

RESOLUTION NO. 5100

A RESOLUTION PROPOSING THE ANNEXATION OF PROPERTY LOCATED ON THE WEST SIDE OF COLUMBUS STREET SE AND ON THE NORTH AND SOUTH SIDES OF ELLINGSON ROAD SE (AN-06-04), AND FORWARDING THE QUESTION OF ANNEXATION TO THE VOTERS ON THE MAY 17, 2005 BALLOT.

THE CITY COUNCIL OF THE CITY OF ALBANY RESOLVES that the findings and conclusions contained in Resolution Exhibit C (which consists of the complete staff report to the Albany City Council, including attachments, and dated March 2, 2005; File AN-06-04), and by this reference incorporated herein, are hereby adopted.

THE CITY COUNCIL OF THE CITY OF ALBANY FURTHER RESOLVES that this annexation, which would annex approximately 110 acres of property located on the west side of Columbus Street SE and on the north and south sides of Ellingson Road SE, all within Linn County, Oregon, is to be submitted to the legal voters of Albany, Oregon, for their approval or rejection pursuant to Albany City Charter Chapter 54 at an election to be held on May 17, 2005. This election will be conducted by mail-in ballot.

The ballot title of this measure and the form in which it shall be printed on the official ballot is as follows:

CAPTION: MEASURE PROPOSING ANNEXATION OF PROPERTY ON ELLINGSON ROAD SE

QUESTION: Shall 110 acres of property on the west side of Columbus Street, north and south of Ellingson Road, be annexed?

SUMMARY: Approval of this measure would annex approximately 110 acres to the City of Albany. The property to be annexed is located on the west side of Columbus Street SE and on the north and south sides of Ellingson Road SE. Only the portions of this parcel that lie within the Urban Growth Boundary for the City of Albany are proposed for annexation. Upon annexation, the area along Oak Creek would be zoned Open Space and the rest of the property would be zoned for single-family residential development (RS-5).

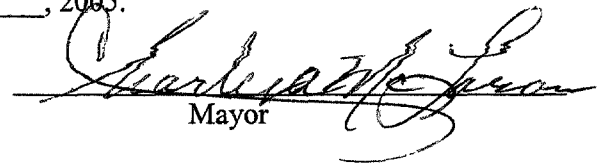
The text of the measure is as follows:

The following described real property, all located in Linn County, Oregon, shall be annexed to the City of Albany upon obtaining a favorable majority vote of the people.

The property generally located on the west side of Columbus Street SE and on the north and south sides of Ellingson Road SE, shown on Linn County Assessor's Map No. 11S-03W-29; Tax Lot 300, as further described in the attached legal description labeled Resolution Exhibit A and shown on the map labeled Exhibit B. The subject property containing 110 acres, more or less.

The City Clerk is authorized and directed to give notice of the submission of this question to the voters, including a true copy of the complete text and the ballot title for the measure in the form in which it shall be printed on the official ballot and any other information required by law to be published. That notice shall be published in not less than two successive and consecutive weekly issues of the *Albany Democrat-Herald*.

DATED AND EFFECTIVE THIS 14 DAY OF March, 2005.



Mayor

ATTEST:



City Clerk

**RESOLUTION EXHIBIT A
LEGAL DESCRIPTION
FILE AN-06-04**

A portion of that tract of land described in Deed Volume 1406, Page 834, recorded April 3, 2003, Linn County Deed Records, being a portion of the Robert Pentland D.L.C. No. 69, located in the southwest one-quarter of Section 20 and the northwest one-quarter of Section 29, Township 11 South, Range 3 West, Willamette Meridian, Linn County, Oregon, being more particularly described as follows:

Commencing at a 3-1/4" aluminum disk marking the southeast corner of said Robert Pentland D.L.C. No. 69, said point also being on the centerline of Columbus Street (County Road No. 353); thence along said centerline N 0° 23' 14" E, 2143.51 feet to an angle point, said angle point also being the ***True Point of Beginning***; thence along said centerline N 0° 23' 40" E, 1328.46 feet to an angle point; thence continuing along said centerline N 0° 23' 53" E, 609.27 feet to the southwest corner of the Jordan S. Robinson D.L.C. No. 55; thence leaving said centerline N 89° 36' 07" W, 40.0 feet to the west right-of-way line of Columbus Street (County Road No. 353); thence along said west right-of-way line N 0° 18' 50" E, 940.25 feet to the southerly line of that tract of land described as Tax Lot 1300 of tax map 11-3W-20 in Deed Volume 1049, Pages 46-62, recorded July 19, 1999, Linn County Deed Records; thence along said southerly line N 89° 29' 57" W, 1564.59 feet to the easterly line of that tract of land described in Deed Volume 781, Pages 462-463, recorded January 3, 1996, Linn County Deed Records; thence along said easterly line and the easterly line of that tract of land described in Deed Volume 1431, Pages 601-602, recorded May 29, 2003, Linn County Deed Records, S 0° 21' 27" W, 2359.59 feet to the centerline of Ellingson Road (County Road No. 350); thence southerly along the easterly line of Partition Plat No. 2004-54, recorded as County Survey 23891, Linn County Survey Records, S 0° 17' 37" W, 639.31 feet to the City of Albany's Urban Growth Boundary; thence along said Urban Growth Boundary S 89° 38' 04" E, 1604.05 feet to the centerline of Columbus Street (County Road No. 353); thence along said centerline N 0° 23' 14" E, 117.19 feet to the ***True Point of Beginning***.

Containing 109.6 acres, more or less, including right-of-way.

Legal Description Map
Ellingson & Columbus
AN-06-04

EXHIBIT B

N 89° 29' 57" W 1564.59'

S 0° 21' 27" W 2359.59'

N 0° 18' 50" E 940.25'

N 89° 36' 07" W 40.0'

SW Cor. DLC No. 55
Jordan S. Robinson

SEVEN MILE LN.

ELLINGSON RD.

S 0° 17' 37" W 638.31'

N 0° 23' 58" E 609.27'

True Point
of Beginning

N 0° 23' 40" E 1328.46'

Urban Growth Boundary

S 89° 38' 04" E 1604.05'

N 0° 23' 14" E 117.19'

COLUMBUS ST. (C.R. NO. 353)

N 0° 23' 14" E 2143.51'

SE Cor. DLC No. 69
Robert Pentland

1"=600'



Community Development Department

333 Broadalbin Street SW, P.O. Box 490, Albany, OR 97321

Phone: (541) 917-7550 Facsimile: (541) 917-7598

STAFF REPORT Annexation

<u>HEARING BODY</u>	ALBANY CITY COUNCIL
<u>HEARING DATE</u>	Wednesday, March 9, 2005
<u>HEARING TIME</u>	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW

GENERAL INFORMATION

DATE OF REPORT:	March 2, 2005
FILE:	AN-06-04
TYPE OF REQUEST:	Annexation of approximately 110 acres west of Columbus Street SE and north and south of Ellingson Road SE (approximately 5 acres is public right-of-way).
REVIEW BODY:	City Council
PROPERTY OWNER:	David Henshaw, et al; 2914 Davidson Street SE; Albany, OR 97321
APPLICANT:	WRG Design Inc.; 5414 Westgate Drive, Suite 100; Portland, OR 97221
ADDRESS/LOCATION:	6150 Columbus Street SE; west of Columbus Street, north and south of Ellingson Road
MAP/TAX LOT:	Linn County Assessor's Map No. 11S-03W-29; Tax Lot 300 (only the portion of the parcel within the Urban Growth Boundary)
TOTAL LAND AREA:	110 acres ±
EXISTING LAND USE:	One single-family house; the remainder is undeveloped: Agricultural/Grass field and open space/riparian area – Oak Creek; (see ortho photo – Staff Report Attachment B)
EXISTING COMP PLAN DESIGNATION:	Urban Residential Reserve (URR); Open Space (OS)
CURRENT ZONING:	Linn County – Urban Growth Area - Urban Growth Management (UGA-UGM-20); Urban Growth Area - Exclusive Farm Use (UGA-EFU-80)
PROPOSED ZONING:	RS-5 (Single-Family Residential) and OS (Open Space)
NEIGHBORHOOD:	South Albany
SURROUNDING ZONING:	Linn County – UGA-EFU (north and south); UGA-UGM-20 (west and east); City of Albany – RM-5 (northeast) and OS (east)
SURROUNDING USES:	Single-family houses (southeast); undeveloped grass fields (west and south); Oak Creek riparian area (north); church (northeast);

NOTICE INFORMATION. On February 16, 2005, notice of the public hearing for this project was mailed to property owners within 300 feet of the subject property. As of March 2, 2005, staff had not received any written comments on this project. Both street frontages were posted with signs on January 19, 2005.

SUGGESTED COUNCIL MOTION

I MOVE that the City Council pass the attached resolution proposing the annexation of property located on the west side of Columbus Street SE and on the north and south sides of Ellingson Road SE, and forwarding the question of annexation to the voters on May 17, 2005. I further move that the City Council adopt the findings and conclusions contained in this staff report (dated March 2, 2005) and authorize the City Manager to sign the accompanying Annexation Agreement. By this motion, the City Council finds that this territory meets the eligibility and timeliness criteria for annexation to the City of Albany (File AN-06-04).

FINDINGS AND CONCLUSIONS FILE AN-06-04

INTRODUCTION

On May 27, 1998, the City Council adopted policies and procedures for voter-approved annexation. The ordinance spells out the eligibility and timeliness criteria that the City Council must deem met before they refer an annexation request to the voters.

Listed below are findings and conclusions that address the review criteria. Review criteria are listed in *bold italics* and are followed by findings and conclusions.

The following abbreviations are used in these findings:

“ADC” means Albany Development Code, available online (<http://www.cityofalbany.net/communitydevelopment/code/index.html>) and in the office of the Albany Community Development Department.

“OAR” means Oregon Administrative Rules, available online (http://www.sos.state.or.us/archives/rules/OARS_600/OAR_660/660_tofc.html).

“ORS” means Oregon Revised Statutes, available online (<http://landru.leg.state.or.us/ors/>).

A. Eligibility. The City Council shall determine that property is eligible for annexation based on the following criteria:

1. The property is contiguous to the existing city limits.

2. The property is located within the Albany Urban Growth Boundary as established by the Albany Comprehensive Plan.

FINDINGS OF FACT:

A1. The subject property contains 181.74 acres and is contiguous to the current city limits along the north half of the east property boundary. (See attached map labeled Attachment A.)

A2. Plate 1 of the City’s Comprehensive Plan shows the Urban Growth Boundary (UGB). Approximately 105 acres of the subject property (110 acres if adjacent right-of-way is included) is within the UGB. (See attached map labeled Attachment A.) The portion of the subject property situated outside of the UGB is neither eligible, nor proposed for annexation.

CONCLUSION

A1. This criterion is met because the property proposed for annexation is contiguous with the existing city limits and is within the Albany UGB.

B. Timeliness. The City shall determine that it is timely to annex property based on the following criteria:

1. An adequate level of urban services and infrastructure is available, or will be made available in a timely manner.

- a. ***“Urban services” means police, fire, and other city-provided services.***
 - b. ***“Infrastructure” means sanitary sewer, water, storm drainage, and streets.***
 - c. ***“Adequate level” means conforms to adopted plans and ordinances.***
 - d. ***“Be made available in a timely manner” means that improvements needed for an adequate level of urban services and infrastructure will be provided in a logical, economical, and efficient manner. Improvements for needed infrastructure may be secured by a development agreement or other funding mechanism that will place the primary economic burden on the territory proposed for annexation and not on the City of Albany generally.***
2. ***Sufficient planning and engineering data has been provided and all necessary studies and reviews have been completed such that there are no unresolved issues regarding appropriate Comprehensive Plan and implementing ordinances.***
 3. ***The City shall attempt to discourage islands or enclaves of unincorporated territory surrounded on all sides by the City.***
 4. ***The City Council may consider, at its discretion, any other factor which affects the timeliness or wisdom of any particular annexation petition.***

FINDINGS OF FACT

- B1. Public water system improvements exist along the northeast Columbus Street frontage of the subject property. Future development on the site would require the extension of the public water system to the site, which would provide fire protection capabilities to this area. The 34th Avenue fire station is located just west of Marion Street, approximately two miles northwest of the subject property.
- B2. Because the subject property is contiguous to the city limits, and because nearby properties north and east of this site are served, police service to this property would be a logical extension of the current patrol boundaries.
- B3. Albany’s *Parks, Recreation and Open Space Plan* (2000) provides a framework for acquisition and development of park facilities throughout the Urban Growth Boundary. The *Plan* identifies a recreation corridor (with a bicycle/pedestrian pathway) along Oak Creek for future consideration. Also, the applicant has proposed making approximately 5 acres available for a future park within the annexation territory.
- B4. Water utility maps indicate that a 16-inch public water main currently exists in Columbus Street along the north half of the east boundary of this parcel.
- B5. The *Water Facility Plan* indicates the need for a future 16-inch water main in Columbus Street (north of Ellingson Road) and in Ellingson Road. This project (designated P38 in the *Water Facility Plan*) is shown in Table 7-5 on page 81, and on page 125 in the *Water Facility Plan*.
- B6. Sanitary sewer utility maps indicate that public sanitary sewer facilities in this area consist of a 12-inch main in Columbus Street that extends only to the northeast corner of the subject property. This main is connected to a public pump station on the east side of Columbus Street near the northeast corner of the subject property.
- B7. The construction of the pump station that serves this area was partially funded by the City. The properties that lie within the service area of this pump station will be charged an in-lieu-of assessment to reimburse the City for a portion of its costs. Resolution No. 4842 explains the assessment policy for this area, and sets the rate for the assessment. The original in-lieu-of assessment calculations were based on a density estimate using RS-6.5 zoning. If a higher density is allowed, the assessment will need to be recalculated by the City Engineer.
- B8. The *Wastewater Facility Plan* shows the 12-inch main being extended a short distance south in Columbus Street, where it decreases to a 10-inch main, and then an 8-inch main. These improvements are represented in the *Wastewater Facility Plan* as “development driven,” and are shown in Figure 7-6 of the *Plan*.

- B9. The subject property lies within the North Fork Oak Creek drainage basin. Storm water in this basin gradually drains to the west in Oak Creek to the Calapooia River. The City's Storm Drainage Master Plan indicates no system deficiencies downstream of this site. (Figure ES.1 in the Plan.)
- B10. The City's *Storm Drainage Master Plan* states (in Section 5.1.2), "Development in the North Fork is not expected to significantly increase peak flood flows because the area zoned for development is small when compared to the entire Oak Creek basin. Also, the area to be developed is located in the lower reaches of the basin. In the analysis, it was assumed that encroachment into the floodplain would not occur..., and that Oak Creek would not be modified."
- B11. Storm drainage system improvements are typically tied to street improvement work. Upon future development of this site, required improvements to Columbus Street and Ellingson Road, as well as local streets within the property, would include public storm drainage facilities that would flow toward, and ultimately discharge to, Oak Creek.
- B12. The subject property abuts Columbus Street on the east, and Ellingson Road runs in an east-west direction through the southern portion of the site. Figure 5.1.1-1 in the City's *Transportation System Plan* (TSP) designates Ellingson Road as a Principal Arterial and Columbus Street as a Minor Arterial.
- B13. Ellingson Road is currently under the jurisdiction of the Linn County Road Department, and is constructed to County road standards. Ellingson Road is currently a two-lane section, with shoulders and roadside ditches.
- B14. Columbus Street is currently under the jurisdiction of the Linn County Road Department, and is constructed to County road standards. Along most of the subject property's frontage, Columbus Street is currently a three-lane section, with a center turn lane (mainly for southbound left turns onto Seven Mile Lane and northbound left turns onto Ellingson Road). There is a bridge on Columbus Street over Oak Creek near the subject property's north boundary. Columbus Street is improved with curb and gutter and sidewalks on both sides of the street north of this bridge. Columbus Street is improved only to County road standards on both sides south of the bridge.
- B15. The City's *TSP* indicates that at build-out the anticipated Ellingson Road improvements would require 125 feet for right-of-way and will be constructed with five lanes for vehicular traffic. The *TSP* shows the need for at least 80 feet of right-of-way for Columbus Street for an ultimate 5-lane section (Table 5.1.4-2). The Public Works Engineering/Transportation Division has concluded that the needed right-of-way width for the ultimate improvement of Ellingson Road is less than that stated in the *TSP*. The right-of-way needed is 98 feet for Ellingson Road. This width would allow for five travel lanes, two bicycle lanes, and setback sidewalks. The current needs on these two streets (Table 5.6-2) call for widening to three lanes, constructing curb and gutter, storm drainage facilities, bike lanes, and sidewalks.
- B16. Development of a parcel as large as this would require the submittal of a traffic study. Such a study would identify the needed improvements in the transportation system for a particular development proposal. Depending upon the anticipated impact to the transportation system, there may be some off-site improvements that are required for a significant development on this property. For example, in addition to curb and gutter on the west side of Columbus Street, the applicant has agreed to construct curb and gutter on the east side of Columbus Street upon subdivision approval by the City. (See attached Annexation Agreement, labeled Attachment D.)
- B17. This annexation request is for approximately 110 acres. The Comprehensive Plan Map designations are Urban Residential Reserve (URR) and Open Space (OS). The applicant is requesting that the property be zoned RS-5 (Single-Family Residential) and OS (Open Space) upon annexation, which is in conformance with the Comprehensive Plan.
- B18. Public infrastructure facility plans that deal with this area include: *Wastewater Facility Plan* completed in 1998; *Storm Drainage Master Plan* completed in 1988; *Transportation System Plan* completed in 1997; *Water System Facility Plan* in 2004.
- B19. Other studies that have been prepared which relate to this area include: *Oak Creek Local Wetland Inventory* completed in 1999; *Oak Creek Riparian Inventory* in 1999; *Parks, Recreation and Open Space Plan* in 2000.

- B20. The City has been doing refinement plans for undeveloped (East I-5) and underdeveloped (North Albany) portions of the City. A refinement plan has not yet been done for the undeveloped Oak Creek area where this property is located. This property is at the eastern edge of this planning area.
- B21. Annexation of the subject property would not create an island.

CONCLUSIONS

- B1. The public water system is adequate and available for extension to serve the subject property. Staff recommends that Council require the attached annexation agreement (labeled Attachment D) which may waive some of the developer's rights and remedies with regard to conditions that may be placed on development by the City if public facilities are insufficient to support the development.
- B2. The public sanitary sewer system is adequate and available for extension to serve the subject property. Staff recommends that Council require the attached annexation agreement (labeled Attachment D) which may waive some of the developer's rights and remedies with regard to conditions that may be placed on development by the City if public facilities are insufficient to support the development.
- B3. The existing storm drainage facilities (Oak Creek) are adequate and available for use upon future development on this site. Staff recommends that Council require the attached annexation agreement (labeled Attachment D) which may waive some of the developer's rights and remedies with regard to conditions that may be placed on development by the City if public facilities are insufficient to support the development.
- B4. The transportation system is adequate for the existing uses on the property, and the future development of the site can be accommodated by providing system improvements commensurate with the impact of specific future development. Engineering staff has concluded that the ultimate right-of-way width needed for Ellingson Road adjacent to this property is less than that identified in the *TSP*. The likely right-of-way widths needed for ultimate street improvements are approximately 98 feet for Ellingson Road and 80 feet for Columbus Street. Staff recommends that Council require the attached annexation agreement (labeled Attachment D) which may waive some of the developer's rights and remedies with regards to conditions that may be placed on development by the City if public facilities are insufficient to support the development.
- B5. Police and fire service to this property would be a logical extension of the current service boundaries.
- B6. There is sufficient planning and engineering data for this area. All applicable facility plans and planning studies have based their conclusions on the area within the UGB.
- B7. The *Parks, Recreation and Open Space Plan* has considered the area within the UGB when studying the needs of the City. A recreation corridor along Oak Creek and the availability of 5 acres of land within the annexation territory would provide parks and recreation facilities for the future citizens of this area.
- B8. While the Oak Creek Refinement Plan has not yet been done, this property's location on the eastern edge makes it an unlikely site for a school.
- B9. The annexation of this property would not create an "island".
- B10. Another factor affecting the timeliness of this annexation is "reasonableness," which is discussed later in this staff report.

C. Statewide Planning Goals. The City Council shall determine that the proposed annexation complies with the Statewide Planning Goals.

FINDINGS OF FACT

- C1. On November 19, 1982, the Oregon Land Conservation and Development Commission acknowledged the Albany Comprehensive Plan to be in compliance with the statewide planning goals. Acknowledgement

means that the City of Albany successfully applied the statewide planning goals through its comprehensive plan and land use regulations.

- C2. The acknowledged Albany Comprehensive Plan is the policy document that guides the use of land within the Albany UGB. Because the annexation territory lies within the Albany UGB, the Albany Comprehensive Plan sets forth the goals and policies that are applicable to the annexation territory. These findings will describe how the proposed annexation complies with applicable statewide planning goals through the acknowledged Albany Comprehensive Plan and Development Code.
- C3. Ultimately, Albany intends to annex and zone all land within the UGB. Until that happens, the county is responsible for zoning unannexed land inside the UGB. Regulation of land use activities is coordinated between the city and county through an urban growth management agreement to ensure consistency with the Albany Comprehensive Plan. The current agreement with Linn County was adopted by Resolution No. 2822 on October 26, 1988, and acknowledged through the periodic review process in 1989.

Goal 1: Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

- C4. The decision to include the annexation territory in the Albany UGB was made in 1981 following a long process of citizen involvement leading to adoption of Albany's first Comprehensive Plan. The location of the UGB was evaluated in 1988 during periodic review and will soon be evaluated in the current periodic review effort. Whether to include the annexation territory within the Albany UGB is moot at this point. That decision was made and affirmed in the past with participation of citizens from our community, and further validated by the Oregon Land Conservation and Development Commission.
- C5. The current proceeding is a quasi-judicial land use public hearing to determine applicability of the Statewide Planning Goals to the proposed annexation. The Albany Comprehensive Plan and Development Code do not specify a process for such a proceeding.
- C6. ORS 197.763(3) (f) (A) requires a 20-day advance notice of a quasi-judicial public hearing to owners of land within 100 feet of the subject property. The City mailed notice 21 days in advance of this public hearing to owners of land within 300 feet of the subject property. The City chose a wider notice area than required by state law in order to be consistent with Albany's notice requirements for other quasi-judicial public hearings.
- C7. The form of the mailed notice followed the requirements set forth in state law [ORS 197.763(2) and (3)] and local ordinance (ADC 1.400). The annexation territory was also posted with signs at least thirty days in advance of this quasi-judicial public hearing as specified by local Ordinance No. 5366.
- C8. A notice of the Public Hearing was published in the local newspaper on February 21, 2005.
- C9. A copy of all documents and applicable criteria are available for inspection at no cost at the Albany Community Development Department, Planning Division. The staff report was available by 5:00 p.m. on Wednesday, March 2, 2005. A copy has been available at the City's website at the following link: www.cityofalbany.net/ellingsonroadannexation, or at the Planning Division located in City Hall. Access to documents followed the requirements set forth in state law [ORS 197.763(4)].

Goal 2: Land Use Planning. To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

- C10. The quasi-judicial public hearing will be conducted in the manner prescribed by state law [ORS 197.763(6)] and local ordinance (ADC 1.490).

Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.

- C11. According to Statewide Planning Goal 3, "agricultural land" protected by the Goal does not include farm land within acknowledged urban growth boundaries. A full reading of Goal 3 reveals that it is intended to protect large tracts of farmland for long-term farm use, an objective that is contrary to the objective of urban growth

boundaries to provide a place for residential, commercial, and industrial development to occur. Farmland as an open space value within the urban growth boundary is discussed under Goal 5.

- C12. One of the Guidelines in Goal 3 states that “urban growth should be separated from agricultural lands by buffer or transitional areas of open space.” The Albany Development Code specifies that “new residential development, for properties bordering designated and zoned productive farmland outside the UGB, shall be designed, where physically possible, to achieve a minimum 125-foot separation between residential and farm activities (ADC 3.275).

Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

- C13. Statewide Planning Goal 4 does not contain an explicit exemption similar to Goal 3. However, in the implementing rules for Goal 4, OAR 660-06-0020 states, “Goal 4 does not apply within urban growth boundaries.” As with Goal 3, the purpose of Goal 4 is to protect large tracts of forest land for long-term timber production. Protection of wooded open space areas within the urban growth boundary is discussed under Goal 5.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. To protect natural resources and conserve scenic and historic areas and open spaces.

- C14. Statewide Planning Goal 5 is directed toward the protection of many types of resources not singled out in other Goals. Goal 5 is applicable inside urban growth boundaries. Resources addressed by Goal 5 are: riparian corridors, including water and riparian areas and fish habitat; wetlands; wildlife habitat; federal wild and scenic rivers; state scenic waterways; groundwater resources; approved Oregon recreation trails; natural areas; wilderness areas; mineral and aggregate resources; energy sources; and cultural areas. Local governments are encouraged, but not required, to address historic resources; open space; and scenic views and sites.

- C15. The annexation territory has been included in Goal 5 planning for the Albany Comprehensive Plan. Within the annexation territory, a Goal 5 inventory has revealed the presence of riparian corridors, wetlands, and wildlife habitat. The City’s Riparian Corridor Inventory includes data gathered from field investigations for this area and is identified as R-OAK-12 L/R (see Attachment C for riparian areas). The Oak Creek Local Wetlands Inventory describes the wetland characteristics on this site under the designation OAK 32Ef. Plate 3 of the Albany Comprehensive Plan identifies this area as including wildlife habitat. The annexation territory does not contain any known federal wild and scenic rivers, state scenic waterways, groundwater resources, approved Oregon recreation trails, natural areas, wilderness areas, mineral and aggregate resources, or energy sources, as those terms are used in the Goal 5 rules (OAR Chapter 660, Division 23).

- C16. Within the annexation territory, the principal tool for protection of Goal 5 resources is the City’s Open Space Comprehensive Plan designation. Section 3.065-3.070 addresses the restrictions on development that are placed on the Open Space zoning designation. Approximately 18 acres of the annexation territory has been designated as Open Space since 1980. The corresponding zoning district proposed for this area upon annexation is the Open Space zoning district. The Open Space zoning district is a compatible zoning district with the Open Space Comprehensive Plan designation, according to the Plan Designation Zoning Matrix set forth in the Albany Comprehensive Plan. It is the *only* zoning district within the City of Albany that is compatible with the Comprehensive Plan designation. It is not necessary to process a zone change to apply the Open Space zoning district because the Comprehensive Plan designation will not change.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

- C17. This goal is typically applied to waste and process discharges emanating from industrial properties. Regulation of point source discharges is deferred to state and federal agencies that permit, monitor, and

enforce industrial discharges. There are no industrial uses within the annexation territory. Proposed zoning will not permit new industrial uses.

Goal 7: Areas Subject to Natural Disasters and Hazards. To protect people and property from natural hazards.

C18. Flood hazard is the primary natural hazard identified in the annexation territory. Maps depicting Special Flood Hazard Areas, published by the Federal Emergency Management Agency for Linn County, dated September 29, 1986, portray the limits of the 100-year floodplain and floodway on the subject property. The City of Albany administers the provisions of the National Flood Insurance Program through Development Code regulations set forth in ADC 6.070 to 6.125 in order to reduce the risk of loss of life and property in flood-prone areas. (See Attachment C for 100-year floodplain.)

Goal 8: Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

C19. The annexation territory has been included in Goal 8 planning for the Albany Comprehensive Plan. Albany's *Parks, Recreation and Open Space Plan* (2000) addresses the recreational needs of Albany's residents and others who visit our city. The *Plan* provides a framework for acquisition and development of park facilities throughout the UGB. The *Plan* identifies a recreation corridor (with a bicycle/pedestrian pathway) along Oak Creek for future consideration.

C20. The applicant is proposing to set aside approximately 5 acres for a park within the area being considered for annexation. It is expected that future development on the subject property will receive Parks System Development Charge credits equivalent to the value of the property if the City is interested in accepting this land for a park.

Goal 9: Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

C21. The annexation territory has been included in Goal 9 planning for the Albany Comprehensive Plan. The *Economic Opportunities Analysis* (2000) addresses Albany's role in economic development activities for our community. The *Analysis* provides a framework for strengthening local businesses and welcoming new businesses to the Albany UGB. The *Analysis* forecasts employment opportunities for future residents of Albany, including those in the annexation territory. No business use is forecast for the annexation territory other than potential home-based businesses. No land is needed in the annexation territory for commercial or industrial use, nor would any land be zoned for such use as a result of the proposed annexation.

Goal 10: Housing. To provide for the housing needs of citizens of the state.

C22. The annexation territory has been included in Goal 10 planning for the Albany Comprehensive Plan. Albany's *Housing Needs Analysis* (2004) provides a forecast for housing needs and a framework for addressing those needs. The housing strategy relies in large part on residential zoning to accommodate Albany's growing population. Approximately 87 acres of the annexation territory is proposed to be zoned Residential Single Family (RS-5) in partial fulfillment of meeting Albany's housing needs.

C23. The RS-5 zoning district is a compatible zoning district with the existing Comprehensive Plan designations, according to the Plan Designation Zoning Matrix set forth in the Albany Comprehensive Plan. It is not necessary to process a zone change to apply the RS-5 zoning district because the Comprehensive Plan designations will not change.

C24. The applicant is requesting the RS-5 zoning district in order to allow more flexibility with regard to lot size, mainly due to the fact that over 20 percent of the property will be set aside for uses other than residential development (open space and park). Here are the reasons given by the applicant for requesting RS-5 zoning:

The site currently contains a significant amount of open space, wetlands, flood plain areas that are largely preserved under the Open Space designation. Specifically, 19 acres of the site currently is dedicated to open space. In addition, the applicant proposes to provide 5 acres of park area that will be incorporated into the development and available to the public. In total, 20 percent of the entire site will

be preserved as open space. It should be noted that this does not include the significant grove of trees along Columbus Street that the Applicant has agreed to preserve as well.

Due to this significant dedication of usable open space, the developable site area is reduced. In order to maintain desired housing densities, and provide a varied mix of housing types, the applicant requests that the RS-5 is applied to the entire site. The applicant basically wants to preserve the flexibility afforded by this zone to provide the widest range of lot sizes possible. In preparing initial site layouts for the site, the applicant has determined that a range of lot sizes from 5,000 square feet to 20,200 square feet with an average lot size of 5,600 square feet may be provided. Ultimately, the anticipated development will include lots that are permitted within the RS-6.5 zone, but through the applicant's design, rather than controlled through the zoning ordinance.

The applicant's request for the RS-5 zone will permit flexibility equal to that of a development in the RS-6.5 zone utilizing the Cluster Development ordinance that is available. In fact, if the RS-6.5 zone is applied with the Cluster Development ordinance, lot sizes could be less than 5,000 square feet as no minimum lot size is required under the Cluster Development ordinance. To insure that this varied lot size is provided, with the minimum lot size of 5,000 square feet, the applicant proposes to not apply the Cluster Development ordinance if the overall zone of RS-5 is applied. This is viewed as an appropriate condition to insure that a variety of housing types can be provided at desired minimum density.

The applicant believes that the request for the RS-5 zone is appropriate due to the amount of open space and preservation of significant trees that is proposed to balance the varied density permitted throughout the anticipated development

Goal 11: Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

- C25. The annexation territory has been included in Goal 11 planning for the Albany Comprehensive Plan. Albany's public facilities plans include the *Water Facility Plan* (2004), *Wastewater Facility Plan* (1998), and *Drainage Master Plan* (1988). Planning for public facilities is based on full build-out of the UGB. Timing and funding of major public works projects over the next six years is described in the annual *Capital Improvements Plan*. Other projects are built as needed by new development. Specific projects that are detailed in these facility plans that relate to development on the subject property are summarized in section B of this Staff Report. Some of the public infrastructure improvements that would be constructed by the developer of this property would contribute to the completion of significant master plan projects for various public facility systems (water distribution mains, right-of-way dedication, street improvements, storm drainage facilities, etc.).
- C26. Major facilities intended to serve this area have been sized to provide adequate capacity for build-out to occur within the UGB based on recommendations from the various facility plans. Extension of service mains will occur as needed in the course of development.

Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system.

- C27. The annexation territory has been included in Goal 12 planning for the Albany Comprehensive Plan. Albany's *TSP* (1997) is a comprehensive analysis of transportation needs for build-out within the Albany UGB. The transportation needs of the annexation territory were factored into the *Plan*. The *Plan* presents a strategy for prioritizing and funding key system improvements needed by 2015. The *Plan* identifies needed projects within the annexation territory: namely, future improvements to Columbus Street (Project No. 15) and Ellingson Road (Project No. 18) to arterial street standards. Extension of local streets will occur as needed in the course of development.

Goal 13: Energy Conservation. To conserve energy.

- C28. To the extent that this Goal is applicable, it is satisfied because the annexation territory is situated within the Albany UGB and is served by an existing network of streets (Columbus Street and Ellingson Road). As an incentive upon annexation, the Albany Development Code allows a 10-percent density bonus for securing solar access to homes in new developments (ADC 3.220). Goal 13 recommends that "land use should, to the

maximum extent possible, combine increasing density gradients along high capacity transportation corridors to achieve greater energy efficiency.” The proposed zoning designation of RS-5 adjacent to arterial streets (Columbus Street and Ellingson Road) works toward that end.

Goal 14: Urbanization. To provide for an orderly and efficient transition from rural to urban land use.

C29. The annexation territory has been included in Goal 14 planning for the Albany Comprehensive Plan. Goal 14 requires the City to forecast future growth needs and establish an urban growth boundary to separate land needed for urbanization from rural land. Goal 14 further states that “land within the boundaries separating urbanizable land from rural land shall be considered available over time for urban uses.” The annexation territory was included in Albany’s UGB when the boundary was first adopted in 1980.

Goal 15: Willamette River Greenway.

C30. The annexation territory is situated outside the Willamette River Greenway, approximately 3 miles south of the Greenway boundary. Therefore, Goal 15 does not apply to the proposed annexation.

Goal 16: Estuarine Resources.

C31. An estuary is the part of the wide lower course of a river where its current is met by the tides. The closest estuary is found on the Yaquina River, located approximately 65 miles to the west of Albany. Therefore, Goal 16 does not apply to the proposed annexation.

Goal 17: Coastal Shorelands.

C32. Coastal shore lands associated with the Pacific Ocean are located approximately 65 miles to the west. Therefore, Goal 17 does not apply to the proposed annexation.

Goal 18: Beaches and Dunes.

C33. Coastal beaches and dunes associated with the Pacific Ocean are located approximately 65 miles to the west. Therefore, Goal 18 does not apply to the proposed annexation.

Goal 19: Ocean Resources.

C34. The Pacific Ocean is located approximately 65 miles to the west. Therefore, Goal 19 does not apply to the proposed annexation.

CONCLUSIONS

C1. This proceeding adheres to Goals 1 and 2 by following the provisions for the conduct of quasi-judicial public hearings set forth in ORS 197.763, ADC 1.400, 1.410, and 1.490, and City of Albany Ordinance No. 5366 and No. 5447.

C2. Goals 3 and 4 are not applicable to this proceeding because protection of agricultural land and forest land inside urban growth boundaries is exempted by Goal 3 and OAR 660-06-0020, respectively. An easement granted to the City by the applicant will provide for a 125-foot setback which will buffer the farm land outside the UGB from residential development on this property (see attached Annexation Agreement labeled Attachment D).

C3. Goal 5 resources found within the annexation territory have been protected since 1980 by the Open Space Comprehensive Plan designation, and will be protected upon annexation by the Open Space zoning district, as well as various state and federal guidelines and regulations pertaining to wetlands, riparian areas, wildlife habitat, etc.

C4. There is no industrial waste or process discharge in the annexation territory that would trigger application of Goal 6.

- C5. Flooding is a natural hazard present within a portion of the annexation territory. Upon annexation, Goal 7 will be implemented through the Albany Development Code Article 6 provisions for development in proximity to this hazard. Much of the floodplain will be zoned Open Space.
- C6. Goal 8 is satisfied because residents of the annexation territory will benefit from existing and future facilities envisioned by Albany's *Parks, Recreation and Open Space Plan*. In addition, the applicant is proposing to set aside approximately 5 acres for a future park within the boundaries of the area being considered for annexation.
- C7. Goal 9 does not apply to the annexation because no land is needed in the annexation territory to meet employment forecasts described in the *Economic Opportunities Analysis*.
- C8. Annexation and application of residential zoning is a component of Albany's strategy to meet Goal 10 by providing needed housing as described in the *Housing Needs Analysis*.
- C9. Goal 11 is applicable to the annexation territory through the implementation of the *Water Facility Plan*, *Wastewater Facility Plan*, and *Drainage Master Plan*. Development on this property would result in the construction of a number public utility improvements listed in these master plans.
- C10. Goal 12 is applicable to the annexation territory through the implementation of the *Transportation System Plan*. Existing arterial streets are available adjacent to the annexation territory, and upgrades to those streets would be made by the developer of this property.
- C11. Goal 13 is satisfied because the annexation territory includes residential areas located close to major transportation systems and employment areas elsewhere within the Albany UGB. The proposal for a slightly higher density near these major roadways also meets Goal 13 recommendations.
- C12. Goal 14 is applicable to the proposed annexation in that the annexation territory is needed to complete residential development of buildable portions of this area to accommodate growth needs of the City of Albany.
- C13. Goals 15-19 are not applicable to this proceeding because those goals are geographically limited to areas outside the annexation territory.

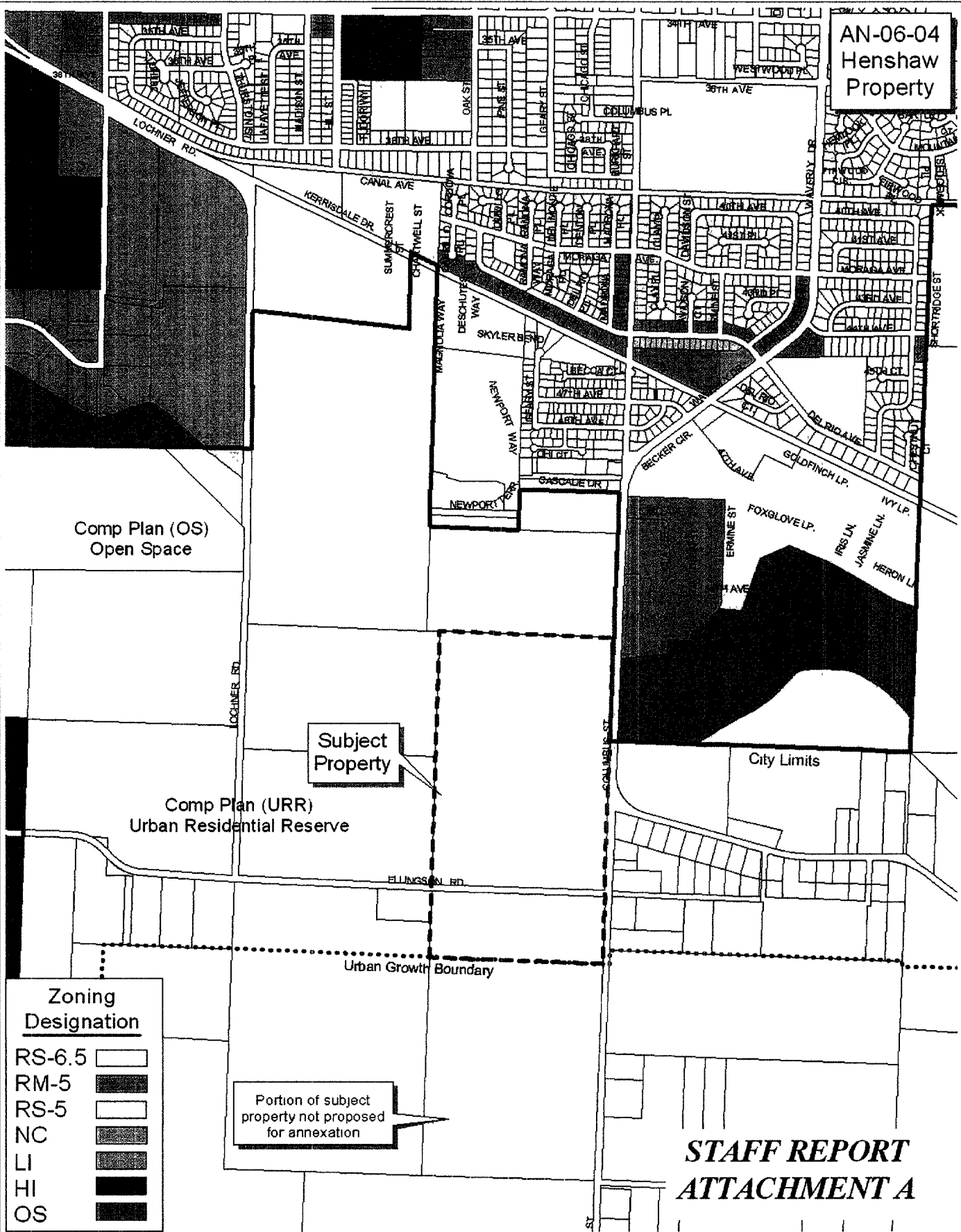
D. Reasonableness. The City Council shall determine that the proposed annexation is reasonable.

FINDINGS OF FACT

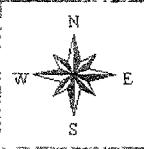
- D1. The subject property abuts the existing city limits and the portion of the property proposed for annexation lies within the UGB.
- D2. Because the property proposed for annexation is within the UGB the area is intended to be served by City services.
- D3. This annexation request has been initiated by the property owners.
- D4. The proposed annexation initiates urbanization south of Oak Creek in an efficient manner.
- D5. Because the property is located on the eastern edge of the Oak Creek planning area, it is unlikely that it would be a good candidate for a school site.

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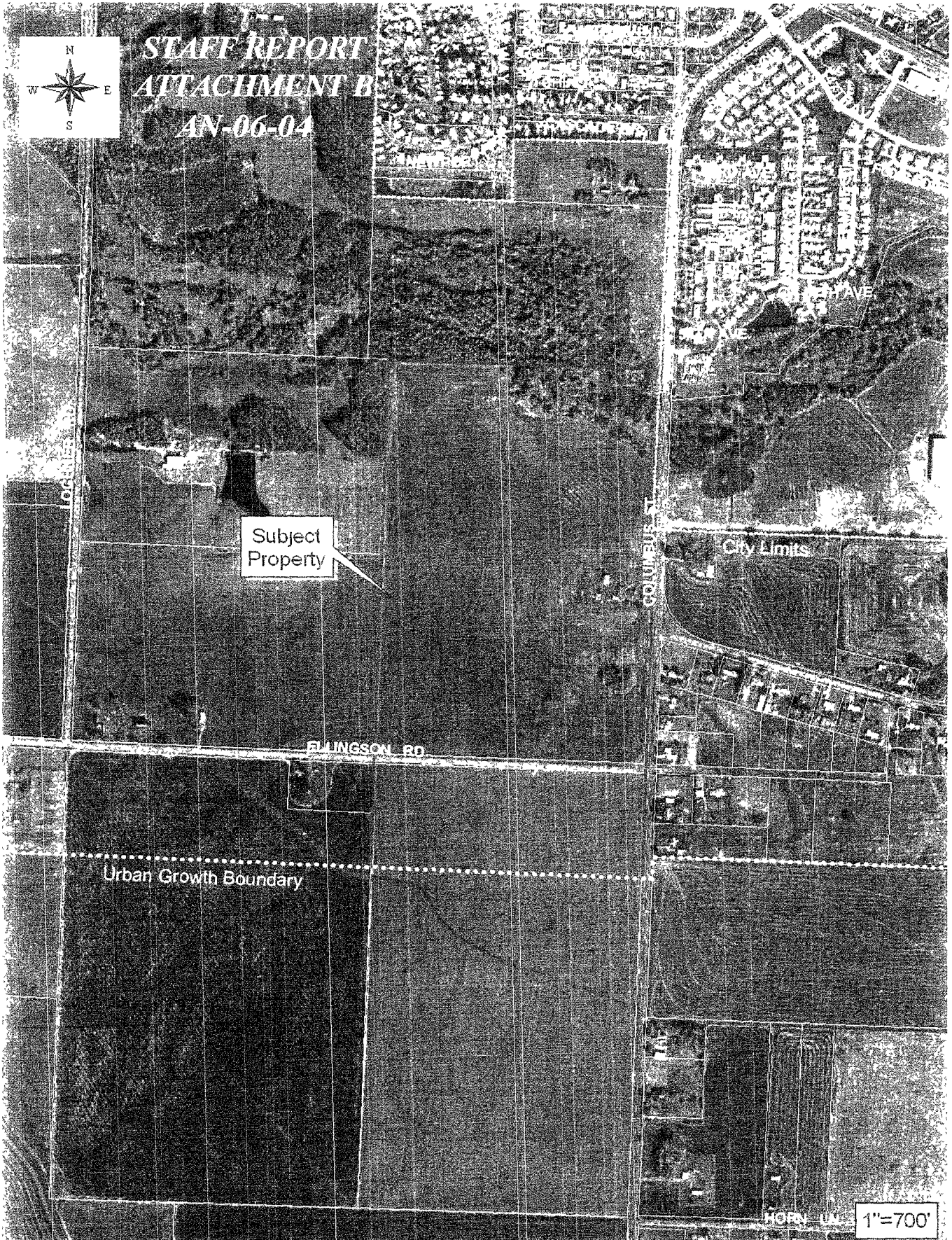
AN-06-04
Henshaw
Property



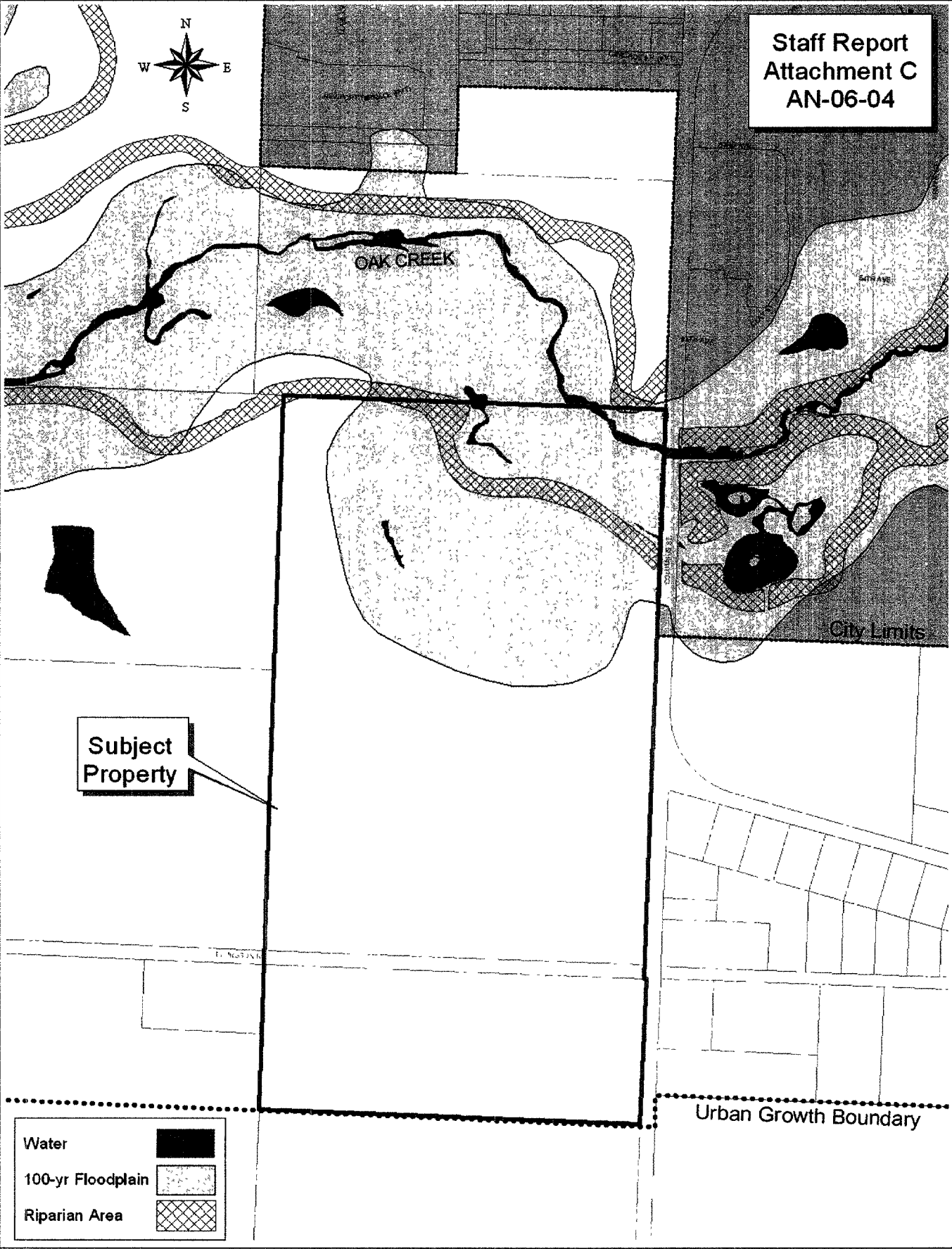
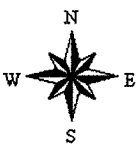
**STAFF REPORT
ATTACHMENT A**



STAFF REPORT
ATTACHMENT B
AN-06-04



Staff Report
Attachment C
AN-06-04



Subject
Property

Water	
100-yr Floodplain	
Riparian Area	

AN-06-04 STAFF REPORT ATTACHMENT D

ANNEXATION AGREEMENT

REVISED MARCH 10, 2005

PARTIES: DAVID K. HENSHAW
6405 Prather Road
Independence, OR 97351

MICHAEL A. HENSHAW
1433 28th Avenue SE
Albany, OR 97322

SHERI L. NEUSCHWANDER
2914 Davidson Street SE
Albany, OR 97322

JEANIE KING
PO Box 554
Joseph, OR 97846

JULIE SILVER
18791 Paulson Drive
Oregon City, OR 97045

JOE HENSHAW, nka SMITH
1105 Lynnwood Drive NE ;
Albany, OR 97322

DOROTHY RUBESH
2889 Seven Mile Way SE
Albany, OR 97322

STEVE HENSHAW
PO Box 1043
2018 S. Main Road
Lebanon, OR 97355

WELLNER MOREY – ALBANY I, LLC Individually and Together (“Developer”)
1536 SW Highland Parkway
Portland, OR 97221

CITY OF ALBANY, OREGON, a municipal corporation (“City”)

RECITALS:

WHEREAS, Developer owns certain real property outside of and adjacent to City and described in Exhibit A and shown in a map labeled Exhibit B attached hereto (the "Property"), which they desire to be annexed to the City, and the City desires to put the annexation proposal on the ballot for approval of voters in accordance with Oregon law and the City Charter;

WHEREAS, City does not want annexation to impose expressed or implied obligations on the City to make and fund infrastructure improvements;

WHEREAS, prior to approving the proposal for the ballot, City staff has requested that Developer enter into an Agreement which will waive many of Developer's rights and remedies with regards to conditions that may be placed on development of the Property by City if public facilities are insufficient to support the development and which will commit Developer in good faith to make certain enhancements and observe restrictions concerning the Property at such time that the actual development of the Property begins;

WHEREAS, the City has the policy of not placing annexation proposals on the ballot unless the Council first determines that the annexation is timely;

WHEREAS, among the factors considered by the Council in its timeliness determination is the adequacy of public infrastructure to serve the proposed annexation site;

WHEREAS, the Parties do not intend that this Agreement be a land use document or comply with the requirements of a Development Agreement as set forth in ORS 94.504 to 94.528;

WHEREAS, nothing in this Agreement limits the use of the Property for any lawful purposes, so long as any required City approval has been obtained;

WHEREAS, nothing in this Agreement shall require Developer to develop the Property or prohibit Developer from stopping any development after it has begun.

AGREEMENT:

NOW, THEREFORE in consideration of the above Recitals and the mutual promises contained herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement as if set forth herein in full.
2. **Location.** The Property is adjacent to the city limits of the City of Albany and within the Urban Growth Boundary for the City of Albany.
3. **Term.** The term of this Agreement shall commence on the date upon which it is approved by the Albany City Council and shall continue until superceded or terminated by the mutual agreement of the Parties or shall terminate upon rejection of the proposed annexation by the voters of the City. The Parties may enter into individual agreements, including, but not limited to, Development Agreements, at any future date, which agreements will supercede this Agreement as applied to the Property as a whole or to portions of the Property or individual phases of development, as specified in said future agreements.
4. **Definitions.** For purposes of this Agreement, specific terms shall be defined as follows:

- 4.1. *"Public Facilities."* Physical infrastructure necessary or beneficial to the development of real property in the City of Albany. Such facilities include, but are not limited to, streets, curbs, gutters, bridges, culverts, intersections, traffic signals, signage, ditches, piping, valves, pump stations, landscaping, trails, bicycle paths, parks, sewer, storm sewer, and/or water facilities.
- 4.2. *"Development."* The meaning prescribed for said term at Albany Municipal Code 20.22.010.
- 4.3. *"Developer."* Any person or legal entity having the right or responsibility to control the development of the Property. This term includes, without limitation, all owners of property proposed for development.
5. **Ballot.** The Property shall be proposed to the voters of the City of Albany for annexation subject to the terms of this Agreement.
6. **Developer Agrees / Waiver of Rights and Indemnification.** If Developer proceeds with development of the Property, Developer agrees that if the City determines, in the exercise of reasonable discretion, based on substantial evidence in the record, that Public Facilities are insufficient to support a proposed development, and there is a reasonable relationship between any condition or denial and said deficiency in Public Facilities, and the City therefore conditions or denies an application based on such a determination:
 - 6.1. Developer shall have no right to claim that such condition or denial constitutes a moratorium under ORS 197.505 to 197.540.
 - 6.2. Developer shall have no right to seek judicial or administrative relief including, but not limited to, claims for injunction or damages that may result from the delay or denial of development opportunities.
 - 6.3. Developer shall not have any claim under any present or future legislation, judicial determination, or Oregon Constitutional amendments that require local government to compensate a property owner for damages which result from governmental regulations which are deemed to constitute a complete or partial taking of such property.
 - 6.4. Developer shall not have any right to appeal said condition or denial or to seek any other form of judicial or administrative relief, on the grounds that it places a "disproportionate burden" on Developer. This waiver is intended to include, but not be limited to, claims that the disproportionate burden constitutes a partial or complete taking of Developer's property. This waiver shall relieve City of any requirement to make individualized findings that justify a condition on the proposed development or a denial of the proposed development, but the condition or denial must be directly related to a deficiency in Public Facilities caused or contributed to by the proposed development.
 - 6.5. Developer agrees to provide curb and gutter along the unimproved portion of the east side of Columbus Street between the bridge over Oak Creek to Ellingson Road, if requested by the City as part of the subdivision approval process, as long as these improvements can be made without additional right-of-way dedication from properties on the east side of Columbus Street.
 - 6.6. Developer shall not have any right to claims arising under or granted by any statutory or constitutional regulatory compensation or waiver provisions, including but not limited to Ballot Measure 37 (2004) or otherwise enacted after the date of this proceeding which would create a right of claim for compensation or waiver from City land use regulations that exist upon the effective date of the proceeding and which, by the approval of the proceeding, are then applicable to the property.
 - 6.7. None of the rights waived by Developer shall waive Developer's right to just compensation in the event that the City initiates eminent domain proceedings to acquire all or a part of Developer's property.

6.8. The Developer agrees to indemnify and hold harmless the City of Albany, its agents, officers, and employees, from any of the following claims including, but not limited to, the attorney's fees and other expenses incurred by the City resisting the following claims:

6.8.1. Any claim challenging the enforceability or binding nature of this Agreement, or any portion thereof;

6.8.2. Any judicial or administrative proceeding which is brought by Developer challenging the correctness or any action taken by the City which is authorized under the terms of this Agreement;

6.8.3. Any claim by any party challenging the correctness of the annexation and zoning process, including procedural errors or irregularities;

6.8.4. Any other proceeding of any kind or nature wherein Developer or its successors or assigns seeks damages or injunctive relief as a result of any City decision to deny, condition, or limit development activities.

7. **Developer Agrees.** If Developer proceeds with development of the Property, Developer agrees as follows:

7.1. ***Natural Resource Protection***

7.1.1. Developer agrees to protect riparian corridors and significant wetlands by providing a minimum 75-foot buffer along each side of natural streams to be measured from the top of the banks.

7.1.2. Developer agrees to preserve the significant grove of trees along Columbus Street.

7.2. ***Agricultural/Residential Buffer***

7.2.1. Developer agrees to provide a buffer between the residentially-zoned property within the Urban Growth Boundary and the farm use south of the Urban Growth Boundary. One acceptable approach to meeting this obligation would be for the Developer to provide a 20-foot easement along the rear setback of the lots abutting the Urban Growth Boundary, and a 105-foot easement located south of the Urban Growth Boundary.

7.3. ***Park Land***

7.3.1. Developer will hold an approximate five-acre site open for a neighborhood park to be developed by the City. The location, configuration, and access to the park site must be acceptable to the Parks & Recreation Director of the City of Albany. The City shall have a three-year option to buy such site from the date the annexation is proclaimed. This option will be offered to the City to purchase the site at no more than its current (pre-annexation) fair market value. This option is not assignable or transferable by the City.

8. **City Agrees.** The City, in consideration for the promises made by Developer, agrees as follows:

8.1. The City agrees to place the question of annexation before the voters;

8.2. There are currently sufficient Public Facilities available to annex the property into the City of Albany upon approval of the voters. This does not imply that available Public Facilities are sufficient for any particular development.

- 8.3. The City shall not impose a Local Improvement District or other financial obligation upon Developer unless it is determined that the Developer benefits from the proposed improvement(s).
 - 8.4. While the City's conditions or denials may place a disproportionate burden on the Developer to make Public Facilities improvements, any such conditions or denials shall be reasonably related to the Public Facilities needs which result from development on the Property. Notwithstanding the foregoing, both Parties agree that the Public Facilities needs of third parties or the public generally may also be a contributing factor to the Public Facilities needs which result from development on the Property. The needs of such third parties or the public shall not limit the City's discretion to impose conditions or denials on the Developer.
 - 8.5. The Property is currently designated on the City's Comprehensive Plan Map as Urban Residential Reserve (URR) and Open Space (OS). The portion of the property with a Comprehensive Plan Designation of Open Space (OS) must be zoned Open Space (OS) based on the *Plan Designation Zoning Matrix* in the Comprehensive Plan. For land with a Comprehensive Plan designation of URR at the time of annexation, there is a variety of zoning that is compatible with that designation. The zoning of the property within the URR Comprehensive Plan designation will be zoned RS-5, as requested by the Developer.
 - 8.6. Subject to the provisions of this Agreement, Developer has full entitlement to apply for development of all or any part of the Property and shall be entitled to the same consideration shown to similarly situated applicants.
9. **Contingency.** This Agreement is expressly contingent on (i) approval by the Albany City Council of the annexation proposal and this Annexation Agreement, and (ii) approval by the voters in accordance with Oregon law of such annexation proposal.

10. Miscellaneous.

- 10.1. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and permitted assigns and upon approval of the voters of the City of Albany, the terms of this Agreement shall be recorded in a form approved by the City so as to provide a record of this Agreement to run with the land described in the attached Exhibit A.
- 10.2. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person, other than the Parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.
- 10.3. **Further Assurances.** Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, in order to carry out the intent and accomplish the purposes of this Agreement.
- 10.3. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict-of-laws principles.
- 10.4. **Exhibits.** The Exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.
- 10.5. **Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect of the remaining provisions of this Agreement shall not in any way be impaired.

- 10.6. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreement, whether written or oral, among the Parties with respect to such subject matter.
- 10.7. **Execution of Document.** This document may be executed first by an authorized representative of the City of Albany. This agreement shall not be binding on any party until and unless it is executed by all of the named parties hereto. If this document is not fully executed and an executed original delivered to the Albany City Manager by March 16, 2005, then this agreement shall be void and the City will not place the question of annexation before the voters. In the further event that this agreement is not fully executed by March 16, 2005, and delivered to the City as called for above, all land use eligibility determinations shall also be void and of no further effect.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement.

PARTIES:

CITY OF ALBANY, OREGON

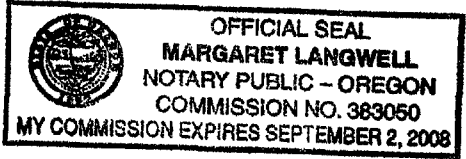
ACCEPTED BY: *Steve Bryant*
 Steve Bryant, City Manager

STATE OF Oregon)
 County of Linn) ss.
 City of Albany)

Personally appeared the above-named Steve Bryant and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this 15 day of March, 2005.

Margaret Langwell
 Notary Public for Oregon
 My Commission Expires: September 2, 2008

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Signed: _____
David K. Henshaw

STATE OF _____)
County of _____) ss.
City of _____)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this _____ day of _____, 2005.

Notary Public for Oregon
My Commission Expires: _____

Signed: _____
Michael A. Henshaw

STATE OF _____)
County of _____) ss.
City of _____)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this _____ day of _____, 2005.

Notary Public for Oregon
My Commission Expires: _____

Signed: _____
Sheri L. Neuschwander

STATE OF _____)
County of _____) ss.
City of _____)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this _____ day of _____, 2005.

Notary Public for Oregon
My Commission Expires: _____

Signed: _____
Jeanie King

STATE OF _____)
County of _____) ss.
City of _____)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this _____ day of _____, 2005.

Notary Public for Oregon
My Commission Expires: _____

Signed: _____
Julie Silver

STATE OF _____)
County of _____) ss.
City of _____)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this _____ day of _____, 2005.

Notary Public for Oregon
My Commission Expires: _____

Signed: _____
Dorothy Rubesh

STATE OF _____)
County of _____) ss.
City of _____)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this _____ day of _____, 2005.

Notary Public for Oregon
My Commission Expires: _____

Signed: _____
Steve Henshaw

STATE OF _____)
County of _____) ss.
City of _____)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this _____ day of _____, 2005.

Notary Public for Oregon
My Commission Expires: _____

Signed: _____
Joe Henshaw, nka Smith

STATE OF _____)
County of _____) ss.
City of _____)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this _____ day of _____, 2005.

Notary Public for Oregon
My Commission Expires: _____

Wellner Morey – Albany I, LLC

By: _____

Its: _____

STATE OF _____)
County of _____) ss.
City of _____)

Personally appeared the above-named _____ and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this _____ day of _____, 2005.

Notary Public for Oregon
My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION
FILE AN-06-04

A portion of that tract of land described in Deed Volume 1406, Page 834, recorded April 3, 2003, Linn County Deed Records, being a portion of the Robert Pentland D.L.C. No. 69, located in the southwest one-quarter of Section 20 and the northwest one-quarter of Section 29, Township 11 South, Range 3 West, Willamette Meridian, Linn County, Oregon, being more particularly described as follows:

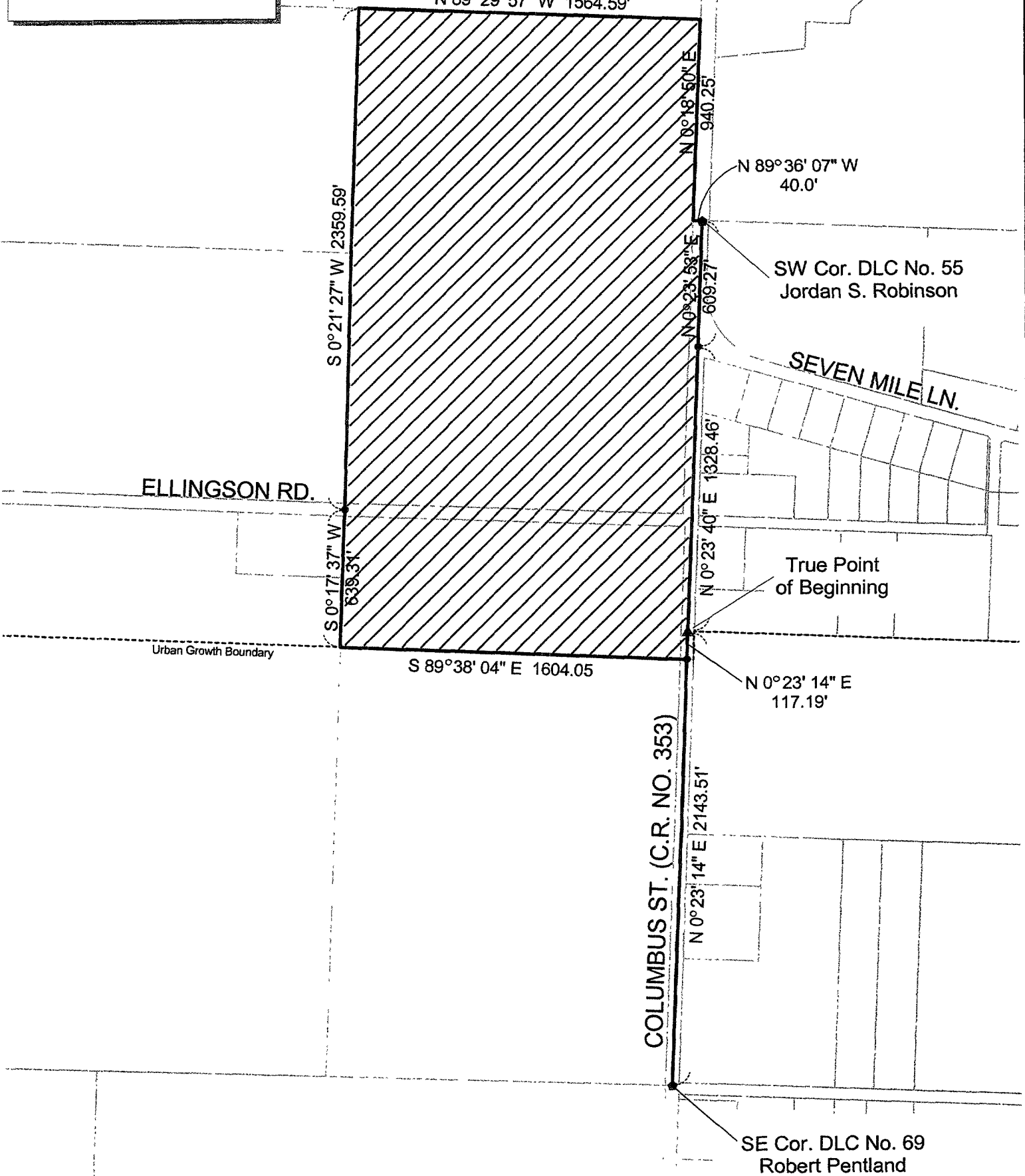
Commencing at a 3-1/4" aluminum disk marking the southeast corner of said Robert Pentland D.L.C. No. 69, said point also being on the centerline of Columbus Street (County Road No. 353); thence along said centerline N 0° 23' 14" E, 2143.51 feet to an angle point, said angle point also being the ***True Point of Beginning***; thence along said centerline N 0° 23' 40" E, 1328.46 feet to an angle point; thence continuing along said centerline N 0° 23' 53" E, 609.27 feet to the southwest corner of the Jordan S. Robinson D.L.C. No. 55; thence leaving said centerline N 89° 36' 07" W, 40.0 feet to the west right-of-way line of Columbus Street (County Road No. 353); thence along said west right-of-way line N 0° 18' 50" E, 940.25 feet to the southerly line of that tract of land described as Tax Lot 1300 of tax map 11-3W-20 in Deed Volume 1049, Pages 46-62, recorded July 19, 1999, Linn County Deed Records; thence along said southerly line N 89° 29' 57" W, 1564.59 feet to the easterly line of that tract of land described in Deed Volume 781, Pages 462-463, recorded January 3, 1996, Linn County Deed Records; thence along said easterly line and the easterly line of that tract of land described in Deed Volume 1431, Pages 601-602, recorded May 29, 2003, Linn County Deed Records, S 0° 21' 27" W, 2359.59 feet to the centerline of Ellingson Road (County Road No. 350); thence southerly along the easterly line of Partition Plat No. 2004-54, recorded as County Survey 23891, Linn County Survey Records, S 0° 17' 37" W, 639.31 feet to the City of Albany's Urban Growth Boundary; thence along said Urban Growth Boundary S 89° 38' 04" E, 1604.05 feet to the centerline of Columbus Street (County Road No. 353); thence along said centerline N 0° 23' 14" E, 117.19 feet to the ***True Point of Beginning***.

Containing 109.6 acres, more or less, including right-of-way.

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Legal Description Map
Ellingson & Columbus
AN-06-04

EXHIBIT B



1"=600'