

AN ORDINANCE AMENDING ORDINANCE NO. 4447, WHICH ADOPTED THE CITY OF ALBANY COMPREHENSIVE PLAN MAP; AMENDING ORDINANCE 4441, WHICH ADOPTED THE CITY OF ALBANY ZONING MAP; ADOPTING FINDINGS; AND DECLARING AN EMERGENCY FOR PROPERTIES LOCATED ON THE EAST SIDE OF OAK STREET, SOUTH OF 9TH AVENUE.

WHEREAS, the Albany Planning Commission recommended approval of the proposed map amendments, based on evidence presented in the staff report and testimony presented at the February 20, 2006 public hearing for City of Albany File Nos. CP-02-05 and ZC-02-05; and

WHEREAS, the Albany City Council held a public hearing about the proposed map amendments on March 22, 2006; and held first reading of the ordinance; and

WHEREAS, the Albany City Council held second reading of the ordinance on April 12, 2006.

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

Section 1: The Findings of Fact, Conclusions, and Conditions included in the Staff Report attached as Exhibit "A" are hereby adopted in support of this decision. (Exhibit "B" is the map referenced in Section 4 and Section 5 below.)

Section 2: The Albany Comprehensive Plan Map designation of the properties described in Exhibits "C-1" and "C-2" is hereby amended from Residential Medium Density to General Commercial.

Section 3: The Zoning Map designation of the properties described in Exhibits "C-1" and "C-2" is hereby amended from RM-5 (Residential Limited Multiple Family) to CC (Community Commercial).

Section 4: A copy of the map showing the amendments to the Comprehensive Plan Map and Zoning Map shall be filed in the Office of the City Clerk of the City of Albany and the changes shall be made on the official City of Albany Comprehensive Plan Map and Zoning Map.

Section 5: A copy of the legal description of the affected property and the map showing the amendment to the Zoning Map shall be filed with the Linn County Assessor's Office within 90 days after the effective date of this ordinance.

IT IS HEREBY adjudged and declared that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany, and an emergency is hereby declared to exist, and this Ordinance shall take effect and be in full force and effect when passed by the City Council and approved by the Mayor.

Passed by Council: April 12, 2006

Approved by Mayor: April 12, 2006

Effective Date: April 12, 2006

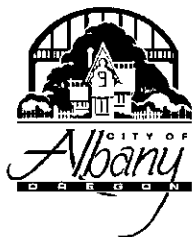


Mayor

ATTEST:



City Clerk



Community Development Department

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

Phone: (541) 917-7550 Facsimile: (541) 917-7598
www.cityofalbany.net

STAFF REPORT Comprehensive Plan Map Amendment and Zoning Map Amendment

<u>HEARING BODY</u>	CITY COUNCIL
<u>HEARING DATE</u>	Wednesday, March 22, 2006
<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 14, 2006
FILES:	CP-02-05 and ZC-02-05
TYPES OF APPLICATIONS:	<ol style="list-style-type: none"> 1) Comprehensive Plan Map amendment that would change the designation of 7.5 acres of property from Residential Medium Density to General Commercial. 2) Zoning Map amendment that would change the designation of the same 7.5 acres of property from RM-5 (Residential Limited Multiple Family) to CC (Community Commercial).
REVIEW BODY:	Planning Commission and City Council Staff Report prepared by: Don Donovan, Senior Planner
PROPERTY OWNERS/ APPLICANTS:	J. Conser and Sons LLC; 33556 Columbus Street SE; Albany, OR 97321 Albany Boys and Girls Club; P.O. Box 619; Albany, OR 97321
APPLICANT REP:	Dave Dodson; Willamette Valley Planning; 350 NW Polk Avenue; Corvallis, OR 97330
ADDRESSES/LOCATIONS:	1105 and 1111 Oak Street SE
MAP/TAX LOTS:	Linn County Assessor's Map No. 11S-3W-8BC; Tax Lots 1201, 1202, 1300, and part of 1400
ZONING:	RM-5 (Residential Limited Multiple Family)
TOTAL LAND AREA:	7.5 acres
EXISTING LAND USE:	There are apartments and a single-family house on this property now. These buildings will most likely be removed in the future when a new development is built on the property.
NEIGHBORHOOD:	Jackson Hill

SURROUNDING ZONING: North: CC (Community Commercial)
South: RM-5 (Residential Limited Multiple Family)
East: RM-5
West: RM-5

SURROUNDING USES: North: Vacant land
South: Vacant land
East: Mobile home park across Periwinkle Creek
West: Single-family houses across Oak Street

PRIOR HISTORY: No other land use applications for this property have been reviewed by the Planning Division.

NOTICE INFORMATION

The applicants held a neighborhood meeting to present their proposal to owners of surrounding properties on July 26, 2005.

A Notice of Public Hearing was mailed to surrounding property owners on February 9, 2006. The site was posted on February 10, 2006, with a sign that advertises the public hearing.

PLANNING COMMISSION AND STAFF RECOMMENDATIONS

The Planning Commission held a public hearing on these applications on February 20, 2006. They unanimously recommended that the City Council approve the applications.

CITY COUNCIL DECISIONS

[NOTE TO PLANNING COMMISSION: CHOOSE ONE FROM THE MOTIONS LISTED BELOW.]

MOTION TO RECOMMEND APPROVAL

If no new evidence is presented at the public hearing, the City Council may adopt the ordinance that will approve the applications based on the findings and conclusions of the staff report.

I MOVE that the City Council adopt the ordinance that will approve the Comprehensive Plan Map amendment that would change the designation of 7.5 acres of property from Residential Medium Density to General Commercial, and the Zoning Map amendment that would change the designation of the same 7.5 acres of property from RM-5 (Residential Limited Multiple Family) to CC (Community Commercial). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

OR

MOTION TO DIRECT STAFF TO PREPARE ADDITIONAL FINDINGS FOR APPROVAL

If new information is presented at the public hearing or if the City Council believes additional findings are needed to address issues in the staff report, the Council may direct staff to prepare additional findings for approval for its review at a future meeting. If those findings are found to be satisfactory, the Council would then adopt the ordinance that will approve the applications based on the staff report, the new information, and the additional findings.

I MOVE that the City Council direct staff to prepare additional findings for the Comprehensive Plan Map amendment that would change the designation of 7.5 acres of property from Residential Medium Density to General Commercial, and the Zoning Map amendment that would change the designation of the same 7.5 acres of property from RM-5 (Residential Limited Multiple Family) to CC (Community Commercial). These findings will address [Note to City Council: Insert appropriate review criteria where you feel additional findings are needed]. The findings will be brought back to the Council for consideration at a future meeting.

OR

MOTION TO DIRECT STAFF TO PREPARE FINDINGS FOR DENIAL

If new information is presented at the public hearing, the City Council may direct staff to prepare findings for denial for its review at a future meeting. If those findings are found to be satisfactory, the Council would then deny the application based on the staff report, the testimony at the public hearing, and the additional findings.

I MOVE that the City Council direct staff to prepare findings for denial of Comprehensive Plan Map amendment that would change the designation of 7.5 acres of property from Residential Medium Density to General Commercial, and the Zoning Map amendment that would change the designation of the same 7.5 acres of property from RM-5 (Residential Limited Multiple Family) to CC (Community Commercial). [Note to City Council: Insert reasons for denial.] The findings will be brought back to the City Council for consideration at a future meeting.

APPEALS

Within five days of the City Council's final action on these applications, the Community Development Director will provide written notice of the decisions to the applicant and any other parties entitled to notice. A City Council decision can be appealed to the Oregon Land Use Board of Appeals (LUBA) if a person with standing files a Notice of Intent to Appeal within 21 days of the date the decision is reduced to writing and bears the necessary signatures of the decision makers.

U:\Community Development\Planning\Current\2005\05cp02spc dd.doc

DESCRIPTION AND PURPOSE OF THE APPLICATIONS

J. Conser and Sons LLC submitted a Comprehensive Plan Map amendment application and a Zoning Map amendment application. The applications propose to change the map designations of three separate parcels of land and part of a fourth parcel. All four parcels are currently designated on the maps for residential multiple-family use. The applications propose to change the map designations to allow commercial use of the properties.

J. Conser and Sons LLC owns three of the parcels. The Boys and Girls Club of Albany owns the fourth parcel. The applications propose to change the designation of only part of the parcel owned by the Boys and Girls Club. The three parcels and part of the fourth parcel together total 7.5 acres.

There is an apartment complex on one of the parcels and a single-family house on one of the other parcels owned by the Consers. The rest of the property is vacant. In 2001, the City Council approved three baseball/soccer fields, a play area, a concession stand, restrooms, and a picnic shelter to be built on the Albany Boys and Girls Club property. The project was to be constructed in two phases. Part of the property has been filled. The ball fields and related facilities have not been built.

A condition of approval of the ball fields and related facilities requires that 15 parking spaces, in addition to the number shown on the Site Plan, be constructed. The area of the Boys and Girls Club property that is proposed to be changed from residential to commercial use is shown on the approved Site Plan for "future parking." This is the most likely area for the 15 additional parking spaces that were required. Parking lots are allowed on commercial land.

In written information submitted with the application, the applicants say that the Consers were approached by a commercial developer who is interested in acquiring the property for development of a retail center with a medium size department store. The applicants say that the developer is having a hard time finding commercially zoned land that is large enough for a medium size department store. The purpose of these applications is to make available the Conser and Boys and Girls Club properties to combine with the existing 5 acres of commercial land to the north, thereby creating an area of commercial land that will be about 12 acres.

The Planning Commission held a public hearing on these applications on February 20, 2006. Following the public hearing, the Planning Commission unanimously recommended that the City Council approve the applications.

STAFF ANALYSIS

Comprehensive Plan Map Amendment File CP-01-05

The Albany Development Code includes the following review criteria which must be met for this quasi-judicial map amendment to be approved. Code criteria are written in *bold italics* and are followed by findings and conclusions.

- (1) *The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance has been found to be more supportive of the Comprehensive Plan as a whole than the old designation.*

FINDINGS OF FACT

REQUESTED DESIGNATION OF THE PROPERTY

- 1.1 The current Comprehensive Plan Map designation of the property is Residential Medium Density.

The Residential Medium Density designation, "Identifies areas suitable for multiple family and attached single family development at densities ranging from 10 to 20 units per acre. Manufactured homes may be sited on individual lots with Conditional Use Permit approval, and manufactured home parks and

subdivisions are permitted with Site Plan Review. (Comprehensive Plan, pages 9-11.)

- 1.2 The requested designation of the property is General Commercial. The General Commercial designation "Identifies areas from community services to regional commercial establishments, suitable for a wide range of retail sales and service establishments. Aside from recognition of existing commercial corridors, new commercial areas will develop under design guidelines to avoid the continuance of 'strip commercial' development in order to more efficiently serve the shopping needs of the community and region." (Comprehensive Plan, pages 9-12.)

CITY OBLIGATION IN REGARD TO GOALS AND POLICIES

- 1.3 The Comprehensive Plan defines a goal as, "a general statement indicating a desired end, or the direction the City will follow to achieve that end."

The Comprehensive Plan describes the City's obligation in regard to goals as follows: "The City cannot take action which opposes a goal statement unless: 1) It is taking action which clearly supports another goal, 2) There are findings indicating the goal being supported takes precedence (in the particular case) over the goal being opposed." (Comprehensive Plan, page ii)

- 1.4 The Comprehensive Plan (page 3) defines a policy as, "a statement identifying a course of action or City position."

The Comprehensive Plan describes the City's obligation in regard to policies as follows: "The City must follow relevant policy statements in making a land use decision . . . [I]n the instance where specific Plan policies appear to be conflicting, then the City shall seek solutions which maximize each applicable policy objective within the overall content of the Comprehensive Plan and in a manner consistent with the statewide goals. In balancing and weighing those statements, the City can refer to general categories of policies and does not have to respond to each applicable policy. Also, in this weighing process, the City shall consider whether the policy contains mandatory language (e.g., shall, require) or more discretionary language (e.g., may, encourage)." (Comprehensive Plan, pages ii and iii)

RELEVANT GOALS AND POLICIES

- 1.5 The following Comprehensive Plan goals and policies are relevant in considering whether the proposed General Commercial designation is more supportive of the Comprehensive Plan, on balance, than the current Residential Medium Density designation. Goals and policies are listed below in ***bold italic*** print followed by findings of fact and conclusions.

GOAL 1: CITIZEN INVOLVEMENT

- 1.6 ***Goal: Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process.***

Policy 2: When making land use and other planning decisions:

- a. ***Actively seek input from all points of view from citizens and agencies and assure that interested parties from all areas of the Urban Growth Boundary have the opportunity to participate.***
- b. ***Utilize all criteria relevant to the issue.***
- c. ***Ensure the long-range interests of the general public are considered.***
- d. ***Give particular attention to input provided by the public.***
- e. ***Where opposing viewpoints are expressed, attempt to reach consensus where possible.***

Policy 3: Involve the general public in the use, evaluation, and periodic review and update of the Albany Comprehensive Plan.

Policy 4: Ensure information is made available to the public concerning development regulations, land use, and other planning matters, including ways they can effectively participate in the planning process.

The City of Albany's Comprehensive Plan and Development Code provide requirements for citizen involvement in the decision-making process for Comprehensive Plan Map Amendments. Comprehensive Plan Map Amendments are processed as Type IV land use decisions with notice to affected parties, including surrounding property owners and affected government agencies. Public hearings before the Planning Commission and City Council are held. Notice of the public hearings is posted on the subject property, and at other public locations in Albany. The City's Comprehensive Plan and Development Code, including the processes for citizen involvement, have been acknowledged by the Land Conservation and Development Commission as consistent with statewide planning goals.

People who are notified of the public hearing are invited to submit comments or questions about the application prior to the hearing or at the hearing. Review of the application is based on the review criteria listed in the Development Code. The review criteria for Comprehensive Plan Map amendments ask about the long- and short-term impacts of the proposed changes and about the public need for the change. These questions are discussed under Goal 2 below. The purpose of the public hearing is to provide the opportunity for people to express their opinion about the proposed changes, and where opposing viewpoints are expressed, to try to reach consensus. The Planning Commission and City Council facilitate this process at the public hearings.

GOAL 2: LAND USE PLANNING - UPDATING AND AMENDING THE COMPREHENSIVE PLAN

1.7 ***Goal: To "Undertake Periodic Review and Update of the Albany Comprehensive Plan to ensure the Plan:***

- 1. Remains current and responsive to community needs.***
- 2. Retains long-range reliability.***
- 3. Incorporates the most recent and reliable information.***
- 4. Remains consistent with state laws and administrative rules.***

Policy 2: Base approval of Comprehensive Plan amendments upon consideration of the following:

a. Conformance with goals and policies of the Plan.

How this application conforms to the goals and policies of the Comprehensive Plan is the subject of the discussion under this review criterion.

b. Citizen review and comment

A Comprehensive Plan Map amendment application is processed as a Type IV land use decision. The City's Development Code requires notification to surrounding property owners that this Comprehensive Plan Map Amendment Application has been received and that there will be public hearings on the application. Signs advertising the public hearing must also be posted on the property [ADC 1.440 and 1.410]. A Notice of Public Hearing was mailed to surrounding property owners and the property was posted with the required signs.

c. Applicable Statewide Planning Goals

How the proposed changes comply with the Statewide Planning Goals is discussed under Review Criterion (4) below.

d. Input from affected governmental units and other agencies

Local utility providers may have an interest in the proposed change in the land use designation of this property. Local utility companies were notified of the proposed map amendments.

Pacific Boulevard is a State highway (Highway 99E) under the jurisdiction of the Oregon Department of Transportation (ODOT). ODOT was notified of the proposed map amendments.

ORS 197.610 requires the City to notify the Oregon Department of Land Conservation and Development (DLCD) of any proposed changes to the Comprehensive Plan Map and/or Zoning Map. Notice was provided to DLCD.

- e. Short - and long-term impacts of the proposed change.*
- f. Demonstration of public need for the change.*
- g. Demonstration that the proposed amendment will best meet the identified public need versus other available alternatives.*
- h. Any additional information as required by the Planning Commission and City Council.*

The short-term and long-term impacts of the proposed change, the public need for the change, and other available alternatives are discussed in the findings below.

GOAL 5: OPEN SPACES, SCENIC & HISTORIC AREAS, & NATURAL RESOURCES

VEGETATION AND WILDLIFE HABITAT

- 1.8 *Goal: Ensure vegetation is and remains an integral part of Albany's environment.*

Policy 1: Protect existing vegetation, which possesses significant environmental, wildlife habitat, and aesthetic qualities, particularly along the Santiam Canal and the Willamette and Calapooia Rivers, their tributaries, and associated floodplains and drainageways.

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

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

Comprehensive Plan Plate 3: Natural Vegetation and Wildlife Habitat does not show any areas of vegetation or wildlife habitat on the property. The property has a variety of types of trees on it, including oak trees.

There are existing apartment buildings on part of the property now. If the apartments were to remain on the property, trees would not have to be removed on this part of the property. However, the Consers submitted building permit applications for new development on the property before they submitted this Zoning Map amendment application. Construction of the new development would have required the removal of some trees.

Either residential or commercial development on the property may require removal of trees. The uniqueness, size, age, and other characteristics of the trees are considered at the time development is proposed on the property.

GOAL 5: WETLAND RESOURCES

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

Comprehensive Plan Plate 6: Wetland Sites does not show any wetlands on the property. The National Wetlands Inventory map does not show wetlands on the property. The City does not have a local wetlands inventory for this area. The applicants had Patrick Thompson, a wetlands scientist, do a wetlands delineation for the property. The delineation is dated July 2003. The delineation found four small wetlands on the property. Together these wetlands equal 0.43 acres. The delineation refers to

“Pringle Creek” instead of Periwinkle Creek. Staff suggested that the applicants have Mr. Thompson correct this error in the delineation, but this has apparently not been done yet.

The wetlands were found on the vacant areas of the property. The area of the property where the existing apartments and the existing house are located were not include in the wetlands delineation.

The applicants attached a copy of a wetlands removal-fill permit that has been issued by the Oregon Department of State Lands (DSL). The permit apparently allows fill and excavation in the wetlands on the property. The permit expires on July 18, 2006.

DSL regulates wetlands in Oregon. Either residential or commercial development on the property may require permits from DSL. The applicants will be required to comply with DSL regulations and permit requirements when the property is developed.

GOAL 9: ECONOMY

- 1.10 Goal 9, Comprehensive Plan Economic Development goals and policies, are organized under headings Albany’s Economy, Land Use, Public Infrastructure, and Natural Resources and Environment.

Albany’s Economy

- 1.11 **Goal 1:** *Diversify the economic base in the Albany area and strengthen the area’s role as a regional economic center.*

The proposed General Commercial Comprehensive Plan designation will provide the opportunity to zone this property for a wide range of commercial uses. If Albany is to be a regional economic center, the city must attract businesses that serve the region.

The applicants have submitted a concurrent zoning map amendment application to zone the property CC (Community Commercial). The CC designation will allow a variety of commercial uses on the property. ADC 4.020(3) describes Community Commercial zones as suitable for a diversity of small to medium-scale businesses, services and sites mostly located on arterial streets and highways.

Land Use

- 1.12 **Goal 1:** *Ensure an adequate supply of appropriately zoned land to provide for the full range of economic development opportunities in Albany, including commercial, professional, and industrial development.*

Policy 1, General: *Provide opportunities to develop the full range of commercial, industrial, and professional services to meet the needs of Albany’s residents and others.*

Policy 3, General: *Designate enough land in a variety of parcel sizes and locations to meet future employment and commercial needs.*

- 1.13 The proposed Comprehensive Plan Map amendment application would change the map designations of 7.5 acres of land from Residential Medium Density to General Commercial. A concurrent application proposes to change the Zoning Map designation of the same land from RM-5 (Residential Limited Multiple Family) to CC (Community Commercial).

The goal that is the subject of this section of the Staff Report requires that the City ensure an adequate supply of appropriately zoned land to provide for the full range of economic development opportunities in Albany, including commercial development. The proposed map changes would provide an additional 7.5 acres of commercial land that could be combined with an adjacent 5 acres to create a 12-acre commercial site.

- 1.14 In general, the basis for determining whether there is an adequate supply of various types of land is data included in the Comprehensive Plan. The Comprehensive Plan is updated periodically.

1.15 Demand for Commercial Land in Albany – the Economic Opportunities Analysis

The City has been reviewing the Comprehensive Plan as part of a state-mandated “periodic review.” As part of periodic review, ECONorthwest did an *Albany Economic Opportunities Analysis* (EOA), dated February 2002. The EOA was adopted by the City Council on October 23, 2002 (Ordinance 5543), as a background document for the Comprehensive Plan update.

EOA, Table 3-11, shows that there are 325 acres of vacant and redevelopable commercial land in the Albany Urban Growth Boundary (UGB). The EOA projects that there will be demand for 76 acres of buildable commercial land between 1999 and 2020. There is a surplus of 249 acres of commercial land in the UGB. (EOA, page 3-9)

But the EOA notes that, “when parcel size is a factor, the surplus of buildable land may actually be much less, due to very few vacant parcels larger than one or five acres in most commercial zones.” (EOA, page 3-9) [Emphasis added.]

“While Albany has a lot of vacant land, the location and size of these parcels may not be suitable to meet the needs of businesses and industries... A more detailed look at the data by parcel in Appendix A shows there are very few parcels over five acres zoned for commercial uses.” (EOA, page 4-4)

1.16 Supply of Commercial Land in Albany

The EOA finds that there are 10 vacant or redevelopable commercial parcels larger than 5 acres in the UGB. (EOA, Table 3-10, page 3-8)

The inventory did not take into consideration that development of some of the parcels in the inventory might be constrained by environmental factors, such as wetlands, floodplains, and riparian corridors. The inventory did not take into consideration that government and churches own some of the parcels in the inventory, and so the parcels are unlikely to be developed for commercial uses.

The EOA inventory of vacant and redevelopable land was done in 2000. Three of the vacant parcels shown in the inventory are shown zoned Heavy Commercial. The Heavy Commercial zoning designation does not exist any more. It is likely that the zoning of the Heavy Commercial parcels was changed to Light Industrial, because the uses allowed in Heavy Commercial were closer to the uses allowed in Light Industrial zones, than the other commercial zones. A Regional Commercial zone has been added since the EOA inventory was done. The zoning of some existing CC parcels was changed to RC. No new commercial parcels were designated RC. A new Mixed Use Commercial zone was added and new MUC parcels were designated. The EOA inventory is out-of-date.

1.17 The City's Inventory of Commercial Land

The City has a new inventory of vacant and redevelopable commercial parcels. The inventory was done in July 2005 using the City's Geographic Information Services databases.

The City's inventory of vacant commercial land shows that there are eight parcels larger than 5 acres in the City limits of Albany. The parcels are zoned either RC (Regional Commercial), CC (Community Commercial), or MUC (Mixed Use Commercial). Each of these designations allows a variety of commercial uses. There are three parcels larger than five acres designated on the Comprehensive Plan Map outside the City limits in the UGB for commercial use. The largest of these parcels is about 7.5 acres, and the parcels area designated Light Commercial. CC zoning is not compatible with the Light Commercial zoning designation. The sewer and water lines that must be extended to serve these parcels are about 2,000 feet away.

1.18 Status of the City's Inventory

In recent decisions, LUBA and the Court of Appeals have decided that cities cannot use new data on vacant land (buildable lands inventories) unless they have been adopted into the Comprehensive Plan.

So, we cannot use our new inventory of buildable commercial land, but staff did want to include a reference to it here as a reality check on how the EOA numbers compare to the new, more up to date, inventory. The EOA inventory finds 8 vacant or redevelopable parcels larger than 5 acres. CH parcels have been deleted from the inventory, and new mixed use commercial parcels have been added to the inventory since the EOA was done.

The City's inventory finds 13 commercial parcels larger than 5 acres. The City's inventory finds only three parcels larger than 10 acres. Two of the parcels are in mixed use commercial (MUC) zoning districts, where the size of building footprints is limited to 20,000 square feet, except when a grocery store occupies part of the building. If a grocery store occupies at least 50 percent of the building, the building may be up to 80,000 square feet. The only commercial property larger than 10 acres that does not have this limit is the Epping property (also known as the "piano property") on Pacific Boulevard near 53rd Avenue (zone RC).

1.19 ***Policy 1, Commercial: The size and type of future commercial sites should be proportional to the area to be served and located so as to be easily accessible by the service area. Approvals of commercial sites may be based on studies requested by the City that assess public need and impacts on competing commercial areas, traffic, and other public services.***

1.20 Analysis of Demand and Supply of Retail Land in Albany

The applicants submitted an "Analysis of Demand and Supply of Retail Land in Albany" in support of the Comprehensive Plan Map and Zoning Map amendment applications. The analysis was done by EcoNorthwest. It's dated October 7, 2005.

The analysis evaluates whether there is a market for a 70,000 square foot department store on the property. (The application says a potential developer has contacted the property owner about constructing a department store on the property.)

If the designation of the Conser property and part of the Boys and Girls Club property are changed to allow commercial development, and these properties are combined with the property to the north, together they will provide about 12 acres of commercial land. The property would be large enough for about 130,000 square feet of commercial development, using a typical building square footage to land ratio of 0.25. (ECONorthwest in City of Albany File CP-01-03.) A recent example is the shopping center on Hickory Street in North Albany that was approved in May 2005. The shopping center will have about

111,000 square feet of building area in ten buildings on 13.5 acres. The maximum building footprint in CC zoning districts is 100,000 square feet.

A department store would have a regional market, so the analysis uses Linn and Benton County as the market area for analysis of demand for regional retail development in Albany. The analysis focuses on the demand for goods typically sold in retail stores with a regional market: clothing, electronics, reading materials, appliances, sporting goods, and furniture. Excluded from the analysis are products that are typically not sold in department stores: groceries, personal care and health products, building materials, garden supplies, motor vehicles, and gasoline.

The analysis estimates the demand in Linn and Benton County for the specified goods. The analysis finds that there is substantial demand. The next question is how much of the demand is currently being met by retailers in Linn and Benton County. The analysis finds that residents of Linn and Benton County spend about \$600 million a year on the specified goods, but that there are sales by Linn and Benton County retailers of just \$460 million on these goods. The analysis concludes that about \$140 million in sales are "leaking" out of the two-county region. The analysis goes on to qualify these conclusions based on the limitations of the data that is available and the way it is aggregated, but concludes that the level of retail leakage suggests that there is an opportunity for retail development in Albany that could capture these sales.

The analysis shows that the largest amount of leakage appears to be for clothing, electronics, appliances, furniture, and home furnishings. Expected population growth will add to the demand for retail development.

The analysis acknowledges that it is unlikely that retailers in the two-county region will ever capture all of the expenditures by its residents. The study concludes, nevertheless, that if the City of Albany wants to allow or encourage retail development to further its goals for economic development and urban revitalization, and for the economic and fiscal benefits of that development, then it must maintain an inventory of buildable sites to allow this development to occur.

1.21 Staff's Response to the Analysis

Planning Division staff reviewed the analysis and provided a few comments to the applicants in a letter dated October 31, 2005. The letter began by saying that on the whole, staff agrees with the findings and conclusions of the analysis. Staff was concerned at first with the assumption in the analysis concentrated too much on the market for a department store. A department store is not proposed on the property. Even if it was, the City would not consider that particular development in reviewing the applications. It is generally necessary to consider the range of types of uses that could be developed on the property. It is necessary to do this, even if a specific development was proposed, because there is no guarantee a particular development will be built if the map designations of the property are changed. It is not uncommon that a project someone thinks they will build does not get built for one reason or another. The City does not condition map amendments on building a particular development.

After further thought, staff concluded that what the analysis does is identify a commercial market segment for which there is unmet demand. The market segment is "goods typically sold in department stores." These goods are "sold in retail stores with a regional market." These goods include clothing, electronics, reading materials, appliances, sporting goods, and furniture.

Staff also had some concern about the fact that the analysis identifies goods with a regional market as the segment that would be used to establish the trade area for development on the Conser property. The proposed zoning designation is CC (Community Commercial), not RC (Regional Commercial). But we concluded that all of the goods used in the analysis can be sold in CC zoning districts, so it is appropriate to consider the market for these goods.

Staff had one suggestion for the applicants. The analysis finds that the data “suggests that there is \$140 million of expenditures by residents of Benton and Linn County that are ‘leaking’ out of the two-county region.” And that, “despite these issues, the level of retail leakage suggests that there is an opportunity for retail development in Albany that could capture these sales.” (Analysis, page 4)

The analysis observes that “the presence of retail leakage alone does not automatically mean that demand for retail development exists,” but concludes that, “the bottom line of the analysis is this: there is, and will be, opportunities for retail development that will keep more of resident’s expenditures in the region.”

Staff suggested that the applicants estimate how much of the unmet demand (leakage) in the trade area can be captured by commercial development in Albany and the amount of land needed for commercial development that would capture this demand. Albany would be competing with other cities in Linn and Benton County to capture sales that leak out of the region.

1.22 Applicant’s Response to Staff Comments

In a letter dated November 11, 2005, EcoNorthwest responded to staff’s comments. The letter correctly notes that the goods typically sold in department stores (such as clothing, electronics, and appliances) can also be sold in smaller specialty stores, which are allowed in CC zoning districts. EcoNorthwest believes it is sufficient to show that there is a market for these goods in the Linn and Benton County region to establish that there is a market for commercial development on the Conser property. Staff agrees.

EcoNorthwest also addressed staff’s suggestion that they estimate the amount of retail leakage that could be captured by commercial development in Albany, and the resulting amount of land needed for commercial development. The letter notes the difficulties that arise in trying to do this estimate. For example, there are no statistics available that report average capture of retail sales leakage by new stores. Estimates used in market analyses that EcoNorthwest examined are almost always assumptions. Anything more empirical is typically proprietary information held by large chain stores that they use in their own market analyses. Staff is aware of these constraints on the ability to estimate a capture rate. In the comments provided to the applicants, staff acknowledged that, “the best we may be able to do in this circumstance is an educated guess and you may need to further qualify your conclusions.”

EcoNorthwest assumed a 5 percent capture rate and concluded a commercial development of about 106,000 square feet on about 7.4 acres would capture 5 percent of the leakage identified in the original analysis. They used 5 percent because it is relatively low and seems achievable.

[Note that the analysis finds that 7.4 acres of commercial land would be needed, not 7.4 acres of land in addition to what we already have. The EOA finds that we have plenty of land to accommodate commercial development. It is a lack of large commercial parcels that may be the problem. The EcoNorthwest analysis acknowledges that the goods specified in their analysis are typically sold in department stores, they may also be sold in smaller specialty stores that could also be built in the CC zone. (Response, page 1.) Large parcels are not necessarily needed to capture the leakage identified in the analysis. But the large scale commercial developments that we have seen in Albany have been in the range of 100,000 square feet on 10 acres. For example, Home Depot, Costco, and the new North Albany Village Center.]

1.23 *Goal 4: Promote infill development and redevelopment throughout the City.*

The parcels for which the Comprehensive Plan Map amendment is proposed are located on the south side of 9th Avenue (State Highway 99E) just east of Oak Street. The properties to the south, east, and west of the properties are all developed.

The Comprehensive Plan does not include a definition of “infill development,” but infill, as typically used in land use planning, means the development of land that has at least some development on surrounding properties. The subject property meets this definition.

The Comprehensive Plan does not include a definition of “redevelopment,” but redevelopment, as typically used in land use planning, means removing existing development on land and building something new. Two of the parcels owned by J. Conser and Sons LLC have buildings on them.

The buildings on the two parcels are apartments and a single-family house. The buildings are not suitable for commercial use. It is fairly certain that the buildings will be removed to redevelop the property with commercial buildings if the map amendments are approved.

The applicants point out that the property to the north, on the south side of 9th Avenue, is within the Central Albany Revitalization Area (CARA). CARA is an urban renewal area within the City. The urban renewal area was created to encourage redevelopment of underutilized and/or blighted properties. The applicants observe that if the map designations of the Conser property are changed to commercial, and the property is combined with the property to the north, it will allow the Conser property to be used for parking for a large commercial development. More buildings can be constructed on the property in the

CARA district, thereby creating more value in the district. This will generate additional tax revenue that can be reinvested in the district.

1.24 ***Goal 5: Improve community appearance and establish attractive gateways into Albany and visually appealing highway corridors.***

The apartments on the property were built in about 1973, according to the applicants. The landscaping on the property does not meet today’s standards. When the property is redeveloped, today’s landscape requirements must be met.

1.25 ***Policy 2, General: Encourage land use patterns and development plans that take advantage of density and location to reduce the need for travel and dependency on the private automobile, facilitate energy-efficient public transit systems, and permit building configurations that increase energy efficiency.***

The property to the north of the property where the map changes are proposed is zoned CC (Community Commercial) now. The property is about 5 acres. The property is wider than it is deep. This is not an ideal configuration or size for a large commercial development.

The property to the north has frontage on 9th Avenue. Ninth Avenue is the eastbound half of the one-way street couplet that includes 9th Avenue and Pacific Boulevard. Both streets are part of the State highway system.

If the Conser property and the property to the north are made available as one parcel, a development on the property will have frontage on 9th Avenue. The location of the property on a busy State highway makes it an ideal location for shopping. People are on the street anyway, and will not have to drive out of their way to patronize the businesses on the property. A larger parcel of land (about 12 acres) will provide the opportunity to develop about 130,000 square feet of commercial building space.

There are residential neighborhoods on both sides of the Conser property, and the property to the south is zoned for residential development. Commercial development on the Conser property and the property to the north will provide shopping opportunities nearby for the people that live in the adjacent neighborhoods.

Ninth Avenue is on Albany Transit routes 2 and 4.

- 1.26 ***Policy 5, General: Provide development opportunities for large-scale industrial and commercial development and for people to live near activity centers, particularly their place of employment.***

If the 7.5 acres of property that is the subject of this application is changed to commercial, and they are combined with the two commercial properties to the north, a 12-acre parcel of commercial property will be created. This is enough land to develop up to about 130,000 square feet of commercial space – a large-scale commercial development in proximity to the surrounding residential neighborhoods.

- 1.27 ***Policy 7, General: Consider infill and redevelopment of already serviced vacant and underdeveloped land before designating additional land for industrial and commercial uses.***

As discussed under Finding 1.23 above, development on this property would be considered infill development. As discussed under Finding 1.29 below, the property has services such as water and sewer. The property would most likely be redeveloped if the designation of the property were changed from industrial to commercial.

- 1.28 ***Policy 2, Commercial: Discourage future strip commercial development and promote clustered commercial opportunities and the infilling of existing commercial areas that will foster:***

- a. ***Efficient and safe utilization of transportation facilities.***
- b. ***A variety of attractive and comfortable shopping opportunities that encourage shopping in a number of stores without auto use.***
- c. ***Compatibility between land uses, particularly adjacent residential neighborhoods.***
- d. ***Efficient extension of public facilities and services.***

Changing the Comprehensive Plan Map designation of the Conser property and part of the Boys and Girls Club property from residential to commercial will not add commercial frontage along 9th Avenue because the properties do not have frontage on 9th Avenue. It will add commercial frontage along Oak Street. The existing commercial property at the southeast corner of 9th Avenue and Oak Street has about 300 feet of frontage on Oak Street. The Conser and part of the Boys and Girls Club property have about 450 feet of frontage on Oak Street. Changing the designation of the Conser and part of the Boys and Girls Club property will create a total of about 750 feet of commercial frontage along 9th Avenue. To the south along Oak Street, all of the rest of the property to Queen Avenue (about 2,000 feet) is designated for residential use.

Public Infrastructure

- 1.29 ***Goal 1: Ensure that new industrial and commercial development is located in areas that can be adequately served by public infrastructure.***

Goal 2: Provide a safe, diversified, economical and efficient transportation system (auto, transit, bicycles, pedestrian, rail and air) that protects and enhances Albany's economy, environment, neighborhood quality, and cultural and scenic values.

Policy 1: Encourage the siting of new industrial and commercial development on land that is adequately served by existing infrastructure; where the infrastructure can be made adequate, require the "minimum necessary" improvement cost to be borne by the new business rather than by existing taxpayers or utility rate payers.

Policy 2: Develop a transportation system, encourage land use patterns and design standards, and promote transportation projects, programs, and policies that reduce dependency on the automobile and encourage alternatives such as public transit, bicycling, walking, car and van pools.

Policy 5: Promote land use patterns, site design, and incentives that accommodate public transit, bicycling, walking, vans and carpools as alternatives to single-occupancy vehicle commuting.

If the Comprehensive Plan Map designation of the property is changed from residential to commercial, this will allow new commercial development. The property has public infrastructure in place to serve it.

Transit and sidewalks: If the map designation of the Conser property and part of the Boys and Girls Club property is changed to allow commercial development, it will create a 12-acre area of commercial land at the southeast corner of 9th Avenue and Oak Street. Ninth Avenue has transit service. There are sidewalks along 9th Avenue. Oak Street is not improved to City standards. The street does not have curb, gutter, or sidewalk. If the designation of the property is changed and the property is developed for commercial use, Oak Street will have to be improved. If the designation of the property is not changed, it may be a while before Oak Street is improved.

Sanitary Sewer: The City's utility maps show that there is an 8-inch public sanitary sewer main that runs north/south through the Conser property 200 feet east of Oak Street, from 9th Avenue to the south boundary of the property. The City's Wastewater Facility Plan does not show any collection system deficiencies in this sewer basin.

See the findings under Review Criterion (3) of the concurrent Zoning Map amendment review for more information about sanitary sewer demand and capacity.

Water: The City's utility maps show that there is a 12-inch public water main in 9th Avenue and a 4-inch main in Oak Street along the southern section of this property's frontage. There are sections of Oak Street in this area that do not have public water facilities.

A new water line in Oak Street will most likely be needed in Oak Street to serve commercial development on the property. See the findings under Review Criterion (3) of the concurrent Zoning Map amendment review for more information about water system demand and capacity.

Storm drainage: The City's utility maps show that there is a 27-inch public storm drain main along the south boundary of the Conser property and 12- and 15-inch mains in 9th Avenue. Periwinkle Creek is the main drainage feature in this area. The creek runs along the east boundary of the property. The storm drainage facilities in the 9th Avenue street right-of-way are under the jurisdiction of the Oregon Department of Transportation (ODOT).

A new storm drain line from Oak Street to Periwinkle Creek will most likely be needed to serve commercial development on the property. See the findings under Review Criterion (3) of the concurrent Zoning Map amendment review for more information about storm drainage demand and capacity.

GOAL 10 HOUSING

- 1.30 ***Goal: Provide a variety of development and program opportunities that meet the housing needs of all Albany's citizens.***

Policy 1: Ensure that there is an adequate supply of residentially zoned land in areas accessible to employment and public services to provide a variety of choices regarding type, location, density, and cost of housing units commensurate to the needs of city residents.

Policy 11: Encourage residential development on already serviced and vacant residential lots or in areas within which services are available or can be economically provided.

- 1.31 The proposed Comprehensive Plan Map amendment application would change the map designations of 7.5 acres of land from Residential Medium Density to General Commercial. A concurrent application proposes to change the Zoning Map designation of the same land from RM-5 (Residential Limited

Multiple Family) to CC (Community Commercial).

The proposed map changes would remove 7.5 acres of land designated for multi-family development from the city's inventory of residential land.

- 1.32 On February 8, 2006, the City Council adopted new population projections and estimates of demand for various types of housing for Albany. They also adopted a new inventory of vacant and redevelopable land.

1.33 Demand for Residential Land and Supply of Residential Land

The data in the Comprehensive Plan shows that we will need 5,720 new housing units in the city by the year 2025. The data in the Comprehensive Plan shows that there is enough land in the Urban Growth Boundary (UGB) now for about 15,000 housing units. We have more than enough total acreage designated for residential development.

- 1.34 The analysis in the Comprehensive Plan also concludes that there is enough land designated for low-density single-family use.

- 1.35 But, the analysis concludes that there is not enough land designated for medium-density multi-family use to provide an adequate supply for the next 20 years. The data shows that there will be a deficit of about 22 acres with the current map designations in the UGB.

- 1.36 There is a large amount of land designated URR (Urban Residential Reserve) on the Comprehensive Plan Map. The Plan Designation Zoning Matrix in the Comprehensive Plan (page 9-15) shows that a variety of residential zoning designations can be applied to land designated URR, including multi-family and mixed use zoning.

For example, the City's Planning Division is currently in the process of preparing a more specific land use plan for the Oak Creek area. The Oak Creek Refinement plan will designate a new village center in the Oak Creek area. The plan will recommend new land use designations for this area. It is likely that some of the land will be designated multi-family and/or mixed use.

GOAL 12: TRANSPORTATION

Goal: Provide a safe, diversified, economical, and efficient transportation system that protects and enhances Albany's economy, environment, neighborhood quality, cultural, and scenic values. For the purposes of this document, a transportation system includes auto, transit, bicycles, pedestrian, rail and air transportation.

Policy 1: When planning for, designing, and providing transportation systems:

- a. Coordinate the requirements of the various transportation types with each other and minimize operational and safety conflicts.*
- b. Coordinate proposed projects with impacted agencies and businesses and applicable neighboring cities, county, state, and federal agencies.*
- c. Notify and coordinate with affected agencies regarding the transportation impacts of proposed development within or adjacent to the Urban Growth Boundary.*

Policy 2: Protect transportation facilities, corridors, and sites for their identified functions.

- a. Develop access control measures and encourage land development patterns that minimize direct access onto collector and arterial roads.*
- b. Protect the future operation of corridors by obtaining sufficient right-of-way or building setbacks to provide for future capacity in transportation corridors and by conditioning development proposals to minimize impacts.*

- c. *Review land use designations, densities, and design standards for consistency with the functions, capacities, and levels of service of facilities identified in the TSP.*

Policy 3: Develop a roadway system that is efficient and safe for the traveling public while preserving neighborhood quality and character.

Policy 4: Develop a transportation system, encourage land use patterns and design standards, and promote transportation projects, programs, and policies which reduce dependency on the automobile and encourage alternatives such as public transit, bicycling, walking, car and van pools.

FINDINGS OF FACT

- 1.36 See the discussion under Zoning Map Amendment Review Criterion (2). The discussion finds that the transportation system can be made adequate for commercial development of the property. Those findings and conclusions are included here by reference. To avoid repeating the same information here, those findings and conclusions are included here by reference.

GOAL 14: URBANIZATION

Goal: Achieve stable land use growth which results in a desirable and efficient land use pattern.

Policy 12: Discourage future strip commercial development and promote clustered commercial opportunities and the infilling of existing commercial areas which will foster:

- a. *Efficient and safe utilization of transportation facilities.*
- b. *A variety of attractive and comfortable shopping opportunities that encourage shopping in a number of stores without auto use.*
- c. *Compatibility between land uses, particularly adjacent residential neighborhoods.*
- d. *Efficient extension of public facilities and services.*

Policy 15: Encourage land use patterns and development plans which take advantage of density and location to reduce the need for travel and dependency on the private automobile, facilitate energy-efficient public transit systems, and permit building configurations which increase the efficiency of energy use.

FINDINGS OF FACT

- 1.37 These same policies are included under Goal 9. See the discussion under Findings of Fact 1.23 and 1.25 above.

CONCLUSIONS

- 1.1 The City's Planning Division has notified people and agencies about the proposed map amendment application. The people and agencies that were notified have an opportunity to be involved in the decision-making process. The notification and involvement processes conform with the procedures specified in the City's Development Code.
- 1.2 If the proposed map amendments are approved, a 12 acre tract of land designated for commercial use will be created. This will provide the opportunity for a large-scale commercial development at this location. A 12 acre tract of land can support about 130,000 square feet of commercial development with associated parking and landscaping. Such a site will contribute to Albany's role as a regional economic center.
- 1.3 There is enough commercial land inside the Urban Growth Boundary to accommodate the need for commercial land for at least the next 20 years in terms of gross acreage, but we need more large tracts of commercial land (greater than 5 acres). A 12 acre tract of land will provide an opportunity to capture

some of the spending on goods such as clothing, electronics, and appliances that “leaks” out of the community.

1.4 The applicants say that they have been contacted by a commercial developer who is having a hard time finding commercially zoned land that is large enough for a medium size department store. The developer may be interested in acquiring the property for development of a retail center with a medium size department store.

1.5 The property where the map amendments are proposed is surrounded by development. Development of the property would be considered “infill” development, which is encouraged by Comprehensive Plan goals and policies. A 12 acre tract of land at this location will provide the opportunity for a node of commercial development at the corner of 9th Avenue and Oak Street.

The property has public services, such as transit, streets, sewers, and water lines in close proximity. With improvements that will be required when the property is developed, these services can be made adequate to serve commercial development on the property. Landscaping required with new development will improve the appearance of this area along 9th Avenue, a State highway with high traffic counts and visibility.

1.6 The proposed map amendments would change the land use designation of this property from residential medium density to commercial. The map amendments would remove 7.5 acres of residential medium density land from the City’s inventory.

New housing data recently adopted by the City shows that there will be a shortage of about 22 acres of residential medium density land over the next 20 years. The shortage will occur in the relatively long term, which will give us the opportunity to designate additional residential medium density land at another location. The need for a large tract of commercial land is more immediate.

1.7 The requested General Commercial Comprehensive Plan Map designation for this property have been evaluated against relevant Comprehensive Plan policies and on balance has been found to be more supportive of the Comprehensive Plan as a whole than the current Residential Medium Density designation.

1.8 This review criterion is met.

(2) *The requested designation is consistent with any relevant area plans adopted by the City Council.*

FINDINGS OF FACT

2.1 “Relevant area plans” as used here means land use plans. For example, the City has relevant area plans for areas such as East I-5 and North Albany.

2.2 There are no relevant area plans for the area where the Conser and Boys and Girls Club properties are located.

2.3 Public utility plans, such as sewer and water master plans, are discussed under other relevant goals and policies.

CONCLUSIONS

2.1 This review criterion is not applicable because there are no relevant area plans for the area where the property is located.

(3) *The requested designation is consistent with the Comprehensive Plan map pattern.*

FINDINGS OF FACT

- 3.1 The Comprehensive Plan does not, in broad terms, describe ideal land use or map patterns. Particular goals and/or policies provide guidance about what kind of uses and land patterns are desirable.

For example, Goal 14 (Urbanization), Policy 12 says "Discourage future strip commercial development and promote clustered commercial opportunities and the infilling of existing commercial areas... Goal 15

says, "Encourage land use patterns and development plans which take advantage of density and location to reduce the need for travel and dependency on the private automobile, facilitate energy-efficient public transit systems, and permit building configurations which increase the efficiency of energy use." (Comprehensive Plan, page 8-3)

- 3.2 There are two parcels at the southeast corner of 9th Avenue and Oak Street that together total about 5 acres. These parcels are currently designated for commercial use. To the south of these two parcels is the Conser property and the Boys and Girls Club property. The Conser property is designated for residential use. The Boys and Girls Club property is designated "Public and Semi-Public" on the Comprehensive Plan Map, but zoned for multi-family use. The proposed map amendments would move the boundary between the commercial land and the other land about 450 feet south. This will create the opportunity to develop a 12-acre commercial node at the southeast corner of 9th Avenue and Oak Street, instead of a

more narrow commercial strip development on the existing 5 acres of property that exists along 9th Avenue now.

- 3.3 The land to the east and west of the Conser and Boys and Girls Club property is designated Residential Medium Density.

- 3.4 The proposed map amendment would place new General Commercial property adjacent to the existing General Commercial property to the north.

- 3.5 The proposed map amendment would place new General Commercial property adjacent to Public and Semi-Public property to the south. The property to the south is owned by the Albany Boys and Girls Club. Ball fields and associated facilities were approved for this property in 2001.

- 3.6 The proposed map amendment would place new General Commercial property adjacent to Residential Medium Density property to the east and west. Periwinkle Creek would separate the new General Commercial property from the Residential Medium Density property to the east. The right-of-way for Periwinkle Creek is 80 feet wide. Oak Street would separate the new General Commercial property from the Residential property to the west. The right-of-way for Oak Street is 60 feet wide.

- 3.7 ADC 9.210 says that, "In order to reduce the impacts on adjacent uses which are of a different type, buffering and screening is required in accordance with the matrix that follows."

The matrix shows that a 10-foot wide buffer area and screening is required between commercial uses and residential uses. No buffering and screening is required between commercial uses and may or may not be required between a commercial use and development on the property to the south.

Buffering consists of a row of trees with the area between the trees landscaped with shrubs and ground cover. Screening consists of a fence, wall, or hedge.

- 3.8 At a neighborhood meeting held by the applicants on July 26, 2005, a few neighbors expressed a preference for commercial development on the property where the map changes are proposed, rather than apartments which are allowed with the current Residential Medium Density designation of the property.
- 3.9 The owners of the property to the north (Perlenfein and Killen) submitted letters in support of the proposed map amendment applications.

CONCLUSIONS

- 3.1 The Comprehensive Plan does not describe ideal land use patterns or map patterns.
- 3.2 The proposed map amendments would move the boundary between commercial land and residential land about 450 feet south. This will create the opportunity to develop a 12 acre commercial node at the southeast corner of 9th Avenue and Oak Street, instead of a commercial strip development on the existing 5 acres of property that exists along 9th Avenue now.
- 3.3 The proposed map amendment would place new General Commercial property adjacent to Residential Medium Density property. The new General Commercial would be separated from the Residential Medium Density property to the east by Periwinkle Creek. The new General Commercial property would be separated from the Residential Medium Density property to the west by Oak Street.
- 3.4 In addition to the separation created by Periwinkle Creek and Oak Street, at the time the new General Commercial property is developed, buffering and screening will be required between commercial development and residential development.
- 3.5 The requested designation is consistent with the Comprehensive Plan map pattern
- 3.6 This review criterion is met.

(4) *The requested designation is consistent with the Statewide Planning Goals.*

FINDINGS OF FACT

- 4.1 The following Statewide Planning Goals are relevant to consideration of this application. Goals and policies are listed below in ***bold italic*** print followed by findings of fact, then conclusions.
- 4.2 ***Goal 1: Citizen Involvement is "To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."***
- The City of Albany has a citizen involvement program. The program is described under Findings of Fact 1.6 above. The program has been followed in reviewing this application for a Comprehensive Plan Map amendment.
- 4.3 ***Goal 2: Land Use Planning is "To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."***

The City of Albany has land use planning processes and a policy framework that are used as a basis for making decisions on Comprehensive Plan Map amendments. The processes are described in the Albany Development Code. As described under Findings of Fact 1.7 above, Comprehensive Plan Map amendment applications are processed as Type IV land use decisions with notice to affected parties, including surrounding property owners and affected government agencies. Public hearings before the Planning

Commission and City Council are held. Notice of the public hearings is posted on the subject property, and at other public locations in Albany.

- 4.4 **Goal 9: Economic Development is “To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.”**

As discussed under Review (1) above, providing another large parcel of land for commercial development at this location will meet the need for a large parcel of commercial land in this area of Albany.

- 4.5 **Goal 11: Public Facilities and Services is, “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.”**

As discussed under Review Criterion (1) above, this property has public services available to serve development on the property.

- 4.6 **Goal 12: Transportation is “To provide and encourage a safe, convenient and economic transportation system.”**

As discussed under Review Criterion (2) of the Zoning Map amendment review that follows, the transportation system in the vicinity of this property can be made adequate to accommodate commercial development on the property.

- 4.7 **Goal 14: Urbanization is “To provide for an orderly and efficient transition from rural to urban land use.”**

No transition from rural to urban land uses is proposed in this application.

CONCLUSIONS

- 4.1 The requested General Commercial designation of this property is consistent with the Statewide Planning Goals.

STAFF ANALYSIS

Zoning Map Amendment File ZC-02-05

The Albany Development Code includes the following review criteria which must be met for this application to be approved. Code criteria are written in *bold italics* and are followed by findings and conclusions.

- (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 in accordance with Section 2.080, ADC Article 2.*

FINDINGS OF FACT

- 1.1 The applicants propose to change the Zoning Map designation of 7.5 acres from RM-5 to (Residential Limited Multiple Family) to CC (Community Commercial).
- 1.2 The current Comprehensive Plan designation of the property where the Zoning Map amendment is proposed is Residential Medium Density.
- 1.3 The Plan Designation Zoning Matrix in the Comprehensive Plan (pages 9-15) shows that the proposed CC zoning is not consistent with the Residential Medium Density Comprehensive Plan Map designation of the property.
- 1.4 The applicants have applied to change the Comprehensive Plan Map designation from Residential Low Density to General Commercial.
- 1.5 The proposed CC zoning is consistent with the proposed General Commercial designation of the property.

CONCLUSIONS

- 1.1 This criterion is met because the applicants have applied for a Comprehensive Plan Map amendment to General Commercial. The proposed CC zoning is consistent with the General Commercial designation.
- (2) *Existing or anticipated transportation facilities are adequate for uses that are permitted under the proposed zone designation.*

FINDINGS OF FACT

- 2.1 The property where the map amendments are proposed is located on the east side of Oak Street about 290 feet south of 9th Avenue.
- 2.2 An application to develop the property was not submitted with the Zoning Map amendment application.
- 2.3 The property adjacent to the north has frontage on 9th Avenue and Oak Street. This property is zoned CC now.
- 2.4 Ninth Avenue is classified as a principal arterial street. The street is under the jurisdiction of ODOT. Ninth Avenue and Pacific Boulevard form a one-way street couplet. Ninth Avenue accommodates eastbound traffic. Pacific Boulevard accommodates westbound traffic. Ninth Avenue is improved to City standards. It has curb, gutter, and sidewalk, three travel lanes, and a bike lane. The speed limit is 35 miles per hour.

- 2.5 Oak Street is currently classified as a local street. The street is not improved to City standards. It does not have curb, gutter, or sidewalk. The pavement width is about 20 feet, which provides for one 10-foot wide travel lane in each direction. The right-of-way width for the street is 60 feet.
- 2.6 ADC 12.060 requires that all public streets within and adjoining a development be improved to City standards. When a site plan or conditional use application is submitted for development on this property, a condition of approval of the application may be that Oak Street be improved to City standards along at least the frontage of the property.
- 2.7 The applicants submitted a traffic study with the application. The study was done by PTV America, Inc. The study is dated October 2005. ODOT and City staff have reviewed the study.
- 2.8 The traffic study assumes that the Conser property, the Boys and Girls Club property, and the property to the north will be combined and developed with 98,600 square feet of mixed retail uses.
- 2.9 The traffic study shows trip generation estimates for residential and commercial development on the property. The study analyzes the traffic impact of development on the property for year 2006 (project build-out), year 2011 (build-out, plus five years), and year 2021 (build-out, plus 15 years).
- 2.10 The traffic study analyzes the operation of the following intersections:
- Pacific Boulevard/Hill Street
 - Pacific Boulevard/Geary Street
 - 9th Avenue/Hill Street
 - 9th Avenue/Oak Street
 - 9th Avenue/Geary Street
 - 14th Avenue/Geary Street
 - Queen Avenue/Hill Street
 - Queen Avenue/Oak Street
 - Queen Avenue/Geary Street
- 2.11 The traffic study concludes the following:
- The 9th Avenue/Geary Street intersection is expected to drop below ODOT's mobility standard of 0.85 volume to capacity (v/c) ratio by the year 2021 both with and without the proposed zoning map amendment. No mitigation is proposed at the intersection since the v/c ratio is expected to increase to 0.88 for both the Build and No Build scenarios for 2021.
 - The southbound left turn movement at the Queen Avenue/Oak Street intersection is expected to drop below the City of Albany's minimum level of service (LOS) standard of "D" by the year 2021 without the project, and by the year 2011 with commercial development of the property. Traffic volumes at the intersection will not be high enough to meet warrants for installation of a traffic signal. The traffic study proposes installation of a southbound left turn pocket at the intersection as a mitigation measure. Installation of the left turn pocket would improve the LOS of the southbound left turn movement to the "no build" condition of LOS "D" at year 2011, and LOS "E" at year 2021.
 - All other study intersection comply with ODOT and City of Albany performance standards under the "build" condition for years 2006, 2011, and 2021.
- 2.12 ODOT staff reviewed the traffic study and concluded (in an e-mail dated 12/07/05 from John deTar) that "... there is no significant affect on state highways ..." that would result from development of the property under the requested zoning designation.

- 2.13 City staff reviewed the traffic study and agrees with its conclusions and recommendations.

CONCLUSIONS

- 2.1 The existing transportation system in the area of the property where the Zoning Map amendment is proposed can be made adequate to accommodate commercial development on the property with the improvements recommended in the traffic study submitted by the applicants. It will most likely be necessary to improve Oak Street to City standards at the time the property is developed. All of the improvements recommended in the traffic study can be required as conditions of approval at the time the property is developed.
- 2.2 This review criterion is met.
- (3) *Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development within the subject area without adverse impact on the affected service area.*

Sanitary Sewer

- 3.1 The City's utility maps show that there is an 8-inch public sanitary sewer main that runs north/south through this property approximately 200 feet east of Oak Street, from 9th Avenue to the south boundary of the property. The City's Wastewater Facility Plan does not show any collection system deficiencies in this sewer basin.

This application is to change the zoning designation of 7.5 acres of land from RM-5 (Residential Limited Multiple Family) to CC (Community Commercial). The "medium density" RM-5 zone would allow for approximately 12-18 dwelling units per acre. The value that is used in the City's current computer model for the wastewater collection system to estimate discharge from residential uses is approximately 125 gallons per persons per day. Using 2.46 people per dwelling unit (City of Albany Wastewater Facility Plan, June 1998, page 3-9), the resulting estimated wastewater discharge from a residential development allowed in the RM-5 zone would be in the range of 3,500 - 5,500 gallons per acre per day. The City's Wastewater Facility Plan does not distinguish between different types of general commercial developments when estimating the wastewater discharge from those uses. The computer model mentioned above uses a figure of approximately 1,500 gallons per acre per day from typical commercial development. In general, commercial development generates less wastewater than residential development.

Water

- 3.2 The City's utility maps show that there is a 12-inch public water main in 9th Avenue and a 4-inch main in Oak Street along the southern frontage of this property. There are sections of Oak Street in this area that do not have public water facilities.

Even though the daily domestic water use for residential development is typically greater than a commercial development (on a per acre basis), water system design and adequacy are typically dictated by the fire flow needs within an area or zone. The City of Albany's Water Facility Plan (2004) uses a minimum fire flow rate of 2,500 gallons per minute for medium density residential, and 3,500 gallons per minute for commercial uses as thresholds for system design (Table 3-1, page 31). This leads to the conclusion that, because of the higher fire flow needs within typical commercial developments, that a water system within a commercial area must be designed to provide more water than a system in a residential district.

The 12-inch main in 9th Avenue supplies enough water (10,000+ gallons per minute) to meet fire flow demands for virtually any type of commercial or residential development that would be allowed on this property with either the current or proposed zoning designations. The public water system in Oak Street, between 9th Avenue and Queen Avenue does not meet the standards for either multi-family or commercial development. The desired water system layout in medium density residential zones and commercial zones consists of a grid of 12-inch mains, with smaller (usually 8-inch) mains interspersed throughout the remainder of the area. It is likely that at least an 8-inch water main, and possibly a 12-inch main, is needed in Oak Street to adequately supply the area between 9th Avenue and Queen Avenue, and Oak Street and Periwinkle Creek. Whether the property is developed with medium density residential or general commercial, the water system improvements needed in Oak Street are likely to be the same.

Storm Drainage

- 3.3 The City's utility maps show that there is a 27-inch public storm drain main along the south boundary of this property and 12- and 15-inch mains in 9th Avenue. Periwinkle Creek is the main drainage feature in this area. The creek runs along the east boundary of the property. The storm drainage facilities within the 9th Avenue right-of-way are under the jurisdiction of the Oregon Department of Transportation (ODOT).

The amount of storm water runoff from a development is generally depends on the total area of impervious surfaces on the property. The Albany Development Code specifies a maximum amount of "lot coverage" (buildings and parking areas) for each zoning district. The maximum lot coverage in the RM-5 zoning districts is 60 percent (ADC 3.190, Table 1). The maximum lot coverage in CC zoning districts is 90 percent (ADC 4.090, Table 1). A change from RM-5 to CC would allow for development that may result in more storm water runoff.

The City of Albany's Storm Drainage Master Plan (1988) shows no system deficiencies downstream of this property. Periwinkle Creek is the main drainage feature in this drainage basin and is adequate to handle all drainage from this basin. The Master Plan shows the need for a public storm drain line from Oak Street to Periwinkle Creek in the general vicinity of this property. This storm drain line will be needed to carry storm water runoff from Oak Street (when it is improved to City standards) and the adjacent properties. The exact location of this line has not yet been determined. The City's Storm Drainage Master Plan concludes that the Periwinkle Creek channel is adequate to handle the 100-year flood, even with full development of this drainage basin (Appendix B, page B.4).

Even though the maximum lot coverage allowed will increase from 60 percent to 90 percent if the zoning is changed from RM-5 to CC, it is the view of the City's Engineering Division that over an area of 7.5 acres this amount would not be significant in terms of the adequacy of Periwinkle Creek to accommodate the storm water runoff in this basin.

Schools

- 3.4 The property is currently zoned for residential development. Residential developments usually have children living in them. Commercial developments usually do not have children living in them.

Police and Fire Protection

- 3.5 The Albany Police Department and Fire Department provide services to development in Albany. These departments will provide service to the property whether it is developed with residential or commercial uses.

CONCLUSIONS

- 3.1 The public sanitary sewer, water, and storm drainage systems in this area have the capacity to serve commercial development on the property if the zoning is changed from RM-5 to CC. Improvements and/or extensions of these systems may be required at the time the property is developed.

- 3.2 If the zoning designation of the property is changed from RM-5 to CC, it will likely decrease the demand for school space by a relatively insignificant amount.
- 3.3 The Albany Police and Fire Departments will provide service to development on the property whether it is residential or commercial.
- 3.4 Existing or anticipated services can accommodate potential development within this area without adverse impact on the affected service area.
- 3.5 This review criterion is met.

(4) ***Any unique natural features or special areas involved such as floodplains, slopes, significant natural vegetation, historic district will not be jeopardized as a result of the proposed rezoning.***

4.1 Floodplains: *Comprehensive Plan Plate 5: Floodplains* does not show a floodplain on this property. FEMA/FIRM Community Panel No. 410137 0004F, dated July 7, 1999, shows the property is in Zone X, an area determined to be outside any 500-year floodplain. Periwinkle Creek stays within its banks during a 100-year flood.

4.2 Wetlands: *Comprehensive Plan Plate 6: Wetland Sites* does not show any wetlands on the property. The National Wetlands Inventory map does not show wetlands on the property. The City does not have a local wetlands inventory for this area. The applicants had Patrick Thompson, a wetlands scientist, do a wetlands delineation for the property. The delineation is dated July 2003. The delineation found four small wetlands on the property. Together these wetlands equal 0.43 acres. The delineation refers to "Pringle Creek" instead of Periwinkle Creek. Staff suggested that the applicants have Mr. Thompson correct this error in the delineation, but this has apparently not been done yet.

The wetlands were found on the vacant areas of the property. The area of the property where the existing apartments and the existing house are located were not include in the wetlands delineation.

The applicants attached a copy of a wetlands removal-fill permit that has been issued by the Oregon Department of State Lands (DSL). The permit apparently allows fill and excavation in the wetlands on the property. The permit expires on July 18, 2006.

DSL regulates wetlands in Oregon. Either residential or commercial development on the property may require permits from DSL. The applicants will be required to comply with DSL regulations and permit requirements when the property is developed.

4.3 Slopes: *Comprehensive Plan Plate 7: Slopes* does not show steep slopes on the property. The City's topographic data shows that elevations on the property vary from about 218 feet to about 220 feet.

4.4 Significant natural vegetation: *Comprehensive Plan Plate 3: Natural Vegetation and Wildlife Habitat* does not show any areas of vegetation or wildlife habitat on the property. The property has a variety of types of trees on it, including oak trees.

There are existing apartment buildings on part of the property now. If the apartments were to remain on the property, trees would not have to be removed on this part of the property. However, the Consers

submitted building permit applications for new development on the property before they submitted this Zoning Map amendment application. Construction of the new development would have required the removal of some trees.

Either residential or commercial development on the property may require removal of trees. The uniqueness, size, age, and other characteristics of the trees are considered at the time development is proposed on the property.

- 4.5 Historic District: *Comprehensive Plan Plate 9: Historic Districts* shows the property is not in a historic district.

CONCLUSIONS

- 4.1 Floodplains, slopes, and/or historic districts will not be jeopardized as a result of the proposed rezoning. It may be necessary to remove trees on the property whether the property is zoned RM-5 or CC. The uniqueness of the trees will be considered at the time the property is developed.
- 4.2 This review criterion is met.
- (5) *The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.*
- 5.1 The current zoning designation of the property where the Zoning Map amendment is proposed is RM-5 (Residential Limited Multiple Family). The proposed designation is CC (Community Commercial).
- 5.2 This review criterion requires that the intent and purpose of the proposed CC zoning district “best satisfies” the goals and policies of the Comprehensive Plan.

INTENT AND PURPOSE OF RM-5 AND CC ZONING DISTRICTS

- 5.3 ADC 3.010 says the purpose of residential zoning districts is to preserve land for housing.
- 5.4 ADC 3.020(5) says “The RM-5 district is primarily intended for low to medium density multiple family residential urban development.”
- 5.5 ADC 4.010 says commercial zones are intended to provide land for commercial uses.
- 5.6 ADC 4.020(3) says “The CC district recognizes the diversity of small to medium-scale businesses, services and sites mostly located on arterial streets and highways. Design guidelines, building location and front-yard landscaping will provide a coordinated and enhanced community image along these major transportation corridors as they develop or redevelop. Sound and visual buffers should be used to mitigate impacts on nearby residential areas.”

RELEVANT GOALS AND POLICIES

- 5.7 The findings and conclusions under Review Criterion (1) of the concurrent Comprehensive Plan Map amendment staff report are applicable to the Zoning Map amendment as well. To avoid repeating the same information here, those findings and conclusions are included here by reference.

CONCLUSIONS

- 5.1 The intent and purpose of the proposed CC zoning district best satisfies the goals and policies of the Comprehensive Plan.



SCALE:
1"=200'

Exhibit B



Boys & Girls
Club Property

Conser
Property

CP-02-05 and ZC-02-05

K & D ENGINEERING, Inc.*Engineers • Planners • Surveyors***Legal Description of Conser Properties**

Tax Lots 1201, & 1202, & 1300

Three (3) properties under the ownership of J. Conser & Sons, LLC, an Oregon Limited Liability Company (herein after referred to as "Conser Properties"), described by deeds recorded in MF Volume 1381, Page 648 and MF Volume 1381, Page 659 in the Linn County, Oregon Deed Records, said Conser Properties also known as Tax Lots 1201, and 1202, and 1300 of Assessors Map 11S-3W-8BC and are more particularly described as follows:

Beginning at a 5/8 inch rod at the northwest corner of said Conser Properties; thence along the boundary lines of said Conser Properties the following seven (7) courses: 1) North 79°05'07" East 770.42 feet to a point that is North 04°13'58" West 0.36 feet of a 5/8 inch rod; 2) thence South 04°13'58" East 390.30 feet to a 5/8 inch rod; 3) thence South 72°37'29" West 589.34 feet to a point that is North 07°02'03" West 0.40 feet of a 5/8 inch rod; 4) thence North 07°02'03" West 174.04 feet to a 1/2 inch rod; 5) thence South 79°00'21" West 170.11 feet to a 1/2 inch rod; 6) thence North 06°55'20" West 130.20 feet to a 1/2 inch rod; 7) thence North 07°10'17" West 151.00 feet to the Point of Beginning. Containing 6.79 acres of land more or less.

March 14, 2006
 CONSER PROPERTIES
 (03-33-C) JJC:nm
 File: nm\shared\legal\03-33-c Conser properties.doc

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 JULY 9, 2002
 JOE J. GOTA
 #58581LS

EXPIRES: 12/31/07

K & D ENGINEERING, Inc.*Engineers • Planners • Surveyors***Portion of Boys and Girls Club Tract**

Portion of Tax Lot 1400 Assessors map 11S-3W-8BC

A portion of that Boys and Girls Club of Albany Tract described by deed recorded in MF Volume 1073, Page 681 in the Linn County Oregon Deed Records, which portion being more particularly described as follows:

Beginning at a 5/8 inch rod at the most northerly northwest corner of said Boys and Girls Club of Albany Tract; thence North 79°00'21" East 170.11 feet to a 1/2 inch rod; thence South 07°02'03" East 174.04 feet to a point that is North 07°02'03" West 0.40 feet of a 5/8 inch rod; thence South 72°37'29" West 173.89 feet to a 7/8 inch rod; thence North 06°55'20" West 193.33 feet to the Point of Beginning. Containing 0.72 acres of land more or less.

March 15, 2006
 PORTION OF BOYS and
 GIRLS CLUB TRACT
 (03-33-C) JJC:nm
 File: nm\shared\legal\03-33-c B&G Club Tract.doc

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 JULY 9, 2002
 JOE J. COTA
 #585015

EXPIRES: 12/31/07