



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

Community Services Division

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



June 23, 2014

Julie Warncke,
Transportation Planning Manager, City of Salem
555 Liberty St SE/Rm 325
Salem, OR 97301

Re: Salem River Crossing Bridge Proposal

Dear Julie,

On June 5, 2014, the Mid-Willamette Regional Solutions Team held a meeting for the Salem River Crossing project. Invited parties included ODOT, DLCD, City of Salem, and Polk County. The meeting was held to discuss the appropriate process or processes to review the proposed project for compliance with the land use system.

One of the major concerns expressed by the city at the meeting was a letter written from our agency to ODOT on the Land Use Technical Report back in January of 2013. This letter replaces that advice, and outlines the two options the cities and counties have for making land use decisions on the proposed bridge. Our goal is to provide technical assistance and work alongside our sister agencies to provide clarity for local governments and regional partners.

In the following sections we will describe the two paths available for the required land use actions related to a transportation facility, one is the UGB expansion with a Goal 15 exception and the other is the Goal Exceptions path. Finally, we will also address requirements needed for the significant Goal 5 resources located within the impact area.

Process for a UGB expansion and Goal 15 Exception

A UGB amendment is guided by Statewide Planning Goal 14, (Urbanization), which incorporates the requirements of ORS 197.298 (establishing the priority of lands to be included in a UGB expansion). Because the current UGB is governed by an urban growth management

agreement, any amendments will require adoption by Salem, Keizer, Marion County, and Polk County.

A. Land Need

Goal 14 includes two “Land Need Factors” which state:

“Establishment and change of urban growth boundaries shall be based on the following:

“(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

“(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection.”

A need must be established under both of these criteria before a UGB can be expanded. The goal goes on to state:

“In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.”

“Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.”

B. Boundary Location

1. Requirements

Once a need to add land to the UGB is established, the city must evaluate the available study areas around the existing UGB to select the best location or locations to satisfy the unmet need. The city makes findings on each potential area or alternative under the four “Boundary Location Factors” in Goal 14. This section of Goal 14 states:

“The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

1. Efficient accommodation of identified land needs;
2. Orderly and economic provision of public facilities and services;
3. Comparative environmental, energy, economic and social consequences; and

4. Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.”

ORS 197.298 establishes the following priorities for including lands in the UGB:

1. First priority is land that is designated urban reserve land. Salem currently has no urban reserves, so this would not apply.
2. Second priority is land adjacent to an urban growth boundary that is identified as an exception area or non-resource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland.
3. Third priority is land designated as marginal land pursuant to ORS 197.247. Polk County does not have designated marginal land, so this would not apply.
4. Last priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority is given to land of lower capability as measured by the capability classification system (for farm lands) or by cubic foot site class (for forest lands), whichever is appropriate for the current use.

If lower priority lands are selected for inclusion in the UGB when higher priority lands are available, the city’s findings must justify why higher priority lands were rejected, based on one or more of the criteria in ORS 197.298(3):

“(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;

“(b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or

“(c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.”

2. Methodology

The general steps taken by the city, as set out in OAR 660-024-0060, include applying the statutory priorities to available parcels, starting with the highest priority that applies. First, determine which parcels are the highest priority lands. If specific land characteristics were identified in the need process, determine which of these parcels satisfy the identified land need by analyzing each parcel according to specific characteristics regarding the suitability of the parcel for the intended use. If the resulting list of suitable highest priority parcels provides more land than needed, apply the four Boundary Location Factors in Goal 14 to each such parcel. Note that the city does not need to make a finding that a proposed expansion area satisfies each individual location factor better than all other alternatives. Rather, the considerations embodied in the factors should be applied to each alternative expansion area, and the area or areas that, on

balance, best satisfy the goal should be selected. This provides a tentative list of suitable parcels in the highest priority to add to the UGB.

If the highest priority lands do not accommodate all of the demonstrated land need, then the city should examine the next lower priority lands. The steps described for highest priority land would then be applied to each available parcel of lower-capability farm and forest land, providing a tentative list of suitable parcels in this priority to add to the UGB.

Only if the previous analyses do not identify sufficient land to meet all of the identified need(s) should the city's analysis consider lower priority lands (*i.e.*, higher capability farm and forest lands), providing a tentative list of suitable parcels in this final priority to add to the UGB.

If the city determines that one or more of parcels in any priority category should be rejected in favor of land in a lower priority, then findings explaining why must be made according to the criteria in ORS 197.298(3).

C. Other Analysis Necessary

OAR 660-024-0020 requires that an action to amend a UGB address all relevant Statewide Planning Goals with specific exceptions listed. The goals that would be applicable in this case are listed below. We can provide additional information about specific goals if that would be helpful.

- Goal 5 (natural resources, scenic and historic areas, and open spaces), but only for the area to be added to the UGB;
- Goal 6 (air, water, and land resources quality);
- Goal 7 (areas subject to natural hazards);
- Goal 8 (recreational needs);
- Goal 9 (economic development);
- Goal 10 (housing);
- Goal 11 (public facilities and services);
- Goal 12 (transportation);
- Goal 13 (energy conservation); and
- Goal 15 (Willamette River Greenway).

D. Applicability to Specific Facts for Salem UGB Amendment

The first major step requires that Salem prove that there is a need for the transportation facility. This evidence could come from the transportation studies prepared for the for the draft

environmental impact statement, (DEIS) which would be summarized and incorporated into the record.

The second major step requires that Salem prove that the need cannot *reasonably be accommodated* (language in both Goal 14 and in 660-024 implementing rules) inside the existing Salem-Keizer UGB. This is probably the most important and difficult step in the analysis. For example, the findings will have to show that the alternatives that involve widening the existing bridges only, or adding a new bridge next to the existing bridges in the urban growth boundary, do not reasonably accommodate the need.

The third major step requires that Salem analyze the remaining alternatives outside the UGB, first against the priorities set forth in ORS 197.298. This will require a calculation of how much land would be added to the UGB under each remaining alternative, and the agricultural classification of such land. Each alternative appears to be located entirely on agricultural land, and the maps provided divide that land into classifications relating to prime farmland, but an additional classification must be made for specific soil class (Class I through IV) of the lands included under each alternative.

From here, the analysis can go one of two different paths. If the preferred alternative has better or similar quantitative impacts to agricultural land than the other alternatives, Salem must proceed to weighing and balancing the alternatives against the four location factors within Goal 14. Once again, findings backed by substantial evidence must justify the city's decision.

If, however, the preferred alternative has greater quantitative impacts to agricultural land, then in order to choose the preferred alternative the city must first make findings backed by substantial evidence that, for one of the three reasons contained within ORS 197.298(3), the alternative that would be a higher priority for inclusion in the UGB under the statute may be downgraded to a lesser priority.

E. Procedures For UGB Review

The process for review and appeal after all four jurisdictions have adopted a UGB amendment depends on the size of the expansion. If the UGB expansion is more than 50 acres, the decision is reviewed by the Land Conservation and Development Commission in the manner of periodic review. ORS 197.626(1)(b). A UGB expansion less than 50 acres is subject to the post acknowledgement plan amendment procedures in ORS 197.610 – 197.625 and OAR 660 Division 18 and any appeal would be reviewed by the Land Use Board of Appeals.

A UGB expansion is effective only after city and county adoption and exhaustion of appeals.

Process for Exceptions to Statewide Planning Goals

In this section we will provide details on the exceptions process and have limited the discussion to those elements that would apply to a new bridge outside the UGB. If the city would like similar advice with respect to other alternatives, please let us know.

Exceptions to Statewide Planning Goals 3, 11, and 14 taken for transportation improvements on rural lands must follow the process outlined in OAR Chapter 660, division 12 (referred to as the “Division 12 exceptions process”). Exceptions to Goal 15 (Willamette River Greenway) do not follow the same exceptions process. Instead, exceptions to Goal 15 for transportation improvements must follow the exceptions process identified in OAR chapter 660, division 4 specifically, OAR 660-004-0020 and OAR 660-004-0022 (referred to as the “Division 4 exceptions process”). Note that bridges and associated improvements are not considered a water-dependent or water-related use for purposes of Goal 15.

Finally, it is important to note that the two exception processes cannot be combined and must be conducted independently. Exceptions to Goal 15 should be taken pursuant to the Division 4 exceptions process and evaluated and justified independently of exceptions to Goals 3, 11 and 14.

A. Exceptions for Goals 3, 11, and 14

The Salem Alternative will require exceptions to statewide planning Goals 3, 11, and 14 for transportation improvements on rural lands. The process for these exceptions is contained in the Transportation Planning Rules (TPR), specifically OAR 660-012-0070 (exceptions for transportation improvements on rural lands), which is available online:

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_012.html

Since the proposed Salem Alternative is largely located outside the urban growth boundary on rural lands, jurisdiction rests with Polk County. The county will be responsible for approving (taking) the exception to Goals 3, 11, and 14 through a post-acknowledgement plan amendment process to amend its comprehensive plan to include the exception.

An exception for a new bridge must include finding in two areas (OAR 660-012-0070(4) and (5)). First, it must include reasons justifying why the policies in the goals should not apply. Second, it must demonstrate that the transportation need cannot reasonably be accommodated in an alternative (or combination of alternatives) that would not require an exception.

There are two key elements for the findings on reasonable alternatives (OAR 660-012-070(6)). First, the finding must identify the factors that will be used to judge whether an alternative can

reasonably accommodate the need. Second, the findings must also justify a threshold for each factor that will be used to judge whether an alternative could reasonably accommodate the need. The findings would need to evaluate non-exception alternatives that are included in the draft environmental impact statement (DEIS) and others that may be suggested during the public hearings process.

Appropriate factors for determining whether an alternative is reasonable include cost, operational feasibility, economic dislocation and other relevant factors (OAR 660-012-0070(6)).

If the findings demonstrate that there is no non-exception alternative that could reasonably accommodate the need, then the findings would need to compare all of the alternatives that require an exception, if there is more than one. The findings must clearly show that the selected alternative is the one with the least adverse impacts for long-term economic, social, environmental and energy consequences (OAR 660-012-0070(7)). Finally, the findings would need to describe how any adverse impacts will be reduced through access restrictions, facility design, or other mitigation measures (OAR 660-012-0070(8)).

B. Exception for Goal 15

The Salem Alternative will also require exceptions to Goal 15. The process for an exception to Goal 15 in an urban area is contained in OAR 660-004-0020 and OAR 660-004-0022(6), and this would apply for the portion of the bridge within the Salem Urban Growth Boundary (UGB). The Goal 15 exception process for rural lands is similar to the Goal 15 process for urban uses, but not identical. The Goal 15 exceptions process for those uses in rural areas is contained in OAR 660-004-0020 and OAR 660-004-0022(1), and applies to reasons exceptions to Goal 15. Please note the nuances and differences from the process specifically meant for urban areas under OAR 660-002-0022(6).

Process for Goal 5 Resources

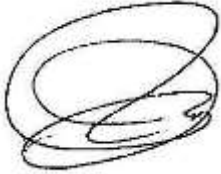
A UGB expansion will trigger application of the Goal 5 rule, and any plan amendment allowing a new use that could conflict with a locally significant resource site must include findings based on OAR 660, Division 23. Application of the Goal 5 process could result in the need for an Economic, Social, Environmental and Energy (ESEE) analysis as described in the rule, particularly if the city has reason to modify the protection measures previously prescribed by the county.

The application of the Goal 5 rule in the Willamette River Greenway brings some added complication to the planning process. A local government must review activities in the Greenway for consistency with all Greenway objectives. This is usually done through local

Greenway compatibility review overlay zones. The city will need to extend the zone they already have into the newly acquired area.

In conclusion, we hope the city finds the explanation helpful and should you have any questions about the process, please do not hesitate to contact Angela Lazarean at angela.lazarean@state.or.us or at (503) 934-0056.

Best,

A handwritten signature in black ink, appearing to read "Jim Rue". The signature is stylized and somewhat cursive, with a large initial "J" and "R".

Jim Rue, Director

cc: Angela Lazarean, DLCD Mid-Willamette Regional Rep
Austin McGuigan, Polk County Community Development Director
Greg Ellis, Mid-Willamette RST Coordinator
Matt Garrett, ODOT Director
Sonny Chickering, ODOT Region 2 Manager
Tim Potter, ODOT Area 3 Manager
Rod Thompson, ODOT Senior Environmental Project Manager