

ORDINANCE NO. 5668

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE DEVELOPMENT CODE TEXT RELATING TO PERIODIC REVIEW GOAL 10 HOUSING AND GOAL 14 GROWTH MANAGEMENT, ADOPTING FINDINGS AND DECLARING AN EMERGENCY (FILE DC-01-07).

WHEREAS, from time to time it is appropriate to amend the Albany Development Code based on changing conditions; and

WHEREAS, the City is in Periodic Review, a process through which the City is updating its Comprehensive Plan, Plan Map, Development Code, and Zoning Map in accordance with the work program approved in 1997 by the Oregon Department of Land Conservation and Development; and

WHEREAS, the majority of steep slopes are designated for residential use, and the Hillside Development standards are a means by which the City may allow development on steep slopes without creating hazardous conditions at the time of construction or in the future; and

WHEREAS, the existing Cluster Development standards do not address compatibility with existing development on abutting property; and

WHEREAS, the Planning Commission reviewed the proposed Development Code text amendments in work sessions and public hearings, and then directed staff to prepare specific changes; and

WHEREAS, on March 5 and 12, 2007, the Planning Commission held a public hearing on the proposed amendments and then recommended these changes to the City Council, based on public testimony, their deliberation, and the attached Findings and Conclusions; and

WHEREAS, on March 28, 2007, the Albany City Council held a public hearing on the proposed amendments, reviewed the amendments recommended by the Planning Commission and then deliberated.

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

Section 1: The Albany Development Code, Article 6 (Special Purpose Districts) – Hillside Development, is hereby amended as shown in Exhibit A.

Section 2: The Albany Development Code, Article 6 (Special Purpose Districts) and Article 11 (Land Divisions and Planned Development), are hereby amended by moving the Cluster Development section in its entirety from Article 6 to Article 11.

Section 3: The Albany Development Code, Article 11 (Land Divisions and Planned Development), is hereby amended as shown in Exhibit A.

Upon the effective date of this Ordinance, the text amendments in Exhibit A shall supercede the corresponding sections of the Development Code. Language shown in the Exhibits as having been struck is removed from the Development Code, and language shown in bold is added to the existing text.

Section 4: The attached Findings and Conclusions (Exhibit B) are hereby adopted in support of this decision.

Section 5: Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the city of Albany, an emergency is hereby declared to exist; and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by Council: April 11, 2007

Approved by Mayor: April 11, 2007

Effective Date: April 11, 2007



Mayor

ATTEST:



City Clerk

HILLSIDE DEVELOPMENT

6.170 Purpose. The Hillside Development district is intended to ~~protect the terrain in areas where steep slopes exist~~ **regulate the development of potentially hazardous terrain, minimize public and private losses due to earth movement hazards in specified areas, and minimize erosion and related environmental damage. It is not the intent of Hillside Development standards to transfer density within a development.**

Staff Comment: Reference to Plate 7 was added to clarify that the standards only apply to hillsides and not to minor topographical features on relatively flat land. Plate 7 will be updated as part of Goal 10.

6.180 Applicability. The Hillside Development standards apply to ~~all areas that have an average slope any~~ **property proposed for development that has slopes of 12% percent or greater as shown on Plate 7 of the Albany Comprehensive Plan. Where Plate 7 shows that there are slopes 12 percent or greater on a property, the applicant may choose to submit a topographic survey, prepared and stamped by a licensed surveyor or civil engineer, showing two-foot contour intervals for the entire site. If the applicant chooses to submit survey information, and the survey indicates that the property does not contain slopes 12 percent or greater, the Hillside Development standards will not apply.**

~~6.190 General. All development proposed within the Hillside Development overlay district is required to provide for the preservation and, if possible, enhancement of the site's natural features during all phases of the design and development process. This includes consideration of soils, vegetation, hydrology, wildlife habitat, views and visual orientation, both from the site and to the site, and unusual or unique natural features.~~

6.190 Procedure. Hillside Development is reviewed as part of the land division, site plan review, or conditional use application processes as a Type III procedure.

Staff Comment: The following report is currently required at the building permit stage. It would now be required at the land division stage in order to ensure new lots are buildable.

6.200 Geotechnical Report Required. For any development subject to the applicability criterion in ADC 6.180, an applicant shall provide a geologic and soils report prepared and stamped by a certified engineering geologist or a licensed civil engineer, licensed in the specialty of geotechnical engineering with the State of Oregon.

The report must identify the following:

- (1) All geologic and soils hazards and certify that the site, and each individual lot if land division is proposed, are suitable for the proposed development.
- (2) Area(s) suitable for building and describe how slopes will be stabilized.
- (3) Suitable building footprint(s) for development on each lot.
- (4) Any requirements that must be met from the time construction begins to the time construction is completed.
- (5) Any requirements that must be met after construction is completed (e.g., maintenance requirements for continued slope stabilization).

Staff Comment: The required geotechnical report will describe how the soils will be stabilized.

~~6.200 Revegetation Standards - Slopes Greater Than 20%. Exposed soil which is not under continuous construction must be revegetated with temporary or permanent vegetation so that the soil is not left exposed for more than 60 days in the period between October 1 and April 1. Within 6 months of issuance of a Certificate of Occupancy, vegetation must be reestablished. If irrigation is not provided, then the exposed soil must be planted with species which can survive without irrigation. Vegetative cover or any alternative cover (rock, masonry, etc.) must be maintained in perpetuity.~~

Staff Comment: The density standards section is no longer needed because proposed development of property that includes areas with slopes 12 percent or greater will require a geotechnical report, and the report will determine the buildable portions of the property.

~~6.2100~~ Density Standards. Areas with average slopes of greater than 25% prior to grading shall not be subdivided or partitioned further. However, open space, greenways and recreational trails may be developed in these areas. For those lots of record which have an average slope of 25% or greater, the maximum residential development shall be one dwelling unit per lot of record. Density transfers are permitted in order to utilize the more buildable portions of a site. When density is transferred from areas in excess of 25% slope, density shall be allowed at a rate of two dwelling units per acre. In slope areas of 12-25%, the minimum lot size shall be 15,000 sq. ft.

Staff Comment: *The grading, cut and fill standards will be addressed in the Geotechnical Report.*

~~6.220~~ Grading, Cut and Fill Standards. All cut and fill slopes must not exceed a two (horizontal) to one (vertical) ratio. Slopes which are steeper (i.e. 1:1 1/2 or 1:1) may be conditionally approved by the Public Works Director upon certification, by a qualified soils engineer or geologist, that the slope will remain stable under foreseeable conditions. The certification must delineate any specific stabilization measures deemed necessary by the soils engineer or geologist. [Ord. 5265, 12/18/96]

6.2310 Drainage. In all slope areas, impervious surface drainage from roofs, driveways, and parking areas must be directed to a City storm drain or other City-approved drainage system. Development activities must not block the flow of stormwater in natural drainageways without prior approval from the Public Works Director. [Ord. 5265, 12/18/96]

6.2420 Street and Driveway Standards. Street grades shall generally be 12% **percent** or less. Grades on Arterial or Collector streets must be no more than 6% **percent** and 10% **percent** respectively (see Section 12.210). Street grades of up to 15% **percent** may be permitted for a distance of no more than 200 feet. No intersections are permitted where street grades exceed 12% **percent**. Where practical, streets must be contoured to hillside areas in order to minimize environmental and scenic disruption. Driveways must have a grade of 15% **percent** or less, unless the Public Works Director approves a greater slope.

Staff Comment: *This section has been replaced with 6.190.*

~~6.250~~ Reports Required. When one acre or more of the land to be developed exceeds 12% average slope, the Director may require reports to address possible hazards to life, property, and adverse impacts to the natural environment. These reports might relate to soils, geology, grading, and verification of slopes and grade percentages. These regulations do not apply to construction of a single family house.

6.2630 Modification of Standards. If the Director determines that the applicant's plan adequately implements the policies of the Comprehensive Plan, the Director may modify the standards of this Code as they apply to the entire proposed development, within the following limitations. The following Development Code standards may be modified **through the application process**, if approved by the review body:

- (1) Front, side and rear yards may be reduced **if the geotechnical report explains why the reduction is warranted. The reduction must be approved by the review body. A variance application is not required, but a developer must make a specific written request for the reduction to the City for consideration.** to zero (when in conformance with the Fire and Building Safety Codes); provided, however, where attached dwellings are proposed there shall not be more than 5 dwelling units in any group

Staff Comment: *The following is already covered in Article 12.*

- (2) The reduction of public right of way, pavement width, and/or requirements for the installation of sidewalk as specified in Article 12, Public Improvements, may be made if provisions are made to provide off street parking in addition to that required in other portions of this Code. Any reduction of these minimum street and sidewalk standards must be approved by the City Engineer. The additional parking requirements are as follows:

- (a) ~~Detached Dwelling Units: 2 additional off street parking spaces.~~
- (b) ~~Attached Dwelling Units: One half additional off street parking space for each bedroom more than one in each unit. In cases where a one half space occurs in a total figure, the standard shall be increased to the next whole figure.~~

- (32) **Building Hheight limitations may be removed-exceeded on hillside lots, if the geotechnical report explains why the additional height is warranted. The additional height requires approval by the review body, provided the additional height it does not exceed 45 feet.**

Staff Comment: *The Cluster Development section will be moved from Article 6 – Special Purpose Districts to Article 11 – Land Divisions and Planned Development because the Cluster Development process is not an overlay district that regulates development in specific geographic areas of the City, such as Airport Approach or Floodplain in Article 6; instead it is an optional process that could be applied in many areas of the City, and is more akin to the Planned Development process in Article 11.*

The Planning Commission requested that staff address the potential confusion between Open Space zoning and the open space created through Cluster Development. Open space that is created as part of the Cluster Development is now referred to as “natural areas” throughout this section of the Code.

CLUSTER DEVELOPMENT

Staff Comment: *The Planning Commission requested that staff modify the purpose statement to better clarify that it is not the intent of Cluster Development to increase the number of lots on a property. The second to last sentence, beginning with “It is not the intent...” was added to the Purpose section.*

116.400 ~~Purpose. Cluster Development is intended to allow development of properties, while protecting community resources, including but not limited to: steep slopes, wetlands, stream corridors, scenic vistas, and parks and trails. Cluster development is intended to protect natural features or other features unique to Albany that would not otherwise be protected in the development of a site. , to provide linkage with adjacent parks, open space areas, and pathways, and to allow the development to be more compatible with the topography and/or physical limitations of the site. These provisions are not intended to infer public ownership or use. The cluster standards are also intended to promote flexibility in residential development without compromising the development potential of the underlying zoning district or changing the character of adjacent neighborhoods. In return for this protection, the more flexible standards found in this section may supersede other more strict standards of this Code. Cluster developments may provide greater flexibility, reduced and/or varied lot sizes, and more variety in permitted uses. It is not the intent of cluster development to increase the overall housing density of property above the density that would have been allowed in a standard subdivision. Developments must satisfy high-quality master planning and design requirements. should group residential units in one or more areas to reduce the amount of impervious surfaces and length of utility installations. [Ord. 5562, 10/10/03]~~

116.4045 Optional Nature. Cluster Development is an optional form of development. **Cluster Development proposals are reviewed as part of the land division application process.** [Ord. 5562, 10/10/03]

Staff Comment: *The list in Section 11.460(1) is referenced in this section rather than repeating the list here.*

116.410 Eligibility. To be eligible to apply for Cluster Development, **all of the following are required:**

- (1) **Residential Zoning.** The development site must be located in a residential zoning district.
- (2) **Natural Features.** The site must contain one or more of the following features listed in Section 11.460(1).

- (1) ~~Lake;~~
- (2) ~~Delineated wetland. The Oregon Division of State Lands must concur with the delineation;~~
- (3) ~~Riparian area identified on the city’s Riparian Inventory;~~
- (4) ~~Existing channel identified on Figure 7.1 of the draft North Albany Storm Water Master Plan;~~
- (5) ~~Slope greater than 25 percent;~~
- (6) ~~Wooded area with five or more trees over 12 inches in diameter measured 4½ feet from the ground; or~~
- (7) ~~Land providing connectivity to parks, trails, inventoried natural features, or areas zoned or protected as permanent open space. [Ord. 5562, 10/10/03]~~

Staff Comment: *The purpose of requiring a design professional is to get careful, yet creative plans.*

- (3) **Professional Designer.** An applicant for Cluster Development approval must certify in writing that a certified landscape architect, site planner, or landscape designer, approved by the Director, will be used in the planning and design process for the proposed development.

116.420 Relationship to Other Regulations. If the **applicant chooses the Cluster Development option, and the site is deemed eligible by the City, and the applicant chooses cluster development** these standards will supplement other provisions of this Code. For example, a subdivision of single-family lots proposed as a cluster development is also subject to ~~the other~~ provisions of Article 11 of the Development Code. Other **types of residential development** are subject to site plan review or conditional use review. These provisions apply to issuance of building permits in a cluster development and to ongoing uses and activities in a cluster development. [Ord. 5562, 10/10/03]

116.430 Procedure. Cluster ~~d~~Development applications **proposals** are reviewed as a Type III procedure. [Ord. 5562, 10/10/03]

116.440 Review Criteria. The review criteria for a ~~e~~Cluster ~~d~~Development are those that apply to a particular type of development. For example, the tentative plat criteria in Article 11 apply to cluster land divisions. **(See ADC 11.420 for relation to other requirements.)** Also, the review body must find that the application meets the following additional criteria:

- (1) ~~The proposed plan meets the purpose of cluster development and the protection of permanent open space. [Ord. 5562, 10/10/03]~~ **The proposed development meets all of the requirements for Cluster Development.**
- (2) **The proposed development preserves natural or unique features that normally would not be preserved under conventional development standards.**

Staff Comment: Land zoned Open Space has limited development potential, so the applicant should not be able to transfer density since there is no density to transfer.

116.450 Open Space Natural Area Requirements. Cluster developments must provide a minimum of **20 percent of the site as amount of permanent open space-natural areas**. **Land shown as Open Space on the Comprehensive Plan map may not be used to fulfill this requirement.**

- (1) ~~At least 20 percent of the site shall be designated as permanent open space, OR~~
- (2) ~~If the site contains land in the Open Space zoning district, the proposed development shall reserve all of the land within the Open Space zone or at least 20 percent of the site, whichever is greater, as permanent open space. [Ord. 5562, 10/10/03]~~

116.460 Designation of Permanent ~~Open Space~~Natural Area. **The required natural area may be public or private. The minimum 20 percent of the gross acreage of the development site set aside as open space-natural area** in a ~~E~~cluster ~~D~~development should be designated in the following priority order:

Staff Comment: Land zoned Open Space has limited development potential, so it should not count toward the permanent natural area created as part of the cluster development.

- (1) The first priority for ~~open space-natural area~~ designation is the protection of natural features, environmentally sensitive areas, and scenic features of the site **not shown as Open Space on the Comprehensive Plan map**. This priority is satisfied by any of the following:
 - (a) Lake
 - (b) Wetland identified on the ~~e~~City's Local Wetland Inventory **or by a delineation approved by the Oregon Department of State Lands.**
 - (c) Riparian area identified on the ~~e~~City's Riparian Inventory.
 - (d) Existing channel identified ~~on Figure 7.1 of~~ **in the City of Albany Storm Water Master Plan or the draft North Albany Storm Water Master Plan.**
 - (e) Spring.

Staff Comment: The proposed change to the Hillside Development section of the Code will no longer result in a conflict between these two sections.

- (f) ~~Slope greater than 25 percent.~~ **Slopes 12 percent or greater.**

Staff Comment: Other sections of the Code apply to trees over 8 inches in diameter. Staff proposes that this section be consistent with the other Code sections.

- (g) Wooded area with five or more **healthy** trees over ~~128~~ inches in diameter measured 4½ feet from the ground, **if approved by the City Forester.**
 - (h) ~~Land providing connectivity to parks, trails, inventoried natural features, or areas zoned or protected as permanent open space.~~ **Land that will provide bike or walking trails that connect to existing or proposed parks or trails, inventoried natural features, or areas zoned Open Space or otherwise protected as permanent natural areas.**
 - (i) **Other features of the site unique to Albany, if approved by the Director.**
- (2) The second priority for ~~open space~~ **natural area** designation is to create open spaces in and around neighborhoods. This priority is satisfied by any of the following:
- (a) Continuity of adjacent open space corridors or parkways.
 - (b) A network of interconnected open space corridors.
 - (c) A buffer between neighborhoods.
- (3) The third priority for ~~open space~~ **natural area** designation is to incorporate public parks, trails or open space designated in the Parks, Recreation and Open Space Plan and the North Albany Refinement Plan ~~to create private parks and trails that may be connected to public streets, parks, trails or open space.~~ [Ord. 5562, 10/10/03]

116.470 Creation of Permanent ~~Open Space~~ Natural Areas.

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

116.480 Protection of Permanent ~~Open Space~~ Natural Areas.

- (1) ~~Except~~ **The development may encroach into permanent natural areas, only under the following circumstances:**
- (a) ~~as necessary~~ **To meet transportation or utility infrastructure requirements, or**
 - (b) **To provide bike or walking trails that connect to existing or proposed parks or trails, inventoried natural features, or areas zoned Open Space or otherwise protected as permanent natural areas.** ~~, the development shall avoid encroachment into significant wetlands and riparian corridors.~~

Staff Comment: *In the recent hearings for the 13th Avenue subdivision in West Albany, staff became aware that the existing Code language would not allow the use of the natural areas for wetland, riparian, or habitat restoration activities because it prohibits "alteration of ground contours." This is not consistent with the intent of the section of the Code, which is to protect natural features. The original language in (2) did not relate to the protection of natural areas.*

- (2) ~~For other natural features,~~ **Permanent alteration by grading or placement of structures or impervious surfaces may be authorized for the purpose of natural resource enhancement, such as wetland,**

riparian, or wildlife habitat restoration. ~~upon demonstration that equal or better protection for natural resources found on site or in the same basin will be ensured through restoration or enhancement or similar measures. In no case shall such alterations encroach more than is necessary to accommodate the use.~~

Staff Comment: *At a joint City Council-Planning Commission work session, it was requested that the section be reworded so it does not conflict with natural resource protection.*

- (3) Significant wetlands, riparian corridors, and intermittent streams preserved as ~~open-space-natural areas~~ in a cluster development may be used for conveyance of storm waters **only when the applicant has demonstrated that the discharge is compatible with the protection of the natural resource.** ~~but~~ **These natural features** shall not be used for drainage improvements, such as detention or retention ponds, or any other utility improvement necessary for development of the lots.
- (4) Areas set aside for permanent ~~open-space-natural areas~~ in a cluster development cannot be further subdivided.
- (5) Fences are permitted in and around the ~~open-space-natural areas~~ if consistent with the expressed purpose of the ~~open-space-natural areas~~.
- (6) Provisions must be established to ensure the continued maintenance of **areas designated as natural areas through Cluster Development** ~~any common areas.~~ See Section 11.470. [Ord. 5562, 10/10/03]

Staff Comment: *The change to maximum density in the table better reflects reality when street rights-of-way, etc are subtracted out. New note #1 addresses compatibility with land adjacent to the development under different ownership.*

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

Standard	RS-10	RS-6.5	RS-5	RM-5
Max. dwelling units per gross acre	4	8-6	10-8	20
Minimum Lot size (1)	None	None	None	None
Minimum Lot Width	None	None	None	None
Minimum Lot Depth	None	None	None	None
Minimum front house setback (12)	15 ft.	10 ft.	10 ft.	10 ft.
Maximum Lot Coverage (23)	70%	70%	70%	70%

(1) Lots on the perimeter of the cluster development shall meet the standards in 116.495.

(12) Except, when lots are adjacent to existing development on the same side of the street, the setback shall be within 5 feet of the adjacent house(s) setback(s).

(23) ~~Except, when building envelopes are used,~~ **The maximum lot coverage may be up to 100% for lots that provide land only for the building footprint.**

[Ord. 5562, 10/10/03]

Staff Comment: *The issue that generated the most discussion at public hearings was perimeter lot compatibility. Based on testimony and Planning Commission comments and questions at the public hearing, staff concluded that the Planning Commission and public agreed that:*

- *Compatibility is a concern when adjacent to existing development. There was no testimony to support the need for larger lots along perimeters of cluster developments adjacent to undeveloped/vacant land.*
- *There should be a transition of lot sizes between the (larger) existing subdivisions and the (smaller) clustered housing.*
- *Buffer yards should be considered as an alternative way to provide a transition between existing houses and cluster development.*

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

- (1) **Standards.** The term “standard minimum lot size” as used in this section, means the minimum lot size allowed in the underlying base zone without any reductions in size allowed elsewhere in this Code.
 - (a) When the proposed cluster development abuts developed property in a **lower density residential zoning district**, the size of lots on the perimeter of the proposed cluster development shall be at least the standard minimum lot size allowed in the zone underlying the cluster development.

Example:

<p>Proposed Cluster Development <u>RS-6.5</u> <i>Perimeter lots must be at least 6,500 sf</i></p>	<p>Abutting Property w/ Lower Density Residential Zoning <u>RS-10.0</u></p>
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Staff Comment: During the public hearing for the Tuscany Estates subdivision, compatibility with adjacent neighbors was a concern. The Planning Commission conditioned the perimeter lots in Tuscany Estates to be built at 70 percent of the base zoning district. The following would codify this condition.

- (b) When the proposed cluster development abuts developed property in the **same residential zoning district** as the proposed cluster development, the size of lots on the perimeter of the cluster development shall be at least 70 percent of the standard minimum lot size of the underlying zoning district.

Example:

<p>Proposed Cluster Development <u>RS-10.0</u> <i>Perimeter lots must be at least 7,000 sf (70% of minimum lot size for underlying zoning)</i></p>	<p>Abutting Property w/ Same Residential Zoning <u>RS-10.0</u></p>
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- (2) **Exceptions.** The Perimeter Lot Compatibility standards do not apply in the following cases:
 - (a) Perimeter lots that are adjacent to land that is zoned for higher density housing, mixed-use or non-residential uses, or to residentially zoned property not in residential use (such as educational, institutional, religious or park uses).

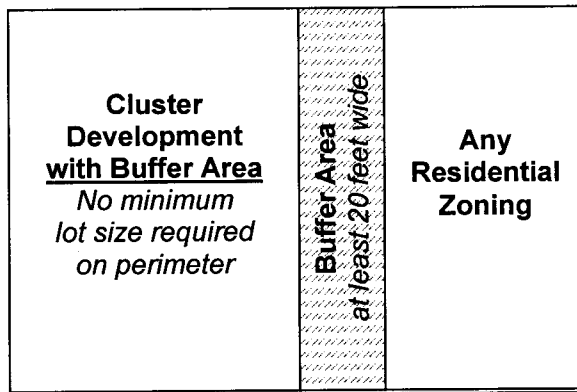
Staff Comment: In the last version reviewed by the Planning Commission at the May 1, 2006 work session, the following standard had included the city limits (“...when the perimeter lots share a property line with the city limits/Urban Growth Boundary”), but was removed as recommended by the Planning Commission.

- (b) **Where the same property owner owns the property abutting the proposed cluster development or when the perimeter lots share a property line with the Urban Growth Boundary.**

Staff Comment: The Planning Commission requested that staff add language that allows for ownership of the buffer area by more than the homeowners' association, as is allowed for natural areas created through Cluster Development. Staff proposes making the buffer area a natural area per the provisions in other sections of this article of the Code.

- (c) **If a buffer area is created as a separate property along the perimeter and is at least 20 feet wide. The buffer area shall become a permanent natural area and shall meet the provisions in Sections 11.470 and 11.480.**

Example:



Staff Comment: The following exception addresses property with development potential, which is defined as property 1 acre or larger.

- (d) **Cluster developments abutting property that is at least one acre in size.**

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

- (1) On development sites greater than 20 acres, up to 20 percent of the housing units in RS-6.5 and RS-10 may be attached single-family or condominium-style housing.

Staff Comment: The existing language in the next section is contradictory, i.e., although office uses are mentioned as an intended use, none are actually allowed because they are not restaurants nor are they included in the convenience-oriented category referenced. Adding personal service-oriented uses would include office uses, such as insurance broker or tax advisor, as well as other neighborhood-serving businesses, such as hair salons and bank branches.

- (2) On development sites greater than 50 acres, up to 2 acres may be developed with neighborhood commercial uses through a conditional use review. The maximum building footprint of commercial or office uses shall be 3,000 square feet. Commercial and office uses shall be limited to restaurants with no drive-through service, and convenience-oriented **and personal service-oriented** uses as described in Article 22. [Ord. 5562, 10/10/03]

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

FINDINGS AND CONCLUSIONS

File DC-01-07

Recommended by the Albany Planning Commission on March 12, 2007

Adopted by the Albany City Council on March 28, 2007

The Albany Planning Commission recommended these findings in support of their recommendations for the Development Code changes. The Albany City Council adopted these findings in support of the Ordinance.

Section 2.290 of the Albany Development Code (ADC) contains the following review criteria that must be met for text amendments of the Development Code to be approved:

(1) THE PROPOSED AMENDMENTS BETTER ACHIEVE THE GOALS AND POLICIES OF THE COMPREHENSIVE PLAN THAN THE EXISTING REGULATORY LANGUAGE.

The following Comprehensive Plan goals and policies are relevant to the proposed Hillside and Cluster Development amendments. Each goal and policy is written in *italics* and is followed by findings.

- 1.1 *Goal 14, Urbanization, Directing Growth, 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.*

Cluster Development: The proposed amendment to ADC 11.500 Permitted Uses will reduce the need for travel and dependency on the private automobile by adding personal service-oriented uses to the neighborhood-serving uses allowed in cluster developments.

- 1.2 *Goal 14, Urbanization, Development Review, Policy #2: Encourage design innovation but ensure that site design considers site characteristics, potential impacts on surrounding areas, and applicable Comprehensive Plan policies, i.e., access, vegetation, soils, slopes, public facilities and services, energy conservation, recreation, natural and other hazards, etc.*

Cluster Development: The proposed requirement that an applicant certify they will use a design professional [ADC 11.410 Eligibility (3)] is intended to encourage both design innovation and careful planning to protect natural and other special features of the site.

Hillside: The new proposed ADC 6.200 Geotechnical Report Required requires a geotechnical report at the land division stage, which will balance design innovation with consideration of geologic and soil hazards. The geotechnical report is intended to allow development of slopes over 12 percent only if a licensed engineer certifies that proposed development is feasible and safe. Other sections that address development standards are proposed to be deleted because they will be covered in the geotechnical report, e.g., revegetation standards, grading, cut and fill standards.

- 1.3 *Goal 14, Urbanization, Development Review, Policy #3: Give special attention to proposals in areas identified as in need of special review (greenway, floodplains, floodways, open space, airport, etc), ensuring that developments in these areas are specially designed in recognition of the particular concern for that area.*

Cluster and Hillside Development: See Finding 1.2.

- 1.4 *Goal 14, Urbanization, Development Review, Policy #5: Ensure that the City's land use planning process and its policy framework is workable and understandable for local officials, staff, and the public. Ensure that the degree of application and review is commensurate with the size and complexity of various development requests.*

Cluster Development: Cluster Development is an optional form of development, similar to planned development, which is available in many parts of the city. It is not an overlay district that applies to a specifically defined geographic area, such as floodplains or wetlands. Cluster Development is proposed to

be moved from Article 6 - Special Purpose Districts to Article 11 - Land Divisions and Planned Development to make the process more understandable.

Adding clarification to ADC 11.400 Purpose that it is not the intent of Cluster Development to increase the overall housing density of the property makes the purpose of Cluster Development more understandable.

Proposed revisions to ADC 11.405 Optional Nature further clarifies that Cluster Development is not mandatory and that it would happen as part of the land division process.

When Cluster Development was added as a development option in 2003, it was intended that the permitted uses would include neighborhood-serving businesses – both retail and personal services – not just retail. The existing language in the Code is contradictory. On the one hand, office uses are mentioned as an intended use; on the other hand the stated uses preclude office uses – "commercial and office uses shall be limited to restaurants with no drive-through service, and convenience-oriented uses described in Article 22." Convenience-oriented uses do not include office uses, such as insurance broker and tax advisor, or personal service-oriented uses, such as hair salons and bank branches. The proposed amendment to ADC 11.500 Permitted Uses will correct the inconsistency.

Land zoned as Open Space has limited development potential, so it was not intended to be counted toward the required creation of permanent natural areas. Proposed revisions to ADC 11.450 Natural Area Requirements and 11.460 Designation of Permanent Natural Areas clarify this point.

Proposed revisions to ADC 11.460 Designation of Permanent Natural Areas (1)(f) changes the slopes from greater than 25 percent to 12 percent or greater so it is consistent with the Hillside Development section of the Code.

Proposed revisions to ADC 11.460 Designation of Permanent Natural Areas (1)(g) clarifies that the trees need to be healthy to count, and changes the feature from trees 12 inches in diameter to 8 inches in diameter to be more consistent with other sections of the Albany Development Code.

Hillside Development: The proposed amendment to ADC 6.170 Purpose clarifies that the intent of the Hillside Development standards is to regulate development in potentially hazardous terrain, not just to protect the terrain itself. The revisions make the purpose more clear and understandable.

The proposed change to ADC 6.180 Applicability clarifies the situations in which the Hillside Development standards apply, thereby making the process more workable and understandable.

- 1.5 Goal 14, Urbanization, North Albany Planning Area – Natural and Cultural Resources, Policy #1: Minimize potential impacts to riparian vegetation, stream hydrology and adjacent land uses.

Cluster Development: The new proposed ADC 11.495 Perimeter Lot Compatibility addresses the potential impact on surrounding areas by ensuring there will be a reasonable transition between different housing densities, and allows exceptions under certain circumstances.

- 1.6 Goal 14, Urbanization, North Albany Planning Area – Natural and Cultural Resources, Policy #2: Protect wetlands, floodplains, riparian corridors and other critical natural resources through the use of stormwater management measures and through appropriate practices (cluster development, setbacks from significant resources, corridor protection and reduction of impervious surfaces).

Cluster Development: The proposed amendment to 11.480 Protection of Permanent Open Space (2) allows for the permanent alteration or grading of the natural areas if it is done for the purpose of natural resource enhancement. Currently, these activities would not be allowed, and are therefore not consistent with the intent of the section.

- 1.7 Goal 14, Urbanization, North Albany Planning Area – Natural and Cultural Resources, Policy #4: Protect and enhance cultural and historic resources.

Cluster Development: The proposed amendment to ADC 11.460 Designation of Permanent Natural Areas (1)(i) adds "Other features of the site unique to Albany, if approved by the Director" to the list of features that are the first priority in natural area designation, as well as one of the features that would enable a property to be eligible for cluster development. This could include cultural and historic resources.

- 1.8 Goal 7, Flood Hazards & Hillside, Policy #12: Require land divisions and planned developments in slope areas to:
- o Minimize cut and fill requirements
 - o Ensure that the location and design of streets, structures, and other development give full consideration to natural contours, drainage patterns, and vegetation features of the site.
 - o Protect against temporary and long-term erosion.
 - o Control storm drainage to minimize the amount and rate of storm water flowing onto adjacent property and city streets.

Hillside Development: The new proposed ADC 6.200 Geotechnical Report Required allows development on slopes where a licensed engineer certifies that proposed development is feasible and safe. The geotechnical report will identify building footprints and locations, and include any requirements necessary to ensure the development will not create hazardous conditions at the time of construction or in the future

CONCLUSIONS

- 1.1 The proposed amendments to the *Cluster Development* section of the Code better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language because the Code amendments encourage efficient land use patterns, encourage design innovation while protecting critical natural and cultural resources, ensure consideration of special site characteristics and potential impacts to surrounding areas, and ensure that the land use planning process is workable and understandable.
- 1.2 The proposed amendments to the *Hillside Development* section of the Code better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language because the Code amendments encourage design innovation while minimizing geologic and soil hazards and ensure that the land use process is workable and understandable.

(2) THE PROPOSED AMENDMENTS ARE CONSISTENT WITH DEVELOPMENT CODE POLICIES ON PURPOSE AND WITH THE PURPOSE STATEMENT FOR THE BASE ZONE, SPECIAL PURPOSE DISTRICT, OR DEVELOPMENT REGULATION WHERE THE AMENDMENT IS PROPOSED.

The following purposes written in *italics* are relevant to the proposed Development Code amendments and are followed by findings:

FINDINGS

- 2.1 ADC 1.020(1): *Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.*

Cluster Development: The proposed amendments will help implement the Comprehensive Plan goals and policies, as discussed under the previous section, in a manner that protects the welfare of the citizens of Albany.

Hillside Development: The proposed amendments will help implement the Comprehensive Plan goals and policies, as discussed under the previous section, in a manner that protects the safety and welfare of the citizens of Albany.

- 2.2 ADC 1.020(2): *Satisfy relevant requirements of federal law, state law, statewide planning goals, and administrative rules.*

Cluster Development: The proposed amendments are being done as part of the City's periodic review work program, which is administered by the Oregon Department of Land Conservation and Development.

Hillside Development: The proposed amendments are being done as part of the City's periodic review work program, which is administered by the Oregon Department of Land Conservation and Development.

- 2.3 *ADC 1.020(3): Facilitate prompt review of development proposals and the application of clear and specific standard.*

Cluster Development: Adding clarification that it is not the intent of Cluster Development to increase the overall housing density of the property, that the process is optional and occurs as part of the land division process, and that personal service-oriented uses are included in neighborhood commercial uses, makes the standards more clear and specific.

Hillside Development: The proposed amendments to 6.180 Applicability clarify the applicability of the Hillside Development standards, which is currently somewhat ambiguous.

- 2.4 *ADC 1.020(6): Establish procedures and standards requiring that the design of site improvements and building improvements are consistent with applicable standards and flexible design guidelines.*

Cluster Development: The proposed amendments include requiring a design professional to be included in the planning and development process to ensure that the plans are creative yet consistent with design guidelines.

Hillside Development: The proposed amendments require a licensed engineer to certify that the proposed development is feasible and safe.

- 2.5 *ADC 1.020(8): Require that the permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards as well as prevent the spread of blight, and aid in the prevention of crime.*

Hillside Development: The required geotechnical report in ADC 6.200 Geotechnical Report Required will ensure that the development does not cause landslides or erosion.

- 2.6 *ADC 1.020(9): Protect and enhance the city's aesthetic beauty and character.*

Cluster Development: Requiring a professional designer in the planning and design process, adding "Other features of the site unique to Albany" to the list of features that are the first priority for natural area designation, allowing natural resource enhancement activities to take place within natural areas, and adding standards for perimeter lot compatibility, protects and enhances the city's aesthetic beauty and character.

- 2.7 *ADC 6.400: Cluster development is intended to allow development of properties, while protecting community resources, including but not limited to: steep slopes, wetlands, stream corridors, scenic vistas, and parks and trails. Cluster development is intended to protect natural features, to provide linkage with adjacent parks, open space areas, and pathways, and to allow the development to be more compatible with the topography and/or physical limitations of the site. These provisions are not intended to infer public ownership or use. The cluster standards are also intended to promote flexibility in residential development without compromising the development potential of the underlying zoning district or changing the character of adjacent neighborhoods. Cluster development should group residential units in one or more areas to reduce the amount of impervious surfaces and length of utility installations.*

Cluster Development: The proposed amendment to 11.480 Protection of Permanent Natural Areas (2) allows for the permanent alteration or grading of the natural area if it is done for the purpose of natural resource enhancement. Currently, these activities would not be allowed, and are therefore not consistent with the intent of the section.

CONCLUSIONS

- 2.1 The proposed amendments to the *Cluster Development* section of the Development Code are consistent with the purposes of the Development Code because they will facilitate prompt review of development proposals, and protect and enhance the City's natural features and character.
- 2.2 The proposed amendments to the *Hillside Development* section of the Development Code are consistent with the purposes of the Development Code because they will facilitate prompt review of development proposals, and provide reasonable protection from landslide and erosion.

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