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M E M O R A N D U M

**TO:** Joint OTC/LCDC Transportation Subcommittee  
**FROM:** Frank Angelo, Principal  
**DATE:** September 16, 2005  
**CC:**  
**FILE #:** 009-005  
**RE:** Final Amendments to OAR 660-012-0070, OAR 660, Division 4 and OAR 660-012-0005 (11)

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Proposed Amendments to OAR 660-012-0070

At the July 19<sup>th</sup> Joint Transportation Subcommittee meeting, staff was directed to finalize proposed amendments to OAR 660-012-0070 and provide a final version at the September 23<sup>rd</sup> Subcommittee meeting. As was previously discussed, amendments to OAR 660, Division 4 will also be necessary to achieve the Subcommittee's desire of making 660-012-0070 a "stand-alone" requirement for exceptions for transportation improvements on rural land. Staff has prepared the following items attached to this memo for your final action:

- Final amendments to OAR 660-012-0070 in column format with commentary describing the amendments. Changes to the text following the July 19<sup>th</sup> Subcommittee meeting are highlighted in the attached table – Section 0070 (10)(b) and (c).
- Final amendments to OAR 660, Division 4. Changes to Division 4 following the July 19<sup>th</sup> Subcommittee meeting are highlighted in the attachment – OAR 660-004-0022(1).
- Final amendments to OAR 660-012-0005 that staff believes will provide clarification and more effectively implement the proposed amendments to OAR 660-012-0070.

In addition, a memo from Rob Zako, 1000 Friends of Oregon with his comments on the proposed 0070 amendments is included in the meeting packet. Oregon Department of Justice staff will be prepared to respond to the memo at the subcommittee meeting.

## Proposed Amendments 660-012-0070

<p><b>Proposed Amendments: 660-012-0070</b></p> <p><b>Exceptions for Transportation Improvements on Rural Land</b></p>	<p><b><u>Commentary</u></b></p>
<p>Section 660-012-0070: Exceptions for Transportation Improvements on Rural Land</p>	
<p>SECTION 660-012-0070 (1)</p> <p>(1) Transportation facilities and improvements which do not meet the requirements of OAR 660-012-0065 require an exception to be sited on rural lands.</p> <p>(a) A local government approving a proposed exception shall adopt as part of its comprehensive plan findings of fact and a statement of reasons that demonstrate that the standards in this rule have been met. A local government denying a proposed exception shall adopt findings of fact and a statement of reasons explaining why the standards in this rule have not been met. However, findings and reasons denying a proposed exception need not be incorporated into the local comprehensive plan.</p> <p>(b) The facts and reasons relied upon to approve or deny a proposed exception shall be supported by substantial evidence in the record of the local exceptions proceeding.</p>	<p>New language: adds language from OAR 660-004-0015 needed to implement requirements in ORS 197.732 and Goal 2. Requires that the facts and reasons relied upon are in the record of the local proceeding.</p>
<p>SECTION 660-012-0070 (2)</p> <p>(2) When an exception to Goals 3, 4, 11, or 14 is required to locate a transportation improvement on rural lands, the exception shall be taken pursuant to ORS 197.732(1)(c), Goal 2 and this division. The exceptions standards in OAR 660, Division 4 and OAR 660, Division 14 shall not apply. Exceptions adopted pursuant to this Division shall be deemed to fulfill the requirements for goal exceptions required under ORS 197.732(1)(c) and Goal 2.</p>	<p>New language: eliminates redundancy and confusion by providing that only the standards in ORS 197.732, Goal 2 and OAR 660, Division 12 apply to exceptions to locate transportation improvements on rural lands. It eliminates the application of OAR 660, Division 4, and clarifies that OAR 660, Division 14 does not apply.</p>
<p>SECTION 660-012-0070 (3)</p> <p>(3) An exception shall, at a minimum, decide need, mode, function and general location for the proposed facility or improvement:</p> <p>(a) The general location shall be specified as a corridor within which the proposed facility or improvement is to be located, including the outer limits of the proposed location. Specific sites or areas within the corridor may be excluded from the exception to avoid or lessen likely adverse impacts. Where detailed design level information is available, the exception may be specified as a specific alignment;</p> <p>(b) The size, design and capacity of the proposed facility or improvement shall be described generally, but in sufficient detail to</p>	<p>Proposed amendment clarifies that when a local government has already developed more detailed alignment information, it may specify a specific alignment.</p>

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<p>allow a general understanding of the likely impacts of the proposed facility or improvement. Measures limiting the size, design or capacity may be specified in the description of the proposed use in order to simplify the analysis of the effects of the proposed use;</p> <p>(c) The adopted exception shall include a process and standards to guide selection of the precise design and location within the corridor and consistent with the general description of the proposed facility or improvement. For example, where a general location or corridor crosses a river, the exception would specify that a bridge crossing would be built but would defer to project development decisions about precise location and design of the bridge within the selected corridor subject to requirements to minimize impacts on riparian vegetation, habitat values, etc.;</p> <p>(d) Land use regulations implementing the exception may include standards for specific mitigation measures to offset unavoidable environmental, economic, social or energy impacts of the proposed facility or improvement or to assure compatibility with adjacent uses.</p>	
<p>SECTION 660-012-0070 (4)</p> <p>(4) To address Goal 2, Part II(c)(1) the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Further, the exception shall demonstrate that there is a transportation need identified consistent with the requirements of OAR 660-012-0030 which cannot reasonably be accommodated through one or a combination of the following measures not requiring an exception:</p> <p>(a) Alternative modes of transportation;</p> <p>(b) Traffic management measures; and</p> <p>(c) Improvements to existing transportation facilities.</p>	<p>No changes proposed to this section.</p>
<p>SECTION 660-012-0070 (5)</p> <p>(5) To address Goal 2, Part II(c)(2) the exception shall demonstrate that non-exception locations cannot reasonably accommodate the proposed transportation improvement or facility.</p>	<p>No changes proposed to this section.</p>

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<p>SECTION 660-012-0070 (6)</p> <p>(6) To determine the reasonableness of alternatives to an exception under sections (4) and (5) of this rule, cost, operational feasibility, economic dislocation and other relevant factors shall be addressed. The thresholds chosen to judge whether an alternative method or location cannot reasonably accommodate the proposed transportation need or facility must be justified in the exception.</p> <p>(a) In addressing sections (4) and (5) of this rule, the exception shall identify and address alternative methods and locations that are potentially reasonable to accommodate the identified transportation need.</p> <p>(b) Detailed evaluation of such alternatives is not required when an alternative does not meet an identified threshold.</p> <p>(c) Detailed evaluation of specific alternative methods or locations identified by parties during the local exceptions proceedings is not required unless the parties can specifically describe with supporting facts why such methods or locations can more reasonably accommodate the identified transportation need, taking into consideration the identified thresholds.</p>	<p>Section (6)(a) reflects language from OAR 660-004-0020(2)(b)(B) that directs an applicant initially to identify and address possible alternatives not requiring exceptions that are potentially reasonable to accommodate the identified need.</p> <p>Section (6)(b) provides that a detailed analysis is not required for alternatives that do not meet one or more of the thresholds identified under Section (6).</p> <p>Section (6)(c) reflects language from OAR 660-004-0020(2)(b)(C) providing that a local government taking an exception need not evaluate in detail specific alternatives not requiring exceptions unless another party to the local proceeding can describe why such alternatives can more reasonably accommodate the proposed use.</p>
<p>SECTION 660-012-0070 (7)</p> <p>(7) To address Goal 2, Part II(c)(3), the exception shall:</p> <p>(a) Compare the economic, social, environmental and energy consequences of the proposed location and other alternative locations requiring exceptions;</p> <p>(b) Determine whether the net adverse impacts associated with the proposed exception site are significantly more adverse than the net impacts from other locations which would also require an exception. A proposed exception location would fail to meet this requirement only if the affected local government concludes that the impacts associated with it are significantly more adverse than the other identified exception sites;</p> <p>(c) The evaluation of the consequences of general locations or corridors need not be site-specific, but may be generalized consistent with the requirements of section (3) of this rule. Detailed evaluation of specific alternative locations identified by parties during the local exceptions proceeding is not required unless such locations are specifically described with facts to support the assertion that the locations have significantly fewer net adverse economic, social, environmental and</p>	<p>Section 7(c) incorporates language from OAR 660-004-0020(2)(c) providing that a local government taking an exception need not evaluate in detail specific alternatives requiring exceptions unless another party to the local proceeding can describe why such alternatives would have significantly fewer net adverse economic, social, environmental and energy impacts than the proposed alternative.</p>

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<p>energy impacts than the proposed exception location.</p>	
<p><b>SECTION 660-012-0070 (8)</b></p> <p>(8) To address Goal 2, Part II(c)(4), the exception shall:</p> <p>(a) Describe the adverse effects that the proposed transportation improvement is likely to have on the surrounding rural lands and land uses, including increased traffic and pressure for nonfarm or highway oriented development on areas made more accessible by the transportation improvement;</p> <p>(b) Demonstrate how the proposed transportation improvement is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts;</p> <p>(c) Adopt as part of the exception, facility design and land use measures which minimize accessibility of rural lands from the proposed transportation facility or improvement and support continued rural use of surrounding lands.</p>	<p>No changes proposed to this section.</p>
<p><b>SECTION 660-012-0070 (9)</b></p> <p>(9) (a) Exceptions taken pursuant to this rule shall indicate on a map or otherwise the locations of the proposed transportation facility or improvement and of alternatives identified under subsections 4 (c), (5) and (7) of this rule.</p> <p>(b) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.</p>	<p>New Section. Section 9(a) incorporates an existing requirement in OAR 660-004-0020(2)(b)(A) that alternative exception areas be identified on a map or otherwise.</p> <p>Section 9(b) implements ORS 197.732(5) and incorporates an existing requirement in OAR 660-004-0030(1).</p>
<p><b>SECTION 660-012-0070 (10)</b></p> <p>10). An exception taken pursuant to this rule does not authorize uses other than the transportation facilities or improvements justified in the exception.</p> <p>(a) Modifications to unconstructed transportation facilities or improvements authorized in an exception shall not require a new exception if the modification is located entirely within the corridor approved in the exception.</p> <p>(b) Modifications to <b>constructed</b> transportation facilities authorized in an exception shall require a new exception, unless the modification is permitted without an exception under OAR 660-012-0065(3)(b)-(f). For purposes of this section, minor transportation improvements made to a transportation facility or improvement authorized in an exception shall</p>	<p>New Section. Section 10 incorporates an existing requirement in OAR 660-004-0018(4)(a) that an exception authorizes only the uses justified in the exception.</p> <p>Section 10(a) allows modifications to unconstructed transportation facilities authorized in an exception without a new exception if the modification is located entirely with the corridor approved by the exception. This is consistent with Section 3(a) and reflects the fact that during the project design phase, project alignments and</p>

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<p>not be considered a modification to a transportation facility or improvement and shall not require a new exception.</p> <p>(c) Notwithstanding subsections (a) and (b) of this section, the following shall require new goal exceptions:</p> <p>(1) New intersections or new interchanges on limited access highways or expressways, excluding replacement of an existing intersection with an interchange.</p> <p>(2) New approach roads located within the influence area of an interchange.</p> <p>(3) Modifications that change the functional classification of the transportation facility.</p> <p>(4) Modifications that reduce the effectiveness of facility design measures or land use measures adopted pursuant to Section 8(c) of this rule to minimize accessibility to rural lands or support continued rural use of surrounding rural lands, unless the area subject to the modification has subsequently been relocated inside an urban growth boundary.</p>	<p>other design features often shift within an approved corridor.</p> <p>Section 10(b) provides that modifications to existing facilities authorized in an exception will require a new exception. This reflects language in OAR 660-004-0018(4)(b). However, a new exception would not be required for minor transportation improvements as defined in OAR 660-012-0005(11) (e.g., turn lanes, signalization, merge lanes) or for modifications that the TPR allows in rural areas without exceptions under OAR 660-012-0065(3)(b)-(f).</p> <p>Section 10(c) requires new exceptions for certain improvements and modifications that would otherwise be permitted without a new exception under Sections 10(a) and (b). These include new intersections or new interchanges on limited access highways or expressways; new approach roads to interchanges; modifications that change the functional classification of a transportation facility; and modifications that eliminate design or land use measures adopted under Section 8(c) of this rule to minimize accessibility to rural lands or support continued rural use of surrounding rural lands.</p>

## **OAR 660, Division 4**

The following notes the sections of OAR 660, Division 4 where staff is recommending amendments. The amendment in Section 0022(1) was added following the July 19<sup>th</sup> Joint Subcommittee meeting.

### **Recommended Amendments to OAR 660, Division 4**

#### **660-004-0000**

##### **Purpose**

(1) The purpose of this rule is to explain the three types of exceptions set forth in Goal 2 "Land Use Planning, Part II, Exceptions." Except as provided for in OAR chapter 660, Division 14, "Application of the Statewide Planning Goals to Newly Incorporated Cities and to Urban Development on Rural Lands" and OAR 660, Division 12, "Transportation Planning", Section 0070, "Exceptions for Transportation Improvements on Rural Land", this Division interprets the exception process as it applies to statewide Goals 3 to 19.

(2) and (3) – No Changes.

#### **660-004-0022**

##### **Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)**

An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

(1) For uses not specifically provided for in subsequent sections of this rule **or in OAR 660-012-0070 or** OAR 660, Division 014, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Statewide Goals 3 to 19; and either

(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

(2) – (11) – No Changes

## OAR 660-012-0005

### Proposed Amendments to OAR 660-012-0005

The following presents staff recommended amendments to OAR 660-012-0005 necessary to provide clarification and more effectively implement the proposed amendments to OAR 660-012-0070. These include proposed revisions to existing 660-012-0005(11) plus two new definitions.

#### Proposed revisions to existing OAR 660-012-0005(11) (definition of “minor transportation improvements”)

11) "Minor transportation improvements" include, but are not limited to signalization, addition of turn lanes or merge/deceleration lanes on arterial or collector streets, provision of local streets, transportation system management measures, modification of existing interchange facilities within public right of way and design modifications located within an approved corridor. Minor transportation improvements may or may not be listed as planned projects in a TSP where the improvement is otherwise consistent with the TSP. Minor transportation improvements do not include new interchanges; new approach roads within the influence area of an interchange; new intersections on limited access roadways, highways or expressways;, new collector or arterial streets; road realignments or addition of travel lanes.

In addition, two new definitions are provided:

Approach road" means a legally constructed, public or private connection, providing vehicular access to and/or from a highway and an adjoining property.

"Influence area of an interchange" means the area 1320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.