

RESOLUTION NO. 5008

A RESOLUTION PROPOSING THE ANNEXATION OF PROPERTIES LOCATED ON THE EAST SIDE OF LOCHNER ROAD AND SOUTH OF THE ALBANY SANTIAM CANAL (AN-01-04), AND FORWARDING THE QUESTION OF ANNEXATION TO THE VOTERS ON THE NOVEMBER 2, 2004 BALLOT.

THE CITY COUNCIL OF THE CITY OF ALBANY RESOLVES that the findings and conclusions contained in Resolution Exhibit B (which consists of the complete staff report to the Albany City Council, including attachments, and dated July 21, 2004; File AN-01-04), and by this reference incorporated herein, are hereby adopted.

THE CITY COUNCIL OF THE CITY OF ALBANY FURTHER RESOLVES that this annexation, which would annex approximately 31.9 acres of property located on the east side of Lochner Road and south of the Albany Santiam Canal, all within Linn County, Oregon, is to be submitted to the legal voters of Albany, Oregon, for their approval or rejection pursuant to Albany City Charter Chapter 54 at an election to be held on November 2, 2004. This election will be conducted by mail-in ballots.

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

CAPTION: MEASURE PROPOSING ANNEXATION OF PROPERTIES EAST OF LOCHNER ROAD SE

QUESTION: Shall two parcels totaling approximately 31.9 acres on the east side of Lochner Road be annexed?

SUMMARY: Approval of this measure would annex approximately 31.9 acres to the City of Albany. The property to be annexed is located on the east side of Lochner Road and south of the Albany Santiam Canal. The area is made up of all of Tax Lot 603 (29.2 acres) and a portion of Tax Lot 602 (2.7 acres). The Greater Albany Public School district owns the larger parcel. The school district has declared this property as surplus for school purposes and may sell the property in the future, with proceeds going toward the acquisition of a more suitable school site. The smaller parcel is mainly wetland and has been set aside as an open space area for an approved development east of the site. Upon annexation, the zoning of these parcels would be RS-6.5 (Single-Family Residential).

The text of the measure is as follows:

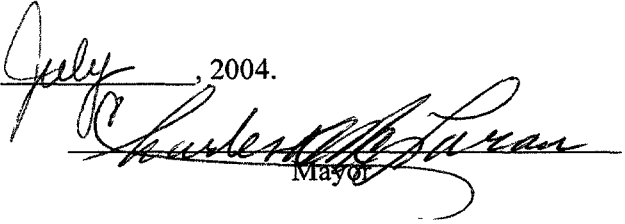
The following described real property, all located in Linn County, Oregon, shall be annexed to the City of Albany upon obtaining a favorable majority vote of the people.

The property generally located on the east side of Lochner Road south of the Albany Santiam Canal, shown on Linn County Assessor's Map No. 11S-03W-20; Tax Lot 603 and a portion of Tax Lot 602, as further described in the attached legal description labeled Resolution Exhibit A. The subject properties containing 31.9 acres, more or less.

The City Clerk is authorized and directed to give notice of the submission of this question to the voters, including a true copy of the complete text and the ballot title for the measure in the form in which it shall be printed on the official ballot and any other information required by law to be published. That notice

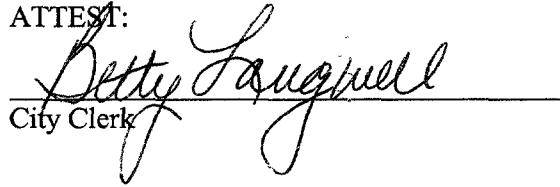
shall be published in not less than two successive and consecutive weekly issues of the *Albany Democrat-Herald*.

DATED AND EFFECTIVE THIS 28 DAY OF July, 2004.



Mayor

ATTEST:



City Clerk

**RESOLUTION EXHIBIT A
LEGAL DESCRIPTION
FILE AN-01-04**

Beginning at a 1/2-inch iron rod on the East line of and South 1° 04' 30" East 1433.04 feet from the Northeast corner of the Truett Davis DLC No. 54 in Township 11 South, Range 3 West, of the Willamette Meridian, Linn County, Oregon, said 1/2-inch iron rod being on the South line of the Albany Santiam Canal right-of-way; thence South 1° 04' 30" East 156.83 feet to the Northwest corner of the Robert Pentland DLC No. 69; thence South 0° 55' 10" East 1195.87 feet to the North line of the Northwest Natural Gas Co. easement as recorded in Book 272, Page 827, Linn County Deed Records; thence South 85° 06' 45" East 1448.11 feet to a 5/8-inch iron rod; thence North 0° 55' 10" West 706.40 feet to the North line of the Southern Pacific Railroad right-of-way; thence North 65° 33' West along said North line of railroad 700.46 feet, more or less, to the Southeast corner of that parcel conveyed to BBF Development (Clover Ridge) LLC by deed recorded in MF1542-869; thence North 1° 04' 30" West 428.93 feet to the South line of said canal; thence North 86° 16' West 20.41 feet; thence South 1° 16' 30" East 61.63 feet; thence on a 606.0-foot radius curve to the right (the long chord of which bears South 11° 35' 15" West 269.80 feet) a distance of 272.08 feet; thence South 24° 27' West 61.33 feet to the North right-of-way line of said railroad; thence North 65° 33' West along said North railroad right-of-way line 198.55 feet; thence North 1° 16' 30" West 321.67 feet to the South line of said canal; thence North 86° 16' West 521.23 feet to the Point of Beginning.

Save and except that portion of the above described property that lies within the Lochner Road right-of-way.

Said area containing 31.9 acres, more or less



Community Development Department

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

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

STAFF REPORT Annexation

<u>HEARING BODY</u>	ALBANY CITY COUNCIL
<u>HEARING DATE</u>	Wednesday, July 28, 2004
<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:	July 21, 2004
FILE:	AN-01-04
TYPE OF REQUEST:	Annexation of approximately 31.9 acres east of Lochner Road and south of the Albany Santiam Canal
REVIEW BODY:	City Council
PROPERTY OWNERS:	Greater Albany Public School District (Tax Lot 603 – 29.2 acres); BBF Development LLC (Tax Lot 602 – 2.7 acres)
APPLICANTS:	Same as property owners
ADDRESS/LOCATION:	Not addressed; East of Lochner Road, south of the Albany Santiam Canal
MAP/TAX LOT:	Linn County Assessor's Map No. 11S-03W-20; Tax Lots 603 and a portion of Tax Lot 602
TOTAL LAND AREA:	31.9 acres
EXISTING LAND USE:	Undeveloped: Agricultural/Grass field on Tax Lot 603; Wetland/open space on Tax Lot 602 (see Ortho photo – Staff Report Attachment B)
EXISTING COMP PLAN DESIGNATION:	Urban Residential Reserve
CURRENT ZONING:	Linn County – Urban Growth Management (UGM-20)
PROPOSED ZONING:	RS-6.5 (Single-Family Residential)
NEIGHBORHOOD:	South Albany (Tax Lot 603); Oak (Tax Lot 602)
SURROUNDING ZONING:	Linn County – UGM-20 (south); City of Albany – RS-6.5 (north and east) and LI (west)
SURROUNDING USES:	Single-family housing (north and east); undeveloped grass field (south); undeveloped light industrial zone (west); juvenile detention facility (southwest)
PRIOR HISTORY:	A portion of Tax Lot 602 was annexed in 1966, but the boundary was irregular. Tax Lot 602 was included in a subdivision proposal that was approved in 2003, but the majority of the parcel is to remain undeveloped open space. The property owner has agreed to annex the remainder of the parcel at the request of the City. Tax Lot 603 has been farmed for many years and has never been developed.

FINDINGS AND CONCLUSIONS
FILE AN-01-04

INTRODUCTION

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

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

REVIEW CRITERIA

ELIGIBILITY CRITERIA:

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

Finding of Fact:

1. When considered in total, the area is contiguous to the current city limits along the north and west property boundaries (See attached map labeled Attachment A).

Conclusion: This criterion is met because the subject properties are adjacent to the existing city limits.

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

Finding of Fact:

2. Plate 1 of the City's Comprehensive Plan shows the Urban Growth Boundary (UGB). All the parcels involved in this annexation proposal are within the Urban Growth Boundary (See attached map labeled Attachment A).

Conclusion: This criterion is met because the properties proposed for annexation are within the UGB.

TIMELINESS CRITERIA:

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

- a. *"Urban services" means police, fire, and other city-provided services.*
- b. *"Infrastructure" means sanitary sewer, water, storm drainage, and streets.*
- c. *"Adequate level" means conforms to adopted plans and ordinances.*
- d. *"Be made available in a timely manner" means that improvements needed for an adequate level of urban services and infrastructure will be provided in a logical, economical, and efficient manner. Improvements for needed infrastructure may be secured by a development agreement or other funding mechanism that will place the primary economic burden on the territory proposed for annexation and not on the City of Albany generally.*

Findings of Fact:Water

3. Water utility maps indicate that public water facilities do not currently exist adjacent to these parcels. The City has given tentative approval to a subdivision/planned development that includes Tax Lot 602. The vast majority of this parcel will remain as undeveloped wetland and open space for the planned development. One of the conditions of approval for this subdivision is the extension of a public water main to the south boundary of Tax Lot 602. This main will be extended to the south, through Tax Lot 603, when it is developed in the future.
4. The Water Facility Plan indicates the need for a future large-diameter water main through Tax Lot 603. This main will ultimately continue south on Lochner Road and loop into a future main in Ellingson Road, providing an additional feed to the southernmost areas of the City.

Conclusion: This criterion is met because although public water does not currently exist adjacent to the subject properties, the properties can be served by extending mains from the existing public water system upon development. Staff recommends that Council require the attached annexation agreements (labeled Attachment C and Attachment D) which may waive some of the developer's rights and remedies with regard to conditions that may be placed on development by the City if public facilities are insufficient to support the development.

Sanitary Sewer

5. Sanitary sewer utility maps indicate that public sanitary sewer facilities in this area consist of a pressure sewer main along the south boundary of Tax Lot 603. This pressure main discharges to a 12-inch gravity sewer approximately 250 feet east of the southeast corner of Tax Lot 603. A 12-inch main also exists approximately 400 feet west of the site near the Oak Creek Juvenile Detention facility. Tax Lot 602 is not proposed for development because it consists of significant wetland and is being set aside as open space for a proposed subdivision/planned development to the east.
6. Future development on Tax Lot 603 may require the replacement of some of the existing pressure sewer main with a gravity main along the south boundary of the site, or the extension of the main that lies west of the property.
7. The Wastewater Facility Plan shows this 12-inch main being increased in size in the future to meet the demand of ultimate development in this basin.

Conclusion: This criterion is met because the public sanitary sewer system is available for extension to serve the subject properties. Staff recommends that Council require the attached annexation agreements (labeled Attachment C and Attachment D) which may waive some of the developer's rights and remedies with regard to conditions that may be placed on development by the City if public facilities are insufficient to support the development.

Storm Drainage

8. The subject property lies within the North Fork Oak Creek drainage basin. This basin gradually drains to the south to Oak Creek, approximately 2,000 feet south of Tax Lot 603. Approximately 1,600 feet of 42-inch storm drain piping was constructed along the west side of Lochner Road when the juvenile detention facility was developed. The City's Storm Drainage Master Plan indicates no deficiencies downstream of this site.
9. Storm drainage system improvements are typically tied to street improvement work. Required improvements to Lochner Road upon future development of Tax Lot 603 would include public storm drainage facilities to be tied into the existing 42-inch main.

Conclusion: This criterion is met because the existing storm drainage system is available for extension upon future development on this site. Staff recommends that Council require the attached annexation agreements (labeled Attachment C and Attachment D) which may waive some of the developer's rights and remedies with regard to conditions that may be placed on development by the City if public facilities are insufficient to support the development.

Transportation

10. Tax Lot 602 will be largely undeveloped because a high percentage of the site is covered by significant wetland and has been identified as an open space area for an approved subdivision/planned development to the east. The extension of Hill Street across the canal will encroach upon the easternmost portion of this site to provide a second access to the proposed development and to the other homes in the subdivisions east of this area. The portion of Hill Street south of 34th Avenue is designated as a Local Street in the Transportation Master Plan. Tax Lot 603 is accessed via Lochner Road. Lochner Road is designated as a Minor Arterial. Lochner Road is unimproved, except for a 1,500-foot section along the frontage of the parcel that includes the juvenile detention facility.
11. Development of a parcel as large as Tax Lot 603 (29.2 acres) would likely require the submittal of a traffic study. Such a study would identify the needed improvements in the transportation system for a particular development proposal. Because of the current condition of Lochner Road, the potential impacts on Marion Street, and the intersection of Marion Street and 34th Avenue, there may be some off-site improvements that are required for a significant development in this area.

Conclusion: This criterion is met because the transportation system is adequate for the existing uses on the property, and the future development of the site (Tax Lot 603) can be accommodated by providing system improvements commensurate with the impact of a specific future development. Staff recommends that Council require the attached annexation agreements (labeled Attachment C and Attachment D) which may waive some of the developer's rights and remedies with regards to conditions that may be placed on development by the City if public facilities are insufficient to support the development.

Police & Fire Protection

12. There are no existing public water system improvements adjacent to the subject properties. Future development on the site would require the extension of the public water system to the site, which would provide fire protection capabilities to this area. The 34th Avenue fire station is located just west of Marion Street, approximately 3,000 feet northwest of the subject properties.
13. Because the subject property is contiguous to the city limits, and because nearby properties north, west, and east of this site are served, police service to this property would be a logical extension of the current patrol boundaries.

Conclusion: This criterion is met because police and fire service to this property would be a logical extension of the current service boundaries.

B. Sufficient planning and engineering data has been provided and all necessary studies and reviews have been completed such that there are no unresolved issues regarding appropriate Comprehensive Plan and implementing ordinances.

Findings of Fact:

14. This annexation request is for approximately 31.9 acres. The Comprehensive Plan Map designation is Urban Residential Reserve. City staff and the applicant are recommending that the properties be zoned RS-6.5 (Single-Family Residential) upon annexation, which is in conformance with the Comprehensive Plan.

15. Public infrastructure facility plans that deal with this area include: Wastewater Facility Plan completed in 1998; Storm Drainage Master Plan completed in 1988; Transportation System Plan completed in 1997. The City's existing Water System Facility Plan was completed in 1988, but a new version is currently being developed.

Conclusion: This criterion is met because of the information provided in the various studies and plans covering this area.

- C. The City shall attempt to discourage islands or enclaves of unincorporated territory surrounded on all sides by the City.***

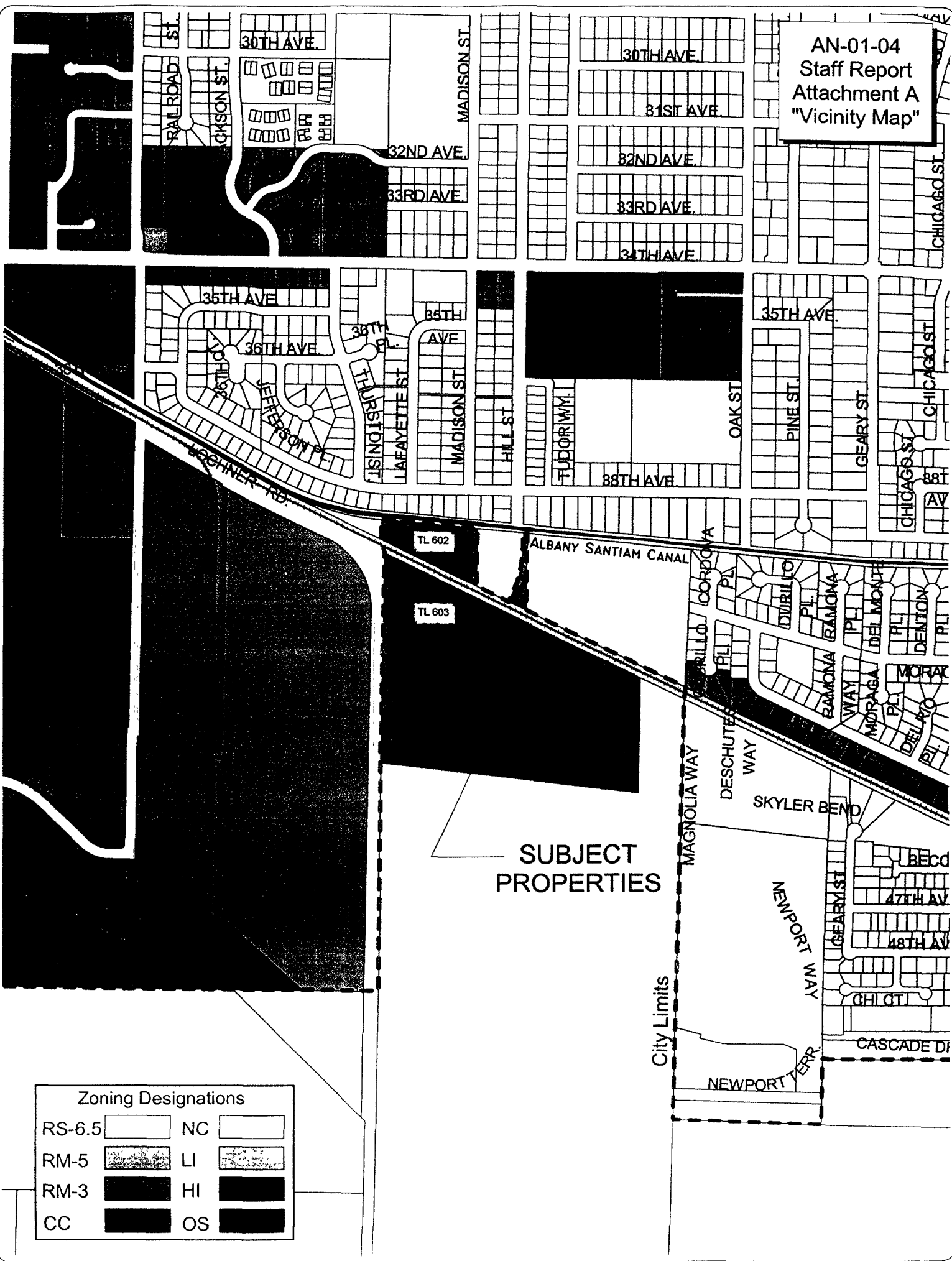
Finding of Fact:

16. Annexation of the subject properties would not create an island, and in fact, the main reason for annexing the remainder of Tax Lot 602 is to further simplify the current city limits boundary, and would prevent the formation of an island.

Conclusion: This criterion is met because no island would be created by this annexation.

- D. The City Council may consider, at its discretion, any other factor which affects the timeliness or wisdom of any particular annexation petition.***

AN-01-04
 Staff Report
 Attachment A
 "Vicinity Map"

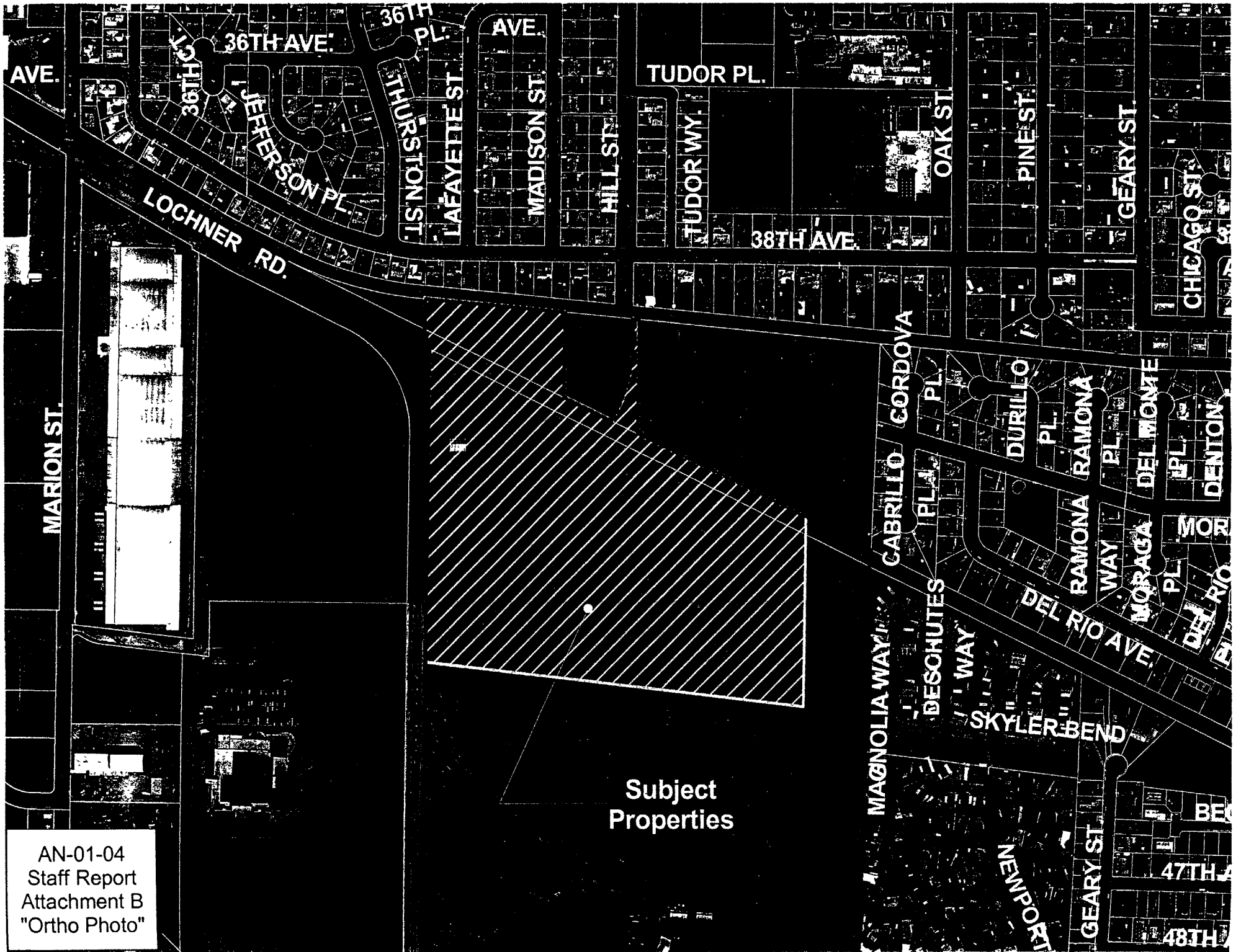


Zoning Designations

RS-6.5		NC	
RM-5		LI	
RM-3		HI	
CC		OS	

SUBJECT PROPERTIES

City Limits



Subject
Properties

AN-01-04
Staff Report
Attachment B
"Ortho Photo"

**Staff Report Attachment C
AN-01-04**

ANNEXATION AGREEMENT

EFFECTIVE DATE: Upon approval of Albany City Council and the approval of the proposed annexation by the voters of the City of Albany.

PARTIES: GREATER ALBANY PUBLIC SCHOOL DISTRICT 8J (“Developer”)
718 7th Avenue SW, Albany

CITY OF ALBANY, OREGON, a municipal corporation (“City”)
333 Broadalbin SW, Albany

RECITALS:

WHEREAS, Developer owns certain real property outside of and adjacent to City and described in Exhibit 1 and shown in a map labeled Exhibit 2 attached hereto (the "Property"), which they desire to be annexed to the City, and the City desires to put the annexation proposal on the ballot for approval of voters in accordance with Oregon law and the City Charter;

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

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

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

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

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

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

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

AGREEMENT:

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

1. **Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement as if set forth herein in full.
2. **Location.** The Property is adjacent to the City Limits of the City of Albany and within the Urban Growth Boundary for the City of Albany.
3. **Term.** The term of this Agreement shall commence on the date upon which it is approved by the Albany City Council and shall continue until superceded or terminated by the mutual agreement of

the Parties or shall terminate upon rejection of the proposed annexation by the voters of the City. The Parties may enter into individual agreements, including, but not limited to, Development Agreements, at any future date, which will supercede this Agreement as applied to the Property as a whole or to portions of the Property or individual phases of development, as specified in said future agreements.

4. **Definitions.** For purposes of this Agreement, specific terms shall be defined as follows:
 - 4.1. *“Public Facilities.”* Physical infrastructure necessary or beneficial to the development of real property in the City of Albany. Such facilities include, but are not limited to, streets, curbs, gutters, sidewalks, bridges, culverts, intersections, traffic signals, signage, ditches, piping, valves, pump stations, landscaping, trails, bicycle paths, parks, sewer, storm sewer, and/or water facilities.
 - 4.2. *“Development.”* The meaning prescribed for said term at Albany Municipal Code 20.22.010.
 - 4.3. *“Developer.”* Any person or legal entity having the right or responsibility to control the development of the Property. This term includes, without limitation, all owners of property proposed for development.
5. **Ballot.** The Property shall be proposed to the voters of the City of Albany for annexation subject to the terms of this Agreement.
6. **Developer Agrees / Waiver of Rights and Indemnification.** If Developer proceeds with development of the Property, Developer agrees that if the City determines, in the exercise of reasonable discretion, based on substantial evidence in the record, that Public Facilities are insufficient to support a proposed development, and there is a reasonable relationship between any condition or denial and said deficiency in Public Facilities, and the City therefore conditions or denies an application based on such a determination:
 - 6.1 Developer will waive the right to claim that such condition or denial constitutes a moratorium under ORS 197.505 to 197.540.
 - 6.2 Developer will waive any right to seek judicial or administrative relief including, but not limited to, claims for injunction or damages that may result from the delay or denial of development opportunities.
 - 6.3 Developer will waive any claim under any present or future legislation, judicial determination, or Oregon Constitutional amendments that require local government to compensate a property owner for damages which result from governmental regulations which are deemed to constitute a complete or partial taking of such property.
 - 6.4 Developer waives any right to appeal said condition or denial or to seek any other form of judicial or administrative relief, on the grounds that it places a “disproportionate burden” on Developer. This waiver is intended to include, but not be limited to, claims that the disproportionate burden constitutes a partial or complete taking of Developer’s

property. This waiver shall relieve City of any requirement to make individualized findings that justify a condition on the proposed development or a denial of the proposed development, but the condition or denial must be directly related to a deficiency in Public Facilities caused or contributed to by the proposed development.

- 6.5 None of the rights waived by Developer shall waive Developer's right to just compensation in the event that the City initiates eminent domain proceedings to acquire all or a part of Developer's property.
- 6.6 The Developer and its successors and assigns agree to indemnify and hold harmless the City of Albany, its agents, officers, and employees, from any of the following claims including, but not limited to, the attorney's fees and other expenses incurred by the City resisting said claims:
 - 6.6.1 Any claim challenging the enforceability or binding nature of this Agreement;
 - 6.6.2 Any judicial or administrative proceeding which is brought by Developer or its successors or assigns challenging the correctness or any action taken by the City which is authorized under the terms of this Agreement;
 - 6.6.3 Any other proceeding of any kind or nature wherein Developer or its successors or assigns seeks damages or injunctive relief as a result of any City decision to deny, condition, or limit development activities.
- 6.7 The Property is currently designated on the City's Comprehensive Plan Map as Urban Residential Reserve (URR). If URR is the Comprehensive Plan designation at the time of annexation, the zoning of the Property will be RS-6.5 (Residential Single Family). The Developer may later request a change in the Comprehensive Plan and zoning designations according to the City of Albany Development Code.

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

- 7.1 There are currently sufficient Public Facilities available to annex the property into the City of Albany upon approval of the voters. This does not imply that available Public Facilities are sufficient for any particular development.
- 7.2 The City shall not impose a Local Improvement District or other financial obligation upon Developer unless it is determined that the Developer benefits from the proposed improvement(s).
- 7.3 While the City's conditions or denials may place a disproportionate burden on the Developer to make Public Facilities improvements, any such conditions or denials shall be reasonably related to the Public Facilities needs which result from development on the Property. "Objective Engineering Standards" will be used to determine the need for Public Facilities which result from any proposed development. Notwithstanding the foregoing, both Parties agree that the Public Facilities needs of third parties or the

public generally may also be a contributing factor to the Public Facilities needs which result from development on the Property. The needs of such third parties or the public shall not limit the City's discretion to impose conditions or denials on the Developer.

- 7.4 Subject to the provisions of this Agreement, the City agrees that upon annexation, and subject to the terms and limitations of this Agreement, the Property shall enjoy the same right to development as applies to similarly situated property in the City of Albany. This is a material consideration for the Developer to comply with the conditions and requirements set forth in this Agreement.
 - 7.5 City shall make a good faith effort to identify and address planning issues and impacts that may arise as a result of development of the Property and will share with Developer any information of prospective issues or impacts.
 - 7.6 Subject to the provisions of this Agreement, Developer has full entitlement to apply for development of all or any part of the Property and shall be entitled to the same consideration shown to similarly situated applicants.
8. **Contingency.** This Agreement is expressly contingent on (i) approval by the Albany City Council of the annexation proposal and this Annexation Agreement, and (ii) approval by the voters in accordance with Oregon law of such annexation proposal.
9. **Miscellaneous.**
- 9.1 ***Binding Effect.*** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and permitted assigns and upon approval of the voters of the City of Albany, the terms of this Agreement shall be recorded in a form approved by the City so as to provide a record of this Agreement to run with the land described in the attached Exhibit 1.
 - 9.2 ***Assignment.*** Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any party without the prior written consent of the other Parties, which consent will not be unreasonably withheld.
 - 9.3 ***No Third-Party Beneficiaries.*** Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person, other than the Parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.
 - 9.4 ***Further Assurances.*** Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, in order to carry out the intent and accomplish the purposes of this Agreement.
 - 9.5 ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict-of-laws principles.

- 9.6 **Exhibits.** The Exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.
- 9.7 **Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect of the remaining provisions of this Agreement shall not be in any way impaired.
- 9.8 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreement, whether written or oral, among the Parties with respect to such subject matter.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement.

PARTIES:

CITY OF ALBANY.

A municipal corporation,

By: _____

Its: _____

Date: _____

GREATER ALBANY PUBLIC SCHOOL DISTRICT 8J.

By: _____

Its: _____

Date: _____

Annexation Agreement
EXHIBIT 1
(Legal Description of Property)

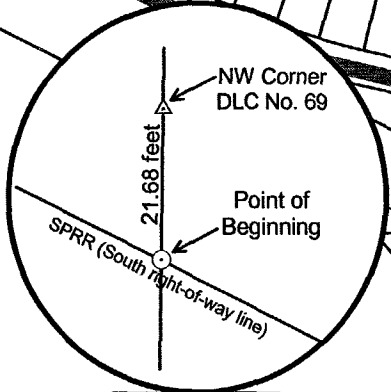
Beginning at the intersection of the South line of the Southern Pacific Railroad right-of-way and the West line of the Robert Pentland Donation Land Claim No. 69 in Township 11 South, Range 3 West, Willamette Meridian, Linn County, Oregon; said point being South 0° 55' 10" East 21.68 feet from the Northwest corner of said claim; thence along the South line of said railroad right-of-way South 65° 37' 40" East 1593.42 feet; thence South 0° 55' 10" East 639.96 feet to the North line of the Northwest Natural Gas Company's easement as recorded in Book 272, Page 827, Linn County Deed Records; thence along said North line of the gas company's easement North 85° 06' 45" West 1448.11 feet to the West line of said DLC No. 69; thence along said West line of DLC No. 69 North 0° 55' 10" West 1174.19 feet to the point of beginning.

Save and except that portion of the above described property lying within the Lochner Road right-of-way.

Containing 29.2 acres, more or less.

Annexation Agreement EXHIBIT 2

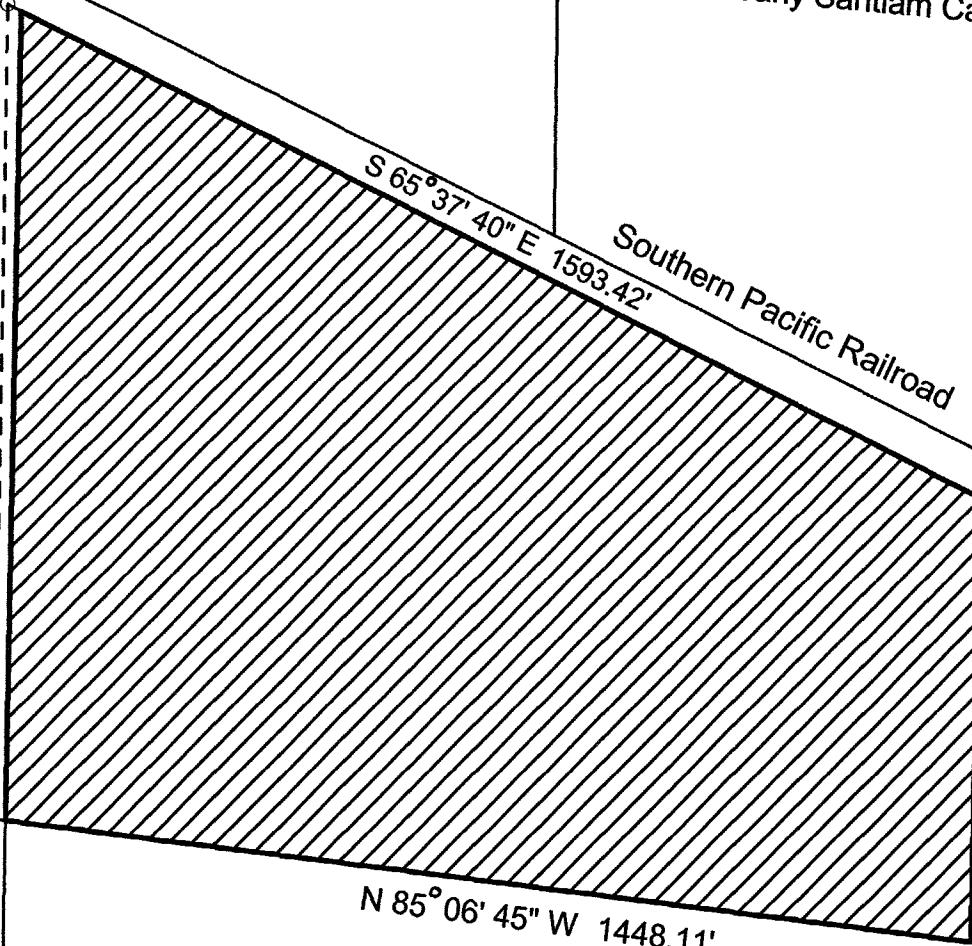
38TH AVE.



Detail View

LOCHNER RD.

N 0° 55' 10" W 1174.19'



CORDOVA PL.

CABRILLO PL.

MORAGA AVE.

SKYLER B

Staff Report Attachment D
AN-01-04

ANNEXATION AGREEMENT

EFFECTIVE DATE: Upon approval of Albany City Council and the approval of the proposed annexation by the voters of the City of Albany.

PARTIES: BBF DEVELOPMENT (CLOVER RIDGE) LLC (“Developer”)
6294 SW Arbor Grove Drive, Corvallis

CITY OF ALBANY, OREGON, a municipal corporation (“City”)
333 Broadalbin SW, Albany

RECITALS:

WHEREAS, Developer owns certain real property outside of and adjacent to City and described in Exhibit 1 and shown in a map labeled Exhibit 2 attached hereto (the "Property"), which they desire to be annexed to the City, and the City desires to put the annexation proposal on the ballot for approval of voters in accordance with Oregon law and the City Charter;

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

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

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

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

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

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

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

AGREEMENT:

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

1. **Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement as if set forth herein in full.
2. **Location.** The Property is adjacent to the City Limits of the City of Albany and within the Urban Growth Boundary for the City of Albany.
3. **Term.** The term of this Agreement shall commence on the date upon which it is approved by the Albany City Council and shall continue until superceded or terminated by the mutual agreement of the Parties or shall terminate upon rejection of the proposed annexation by the voters of the City.

The Parties may enter into individual agreements, including, but not limited to, Development Agreements, at any future date, which will supercede this Agreement as applied to the Property as a whole or to portions of the Property or individual phases of development, as specified in said future agreements.

4. **Definitions.** For purposes of this Agreement, specific terms shall be defined as follows:
 - 4.1. *“Public Facilities.”* Physical infrastructure necessary or beneficial to the development of real property in the City of Albany. Such facilities include, but are not limited to, streets, curbs, gutters, sidewalks, bridges, culverts, intersections, traffic signals, signage, ditches, piping, valves, pump stations, landscaping, trails, bicycle paths, parks, sewer, storm sewer, and/or water facilities.
 - 4.2. *“Development.”* The meaning prescribed for said term at Albany Municipal Code 20.22.010.
 - 4.3. *“Developer.”* Any person or legal entity having the right or responsibility to control the development of the Property. This term includes, without limitation, all owners of property proposed for development.
5. **Ballot.** The Property shall be proposed to the voters of the City of Albany for annexation subject to the terms of this Agreement.
6. **Waiver of Rights and Indemnification.** If Developer proceeds with development of the Property, Developer agrees that if the City determines, in the exercise of reasonable discretion, based on substantial evidence in the record, that Public Facilities are insufficient to support a proposed development, and there is a reasonable relationship between any condition or denial and said deficiency in Public Facilities, and the City therefore conditions or denies an application based on such a determination:
 - 6.1 Developer will waive the right to claim that such condition or denial constitutes a moratorium under ORS 197.505 to 197.540.
 - 6.2 Developer will waive any right to seek judicial or administrative relief including, but not limited to, claims for injunction or damages that may result from the delay or denial of development opportunities.
 - 6.3 Developer will waive any claim under any present or future legislation, judicial determination, or Oregon Constitutional amendments that require local government to compensate a property owner for damages which result from governmental regulations which are deemed to constitute a complete or partial taking of such property.
 - 6.4 Developer waives any right to appeal said condition or denial or to seek any other form of judicial or administrative relief, on the grounds that it places a “disproportionate burden” on Developer. This waiver is intended to include, but not be limited to, claims that the disproportionate burden constitutes a partial or complete taking of Developer’s property. This waiver shall relieve City of any requirement to make individualized findings that justify a condition on the proposed development or a denial of the proposed development, but the

condition or denial must be directly related to a deficiency in Public Facilities caused or contributed to by the proposed development.

6.5 None of the rights waived by Developer shall waive Developer's right to just compensation in the event that the City initiates eminent domain proceedings to acquire all or a part of Developer's property.

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

6.6.1 Any claim challenging the enforceability or binding nature of this Agreement;

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

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

6.7 The Property is currently designated on the City's Comprehensive Plan Map as Urban Residential Reserve (URR). If URR is the Comprehensive Plan designation at the time of annexation, the zoning of the Property will be RS-6.5 (Residential Single Family). The Developer may later request a change in the Comprehensive Plan and zoning designations according to the City of Albany Development Code.

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

7.1 Natural Resource Protection

7.1.1 Developer agrees to include this land as common open space as described in the land use approvals for the Chartwell Station subdivision and planned development (Planning files SD-05-03 and PD-01-03).

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

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

8.2. The City shall not impose a Local Improvement District or other financial obligation upon Developer unless it is determined that the Developer benefits from the proposed improvement(s).

- 8.3. While the City's conditions or denials may place a disproportionate burden on the Developer to make Public Facilities improvements, any such conditions or denials shall be reasonably related to the Public Facilities needs which result from development on the Property. "Objective Engineering Standards" will be used to determine the need for Public Facilities which result from any proposed development. Notwithstanding the foregoing, both Parties agree that the Public Facilities needs of third parties or the public generally may also be a contributing factor to the Public Facilities needs which result from development on the Property. The needs of such third parties or the public shall not limit the City's discretion to impose conditions or denials on the Developer.
- 8.4. Subject to the provisions of this Agreement, the City agrees that upon annexation, and subject to the terms and limitations of this Agreement, the Property shall enjoy the same right to development as applies to similarly situated property in the City of Albany. This is a material consideration for the Developer to comply with the conditions and requirements set forth in this Agreement.
- 8.5. City shall make a good faith effort to identify and address planning issues and impacts that may arise as a result of development of the Property and will share with Developer any information of prospective issues or impacts.
- 8.6. Subject to the provisions of this Agreement, Developer has full entitlement to apply for development of all or any part of the Property and shall be entitled to the same consideration shown to similarly situated applicants.
9. **Contingency.** This Agreement is expressly contingent on (i) approval by the Albany City Council of the annexation proposal and this Annexation Agreement, and (ii) approval by the voters in accordance with Oregon law of such annexation proposal.
10. **Miscellaneous.**
- 10.1 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and permitted assigns and upon approval of the voters of the City of Albany, the terms of this Agreement shall be recorded in a form approved by the City so as to provide a record of this Agreement to run with the land described in the attached Exhibit 1.
- 10.2 **Assignment.** Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any party without the prior written consent of the other Parties, which consent will not be unreasonably withheld.
- 10.3 **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person, other than the Parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.
- 10.4 **Further Assurances.** Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, in order to carry out the intent and accomplish the purposes of this Agreement.

10.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict-of-laws principles.

10.6 **Exhibits.** The Exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.

10.7 **Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect of the remaining provisions of this Agreement shall not be in any way impaired.

10.8 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreement, whether written or oral, among the Parties with respect to such subject matter.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement.

PARTIES:

CITY OF ALBANY.

A municipal corporation,

By: _____

Its: _____

Date: _____

BBF DEVELOPMENT (CLOVER RIDGE) LLC

By: _____

Its: _____

Date: _____

Annexation Agreement
EXHIBIT 1
(Legal Description of Property)

Beginning at a 1/2-inch iron rod on the East line of and South 1° 04' 30" East 1433.04 feet from the Northeast corner of the Truett Davis DLC No. 54 in Township 11 South, Range 3 West, of the Willamette Meridian, Linn County, Oregon, said 1/2-inch iron rod being on the South line of the Albany Santiam Canal right-of-way; thence South 1° 04' 30" East 111.92 feet to the North line of the Southern Pacific Railroad right-of-way; thence along North line of said railroad South 65° 33' East 892.96 feet to a 1/2-inch iron rod, said point being the Southeast corner of that property conveyed to BBF Development (Clover Ridge) LLC by deed recorded in MF 1542-869; thence North 1° 04' 30" West 428.93 feet to the South right-of-way line of said canal; thence along said North line of canal North 86° 16' West 20.14 feet; thence South 1° 16' 30" East 61.63 feet; thence on a 606.0-foot radius curve to the right (the long chord of which bears South 11° 35' 15" West 269.80 feet) a distance of 272.08 feet; thence South 24° 27' West 61.33 feet to the North right-of-way line of said railroad; thence along said North line of the railroad North 65° 33' West 198.55 feet; thence North 1° 16' 30" West 321.67 feet to the South line of said canal; thence along said North line of canal North 86° 16' West 521.23 feet to the Point of Beginning.

Containing 2.69 acres, more or less.

Annexation Agreement EXHIBIT 2

NE corner
Truett Davis
DLC No. 54

S 1 04' 30" E 1433.04'

38TH AVE.

Point of
Beginning

S 1 04' 30" E
111.92'

N 86 16' W 521.23'

N 86 16' W
20.14'

Albany Santiam Canal

S 1 16' 30" E
61.63'

N 1 16' 30" W
321.67'

R = 606.0'
L = 272.08'
L.C. = S 11 35' 25" W
269.80'

S 65 33' E 892.96'

N 65 33' W
198.55'

S 24 27' W
61.38'

N 1 04' 30" W 428.93'

LOCHNER RD.

Southern Pacific Railroad

T11S, R3W
Section 20