



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

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TO: Land Conservation and Development Commission

FROM: Carrie MacLaren, Deputy Director
Dan Eisenbeis, Urban Policy Analyst/Legislative Coordinator

SUBJECT: **Agenda Item 7, January 14, 2016**



PUBLIC HEARING AND PROPOSED ADOPTION OF AMENDMENTS TO OREGON ADMINISTRATIVE RULES CHAPTER 660, DIVISION 27

I. AGENDA ITEM SUMMARY

The Department of Land Conservation and Development (DLCD or department) requests the Land Conservation and Development Commission (LCDC or commission) consider the proposed adoption of amendments to Oregon Administrative Rule (OAR) chapter 660, division 27 to allow modifications of transportation facilities previously authorized by an exception to Statewide Planning Goals 3, 4, 11, or 14 in areas designated as rural reserves. The commission initiated this rulemaking at its September 24-25, 2015 meeting.

For additional information about this report, please contact Dan Eisenbeis at 503-934-0020 or dan.eisenbeis@state.or.us.

II. RECOMMENDED ACTION

The department recommends that the commission review the proposed rule amendments as described in section IV of this staff report, conduct a hearing on the proposals, and adopt the proposed revisions as presented in Attachment A.

III. BACKGROUND

The policy intent behind the designation of rural reserves is to provide long-term protection for large blocks of agricultural and forest lands. Consistent with this intent, OAR 660-027-0070(4) specifies that new transportation facilities may not be built in rural reserves if an exception to Statewide Planning Goals 3, 4, 11, or 14 is required.

The proposed rule amendments are necessary to address a unique issue that concerns an extension of Arndt Road within a rural reserve near Canby. Clackamas County took an exception in 2003 to extend Arndt Road between Barlow Road and Highway 99E, but that roadway has not yet been built due, in part, to a challenging grade differential across railroad tracks and capacity problems on the Highway 99E bridge over the Molalla River. Clackamas County would therefore like to be able to modify the 2003 exception to change the location of the road

extension. However, the method for modifying an exception is to take a new exception, which is prohibited in the rural reserves under OAR 660-027-0070(4). This rulemaking would modify the rural reserves rules to allow for a modification of an existing exception for a transportation facility.

The department worked with a Rulemaking Advisory Committee to develop the proposed rules at a meeting December 17th, 2015 and via email communications. The committee included representatives of the city of Canby, Clackamas County, Metro, Oregon Farm Bureau, and 1000 Friends of Oregon. Commissioner McArthur served as a liaison to the committee. Issues discussed by the committee included:

- The unique nature of the Arndt Rd. case;
- Comparing impacts on farm land from the proposed modifications to the unbuilt transportation facility with those from the facility previously authorized by an exception;
- Standards for comparing impacts;
- Consideration of impacts to farm land as part of the exceptions process;
- The role of state agencies.

The Rulemaking Advisory Committee reached consensus on the rulemaking concept at its meeting, and the department worked with the committee to revise rule amendment language via email. The department is consulting with the Oregon Department of Agriculture and Oregon Department of Transportation regarding the proposed rules, but has not yet received final comments. As this report was being finalized, the department received additional comments that it is reviewing and will discuss with the Rulemaking Advisory Committee members.

IV. PROPOSED RULE AMENDMENTS

This section provides a brief summary of proposed rule amendments included in the attachments, and the department's reasons for the amendments.

The proposed amendments to OAR 660-027-0070(7) create a new Section 7(b) to specify that the prohibition on transportation facilities that require an exception under Statewide Planning Goals 3, 4, 11, or 14 in OAR 660-027-0070(4) does not apply to modifications to an unconstructed transportation facility that was authorized in an exception prior to February 13, 2008 (the effective date of the original OAR 660, Division 27 rules).

The proposed amendments to OAR 660-027-0070(7) further specify that, in addition to the exceptions requirements in OAR 660-012-0070, an exception authorized by Section 7(b) must demonstrate that the modifications have an equal or lesser impact than the unconstructed transportation facility on lands devoted to farm or forest use. The subsection provides three ways a county may demonstrate an equal or lesser impact:

1. Demonstrate that the length of the segment of the modified transportation facility subject to an exception is equal to or shorter than the segment of the previously authorized transportation facility subject to an exception;
2. Obtain a letter from the Oregon Department of Agriculture determining that the modifications have an equal or lesser impact than the unconstructed transportation facility on lands devoted to farm or forest use; or

3. Demonstrate that the modifications have an equal or lesser impact than the unconstructed transportation facility on lands devoted to farm or forest use, considering the impacts of the identified alternatives on: farm and forest practices; farm and forest lands, structures and facilities; the movement of farm and forest vehicles and equipment; and access to parcels created on farm and forest lands.

V. COMMISSION OPTIONS

Possible alternatives for the commission include:

1. Adopt the proposed rule amendments as drafted. The adopted rule amendments will take effect February 10, 2016.
2. Adopt the proposed rule amendments with revisions by the commission, by motion, this meeting. The adopted rule amendments will take effect February 10, 2016.
3. Direct staff to prepare revisions to the proposed amendments for the commission to consider at a later meeting.
4. Not adopt the proposed rule amendments, as presented or with revisions.

VI. RECOMMENDATION AND DRAFT MOTION

The department recommends the commission, after holding a public hearing on the proposed amendments described in this report, adopt the rule amendments as proposed in the attachment and described in this report.

Recommended motion: I move the commission adopt the proposed amendments to OAR 660-027-0070 as recommended by the department and explained in the staff report.

Optional motion: I move the commission adopt amendments to OAR 660-027-0070 as recommended by the department with the following changes: [specify section number and language of deviations from staff recommendation].

VII. ATTACHMENTS

- A. Proposed amendments to OAR 660, division 27

660-027-0070

Planning of Urban and Rural Reserves

(1) Urban reserves are the highest priority for inclusion in the urban growth boundary when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24, and in ORS 197.298.

(2) In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend comprehensive plan provisions or land use regulations for urban reserves designated under this division to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB, except as specified in sections (4) through (6) of this rule.

(3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, except as specified in sections (4) through (6) of this rule.

(4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties may adopt or amend comprehensive plan provisions or land use regulations as they apply to lands in urban reserves, rural reserves or both, unless an exception to Goals 3, 4, 11 or 14 is required, in order to allow:

(a) Uses that the county inventories as significant Goal 5 resources, including programs to protect inventoried resources as provided under OAR chapter 660, division 23, or inventoried cultural resources as provided under OAR chapter 660, division 16;

(b) Public park uses, subject to the adoption or amendment of a park master plan as provided in OAR chapter 660, division 34;

(c) Roads, highways and other transportation and public facilities and improvements, as provided in ORS 215.213 and 215.283, OAR 660-012-0065, and 660-033-0130 (agricultural land) or OAR chapter 660, division 6 (forest lands);

(d) Other uses and land divisions that a county could have allowed under ORS 215.130(5) – (11) or as an outright permitted use or as a conditional use under ORS 215.213 and 215.283 or Goal 4 if the county had amended its comprehensive plan to conform to the applicable state statute or administrative rule prior to its designation of rural reserves;

(5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend its comprehensive plan or land use regulations as they apply to land in an urban or rural reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to

designation of the subject property as urban or rural reserves, in order to authorize an alteration or expansion of uses or lot or parcel sizes allowed on the land under the exception provided:

- (a) The alteration or expansion would comply with the requirements described in ORS 215.296, applied whether the land is zoned for farm use, forest use, or mixed farm and forest use;
- (b) The alteration or expansion conforms to applicable requirements for exceptions and amendments to exceptions under OAR chapter 660, division 4, and all other applicable laws;
- (c) The alteration or expansion would not expand the boundaries of the exception area unless such alteration or expansion is necessary in response to a failing on-site wastewater disposal system; and
- (d) An alteration to allow creation of smaller lots or parcels than was allowed on the land under the exception complies with the requirements of OAR chapter 660, division 29.
- (6) Notwithstanding the prohibitions in sections (2) through (5) of this rule, a county may amend its comprehensive plan or land use regulations as they apply to lands in urban reserves or rural reserves or both in order to allow establishment of a new sewer system or the extension of a sewer system provided the exception meets the requirements under OAR 660-011-0060(9)(a).
- (7) Notwithstanding the prohibition in sections (2) and (4) of this rule, a county may take an exception to a statewide land use planning goal in order to allow:
 - (a) The establishment of a transportation facility in an area designated as urban reserve;
or
 - (b) Modifications to an unconstructed transportation facility that was authorized in an exception prior to February 13, 2008. In addition to the requirements of OAR 660-012-0070, an exception authorized in this subsection shall demonstrate that the modifications have an equal or lesser impact than the unconstructed transportation facility on lands devoted to farm or forest use. For purposes of demonstrating an equal or lesser impact, a county may:
 - (A) Demonstrate that the length of the segment of the modified transportation facility subject to an exception is equal to or shorter than the segment of the previously authorized transportation facility subject to an exception;
 - (B) Obtain a letter from the Oregon Department of Agriculture determining that the modifications have an equal or lesser impact than the unconstructed

transportation facility on lands devoted to farm or forest use; or

(C) Demonstrate that the modifications have an equal or lesser impact than the unconstructed transportation facility on lands devoted to farm or forest use, considering the impacts of the identified alternatives on: farm and forest practices; farm and forest lands, structures and facilities; the movement of farm and forest vehicles and equipment; and access to parcels created on farm and forest lands.

(8) Counties, cities and Metro may adopt and amend conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services, roads, highways and other transportation facilities, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area.

(9) Metro shall ensure that lands designated as urban reserves, considered alone or in conjunction with lands already inside the UGB, are ultimately planned to be developed in a manner that is consistent with the factors in OAR 660-027-0050.

Stat. Auth.: ORS 195.141 & 197.040

Stats. Implemented: ORS 195.137-195.145 & 195.300-195.336; 2007 OL, ch. 424

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 3-2010, f. 4-29-10, cert. ef. 4-30-10; LCDD 10-2010, f. & cert. ef. 10-20-10; LCDD 5-2012, f. & cert. ef. 2-14-12; LCDD 3-2015, f. & cert. ef. 4-27-15