

RESOLUTION NO. 3019

WHEREAS, on December 19, 1991, the Benton County Board of Commissioners, acting as the governing body of the North Albany County Service District, took action to amend the final Alternative Plan to Health Hazard Annexation for North Albany; and

WHEREAS, said amendment was necessitated by the passage of Ballot Measure 5 in November of 1990 which had the effect of eliminating the basic financing structure of the alternative plan; and

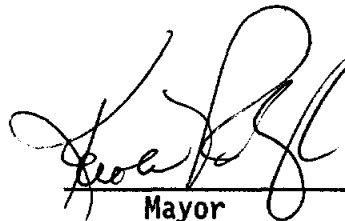
WHEREAS, none of the local government entities, including the City of Albany, are prepared to offer other alternative financing to enable the sewer project to proceed as planned during 1991; and

WHEREAS, the City of Albany may be able to offer sewer revenue bond financing for the project should the affected area choose to annex to the City of Albany; and

WHEREAS, additional time is needed to explore voluntary annexation and other financing mechanisms to allow the project to proceed.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the amendment to the Alternative Plan, attached as Exhibit A, is hereby endorsed and recommended for approval by the State of Oregon.

Adopted this 9th day of January 1991.



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Mayor

ATTEST:



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City Recorder

JAN 2 1991



**DEVELOPMENT DEPARTMENT**

408 SW Monroe  
Corvallis, OR 97333

(503) 757-6819

**NOTICE OF MEETING REGARDING FUTURE OF  
ALTERNATIVE PLAN**

Tuesday, January 8, 1991, 7:30 p.m.  
North Albany Middle School,  
1205 North Albany Road, N.W.  
Albany, OR 97321

The North Albany Citizen Advisory Committee (NACAC) and the North Albany County Service District Advisory Committee (NACSDAC) have called a joint meeting to discuss the future of the Alternative Plan to Health Hazard Annexation.

**The Problem:** The passage of Ballot Measure 5 (the property tax limitation) has effectively eliminated the District's ability to finance the Alternative Plan. This could result in the failure of the Alternative Plan and the resumption of forced health hazard annexation proceedings to the City of Albany.

**Why Measure 5 Stops the Current Plan:** The District planned to pay the costs not covered by grants and loans by assessing those costs to the individual affected properties. The District would then borrow money against these assessments by issuing "Bancroft" bonds. Use of these bonds enables the property owners to pay off their assessments in installments over up to 30 years at a very low interest rate.

Bancroft bonds are primarily guaranteed by the assessments against the properties, but they are secondarily guaranteed by the property taxing authority of the government entity. Measure 5 removes this security because it establishes property tax limits which prevent the taxing units from pledging their taxing authority.

The District had planned to use assessment bonds instead of Bancroft bonds if Measure 5 passed. Assessment bonds are similar to Bancroft bonds, but are guaranteed solely by assessments against the property. At a November 27 meeting at the Department of Environment Quality (DEQ), bank representatives told the District that the cost of the project relative to the assessed value of the property was too high for the District to issue the bonds unless the District provided a secondary security. The District has no ability to give a secondary security, and so is effectively prevented from financing the project.

**What Are the Options?:** If the District cannot find another method to finance the project, the State will terminate the Alternative Plan and resume forced health hazard annexation proceedings. Forced health hazard annexation proceedings could take two to three years, and would likely cost the project the \$3.25 million in federal grants and loans that have been secured.

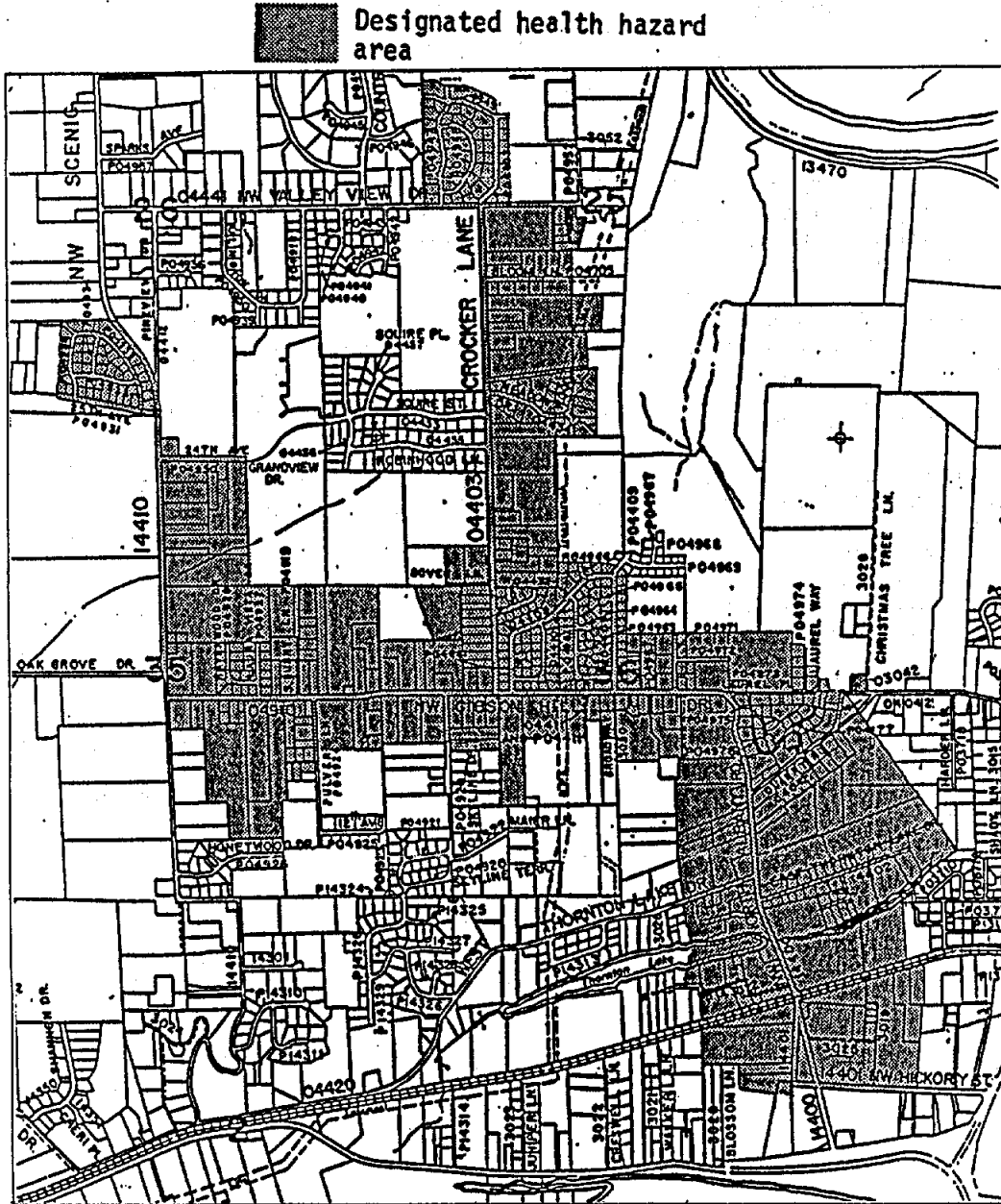
The final project would be much more expensive for the property owners.

At its December 19, 1990, meeting, the Benton County Board of Commissioners adopted an amendment to the Alternative Plan which asks the DEQ and the Health Division for more time to solve the problem. County, City, and State agency staff have investigated alternatives and come up with the following options which will be discussed at the January 8 meeting.

- 1) The District can request the 1991 State Legislature to re-establish the ability to issue local bonds similar to "Bancroft" bonds.
- 2) The District can request the 1991 Legislature to adopt contract annexation. If the territory was certain to be annexed to the City of Albany, the City could issue assessment bonds backed by City sewer revenues.
- 3) The District could assess the properties and require the property owners to be responsible for arranging their own private financing.
- 4) The District could call a District-wide election on a general obligation bond to pay for the capital improvements. SUCY bonds are exempt from the Measure 5 limits.

5) The District or the citizens could seek voluntary annexation, either through circulation of petitions or by an election. If the territory were annexed to the City of Albany, the City could pledge its sewer revenues as a secondary guarantee for assessment bonds. Ballot Measure 5 makes annexation more attractive because the City could not impose its entire tax rate, and because the reduction in school taxes will more than offset the increase in property taxes caused by annexation. By 1991, North Albany property tax payers will see a 40% reduction in property taxes even if annexed. Annexation would also allow the residents of North Albany to vote in City elections.

All interested parties are encouraged to attend the January meeting.





**BOARD OF COMMISSIONERS**

180 NW 5th Street  
Corvallis, OR 97330-4777

(503) 757-6800

FAX (503) 757-6893

December 21, 1990

William P. Hutchison, Chairperson  
Environmental Quality Commission  
Attn: Fred Hanson, Director  
Oregon Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204

Dr. Michael Skeels, Administrator  
Oregon State Health Division  
811 State Office Building  
1400 S.W. 5th Avenue  
Portland, OR 97201

Re: Amendment to North Albany Alternative Plan

Gentlemen:

Attached please find a Resolution adopting an amendment to the Final Alternative Plan to Health Hazard Annexation for alleviation of the declared health hazard in the North Albany area. The Benton County Board of Commissioners, acting as the Governing Body of the North Albany County Service District, adopted this Resolution on December 19, 1990. This amendment has been developed in consultation with the City of Albany, and the County expects the City Council will endorse this amendment shortly. That endorsement will be forwarded to you by the City. The District and the City are submitting this amendment to you for your consideration in an attempt to preserve the Alternative Plan in the wake of the passage of Ballot Measure 5. As you will recall, the District had proposed to pay for the construction of facilities not covered by other grants and loans by using special assessments backed by Bancroft Bonds. As you know, Bancroft Bonding is no longer viable as a result of the passage of Measure 5, leaving the District without any effective means to finance the project.

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CITY OF ALBANY

December 21, 1990


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The amendment essentially requests extra time to develop other methods of financing the Plan, and to seek a voluntary annexation that will make continuation of the Plan or resumption of health hazard annexation unnecessary. The parties believe that the 1991 Legislature will at least make an attempt to replace Bancroft Bonding with some other means of financing. In addition, if the Legislature adopts a strong new contract annexation law, the City might be less reluctant to secure the project. The County also believes that voluntary annexation could be more viable, because Measure 5 will result in substantial property tax reductions for North Albany, even if the area annexes.

The County and City continue to believe that the Alternative Plan, even as amended, will result in a more expeditious solution to the health hazard than returning to health hazard annexation proceedings under ORS 222.840 to 222.915. The Board of Commissioners hereby submits the amendment to the Alternative Plan, and requests the Environmental Quality Commission and the Health Division to approve the amendment and continue the suspension of health hazard proceedings.

Thank you for your consideration.

Sincerely,

  
John Dilworth,  
Chairman

JGC:tw

Enclosure

cc: Senator Mae Yih  
Representative Caroline Oakley  
Bob Rindy, Department of Land Conservation & Development  
Ron Hall, Health Division  
Richard Santner, Department of Environmental Quality  
Steve Bryant, Albany City Manager  
Jeffrey G. Condit, Benton County Counsel

BEFORE THE GOVERNING BODY OF THE NORTH ALBANY COUNTY SERVICE DISTRICT, BENTON COUNTY, STATE OF OREGON

In the matter of submitting an )  
amendment to the Alternative Plan )  
adopted pursuant to ORS 222.885. ) RESOLUTION

WHEREAS, on May 16, 1989, the Administrator of the Oregon State Health Division of the Department of Human Resources issued Findings of Fact, Opinion, Finding of Ultimate Fact, Conclusions of Law and Stay of Proceedings declaring a health hazard in a territory known as the North Albany area pursuant to ORS 222.840 to 222.915; and

WHEREAS, these findings and a subsequent stay issued by the Division on August 10, 1989, stayed further proceedings pursuant to ORS 222.840 to 222.915 until November 15, 1989, to enable area residents and local governments to develop an alternative plan to forced annexation to the City of Albany pursuant to ORS 222.885; and

WHEREAS, the Benton County Board of Commissioners, acting as the Governing Body of the North Albany County Service District submitted the resulting Alternative Plan, endorsed by the City of Albany, to the Department of Environmental Quality (DEQ), on November 13, 1989, pursuant to ORS 222.885(2); and

WHEREAS, the State of Oregon Environmental Quality Commission (EQC) approved the preliminary Alternate Plan pursuant to ORS 222.890(2) on January 19, 1990, giving the District and the City six months pursuant to ORS 222.890(2) to submit the final Alternative Plan; and

WHEREAS, the District and the City submitted the Final Alternative Plan to Health Hazard Annexation pursuant to ORS 222.890(2) on July 18, 1990; and

WHEREAS, the EQC certified the Final Alternative Plan to Health Hazard Annexation pursuant to ORS 222.890(3) on September 21, 1990; and

WHEREAS, the Health Division reviewed the Final Alternative Plan to Health Hazard Annexation, found that it met the requirements of ORS 222.890(2), and certified the Final Alternative Plan to Health Hazard Annexation pursuant to ORS 222.890(3) on October 31, 1990; and

WHEREAS, the voters of the State of Oregon adopted Ballot Measure 5 on November 6, 1990, which Measure significantly affects the ability of local governments to finance projects such as the proposed plan to alleviate the health hazard, necessitating an amendment to the Final Alternative Plan to Health Hazard Annexation:

BE IT HEREBY RESOLVED that the Governing Body of the North Albany County Service District amends the Final Alternative Plan to Health Hazard Annexation as shown in Attachment A, and directs that this resolution and attachments be submitted to the Oregon State Department of Environmental Quality and the Oregon State Health Division as soon as possible after adoption, along with a request that the Environmental Quality Commission and the Health Division permit this amendment to the Final Alternative

Plan and continue the suspension of further health hazard annexation proceedings pursuant to ORS 222.890(3).

Adopted this 19 day of December, 1991.

Signed this 19 day of December, 1991.

GOVERNING BODY OF THE NORTH ALBANY  
COUNTY SERVICE DISTRICT

John R. Dilworth 12-19-90  
John R. Dilworth, Chairman

Dale D. Schrock 12/19/90  
Dale D. Schrock, Commissioner

Pamela S. Folts 12/19/90  
Pamela S. Folts, Commissioner

Approved As To Form:  
[Signature]  
Office of County Counsel



**ATTACHMENT A:**

**Amendment to Alternative Plan to Annexation for  
Removal of Health Hazard Conditions in North Albany**

**I. Nature of Amendment to Final Alternative Plan:** This document is intended to amend the Final Alternative Plan submitted to the State Department of Environmental Quality and the Oregon State Health Division on July 18, 1990. Except as expressly modified in this amendment, the provisions of the previous Plan continue in full force and effect.

**II. Amended Findings:** ORS 222.890(2) requires the governing body of a district proposing an alternative plan pursuant to ORS 222.890(1) to present the Environmental Quality Commission (EQC) with information demonstrating compliance with its four subsections. The passage of Ballot Measure 5 requires amendments to information previously submitted by the District to demonstrate compliance with ORS 222.890(2)(a), 222.890(2)(c), and 222.890(2)(d).

1. ORS 222.890(2)(a) requires information:

"That the territory in which the conditions dangerous to public health exist has received approval for extension of a city's or district's sewer or water lines within the territory or has annexed to a district authorized by law to provide facilities necessary to remove or alleviate the dangerous conditions, and that financing of the facilities or extension of such facilities has been assured."

In the Final Alternative Plan, the District and the City proposed to pay for the necessary facilities by applying for a \$1,261,000 Environmental Protection Agency construction grant, administered by the Oregon Department of Environmental Quality (DEQ) (applied for and approved in the amount of \$1,410,194), and an Oregon State revolving fund SRF (loan) in the amount of \$2,500,000 (applied for and approved in the amount of \$2,537,776). In addition, the City applied for and obtained an Oregon Community Development Block Grant (OCDBG) in the amount of \$500,000 to help low and moderate income households pay assessments. The remainder of the cost, primarily associated with the local collection system or other local share costs, was proposed to be paid for by assessments against the benefited property pursuant to NACSD Ordinance No. 2-B, the NACSD Improvement District Ordinance. This Ordinance, since codified into the North Albany County Service District Code (attached as Exhibit 1), provides for a waiver of remonstrance in the cases of health hazard annexation, and allows the costs assessed against benefited properties to be paid for by utilizing the Bancroft Bonding Act (ORS 223.205 and 223.210 to 223.295).

It is the opinion of bond counsel and of the County and the City that the passage of Ballot Measure 5 effectively prohibits funding the project by Bancroft Bonding.

The only other method for bonding special assessments available to the District is contained in ORS 223.785. This statute empowers a city or district to issue special assessment improvement bonds and pledge the revenue from special assessments against the benefitted property as security for those bonds. Unfortunately, the high cost of the project relative to the total assessed value of the properties to be assessed would make such a bond issue unsalable absent additional security. Measure 5 appears to have eliminated the District's ability to finance such an expensive project via special assessment.

Assessment bond financing might be possible if the City of Albany entered into a joint financing agreement with the District pursuant to ORS 451.560, in which the City agreed to back the District's issuance of assessment bonds with its sewer revenues. The City is unwilling to enter into such an agreement because it violates one of the City's primary conditions for allowing North Albany to hook up to the City regional sewage treatment plant without annexation. The City agreed to the Alternative Plan based on the representation by the District that the citizens of North Albany would be solely responsible for the cost of the sewer system, and that City taxpayers would not be required to subsidize service to North Albany. Under an ORS 451.560 agreement such as noted above, the City ratepayers could end up paying for the North Albany system. For the same reasons, and because of the County debt limitation contained in Article XI, Section 10, of the Oregon Constitution, the Benton County Board of Commissioners is unwilling to pledge the general tax revenue of the County as security for the District to levy assessment bonds.

These financial uncertainties do not necessarily mean that the Alternative Plan is no longer viable. The parties to the Plan expect that the 1991 Legislative Assembly will devise new methods for local governments to finance local improvements. We therefore desire the Health Division and the EQC to extend the time for assuring financing at least through the end of the 1991 Legislative session. The District therefore amends the finding regarding ORS 222.890(2)(a) to clarify that assessments against benefitted property will be made pursuant to the new North Albany County Service District Code. The assessments will be financed pursuant to the Bancroft Bonding Act or some other, similar, method enacted by the 1991 Legislative Assembly. NACSD Code 2.330 has been amended to allow the District to take advantage of any new method of financing that the Legislature enacts (see Exhibit 1).

Given the restrictions of Measure 5, the Legislative Assembly may not be able to replace Bancroft Bonding with a method of financing local improvements that will either enable the District

to finance the project or alleviate the City's concern that City taxpayers or ratepayers might end up paying for the North Albany system. The Alternative Plan could still proceed if the 1991 Legislative Assembly enacts some form of viable contract annexation. If the City can be assured that it will annex North Albany territory in the reasonably foreseeable future, the City has informed the District that it may be willing to secure the District's issuance of assessment bonds by pledging City sewer revenue as security.

In any event, the parties agree to offer a voluntary annexation as an alternative to termination of the Alternative Plan and a resumption of the forced health hazard annexation proceedings. As the EQC is aware, voluntary annexation is a component of the current Alternative Plan. Voluntary annexation was to have been offered to the citizens of North Albany just prior to assessment. The parties now propose to offer a voluntary annexation by early Fall of 1991 at the latest. If the citizens of North Albany approve the voluntary annexation, then the City would finance the local improvements using methods for financing such improvements within the City limits. Measure 5 makes annexation more attractive for citizens of North Albany because the \$10 per thousand limitation on taxing units "other than schools" means that annexation would increase the North Albany tax rate by less than half as much as it would have before Measure 5. In addition, by the time the City tax rate is imposed in tax year 1992-93 (presuming a Spring or Fall '91 annexation). The reduction in the school tax limit will more than offset the increase as a result of annexation. The citizens of North Albany will therefore see a substantial reduction in their property taxes under Measure 5, even if they vote for annexation.

The EQC may well ask why it should approve an extension to the Alternative Plan to await legislative developments when the parties could offer voluntary annexation immediately. The District believes that the citizens of North Albany will not approve a voluntary annexation unless all other non-annexation alternatives have been exhausted. This is true even though the only alternative to a voluntary annexation is forced health hazard annexation, which is highly likely to result in much greater expense to the individual property owners than would voluntary annexation because of the lengthy delays and the potential loss of federal grants and loans. Finally, because the project has been delayed for one year regardless of whether the District waits for the 1991 Legislature to act (see discussion below), awaiting potential legislative developments will not further delay the process. For these reasons, the District believes that a voluntary annexation should only be offered after the parties give the 1991 Legislature a chance to adopt legislation that will make the original Plan viable again.

In conclusion, the District concedes that financing for the project pursuant to the Alternative Plan is not currently assured. The District requests an extension of time until

October 1, 1991, to enable the parties to take advantage of legislative action or voluntary annexation. If one of the three scenarios noted above occurs, financing will be assured. If the legislature does not enact new financing or annexation measures, and if the voluntary annexation is not successful, then the District recognizes that the Alternative Plan will no longer be viable. In this event, the District concedes that resumption of forced health hazard annexation proceedings pursuant to ORS 222.840 to 222.915 will be the only remaining method for alleviating the health hazard in North Albany.

2. ORS 222.890(2)(c) requires the Alternative Plan to contain a time schedule for the construction of facilities.

The previously adopted Final Alternative Plan stated that design would occur in late Fall of 1990, that the project would go out to bid about March 1, 1991, and that construction would begin about May 1, 1991. The project was scheduled to be completed by about October, 1991.

Regardless of whether the EQC approves this amendment, the project cannot now be completed within the above time frame. The District and the City negotiated a design contract with David Evans and Associates (DEA). The District proposed to enter into this agreement as of November 30, 1990. A provision in that contract, however, required that the District be able to assure the design consultant that sufficient funding was available to pay the contract. The parties originally intended to pay for that contract by using bond anticipation notes (BANS) based upon the Bancroft Bonding assessment that would otherwise have occurred in October, 1991. Because the passage of Measure 5 has made the final method of financing uncertain, the parties were unwilling to commit the type of security that was necessary to borrow on a short-term basis, for the reasons previously stated. Any comfortable alternative method of financing (such as acquiring SRF funds) would require a delay of several weeks and perhaps several months.

The tight time schedule in the Alternative Plan would not permit such a delay. In order to meet the time line proposed in the Alternative Plan, the design contract had to be let by November 30 in order to complete design in time to go out to bid in early Spring. Any delay in completion of design would require a delay in going out to bid. Such a delay would eliminate many, if not all, eligible contractors, who would already be committed for the 1991 construction season. This could either prevent construction during the 1991 season, or make the project much more expensive.

The District therefore desire to amend the time schedule for construction to the following: Design will occur begin in early 1991, hopefully to be completed by late Summer, 1991. The project will go out to bid on or about February or March, 1992. Construction shall begin on or about May 1, 1992. The project

will be completed by October, 1992, with hook-ups beginning shortly thereafter.

The design portion of that schedule is subject to change. The City of Albany intends to attempt to retain the current design consultant. This is contingent, however, on the City's ability to obtain SRF funds to pay the consultant. DEA has agreed to give the City ninety (90) days to devise an alternative method of paying for the contract. If the City is unable to obtain SRF funding for the design contract, then design will occur in Fall, 1991.

The delay in construction will also delay the transfer of planning and zoning administration to the City from July 1, 1991, to July 1, 1992.

3. ORS 222.890(2)(d) requires demonstration that the proposed facilities, if constructed "will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditious as would be accomplished by the proposed annexation to the city."

The type of facilities and method of service does not change under the amendment. The requested delay, however, raises the issue of whether the Alternative Plan continues to be more expeditious than health hazard annexation.

The District continues to believe that the amended Alternative Plan will continue to be more expeditious than proceeding with health hazard annexation pursuant to ORS 222.840 to 222.915.

If the EQC decertifies the Alternative Plan, the Health Division will order the resumption of health hazard annexation proceedings pursuant to ORS 222.840 to 222.915. Substantial delays and likely litigation caused by resumption of the health hazard annexation process, as noted in the previous Alternative Plan would occur. ORS 222.880(3) will require the Health Division to consider petitions for exclusion from the health hazard area. This process will delay construction by at least one year, and will likely result in litigation. As indicated by the vigorous opposition during the early part of the process, a large portion of the North Albany population continues to oppose annexation and would likely not only appeal many of the decisions on petitions for exclusion but also the entire health hazard annexation process. Resolution of such legal challenges is likely to take years.

Such a lengthy delay is also likely to cost the project its EPA grant and threaten the current level of SRF loan eligibility. Loss of these funds would make the project much more expensive for the citizens. (The District has been informed that a year's delay in construction will not cost the project its approved grants and loans.)

Finally, the Alternative Plan development and implementation process has resulted in a vastly improved working relationship between the District, the City, and the citizens of North Albany. Resumption of forced health hazard annexation proceedings could destroy this relationship and negatively impact not only this project but future projects as well.

**III. Conclusion:** For the reasons stated above, the District continues to believe the Alternative Plan, with amendments proposed above, continues to be the most satisfactory and expeditious method of removing or alleviating the conditions dangerous to public health which have been found to exist in the health hazard area by the Oregon State Health Division. For the reasons discussed above, implementation of the Alternative Plan as amended is clearly preferable to resumption of proceedings pursuant to ORS 222.840 to 222.915 to force annexation to the City of Albany of the North Albany area.