



## Glenn - Gibson Watershed Council

October 7, 2016

City of Salem Mayor and City Council  
Marion County Commission  
Polk County Commission  
City of Keizer Mayor and City Council

RE: Salem River Crossing Proposal Case File: CA 16-04

Honorable assembled officials:

I represent the Glenn and Gibson Creek Watershed Council and would like to make comments on the proposal before you. The need for and location of additional river crossings of the Willamette River in the Salem-Keizer area has been the subject of much debate and deliberation over decades. Others with a better understanding of population projections and traffic projections will provide comment about the information used and the meaning of that information. I will focus on the issues of interest to the watershed council. The Glenn and Gibson Creeks watershed lies on the west side of the Willamette River in Salem with headwaters in Polk County outside the City limits.

We have six primary concerns about the proposal before you: 1) impacts to the recreational use of the Willamette River, 2) impacts to the floodplain and the failure to consider the recent changes to the federal flood management program, 3) encroachment on tributaries to the Willamette River by Marine Drive, 4) the general lack of attention to the Willamette Greenway in Salem, 5) impacts to agricultural lands, and 6) expressions of community concerns. In addition to the concerns raised in this letter I have attached separately a list of what I see as flaws in the materials presented by the staff that is relevant to your decision (Attachment A).

### **Concern #1: Impacts to State Parks property and Willamette River Recreation**

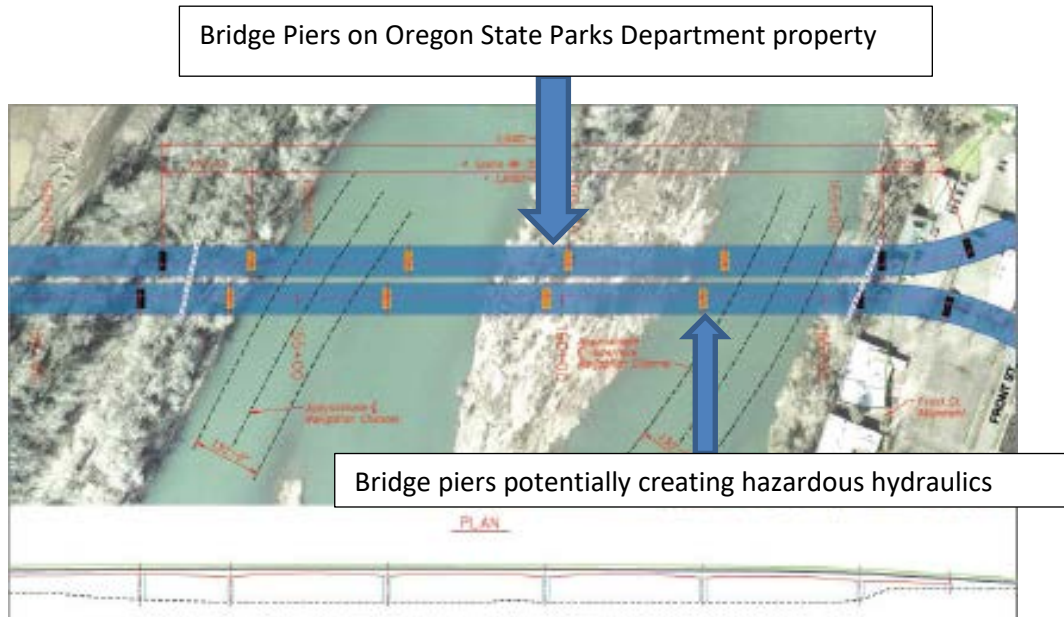
The Draft EIS and all public involvement have overlooked the fact that McLane Island Landing is an Oregon State Parks Department property (see attached map). McLane Island Landing is part of the Willamette Water Trail (see <http://willamettewatertrail.org/map/mclane-island/>), a federal designation made by the Secretary of the Interior. The draft EIS has failed to recognize either the ownership of the island by the Oregon Parks and Recreation Department or evaluate the impacts of the proposed bridge on the use of the island as a part of the Willamette Water Trail. McLane Island Landing is the only low impact camping spot in a significant reach of the river (more than 10 miles of river). For those of us that canoe or kayak the river, the presence of a bridge over the island would significantly diminish the experience and the construction of the bridge would provide both a temporary impact to river recreation and a permanent loss of use which is not discussed in the draft EIS. This oversight is compounded when looking at the environmental impacts of the proposed location.

The proposed bridge section, as shown in "Salem River Crossing Project Right-of-Way Technical Report Addendum" of August 2016, shows bridge piers on State Parks property and in locations that could affect recreational access and use of the island. The illustration below (taken from Salem River Crossing Project Right-of-Way Technical Report Addendum) shows bridge piers on McLean Island Landing and adjacent to the island in a manner that would create a hazardous condition for canoes and kayaks that wish to approach the island from the east channel.



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The Salem River Crossing Project Hydraulics Technical Report Addendum neither recognizes the small boat traffic nor the potential for impacts to small boat use of the channel between McLane Island Landing and the east bank of the Willamette nor effects of the piers on the evolution of the island.



**Your approval at this time will have long-term detrimental effects on the recreational use of the Willamette River and especially McLane Island Landing, an Oregon Department of Parks and Recreation property.**

### **Concern #2: Consideration of Floodplain Impacts and Regulations**

As many of you are aware, the federal Floodplain Management Program in the Pacific Northwest has been determined to have adverse effects on federally listed fish species. The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) listed both the Upper Willamette River spring Chinook and the Upper Willamette River winter steelhead as threatened species in 1999. These two anadromous species travel to the ocean during their lifecycle and return to the fresh water of high Cascade tributaries to spawn. The reach of the Willamette River where the bridge is proposed is within the area designated as "critical habitat" for these species. Shallow water habitats along the river are used by juvenile salmon and steelhead as they return to the Ocean. Activities that impact the shallow water habitat such as bridge piers, abutment fill, and other fill in the floodplain will require formal consultation with NMFS during the permitting process.

In April of 2016, in a separate action, NMFS and the Federal Emergency Management Agency (FEMA) settled a lawsuit brought in 2011 by the issuance of a biological opinion on the way in which federal flood insurance and floodplain management actions can reduce the "take" of listed species in Oregon. The actions require, among other things:

- Revised mapping protocols to improve the identification of special hazard areas, including channel migration zones and areas of future risk.



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- Revised floodplain management criteria to provide greater certainty that the impacts of development in areas of high hazard will be avoided, minimized, and mitigated to protect natural floodplain functions.
- Compliance and enforcement strategies to ensure that effects of floodplain development pursuant to the NFIP are avoided or reduced throughout the action area.

The requirements include the provision that: “FEMA and NMFS’ joint recommendation that new structures placed in the Special Flood Hazard Area (SFHA) should be elevated by methods other than fill,…”

Since the project remains in the evaluation phase (the Final EIS is not complete), and the project has no funding mechanism and therefore is unlikely to be constructed until after 2018, the requirements of the NMFS biological opinion need to be taken into consideration. Specifically the evaluation should include the avoidance and minimization requirements as listed in RPA Element 4: “Floodplain Management Criteria for Special Hazard Areas that Avoid, Minimize, and Mitigate Program Level Impacts.” While the draft EIS discusses avoidance and minimization it does not specifically consider avoidance and minimization of flood plain function impacts or “protecting riparian habitat and functions within the high hazard area” as described in the biological opinion. This is not an engineering evaluation it is a biological evaluation. I would suggest this is a fatal flaw in the current consideration and could affect the outcome of the Final EIS.

The recently released Salem River Crossing Project Hydraulics Technical Report Addendum adds no clarity of how the project will comply with FEMA regulations, in fact the report points out that the project will raise the 100 year flood by 0.27 feet. The late breaking report concludes; ***“The preferred alternative would increase the base flood elevation 0.27 foot. Although small, even this elevation change would require substantial additional work to be acceptable— either to revise the bridge design during final design or to address permitting requirements associated with documenting and communicating these impacts to affected stakeholders. Agency consultation would be needed to assess permitting requirements for the preferred alternative and the need for associated studies. City of Salem and Polk County regulations do not allow any rise in the base flood elevation. Therefore, mitigation would be required as part of the preferred alternative as it results in a base flood elevation net rise.”***

The consultants and staff are asking you to approve a project that fails to meet standards you adopted which are the current FEMA standards. It flies in the face of the known requirements that will be in place at the time of design and construction of the infrastructure projects. They provide the vague promise that “substantial additional work” and “associated studies” would be required which could result in a modified design or mitigation measures (unspecified).

**Your approval at this time does not comply with standards you have adopted and surely will not comply with the new requirements that will be required for the bridge and associated roadways.**

### **Concern #3: Encroachment on other waterways and wetlands**

The draft EIS identifies alternative 4A (the closest to the proposed alternative) as affecting more than 2 acres of wetland and nearly 9 acres of riparian habitat. With the additional construction of Marine Drive, additional encroachment on waterways tributary to the Willamette will be involved, all leading to decreased juvenile salmon rearing habitat in the floodplain. These are the very impacts that the FEMA-NMFS lawsuit was concerned about. These seemingly small and altered habitats have been shown to



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retain importance to juvenile salmon. For example, Randall Covin and other researchers from Oregon State University (Covin, Randall et al. 2009. Fish Use of Intermittent Watercourses Draining Agricultural Lands in the Upper Willamette River Valley, Oregon. Transactions of the American Fisheries Society 138:1302–1313) have found that even ditches in ryegrass fields provide refuge habitat during high flows. The ball fields, backwater into the unnamed slough (see below), Glenn Creek, and low areas of Wallace Marine Park provide similar off-channel refuge during high flows.

The recent promises to not impact Pioneer Village structures by the construction of Marine Drive will force the roadway into the riparian area of a small tributary to the Willamette River, likely an old channel remnant (titled Unnamed Slough in the Draft EIS). This channel has year round flow, likely from subsurface discharges and storm runoff. This is an impact that is part and parcel of the River Crossing Project. The Final EIS must evaluate the impacts of these alterations to both the floodplain function and direct losses of riparian and wetland habitats. The impacts will likely require consultation with NMFS and could affect the Final EIS and subsequent permitting.

The Marine Drive-Riverbend Road connection will require crossing Glenn Creek. Glenn Creek in the area proposed for crossing is in the flood plain of the Willamette River and is used by adult winter steelhead during high flows. Passage of these fish will be necessary as a design factor for the crossing. In fact, the section of Marine Drive at this location is all in the floodplain. The Draft EIS, the Exceptions Report, and the Salem River Crossing Project Land Use Final Technical Report Addendum do not address the NMFS requirements for impacts to the floodplain. There is no description of the nature of the crossing or the impacts associated with this action. It is another area of minimizing the impacts of the project.

There was an extensive fish use survey conducted by the Oregon Department of Fish and Wildlife in 1999 that showed native cutthroat trout in Glenn Creek, Gibson Creek, Archer Brook and other streams draining to the Willamette from the west. I have attached the data which apparently was not available to the consultants.

**Your approval of the project will lead to further degradation of aquatic habitat used by federally Endangered Species Act listed Salmon and Steelhead.**

### **Concern #4: The Salem Willamette Greenway Program**

Salem is the Capitol City of Oregon and the second largest city in the state, yet the City has paid nearly no attention to the Willamette Greenway. The Greenway Program was adopted in 1979 and has not been significantly updated or reviewed in the 37 years since it was adopted. The Greenway Plan at the time was a minimalist approach and it remains so today. There has been **no** effort on the part of the City to seek the public sentiment about the Willamette waterfront other than the development of Riverfront Park and acquisition of the Boise Cascade property to add to Minto-Brown Island Park. While these projects have been well received, there is neither a comprehensive vision nor a consideration of the changed circumstances and understandings of the importance of the Willamette River and its floodplain in Salem over the last nearly 40 years. The proposed action will create an impenetrable concrete maze on the Willamette riverbank further isolating West Salem from the river and a concrete eyesore to users of Riverfront Park.

The proposed Goal 15 Exception was developed from the Draft EIS findings that are general to the area of the nine alternatives considered. The specific impacts of the current proposal have not been evaluated in detail. The findings are deficient in failure to recognize that Oregon State Parks has an ownership interest of McLane Island. It is identified on the City website maps as "Willamette Greenway



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McLane Island Landing” and is a part of the federally designated Willamette Water Trail. These facts are missing from all the information in the Draft EIS and Goal 15 Exception Draft. There is no evaluation of either temporary or permanent effects of bridge piers, bridge construction activity or other impacts to recreation use of the Willamette Water Trail of long term effects of scour or other impacts from changed hydraulics on McLane Island, an Oregon State Parks property.

The discussion of the visual effects of the Willamette Greenway (Salem River Crossing Project Visual Resources Technical Report Addendum) is grossly skewed to views of the river from roads. I do not believe that this was the intention of the framers of the Greenway program when they were clear that the objective was “to protect and preserve the natural, scenic and recreational qualities of lands along the Willamette River...” In fact the proposed transportation plan amendment includes a significant commitment of the current Highway 22 berm along the Willamette River to connecting ramps creating a web of concrete along more than two thirds of a mile of the West Salem waterfront. It is bad enough to have an elevated state highway but to add a series of elevated ramps directly across from Riverfront Park and above Wallace Marine Park boat ramp eliminating the riparian vegetation along the Willamette River flies in the face of the finding that: “On balance, the preferred alternative will not have a significant adverse impact on Greenway scenic values.”

The Goal 15 exception states categorically that: “In summary, because the footprint for the preferred alternative minimizes direct impacts to active use areas of Wallace Marine Park (including canoe and boat launch areas), there is no significant reduction in sites available for water-related or water-dependent uses.” The conceptual bridge design shows the location of piers on a State parks ownership, part of the Willamette Water Trail and used for both overnight camping and local pull-outs by canoeists and kayakers. Without any evaluation of scour and hydraulics it is impossible to make such a statement. Bridge piers can be a navigational hazard to recreational water craft and any location of piers on or near McLean Island Landing will reduce the ability to use this State Park Island for overnight camping or even day use. The relationship of the bridge piers and the island is critical information for a factual evaluation of the potential impacts.

The discussion of the legislative intent of the Willamette Greenway Goal and ORS 390.314 seems to indicate that bridges should be a part of the Greenway. This discussion (page 4-82) appears to be solely from the perspective of a transportation engineer that ignores the many natural values of the river and its floodplain. While there are many bridges over the Willamette the framers of the measure likely wanted to see other uses of this valuable area considered. The discussion also raises the notion that fill in the Greenway can “...remain compatible with the preservation of Greenway values to the greatest degree possible.” This is an incredible conclusion; much like “We had to destroy the village to save it.”





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Where did the Greenway go?

The "Wall" to West Salem

I would recommend a more direct approach of acknowledging that the bridge and especially the associated transportation structures (Marine Drive, flyover connections to Highway 22, etc.) will have significant adverse impacts to the Willamette Greenway in Salem. You can argue that there are mitigation circumstances or overwhelming need but it is a disservice to minimize the impacts since they will last for more than a generation and your grandchildren's grandchildren will be living with the result.

The approach of the City is reflected in the cynical approach to the designation of land added to the Urban Growth Boundary (UGB) as Parks/Open Space. The designation shows the total disregard the City has for Parkland and for Open Space. The intended use of adding land to the UGB is to construct streets and other transportation facilities. A significant portion of the "Parks/Open Space" will be under asphalt. Does the City council truly believe that is the legacy they wish to leave; the fiction of highways as parks/open space?

The bottom line is that Salem has never seriously looked at the Willamette Greenway as an opportunity to work with the community to develop a vision of the future of this critical interface between the urban environment and the incredible resource of the Willamette River. The perfunctory development of a Greenway program to meet Statewide Goal Requirements in 1979 with no further review, only minor ordinance adjustments, and a history of non-enforcement has resulted in the ability to justify nearly anything in this critical interface. The City and citizens of Salem deserve better.

**Your approval of the Goal 15 Exception will result in a wall being built between West Salem and the Willamette River. The conclusions of the exception understate the impacts and overstate the benefits.**

### **Concern #5: Impacts to Agricultural Lands**

The Glenn-Gibson Creek watershed is unique in that agricultural lands occupy both the upper end of the catchment and the lower end of the catchment with urban development between. While this is not a "pristine" watershed the location of agricultural lands and their uses help to ameliorate the urban impacts to the watershed. Significantly, agricultural uses in the lower watershed (floodplain of the Willamette) help to dissipate some of the altered hydrologic effects of impervious surfaces in the mid watershed and buffers the urban area from the Willamette floodplain. The loss of some 20 acres of agricultural land and replacing it with impervious surface (street intersection) will further degrade the watershed and add pollutants to the Willamette River.



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### **Concern #6: Neighborhood disruption and loss of businesses**

The project would displace "between 45 and 55 residential units and an estimated 55 to 65 businesses". This is a significant price to pay for a very expensive project that fails to address other direct environmental concerns. The watershed council has been approached by concerned citizens to determine if there is any way to protect the resources they hold dear.

The Goal 15 exception fails to identify and evaluate the impacts to Oregon State Parks property at McLean Island Landing. The exception as drafted fails to evaluate the visual impacts of the associated transportation facilities from Riverfront Park and the Willamette River other than stating "the use of sensitive designed architectural elements and details..." will mitigate for the nearly one mile of elevated ramps and supports. This bald assertion belies common sense. No one would consider a network of concrete roadways as a compatible visual amenity to the river environment. You could as easily argue that you are providing cover for all the homeless in Salem with this proposal.

The conclusion of the exception is that the preferred alternative is not "significantly more adverse" than other alternatives. This is not the standard for a Statewide Goal exception. The standard for a goal exception (from Goal 2) is: "The following standards are met:

- (1) Reasons justify why the state policy embodied in the applicable goals should not apply;
- (2) Areas which do not require a new exception cannot reasonably accommodate the use;
- (3) The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
- (4) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

I suggest it is difficult to argue that the long term environmental impacts from the project can be justified. I am not conversant with the arguments about economic, social or energy consequences and will let others speak to those. Thank you for your serious consideration.

**The concerns that we have raised are substantial and we believe identify significant deficiencies in the current proposal. It seems premature to make a formal decision that commits public resources to a project that has such significant long-term effects without a public discussion using the current proposal and more complete information about the long-term effects of the project.**

Sincerely,

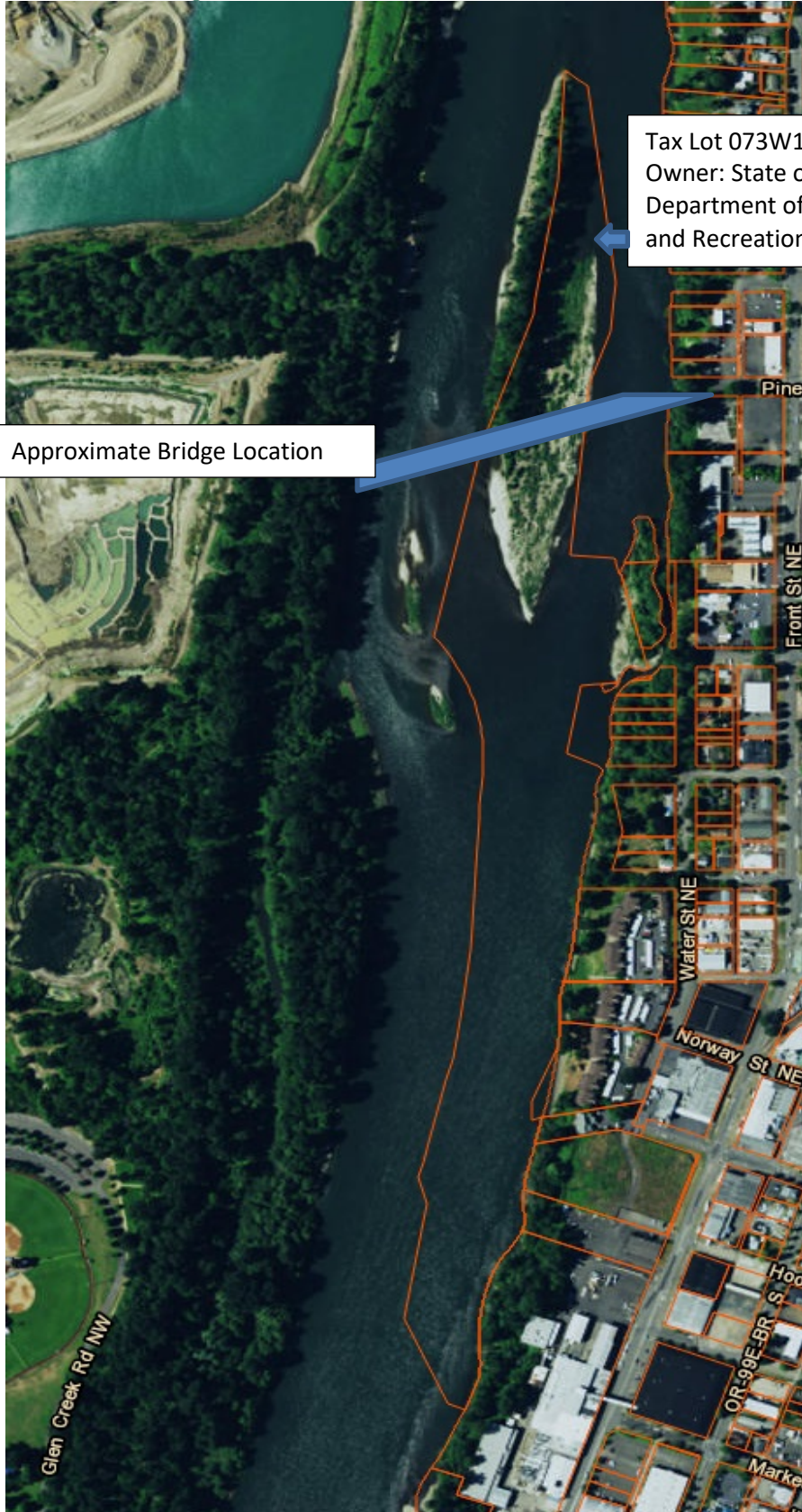
A handwritten signature in blue ink that reads "Kenneth F. Bierly". The signature is written in a cursive style with a large, sweeping flourish at the end.

Kenneth F. Bierly, Chair  
Glenn and Gibson Creek Watershed Council





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Tax Lot 073W15 00100  
Owner: State of Oregon  
Department of Parks  
and Recreation

Approximate Bridge Location

## McLean Island Landing, State Ownership



## Errors and Factual Concerns with the City of Salem Findings

### Policy Framework

#### State law

The overarching goal of the Willamette River Greenway is based in state statute at ORS 390.310-390.368. The policy of the state Willamette River Greenway program is to: “protect and preserve the natural, scenic and recreational qualities of lands along the Willamette River...for public education and enjoyment.”

#### City of Salem Willamette River Greenway Plan

The City adopted Willamette River Greenway Plan has the purpose to achieve the “following objectives:

- A. To protect and enhance the natural, scenic, recreational, historical and economic resources of the Willamette River corridor.
- B. To make the natural, scenic, recreational, historical and economic resources available for the proper use and enjoyment of the Salem urban area resident.
- C. To balance the needs and demands of commerce, industry and people for access to the unique resources of the river.
- D. To allow for use and development consistent with the Greenway concept and the Salem Area Comprehensive Plan policies.
- E. To allow and encourage a variety of recreational developments and types of public access to and along the river while preserving, protecting and enhancing the scenic qualities of the river and the riparian environment.”

#### The West Salem Neighborhood Plan

The neighborhood plan has the vision to “Rediscover the Willamette River”. The Willamette River Greenway should be expanded and extended to provide more opportunities to access the river throughout West Salem.” In addition, the Plan has the vision to “Preserve and expand natural resource areas Natural resources and open spaces should be preserved and enhanced.”

The Neighborhood adopted the Following goal specific to the vision:

#### “GOAL 7

To conserve, restore, and reclaim open space and natural resources including the Willamette River Greenway, stream corridors, wildlife habitat, tree groves, and significant mature trees.”

Policies to implement the Goal were adopted by the West Salem Neighborhood Plan were:

#### “Natural Resource Function

7.1 Maintain, and when possible, restore the natural resource functions and intrinsic values of all designated stream corridors, significant wetlands, designated riparian areas, and significant trees in West Salem.

7.2 Require preservation and maintenance of open space consistent with conditions of development approval including: a) Preventing the removal of trees and non-invasive vegetation except as provided by the City of Salem Tree Ordinance (SRC Chapter 68) and b) Removal of invasive vegetation and replanting with native species where appropriate, unless such action compromises slope stability.

#### Willamette River

**7.3 Regard the Willamette River as a significant natural resource and public amenity. New development shall give priority to river and floodplain functions, provide public access to the banks of the river, and encourage restoration and other compatible uses of the banks (emphasis added).**

Additional policies in the West Salem neighborhood Plan address streams.

## Errors and Factual Concerns with the City of Salem Findings

“Stream buffers

Encourage the City to implement the use of buffers along stream corridors that follow the identified FEMA flood plain boundaries where practicable to allow for maximum flood plain functionality. Buffers may include building setbacks, restricted or limited use areas, or other methods that protect the flood plain function of the stream corridor.”

**All of these policies address resources affected by the proposed project. The Goal 15 exception proposes to address the changes to the City of Salem Greenway plan but does not address the West Salem neighborhood Plan. Adoption of the exemption would create a conflict between the City comprehensive plan and the West Salem Neighborhood Plan.**

### Standards for an Exception

One of the purposes of an exception is to: “Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed”(OAR 660-004-0000(3)(a)) .

Posting more than 50 highly technical documents and detailed findings that run more than 275 pages just a week before the hearing is more of a way to assure the public is unable to have the opportunity to participate in any meaningful way. There has been no way to resolve plan conflicts while the exception was being developed. The process has been developed with extremely limited opportunity to explore the consequences of a significant decision that will affect the public for generations.

**The City has failed to meet the obligation of State Administrative Rule to ASSURE citizens and governmental units have an opportunity to participate.**

An additional standard for exceptions is: “Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide goal” (OAR 660-004-0000(3)(b)).

The findings to support the exception to: “protect and enhance the scenic resources of the Willamette River corridor” is: *“In summary, based on the evidence in the DEIS and the Visual Resources Technical Report Addendum (2016), the Preferred Alternative will have some impact, but not a significant adverse effect, on Greenway scenic values. In addition, the new bridge, and associated bicycle and pedestrian facilities on and off the bridge, would provide additional opportunities for views of the Willamette River, McLane Island, and Wallace Marine Park and riparian areas that aren’t available today.*

*Also, many people find bridges to be attractive and they become part of the character of the city. While some people may find a new bridge over the river to detract from the scenic qualities of the river, others may conclude that it enhances those scenic qualities. In the subsequent Greenway Development Permit phase, the public and decision-makers will have an opportunity to review the bridge design details and bicycle and pedestrian facilities and amenities, to ensure that the new bridge results in an overall net positive impact on the visual and scenic quality of the Willamette River Greenway.*

*Potential measures to avoid, minimize, and mitigate for adverse impacts to scenic values identified in the EIS include, but are not limited to:*

- *The use of sensitively designed architectural elements and details to be integrated with, complement, or otherwise enhance existing and new features.*
- *A sustainable, functional, and aesthetic landscape design.*

## Errors and Factual Concerns with the City of Salem Findings

- *Increased spacing between bridge columns to open up views under bridge structures.”*

While there is a visual assessment it is conducted from the inverse perspective of the Willamette Greenway. All the viewpoints are established from the upland looking at the river. None are from the river looking at the City. This inversion of perspective allows the impacts to be minimized. In addition the argument that “many people find bridges to be attractive” is neither substantiated in the record nor relevant to the impacts to the Willamette River Greenway. Views of concrete abutments and bridge support systems are not one of the protected resources in the Willamette Greenway program. The oversight is compounded when the impact to the views from Riverfront Park, while subjectively rated as “an impact of moderate significance”. The removal of all riparian vegetation, placing fill to widen Highway 22, and placement of a wall of bridge supports and decks for more than 2/3 of a mile along the west riverbank directly across from the highest use public facility in Salem seems to have more than “moderate significance”. There is a permanent loss of Willamette River Greenway resources that is minimized in the City findings and putting lipstick (architectural elements) on the wall will not ameliorate the visual impact of the structures.

The findings do not address the West Salem Neighborhood Plan vision that: “The Willamette River Greenway should be expanded and extended to provide more opportunities to access the river throughout West Salem.” The barrier being proposed is inconsistent with the West Salem neighborhood Plan.

**The findings of visual impacts to the Willamette River Greenway are not supported by substantial evidence and the findings language is written as justification not supported by substantial evidence in the record. The City has used subjective evaluation rather than survey or other forms of evaluation that would provide evidence. The City has substituted their perceptions of preference (many people find bridges to be attractive) to those based on evidence.**

The findings concerning natural resources is summarized as: *“Based on evidence in the DEIS and FEIS technical report addendums in the record and summarized above, the Preferred Alternative will not have a significant adverse effect on Greenway natural values at the new bridge crossing location or where the footprint of OR 22 is expanded onto the riverbank, but not over or into the Willamette River.”*

The Salem Willamette River Greenway Plan identifies “... the floodplain of West Salem, and the east bank of the Willamette River are considered valuable natural resources”. These two areas are called out along with Minto Island as “Significant Natural and Scenic Areas” in the plan. It is these two areas that are the focus of impacts from the proposed action. Other sites not so designated have been rejected.

Again the findings minimize the impacts. The loss of nearly 2/3 mile of riparian vegetation along the west bank of the Willamette to build Highway 22 ramps and lanes is more than insignificant. The discussion in the findings of the historic impacts to the Willamette River should lead to the conclusion that projects such as this are what led to the simplification over time. The incremental loss has accumulated to the point where additional losses to the floodplain habitat and riparian vegetation have become acute. The additional loss of floodplain is an impingement on critical habitat of listed Chinook salmon and steelhead. There is a growing understanding of the importance of off channel habitats for Chinook salmon. The use of the backwater areas of lower Glenn Creek, unnamed slough and the floodplain during high water periods is quite likely. The evidence used to formulate the conclusion of no significant impact is incomplete and recent information about the significance of these areas to juvenile

## Errors and Factual Concerns with the City of Salem Findings

fish is not used. The evidence fails to articulate why the sites identified as significant in the City Plan became the preferred alternative.

**The findings of natural resource impacts fail to include recent information on the importance of floodplain habitats to listed species. The findings minimize the significance of impacts and have incomplete evidence for the findings presented.**

The findings concerning the recreational resources of the Willamette River Greenway are concluded as: *“Based on the above information, it is determined that the placement of fill within the Greenway to construct the Preferred Alternative will have some adverse effect on Greenway recreational values, the overall effect is small and does not rise to the level of being a “significant” adverse effect.”*

The City of Salem Willamette Greenway Goal is: “To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic, and **recreational qualities of lands along the Willamette River**” (emphasis added). The exception concludes that there will be no significant adverse effect.

This staff report refers to the draft 4(f) report completed in 2012 for the alternatives considered at that time. That report and the staff findings are deficient in that they fail to recognize Oregon Parks and Recreation Department ownership of McLean Island Landing. Additionally, the Willamette Water Trail is not mentioned in the 4(f) report and only in passing in the findings. This is a significant oversight and a factual concern with the completeness of the evaluation. All the consideration of recreation use is from the upland use of City Parks. The Willamette River Greenway includes McLean Island Landing (see ORS 390.318 (1) “The Willamette River Greenway shall also include all islands and all state parks and recreation areas situated along the Willamette River”). The Greenway Goal specifically requires public access to the river “c. Access -- Adequate public access to the river shall be provided for, with emphasis on urban and urbanizable areas”. The City has failed to evaluate the effects of recreational small craft use of McLane Island Landing and the effects of the bridge piers on that use. There is a good argument that such impingement constitutes a significant 4(f) consideration. Failure to recognize the river use and Oregon Parks and Recreation Department ownership raises questions about the conclusion above.

**The findings of impacts to recreation use of the Willamette Greenway are based on incomplete facts and given the full range of facts the conclusions are not supported by the evidence available.**

Construction in the floodplain and floodway is regulated by City code (chapter 601) and has the standard for new bridges as; “601.105. **Bridges within the Regulatory Floodplain.** Bridges within the regulatory floodplain shall comply with the following requirements:

(a) Construction of new vehicular bridges shall have the lowest structural member of the bridge at least one foot above the base flood elevation.

(b) Repair or replacement of existing vehicular bridges shall not increase the water surface elevation of the base flood discharge.

(c) Construction or repair of pedestrian bridges shall not increase the water surface elevation of the base flood discharge. (Ord No. 31-13).”

While the language is unclear, it is easily interpreted to mean that new bridges should not increase the water surface elevation of the base flood. Base flood being defined as; “Base flood: The flood having a one percent chance of being equaled or exceeded in any given year. Base flood also referred to as the



## Errors and Factual Concerns with the City of Salem Findings

"100-year flood." The findings of for the project demonstrate that there is a 0.27 foot increase in the base flood from the proposed project. This appears to not comply with existing floodplain ordinances of the City.

The National Marine Fisheries Service has determined that impacts from the implementation of current floodplain regulations will result in "take" of listed salmon and steelhead in the Willamette River. They have issued a biological opinion to the Federal Emergency Management Agency that includes required actions over the next few years. The requirements will result in revised floodplain mapping and floodplain management requirements. The proposed findings of fact ignore the conclusion of the NMFS that floodplain development constitutes "take" and that the proposed project does not meet current standards, let alone standards that would apply at a later date more in time with bridge design and construction.

This creates two problems; first the current proposal is not consistent with current City requirements, second, if redesigned to meet future requirements, the project could be significantly different and the analysis and action being taken now would be irrelevant.

**The proposal does not meet current City Ordinance requirements and the findings of significance by NMFS are not considered in the Natural Resource impacts.**

The finding related to water dependent uses concludes: *"In summary, because the footprint for the Preferred Alternative minimizes direct impacts to active use areas of Wallace Marine Park (including canoe and boat launch areas), there is no significant reduction in sites available for water-related or water-dependent uses and the legal standard in OAR 660-004-0022(6)(b) has been met."*

The findings focus on the boat launch facility at Wallace Marine Park and the limitations to public access to the Willamette River because of steep banks. The entire discussion ignores the water dependent access to McLane Island Landing and the impacts to water dependent uses of the Landing from bridge piers on the island and adjacent to the island.

**The findings fail to include relevant facts that do not support the conclusion. There are additional factors related to small boat use of the Willamette River that are not considered when developing the conclusion. The conclusion is not supported by substantial evidence when all evidence is considered.**

The discussion of the public benefit is entirely constructed to retell the benefits of a bridge, not just this bridge. There is no description of the tradeoff in public values and concerns between livability provided by the Willamette River Greenway as based in Federal, State, City, and Neighborhood policy and vehicle transportation improvements. It is clear that such a tradeoff analysis is difficult; however that is what an exceptions process is designed to bring out. The difficulty you have is making judgements about what future we wish to leave our grandchildren and their children. Because it is difficult it should not be dodged by arguing only one side of the issue. The citizens of Salem deserve a more thoughtful consideration of the tradeoffs being proposed.

The admonition in administrative rule is clear: *"The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons that explains why the proposed use not allowed by the applicable goal, or a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use, should be*

## Errors and Factual Concerns with the City of Salem Findings

*provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.”*

**The findings fail to justify the conclusion with arguments that describe the tradeoffs and the long term consequences of such tradeoffs.**

The designation of plan and zone designation as described in the findings is a sad irony. The proposal that: *“The proposed Greenway goal exception only authorizes the components of the Preferred Alternative (bridge piers and cut and fill for related transportation improvements) within the Greenway Overlay. No other uses are justified in the Greenway goal exception. Existing plan and zone designations will be maintained for the portion of the Preferred Alternative A that is within the existing UGB and Salem city limits. Salem will apply the Parks/Open Space/Outdoor Recreation designation of the Salem Area Comprehensive Plan to the approximately 35 acres added to the UGB.”*

The designation of lands intended for concrete and asphalt transportation facilities as “Parks/Open Space/Outdoor Recreation” may be expedient for the staff but shows a total disregard for the importance of parks and open space in Salem and looks like a cynical ploy to fool the uninformed. To suggest the City is adding 35 acres of parkland to the Urban Growth Boundary while planning to pave most of it is both disingenuous and cynical. There may be reasons for such an approach but the findings do not disclose them nor hide the cynical ploy.

**There are no findings that support and no basis in evidence for the zone designations proposed.**