site ~~not shown as Open Space on the~~

~~Comprehensive Plan Map.~~ This priority ~~is~~ may be satisfied by ~~any of~~ in the following priority order:

- (a) ~~Lake Habitat for western painted and northwestern pond turtles near Thornton Lakes within the Habitat Assessment Overlay (/HA), or as identified by a turtle habitat assessment.~~
 - (b) ~~Significant Wetlands identified as designated by the Wetland Overlay District (/SW) on the City's Local Wetland Inventory or by a delineation approved by the Oregon Department of State Lands.~~
 - (c) ~~Significant riparian corridors area identified as designated by the Riparian Corridor Overlay District (/RC) on the City's Riparian Inventory.~~
 - (d) Existing channel identified in the **most current version of the City of Albany Storm Water Master Plan or the draft North Albany Storm Water Master Plan.**
 - (e) Spring.
 - (f) **Land with natural slopes 12 percent or greater as designated by the Hillside Development Overlay District (/HD).**
 - (g) Wooded area with five or more healthy trees over 8 inches in diameter measured 4½ feet from the ground, if approved by the City Forester.
 - (h) Land that will provide bike or walking trails that connect to existing or proposed parks or trails, inventoried natural features, or areas zoned Open Space or otherwise protected as permanent natural areas.
 - (i) Other features of the site unique to Albany, if approved by the Director.
- (2) The second priority for natural area designation is to create open spaces in and around neighborhoods. This priority is satisfied by any of the following:
- (a) Continuity of adjacent open space corridors or parkways.
 - (b) A network of interconnected open space corridors.
 - (c) A buffer between neighborhoods.
- (3) The third priority for natural area designation is to incorporate public parks, trails or open space designated in the Parks, Recreation and Open Space Plan and the North Albany Refinement Plan.

[Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.470 Creation of Permanent Natural Areas.

- (1) Natural areas in a cluster development may be set aside and managed in one or more of the following ways:
 - (a) Portions of one or more individual lots; or
 - (b) Common ownership by residents of the development; or
 - (c) Third party (non-profit organization) whose primary purpose is to hold or manage the open space, subject to a reversionary clause in the event of dissolution of the non-profit organization; or
 - (d) Dedicated to City of Albany, if the City agrees to accept ownership and maintain the space.
- (2) Except for Subsection (1)(d) above, natural areas shall be subject to restrictive covenants and easements reviewed by the Community Development Director and recorded and filed when the subdivision plat for the project area is recorded. Except when allowed in 11.480, an easement shall include permanent provisions prohibiting the placement of structures or impervious surfaces, alteration of the ground contours, or any other activity or use inconsistent with the purpose of these provisions. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.480 Protection of Permanent Natural Areas.

- (1) The development may encroach into permanent natural areas, only under the following circumstances:
 - (a) To meet transportation or utility infrastructure requirements, or
 - (b) To provide bike or walking trails that connect to existing or proposed parks or trails, inventoried natural features, or areas zoned Open Space or otherwise protected as permanent natural areas.
- (2) Permanent alteration by grading may be authorized for the purpose of natural resource enhancement, such as wetland, riparian, or wildlife habitat restoration.
- (3) Significant wetlands, riparian corridors, and intermittent streams preserved as natural areas in a cluster development may be used for conveyance of storm waters only when the applicant has demonstrated that the discharge is compatible with the protection of the natural resource. These natural features shall not be used for drainage improvements, such as detention or retention ponds, or any other utility improvement necessary for development of the lots.
- (4) Areas set aside for permanent natural areas in a cluster development cannot be further subdivided.
- (5) Fences are permitted in and around the natural areas if consistent with the expressed purpose of the natural areas.
- (6) Provisions must be established to ensure the continued maintenance of areas designated as natural areas through Cluster Development. See Section 11.470. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.490 Development Standards. In a cluster development, the following development standards supersede the same standards in Section 3.190, Table 1. The number of allowable lots is based on the density range for the zone as specified in the following table.

Standard	RS-10	RS-6.5	RS-5	RM
Max. dwelling units per gross acre	4	6	8	20
Minimum Lot size (1)	None	None	None	None
Minimum Lot Width	None	None	None	None
Minimum Lot Depth	None	None	None	None
Minimum front house setback (2)	15 ft.	10 ft.	10 ft.	10 ft.
Maximum Lot Coverage (3)	70%	70%	70%	70%

- (1) Lots on the perimeter of the cluster development shall meet the standards in 11.495.
- (2) Except, when lots are adjacent to existing development on the same side of the street, the setback shall be within 5 feet of the adjacent house(s) setback(s).
- (3) The maximum lot coverage may be up to 100 percent for lots that provide land only for the building footprint.

[Ord. 5562, 10/10/03, Ord. 5668, 4/11/07]

11.495 Perimeter Lot Compatibility. The following standards and exceptions will apply to the lots on the perimeter of a proposed cluster development:

- (1) Standards. The term “standard minimum lot size” as used in this section, means the minimum lot size allowed in the underlying base zone without any reductions in size allowed elsewhere in

this Code.

- (a) When the proposed cluster development abuts developed property in a lower density residential zoning district, the size of lots on the perimeter of the proposed cluster development shall be at least the standard minimum lot size allowed in the zone underlying the cluster development.

Example:

<p>Proposed Cluster Development <u>RS-6.5</u> <i>Perimeter lots must be at least 6,500 sf</i></p>	<p>Abutting Property w/ Lower Density Residential <u>Zoning</u> RS-10.0</p>
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- (b) When the proposed cluster development abuts developed property in the same residential zoning district as the proposed cluster development, the size of lots on the perimeter of the cluster development shall be at least 70 percent of the standard minimum lot size of the underlying zoning district.

Example:

<p>Proposed Cluster Development <u>RS-10.0</u> <i>Perimeter lots must be at least 7,000 sf (70% of minimum lot size for underlying zoning)</i></p>	<p>Abutting Property w/ Same Residential <u>Zoning</u> RS-10.0</p>
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- (2) Exceptions. The Perimeter Lot Compatibility standards do not apply in the following cases:

- (a) Perimeter lots that are adjacent to land that is zoned for higher density housing, mixed-use or non-residential uses, or to residentially zoned property not in residential use (such as educational, institutional, religious or park uses).
- (b) Where the same property owner owns the property abutting the proposed cluster development or when the perimeter lots share a property line with the Urban Growth Boundary.
- (c) If a buffer area is created as a separate property along the perimeter and is at least 20 feet wide, the buffer area shall become a permanent natural area and shall meet the provisions in Sections 11.470 and 11.480.

Example:



(d) Cluster developments abutting property that is at least 1 acre in size.

[Ord. 5668, 4/11/07]

11.500 Permitted Uses. The uses allowed within cluster developments outside the permanent natural areas are determined by the underlying zoning district standards in Section 3.050, with the following exceptions:

- (1) On development sites greater than 20 acres, up to 20 percent of the housing units in RS-6.5 and RS-10 may be attached single-family or condominium housing.
- (2) On development sites greater than 50 acres, up to 2 acres may be developed with neighborhood commercial uses through a conditional use review. The maximum building footprint of commercial or office uses shall be 3,000 square feet. Commercial and office uses shall be limited to restaurants with no drive-through service, and convenience-oriented and personal service-oriented uses as described in Article 22. [Ord. 5562, 10/10/03; Ord. 5668, 4/11/07]

11.510 Street Standards for Cluster Development. All local streets in a cluster development may be constructed to the Residential Street Design for Constrained Sites as described in Section 12.122(6). If the City subsequently adopts street standards specifically designated for cluster development, those standards shall supersede and replace this section. [Ord. 5562, 10/10/03]

ARTICLE 22 USE CATEGORIES AND DEFINITIONS

New text is shown in **bold** and removed text in ~~strikethrough~~. Revisions since 3/7/11 are shown in **bold with yellow highlighting**.

No proposed changes to Sections 22.010 to 22.370.

DEFINITIONS

22.400 Definitions. As used in this Code, the following words and phrases have the following meanings:

The following definitions are proposed to be added to Article 22. They are not shown in bold for easier reading. When an existing definition is proposed to be amended, the current definition is shown in ~~strikethrough~~ in its entirety.

Alter or Alteration: ~~A change, addition, or modification in construction or occupancy of a building or structure.~~ Any human-induced physical change to the existing condition or occupancy of a building or structure, or to land including but not limited to clearing, grubbing, draining, removal of vegetation (chemical or otherwise), excavation, grading, placement of fill material, placement of structures or impervious surfaces or other construction.

Developed Property: Property that has significant site improvements, such as utility installations, paving, and, in many instances, the construction of one or more structures has occurred.

ESEE Analysis: An analysis of economic, social, environmental, and energy consequences, positive or negative that could result from a decision to allow, limit, or prohibit a conflicting use.

Fill or Filling: The deposition of organic or inorganic material in any amount, including the temporary stockpiling of fill material, by human action.

Impervious Surface: A surface that cannot be penetrated by water, such as pavement, rock, or a rooftop, and thereby prevents infiltration and generates runoff.

Lawn: Grass or similar materials maintained as a ground cover. For purposes of this ordinance, lawn is not considered native vegetation regardless of the species used.

Local Wetlands Inventory (LWI): A systematic survey of an area to identify, classify, and map the approximate boundaries of wetlands over one half acre in size within the urban growth boundary, and supporting documentation. The inventories are adopted by the City and any subsequent revisions as approved by the Oregon Department of State Lands (DSL).

Native Vegetation: A plant species that is indigenous to the area and identified as naturally occurring and historically found within the City of Albany.

Non-native Vegetation: A plant species that is not indigenous to the area.

Noxious and Invasive Vegetation: Plant species that are recognized as having a significant potential to disrupt the functions and values of local ecosystems. The City of Albany maintains a list of recognized noxious and invasive plants. Plants may be added to or removed from the noxious and invasive plant list if reviewed and approved by the Director in consultation with the City Forrester, other professional groups with demonstrable expertise and local, state and federal agencies.

OAR: Oregon Administrative Rules.

Oregon Freshwater Wetland Assessment Methodology (OFWAM): A wetland function and quality assessment methodology developed by the Oregon Division of State Lands.

Ordinary High Water Mark (OHW): A line on the bank to which the high water ordinarily rises each year and is the waterward limit of upland vegetation and soil. (Source: ORS 274.005) It is generally recognizable by a visible change in the soil and vegetation. ~~For purposes of this ordinance, the OHW is considered the top of bank or bankfull stage.~~

ORS: Oregon Revised Statutes.

Riparian Corridor: Is a Goal 5 resource that includes the water areas, fish habitat, riparian areas, adjacent wetland and upland areas that serve to protect water quality and the habitat functions of the water body.

Safe Harbor Goal 5 Process: An optional course of action that satisfies certain requirements under the standard Goal 5 process. For example, a jurisdiction may choose to identify “significant” riparian corridors using the safe harbor criteria outlined in OAR 660-23-0090(5) rather than follow the general requirements of determining “significance” in the standard Goal 5 process outlined in OAR 660-023-0030(4). Similarly, a jurisdiction may adopt a wetlands ordinance that meets the safe harbor requirements of OAR 660-023-0100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.

Sensitive Critical Species: A species classification created under Oregon’s Sensitive Species Rule (OAR 635-100-040). The classification is applied to Oregon’s naturally reproducing fish and wildlife species, subspecies, or populations that are facing one or more threats to their population and/or habitats. The subcategories critical and vulnerable have the following meanings: “Critical” sensitive species are imperiled with extirpation from a specific geographic area of the state because of small population sizes, habitat loss or degradation, and/or immediate threats. Critical species may decline to a point of qualifying for threatened or endangered status if conservations actions are not taken.

Standard Goal 5 Process: The standard Goal 5 process is outlined in OAR 660-023-0030 through 660-023-0050 and consists of procedures and requirements to guide local planning for all Goal 5 resource categories. This division also provides specific rules for each of the fifteen Goal 5 resource categories (see OAR 660-023-0090 through 660-023-0230). In some cases this division indicates that both the standard and the specific rules apply to Goal 5 decisions. In other cases, this division indicates that the specific rules supersede parts or all of the standard process rules (i.e., local governments must follow the specific rules rather than the standard Goal 5 process). In case of conflict, the resource-specific rules set forth in OAR 660-023-0090 through 660-023-0230 shall supersede the standard provisions in OAR 660-023-0030 through 660-023-0050.

Undeveloped Property: Land in its natural state before being developed.

Upland: Land not characterized by the presence of riparian area, water bodies or wetlands.

Wetland: Those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetland Boundary Delineation: A determination of wetland presence that includes marking the

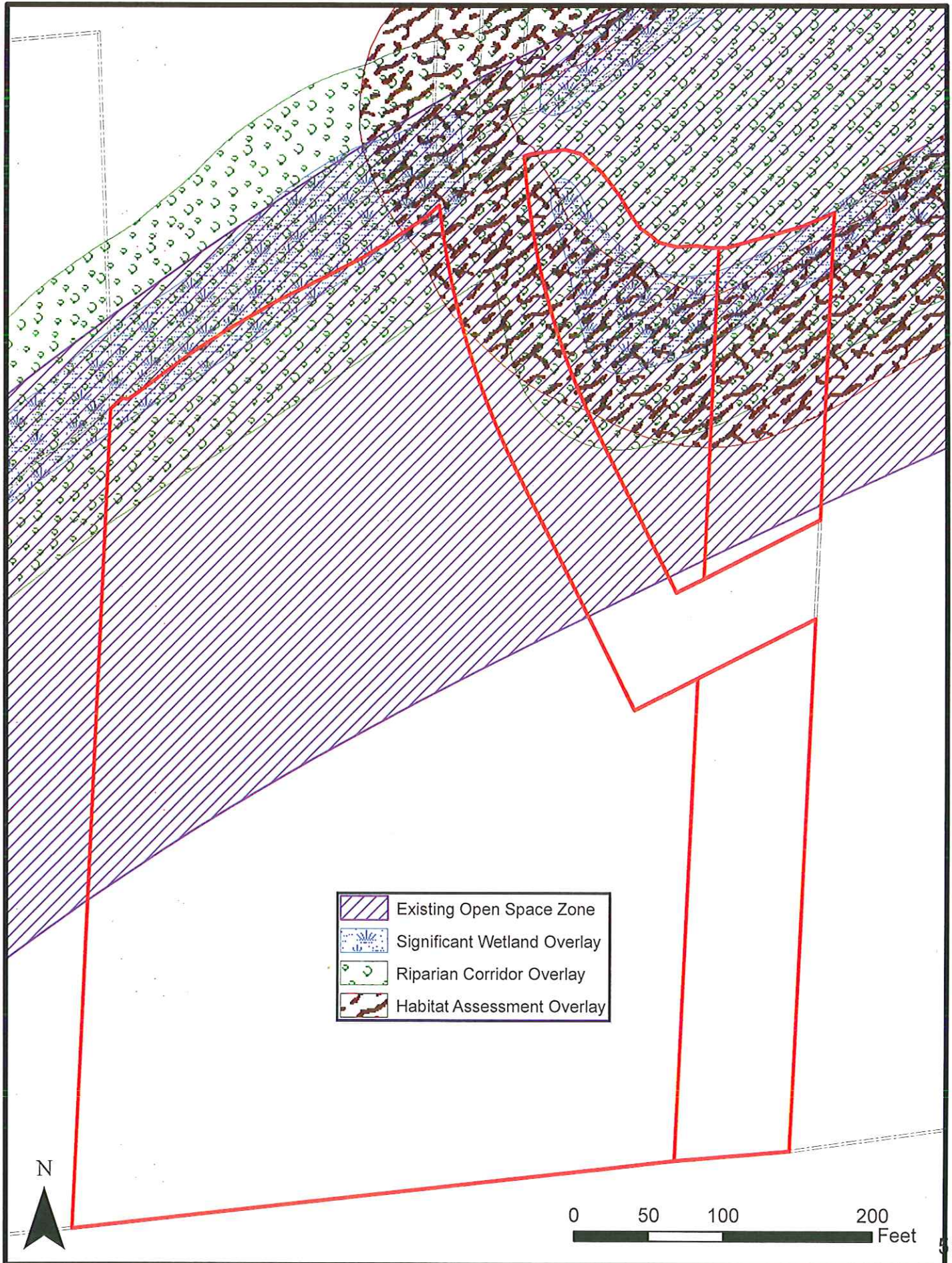
wetland boundaries on the ground and/or on a detailed map prepared by professional land survey or similar accurate methods. A delineation approved by the Division of State Lands is suitable for decision-making.

Wetland Determination: The identification of an area as wetland or non-wetland.

Wetland, Locally Significant: Those wetlands identified on the Local Wetland Inventory Map and determined "significant wetlands" using the criteria of OAR 141-86-0300. These criteria include those wetlands that score a high rating for fish or wildlife habitat, hydrologic control, or water quality improvement functions.

Wetland Professional/Expert: An individual who has the appropriate credentials verifying proven expertise and vocational experience conducting wetland delineations and is qualified to delineate wetlands in accordance with Oregon Department of State Lands rules.

EXHIBIT B: Nauman Property on West Thornton Lake



Scott Lepman Company

100 Ferry Street NW
Albany, Oregon 97321
(541) 928-9390 Phone
(541) 928-4456 Fax

To: Honorable Planning Commission Members
From: Scott D. Lepman, Property Owner
Via: Greg Byrne, Community Development Director
Subject: Request for Language Consideration
Date: March 10, 2011 for March 21, 2011 Planning Commission Public Hearing

- The original Open Space Boundary as depicted on the Comprehensive Plan Map was determined based on analysis of aerial photographs and floodplain maps that were used to map the proposed protected areas along Oak Creek and the Calapooia River. The “forest canopy” analysis of aerial photographs was used as a way of determining the vegetative cover status of land adjacent to these waterways. The boundaries as shown on the adopted Comprehensive Plan Map were arbitrary and historically were subject to change based upon detailed site information provided at the time of development review.
- Currently, Policy 1 of the Comprehensive Plan, Goal 5 states “Maintain wetland inventory information as part of the Comprehensive Plan which indicates areas within the Urban Growth Boundary which may be subject to state and federal regulations. Such information may be refined and updated administratively as more precise information becomes available.”
- Under this same Policy 1 of the Comprehensive Plan, Goal 5, Implementation Methods 2, it states “Encourage applicants to acquire a more formal determination from the Oregon Division of State Lands or other applicable state and federal agencies when development is proposed that would impact an uninventoried site or when there are differences between current wetland inventory information and actual site conditions. Other precise or updated information regarding site-specific wetland resources or boundary locations may be submitted as part of a development applications, including special studies or other information prepared by qualified parties and which are accepted by state and federal regulatory agencies.”
- Although my property is not within the City Limits, it is within the city of Albany’s Urban Growth Boundary and will be subject to the regulations that are adopted by the City. I have provided my approved wetland information and my approved LOMF information to the City Planning Department but the revised boundaries are still not reflected on the City’s proposed maps. As I stated in my letter of February 25, 2011, I have made a substantial investment in

preparing my property for future development upon annexation to the City of Albany, as my property is designated on the Comprehensive Plan Map as Open Space and Urban Residential Reserve.

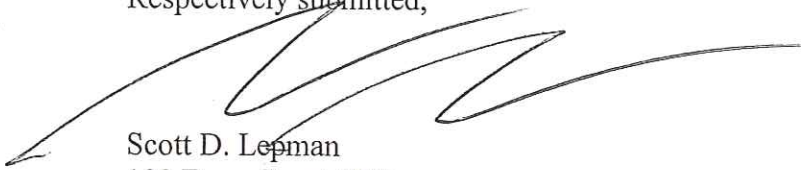
I am asking that the following language be incorporated into the proposed Legislative Comprehensive Plan and Development Code amendments:

1. Properties with approved wetland or riparian fill and mitigation plans, permits or other approved actions issued by the Oregon Department of State Lands (DSL) and or the US Army Corps of Engineers (COE) or other approving authority with jurisdiction over wetland and riparian resources prior to the adoption of this Ordinance shall be exempt from the setback regulations provided therein.
2. Where riparian areas and significant wetland areas overlap, as approved by previous actions by DSL and or the COE, the development setback area shall be 30 feet and shall be measured from the edge of the approved delineated wetland.
3. Wetland delineations verified by the Division of State Lands shall be used to automatically update and replace the City's Local Wetland Inventory mapping. No adjustment or variance application shall be required for map corrections where approved delineations are provided.

I recognize that the acceptance of my requested amendments does not constitute approval of the subdivision layout that was used as a basis for my approved wetland mitigation agreement with the Division of State Lands and the U.S. Army Corp. of Engineers and that I will be subject to the City of Albany's subdivision review process once my property is annexed.

Thank you for your consideration.

Respectively submitted,



Scott D. Lepman
100 Ferry Street NW
Albany, OR 97321

Hansen, Heather

From: HOWARD Heather [heather.howard@state.or.us]
Sent: Friday, March 11, 2011 7:33 AM
To: Hansen, Heather
Subject: RE: delineation for property in south albany
Attachments: Database Query.pdf

Good Morning, Heather,

Happy Friday!! I believe I located the file you referenced. It's WD #1994-0290 (attached) but unfortunately it was rejected by DSL. In case I missed something I've also attached a copy of my database query—let me know if you see anything else.

Have a great day (and weekend!).

*Heather Howard
DSL Wetland Support Staff
775 Summer St. NE, Ste. 100
Salem, OR, 97301
(503) 986-5235 - Direct Line*

From: Hansen, Heather [<mailto:heather.hansen@cityofalbany.net>]
Sent: Thursday, March 10, 2011 3:37 PM
To: 'HOWARD Heather'
Subject: delineation for property in south albany

Hello Heather, Are you able to tell me if there was an approved wetland delineation for this property in South Albany? And if so, can I please get a copy? THANK YOU!

It's along Oak Creek west of I-5, adjacent to Columbus St.
Map and lot number is: 11S03W20 01300
Owner: Glorietta Bay LCC (Scott Lepman)



April 13, 1994

Scott Lepman
815 SW Elm Street
Albany, OR 97321

Re: Wetland Delineation, west of Waverly Street along
Oak Creek (T11S R3W S20C)

Dear Mr. Lepman:

This letter is to convey the results of our site visit on April 8, 1994. I'm sorry you were unable to join us.

The primary reason that I wanted to review the wetland delineation was that the work was completed at a difficult time of year to assess vegetation and hydrology. Late spring is generally the ideal time. Also, there were very few data points for such a large area. We appreciated Frank Wildensee accompanying us, and he did explain that a fairly general wetland delineation was requested. Such large, complex and densely vegetated areas can take an enormous amount of time to delineate in detail.

Because of the recent, heavy rain, we were unable to cross to the south side of Oak Creek. Therefore, we were unable to access the central area that you are (according to Frank) thinking of building on. Based upon what we were able to review, I have outlined a few comments and requests:

- The generalized wetland boundary for the area north of Oak Creek is generally correct; the area is a mosaic of wetland and upland, but is almost entirely wetland with ~~the exception of~~ the fill.
- There is a large, unmapped ponded area on the east side of the parcel adjacent to the fill and separated from the majority of the floodplain wetland by a berm of upland (perhaps some old fill); Frank will be adding that ponded area to the map.
- We did not take the time to check the accuracy of mapped wetland boundaries or do any measurements, but it appeared that the wetland area may extend somewhat closer to the north property boundary than is shown on the map. Much of the area was ponded with reddish-colored water (the result of oxygen depletion in the soil). If/when any development is planned for that area, the precise wetland boundary should be staked or flagged.
- **Please be sure that all fill activity in low-lying areas is halted!** We were told that the existing fill was authorized by the Corps of Engineers. However, the fill now abuts wetland ~~on~~ all sides.

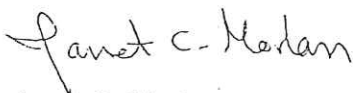


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- The central area that we could not get to still needs to be evaluated, preferably before the end of May. The soils are all hydric, yet the vegetation data in that area was somewhat inconclusive in November. I urge you to retain CES again to collect more data in that area, especially at the potential building site.
- Once we have the additional data and revised map, we can accept the report as a generalized wetland delineation (that may need refinement and staking in the future, depending upon your plans), yet specifically address the status of areas of potential impact (home and access).

As you are undoubtedly aware, there appear to be many constraints on building in the central portion of the parcel. Unless the creek and adjacent wetland can be bridged, it may be difficult to obtain a permit for road access to that site. Please phone if you have any questions or need additional information.

Sincerely,



Janet C. Morlan
Wetlands Program

JCM/jap
jan:959

c: Frank Wildensee, Cascade Earth Sciences
Charles Johnson, Albany Community Development Dept.
Rich Gebhart, Corps of Engineers

Memorandum



K & D ENGINEERING, Inc.
276 NW Hickory Street
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Albany, Oregon 97321

TELEPHONE: (541) 928-2583
FAX NO: (541) 967-3458

DATE: March 10, 2011

TO: City of Albany Planning Department
Attention: Heather Hanson

FROM: Jack Burrell

**SUBJECT: Proposed Comp Plan and Land Development Code
Amendments**

Natural Resources Revisions presented at March 7, 2011 Planning
Commission Hearing

Following are my comments related to the proposed amendments. Some of
these comments / objections were presented at the March 7, 2011 hearing.
Others were not discussed because of limited testimony time.

Some of the following comments are objections. Others require further
clarification from staff before I can assess whether I will object to the proposed
changes.

Please consider the following Objections / Comments:

1. **Comment:** The intent and premise of the proposed amendments is to
protect significant natural resources. The justification is to provide the
minimum level of protection to meet the Goal 5 natural resource
protection requirements and to be as limited as possible. The significant
natural resources as defined by the comp plan are: wildlife habitat,
Riparian Corridors and wetlands. Not: hillsides, flood plains

Objection:

- **No. 1:** The proposed amendment to ADC 2.250 (4) needs to be revised so as not to include hillsides and floodplains within the context of “...special features that have to be avoided....”
 - **No. 2:** The proposed amendment to ADC 11.180 (5) needs to be revised so as not to include hillsides and floodplains within the context of “...special features that have to be avoided....”
2. **Comment:** The notification process is not equitable as compared to other planning actions where applicants must hold neighborhood meetings with affected parties. There is no specific contact with directly affected owners other than general mailings and public notices. The City Council has recognized the limitations of general mailings and notices and addressed that concern by requiring neighborhood meetings of affected property owners.

Objection:

- **No. 3:** Do not approve any zone changes affecting specific properties with out first making direct contact to individuals identifying the proposed changes to their property. Give the affected property owner an opportunity to ask specific questions. This can be done with specific neighborhood meetings targeted to the neighborhood and/or reach of a wetland or riparian area that is being considered.
3. **Comment:** The proposed amendment to ADC 3.080 (10) will require a Site Plan Review to remove a tree larger than 25” circumference if located in a Riparian Corridor. This is too prohibitive for residents whose back yards have been included in the proposed corridor. The cost of a Site Plan Review approaches \$2000. The peoples backyards where there before the corridor was established. The resident should not be penalized.

Objection:

- **No. 4:** The proposed amendment should not be approved unless existing backyards are exempted.
4. **Clarification:** K & D was advised that existing fill permits are being voided because of the proposed amendments. If this so, we need basis for loss of the permit.
5. **Comment:** The proposed amendment to ADC 6.280 requires that wetlands partially in a riparian corridor shall have a 50 foot buffer extended beyond the delineated wetland.

Objection:

- **No. 5:** This amendment should not be approved to allow any additional buffer. The 50' buffer protects the riparian corridor and the delineation line protects the wetland. The wetland requires no further protection than otherwise given in the proposed amendments.
6. **Comment:** The proposed amendment to ADC 6.280 requires riparian protection on named creeks, canals, ditches. The revised Plate 4 inventory map further identifies protected areas. Within the drainage patterns listed or shown, there are likely insignificant reaches where the protections should be reduced or eliminated. Special situations were testified to at the hearing.

Objection:

- **No. 6:** This amendment should not be approved without first making physical observation to all drainage areas and determining if the affected drainage is considered significant or insignificant. Criteria should be established for each and a different set of protections should apply.
7. **Comment:** The proposed amendment to ADC 6.290 requires a Natural Resource Impact Review. I do not find a section outlining what this review shall consist of and upon what criteria is shall be based.

Objection:

- **No. 7:** This amendment should not be approved without more detail being included.
8. **Comment:** The proposed amendment to ADC 6.320 applies to land divisions. I object of this amendment on the basis of the following concerns:

Objection:

- **No. 8:** it states---- land that has already been determined to be put into the protected overlay shall be delineated. Does this mean that an additional delineation be performed?
- **No. 9:** ADC 6.320 (2) and (3) requires that sensitive areas be divided out on to a separate tract and protected in "perpetuity". The sensitive land must be covered by easements or conveyed to

non-profits, etc. before a partition or subdivision can occur. There are many instances and situations where this action would be unnecessary, prohibitive and offer no greater protections than already exists by the proposed code restrictions now under consideration. In phased developments, this requirement would likely put an un-necessary burden on the development. In a partition, it may involve a small tract division out of a larger parcel that poses no potential harm to the resource area.

9. **Comment:** Wetlands are being considered “significant” based on the existing wetland inventories and whether it has been delineated (but not included in a prior inventory). It is unclear as to what criteria have been used to deem the designation as “significant” or “insignificant”.

Objection:

- **No. 10:** This amendment should not be approved without more detail being included and assurances made that in-significant wetlands are getting lumped in to the significant resource areas.

10. **Comment:** The proposed amendment to ADC 6.450 applies to Adjustments and Variances. These processes are always difficult.

Objection:

- **No. 11:** This amendment should not be approved without more detail and scenarios being discussed so it will be better understood. Also costs for the variances and adjustments can but a huge financial impact on the property owner.