

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 SARAH DEUMLING, LINDA WALLMARK,
5 GARY WALLMARK, LINDA BIERLY, KEN BIERLY,
6 JAMES SCHEPPKE, ROBERT CORTRIGHT,
7 and DOUG PARROW,
8 *Petitioners,*

9
10 and

11
12 E. M. EASTERLY,
13 *Intervenor-Petitioner,*

14
15 vs.

16
17 CITY OF SALEM,
18 *Respondent.*

19
20 LUBA No. 2016-126

21 FINAL OPINION
22 AND ORDER

23
24
25 Appeal from City of Salem.

26
27 John Gear, Salem, filed a petition for review and argued on behalf of
28 petitioners.

29
30 E.M. Easterly, Salem, filed a petition for review and argued on his own
31 behalf.

32
33 William K. Kabeiseman, Portland, filed response briefs and argued on
34 behalf of respondent. With him on the briefs was Bateman Seidel, P.C.

35
36 RYAN, Board Chair; BASSHAM, Board Member; HOLSTUN, Board
37 Member, participated in the decision.

1
2
3
4

REMANDED

08/09/2017

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

NATURE OF THE DECISION

Petitioners appeal a city decision that (1) amends the city’s urban growth boundary to add approximately 35 acres, (2) amends the city’s transportation system plan, and (3) adopts an exception to Statewide Planning Goal 15 (Willamette River Greenway), in connection with a new bridge over the Willamette River.

FACTS

This appeal challenges the city of Salem’s approval of a third vehicular bridge over the Willamette River. The Willamette River flows through the city, which includes lands on both the east and the west sides of the river. The center of the river is also the boundary between Marion County on the east and Polk County on the west. The Willamette River Greenway overlay extends 150 feet on both sides of the river’s ordinary low water line, and construction of the bridge would encompass approximately 25 acres of the greenway.

Two existing four lane, one-way traffic bridges provide the only Willamette River vehicular crossings within the Salem-Keizer metropolitan region, with the next closest bridge crossings approximately 11 miles to the south and approximately 23 miles to the north.¹ The existing bridges were both

¹ A former railroad bridge that was converted to a pedestrian-only bridge is now also located to the south of the Center Street Bridge. That bridge can support emergency vehicle access for smaller emergency vehicles.

1 expanded from two lanes to four lanes approximately 35 years ago, from 1981-
2 83. The two existing bridges form a couplet and are part of Oregon State
3 Highway 22, and are owned and managed by the Oregon Department of
4 Transportation (ODOT).

5 The Center Street bridge provides east to west and the Marion Street
6 bridge provides west to east vehicular and pedestrian access across the river.
7 The Center Street bridge directs four lanes of east bound traffic to the
8 intersection of Center Street and Commercial Street, and includes two off-
9 ramps to southbound and northbound Front Street in Salem. The Marion Street
10 bridge directs two lanes of traffic from the bridge onto Oregon Highway 22 and
11 two lanes to the Wallace Road and Edgewater Street intersection, both in West
12 Salem. On the western end of the bridges, Wallace Road runs north of the
13 bridges, generally parallel to the river while Edgewater Street runs south of the
14 bridges along the river. Wallace Marine Park is located in West Salem to the
15 north of the existing bridges and Minto Brown Island Park is located to the
16 south of the existing bridges.

17 Combined, the bridges are the single transportation link across the river
18 for local and regional travel, and for emergency responders. Streets
19 surrounding the bridges experience congestion during the morning and evening
20 peak hours and the evening congestion causes the Marion Street bridge to back
21 up several blocks into Salem's downtown. Starting in 2006, the city evaluated
22 multiple alternatives to: (1) reduce congestion in downtown Salem, (2) provide

1 alternative routes for emergency responders and for regional traffic trips, and
2 (3) address other needs. After studying multiple alternatives, including
3 expanding the existing Marion and Center Street bridges, in 2012 the city
4 issued a Draft Environmental Impact Statement (DEIS) that analyzed nine
5 alternatives, including one that added lanes to the existing bridges. At the
6 conclusion of the DEIS process, the city chose for the Final Environmental
7 Impact Statement (FEIS) a modified version of one of the nine proposed
8 alternatives that locates a new four lane bridge approximately one mile to the
9 north of the existing Marion Street bridge, at approximately river mile 83.² The
10 projected cost of the PA is \$425,000,000 in 2020. Record 79.

11 The city council held a work session on August 1, 2016, and on August
12 8, 2016, the city adopted Resolution 2016-35 to initiate amendments to the
13 Salem Area Comprehensive Policies Plan (SACP) and the city's Transportation
14 System Plan (TSP) to incorporate the new bridge. The city held a joint public
15 hearing on October 12, 2016, with the Keizer City Council and Keizer planning
16 commission, the Polk County Board of Commissioners and the Marion County
17 Board of Commissioners. At the conclusion of the hearing the record was left
18 open until October 19, 2016. At its December 5, 2016 meeting, the city enacted
19 Ordinance No. 14-16, the challenged decision, which (1) amends the Salem-
20 Keizer regional urban growth boundary (UGB) to add approximately 35 acres

² The petitions for review refer to this alternative as the "Preferred Alternative" or the "PA."

1 of land located in Polk County and zoned exclusive farm use (EFU) to the
2 city's UGB; (2) adopts an exception to Goal 15 to site portions of the bridge
3 within the greenway; and (3) amends the SACP and the TSP in connection with
4 the new bridge. This appeal followed.

5 **STANDARD OF REVIEW**

6 Petitioners' and intervenor-petitioner's petitions for review do not
7 identify the standard of review that applies to LUBA's review of the challenged
8 ordinance. LUBA's standard of review of a decision that amends a local
9 government's comprehensive plan is at ORS 197.835(6), which provides that
10 "[t]he board shall reverse or remand an amendment to a comprehensive plan if
11 the amendment is not in compliance with the goals." In addition, ORS
12 197.835(9)(a)(C) and (D) provide that LUBA shall reverse or remand a land
13 use decision if LUBA finds that the local government "[m]ade a decision not
14 supported by substantial evidence in the whole record;" or "[i]mproperly
15 construed the applicable law." Finally, a local government is not necessarily
16 required to adopt findings supporting a legislative decision; nonetheless the
17 record on appeal must be sufficient to demonstrate that "required
18 considerations were indeed considered." *Citizens Against Irresponsible*
19 *Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002).

1 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

2 Petitioners’ first and second assignments of error contain multiple
3 overlapping subassignments of error, and we address the assignments of error
4 here together.

5 **A. OAR 660-012-0070**

6 As noted, some of the land that is included in the proposal is located
7 outside of the city’s UGB, in Polk County, and therefore is rural land. That
8 rural land is zoned for exclusive farm use (EFU). Only transportation facilities
9 and improvements that meet the requirements of OAR 660-012-0065 are
10 allowed on EFU-zoned “rural land” without an exception to Goals 3, 11 and
11 14. OAR 660-012-0070 provides that transportation facilities that do not meet
12 the requirements of OAR 660-012-0065 cannot be constructed on rural land
13 without an exception to the applicable goals.

14 In a subassignment of error under their first assignment of error,
15 petitioners argue that OAR 660-012-0070 required the city to take an exception
16 to unspecified statewide planning goals to construct the transportation facilities
17 that are proposed on rural EFU-zoned land. Petitioners argue that the city’s
18 concurrent approval of the amendments to the UGB to add that land to the
19 UGB does not insulate the decision from the requirement to take an exception
20 to the goals, because at the time the bridge was proposed the land was rural
21 land. Respondent responds that the city correctly concluded that OAR 660-012-

1 0070 does not apply because the land is no longer rural land, since the city
2 concurrently amended the UGB to include the land within it.³

3 Petitioners' third assignment of error challenges the city's decision to
4 amend its UGB to add 35 acres. For the reasons explained below, we deny that
5 assignment of error. Accordingly, we agree with the city that OAR 660-012-
6 0070 does not require an exception to the applicable resource and urban goals
7 where the city concurrently includes the land within its UGB, because the land
8 is no longer "rural land" as defined in that rule.

9 This subassignment of error is denied.

10 **B. OAR 660-012-0035(4)**

11 In another portion of their first assignment of error, and in a portion of
12 their second assignment of error, petitioners argue that the city's decision is
13 inconsistent with the requirements of OAR 660-012-0035(4). OAR 660-012-
14 0035(4) is part of the Land Conservation and Development Commission

³ The city found in relevant part:

"As noted in the criteria cited above, the exceptions process is not applicable unless an exception to a particular goal requirement is needed. A goal exception is required where it is not otherwise possible to comply with the statewide planning goal. The provisions cited in relation to a goal exception in the TPR (OAR 660-012-0070) apply to certain transportation improvements on rural lands. The proposed UGB amendment expands the UGB to include the land where the transportation facilities will be located, thus converting the land from rural to urban and urbanizable land. As a result, exceptions to goals 3, 4, 11, and 14 are not required." Record 285.

1 (LCDC) Transportation Planning administrative rule titled “Evaluation and
2 Selection of Transportation System Alternatives” and provides:

3 “In MPO areas, regional and local TSPs shall be designed to
4 achieve adopted standards for increasing transportation choices
5 and reducing reliance on the automobile. Adopted standards are
6 intended as means of measuring progress of metropolitan areas
7 towards developing and implementing transportation systems and
8 land use plans that increase transportation choices and reduce
9 reliance on the automobile. It is anticipated that metropolitan areas
10 will accomplish reduced reliance by changing land use patterns
11 and transportation systems so that walking, cycling, and use of
12 transit are highly convenient and so that, on balance, people need
13 to and are likely to drive less than they do today.”

14 OAR 660-012-0030(4) relatedly provides that “calculation of local and
15 regional transportation needs also shall be based upon accomplishment of the
16 requirement in OAR 660-012-0035(4) to reduce reliance on the automobile.”
17 “Transportation needs” are defined as:

18 “[E]stimates of the movement of people and goods consistent with
19 acknowledged comprehensive plan[s] and the requirements of this
20 rule. Needs are typically based on projections of future travel
21 demand resulting from a continuation of current trends as
22 modified by policy objectives, including those expressed in Goal
23 12 and this rule, especially those for avoiding principal reliance on
24 any one mode of transportation.” OAR 660-012-0005(32).

25 According to petitioners, the proposed bridge and the TSP amendments that
26 result from the location of the bridge are not “designed to meet [the city’s]
27 adopted benchmarks[.]” Petition for Review 11.

28 The city found that OAR 660-012-0035(4) “do[es] not apply to specific
29 transportation projects or to targeted amendments to a TSP[.]” Record 291.

1 However, the findings also identify adopted standards in the city’s TSP, the
2 SACP and the Salem Revised Code (SRC) that include measures to reduce
3 reliance on cars, including zoning to locate more new dwelling units in close
4 proximity to transit stops, locating more jobs in activity nodes, growth in
5 ridesharing, and increases in non-motorized and transit improvements. Record
6 97-99, 166-67. The city found that the proposed bridge will help achieve those
7 adopted standards and reduce reliance on cars by including new pedestrian and
8 bicycle facilities on the new bridge with connections to off-bridge pedestrian
9 facilities around the bridgeheads. The findings additionally identify
10 improvements for bicycles, pedestrians and vehicles that are planned for the
11 new bridge, and transportation demand management and transportation system
12 management assumptions, which the findings conclude demonstrate that the
13 amendments comply with OAR 660-012-0035(4). Record 291-92.

14 Although the sentence that petitioners challenge takes the arguably
15 incorrect position that OAR 660-012-0035(4) does not apply at all to the
16 proposed TSP amendments, petitioners do not challenge any of the additional
17 findings that the city adopted to demonstrate that the project satisfies adopted
18 standards in the city’s TSP, the SACP and the SRC and that consequently the
19 decision is consistent with OAR 660-012-0035(4). Petitioners neither challenge
20 those findings, nor identify any adopted standards in the TSP, the SACP or the
21 SRC that the TSP amendments fail to satisfy. Petitioners’ argument therefore
22 provides no basis for reversal or remand of the decision.

1 In two subassignments of error under the second assignment of error, we
2 understand petitioners to argue that the city’s calculation of “transportation
3 needs” has not considered the requirement to reduce reliance on automobiles,
4 and that the city’s projections of future travel demand are flawed and therefore
5 are not substantial evidence to support the city’s determination of its
6 “transportation needs.” Petition for Review 19-23. Petitioners argue that the
7 city’s projections overestimate growth in traffic volumes and fail to account for
8 induced demand from the new bridge and accompanying facility
9 improvements, or account for the impact of possible tolling on traffic volumes.⁴

10 The city responds that the city properly relied on projections in the
11 adopted and acknowledged regional transportation analysis prepared by state,
12 regional and local governments. The city also responds that the traffic
13 projections are accurate and that petitioners’ criticisms of the projections are
14 based on earlier versions of the traffic model used, and not the actual models.
15 Finally, the city responds that to the extent petitioners argue that the city’s
16 decision is not supported by substantial evidence in the whole record,
17 petitioners do not point to any evidence that contradicts or undercuts the city’s
18 traffic models. We agree with the city on all points.

⁴ In this context, we understand “induced demand” to refer to additional traffic that would not be present but for the new bridge.

1 **C. OAR 660-032-0040**

2 UGB expansions must be based on a 20-year population forecast that
3 complies with OAR 660, Division 32. OAR 660-024-0040(1).⁵ OAR 660-032-
4 0040 took effect on March 25, 2015. The rule requires that when the population
5 forecasts provided by the Portland State University (PSU) Population Research
6 Center (PRC) are available, those forecasts must be used. For the interim
7 period before the PRC forecast is available, the rule provides in relevant part:

8 “Interim Forecasts

9 “(1) If a local government outside the Metro boundary initiates a
10 periodic review or other legislative review of its
11 comprehensive plan that concerns an urban growth
12 boundary or a matter authorized by section (2) of this rule
13 before the date the PRC issues a final population forecast
14 for the local government in the first forecasting cycle
15 described in OAR 577-050-0040(7), the local government
16 may continue its review using the population forecast that
17 was acknowledged before the review was initiated, provided
18 the forecast was:

⁵ OAR 660-024-0040(1) provides:

“The UGB must be based on the appropriate 20-year population forecast for the urban area as determined under Rules in OAR 660, div 32, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule. The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.”

1 (a) Adopted by the local government not more than 10
2 years before the date of initiation, as a part of the
3 comprehensive plan, consistent with the requirements
4 of ORS 195.034 and 195.036 as those sections were
5 in effect immediately before July 1, 2013, and

6 (b) Acknowledged as provided in ORS 197.251 or
7 197.625 prior to the effective date of this rule.

8 “ * * * * *

9 “(4) If the forecast is consistent with sections (1)(a) and (1)(b) of
10 this rule but does not provide a forecast for the entire
11 applicable planning period for a purpose described in
12 section (2), the local government may apply an extended
13 forecast for such purpose. The extended forecast shall be
14 developed by applying the long term growth trend that was
15 assumed in the acknowledged forecast, for the particular
16 planning area, to the current population of the planning
17 area.”

18 According to evidence in the record the PRC is scheduled to issue a final
19 population forecast for the city in June, 2017. Record 3537.

20 Approximately seven months before the UGB amendment was initiated,
21 in February 2016 the city adopted amendments to the city’s TSP that project a
22 city population of 316,479 people in 2035. Petitioners argue that the city may
23 not rely on the February 2016 population forecast because that forecast was not
24 acknowledged prior to March 25, 2015 as required by OAR 660-032-
25 0040(1)(b). Rather, petitioners argue, the city must rely on a Marion County
26 forecast that was adopted by the city in 2009 and acknowledged in 2009. That
27 forecast projects the city’s population to 2030. Petitioners argue that pursuant
28 to OAR 660-032-0040(4) that forecast must be extended by applying the long

1 term growth trend that was assumed in the acknowledged forecast to the
2 current population of the planning area. Petitioners argue that using that
3 method results in a 2035 projected population of 300,447 people.

4 Under OAR 660-032-0040(1)(b), for purposes of projecting land need,
5 the city may use the February 2016 population forecast if that forecast was, as
6 relevant here, “acknowledged prior to the effective date of [the] rule,” which
7 was March 25, 2015. The February 2016 population forecast that the city used
8 fails that test. Accordingly, remand is necessary for the city to apply the PRC
9 population forecast for the city, if it is available when the city considers the
10 decision on remand; otherwise the city may rely on the Marion County 2009
11 adopted and acknowledged forecast as extended following the process set out
12 in OAR 660-032-0040(4).

13 The first assignment of error is denied. The second assignment of error is
14 sustained, in part.

15 **THIRD ASSIGNMENT OF ERROR**

16 The land added to the city’s UGB includes approximately 18 acres that
17 will be needed to extend Marine Drive north and south of the new bridge, and
18 approximately 16 acres that will be needed for the bridge itself. Record 19. In
19 their third assignment of error, petitioners take the position that the city has not
20 adequately explained or demonstrated with substantial evidence in the record
21 that adding additional lanes to the existing Center Street and Marion Street
22 bridges, located in the existing UGB, would not meet the city’s needs. As part

1 of that position, petitioners challenge the six factors that the city identified to
2 evaluate alternatives to expanding the UGB.⁶

3 In support of their position, petitioners cite one sentence of OAR 660-
4 024-0050(4), which provides that “[p]rior to expanding the UGB, a local
5 government must demonstrate that the estimated needs cannot reasonably be
6 accommodated on land already inside the UGB.” Petitioners then cite LUBA’s
7 decision in *Vincep v. Yahmill County*, 53 Or LUBA 514, 539, *rev’d and rem’d*
8 215 Or App 414, 171 P3d 368 (2007), a case involving a reasons exception to
9 Goals 3, 4, and 14. Petitioners argue that the holding in *Vincep* requires the city
10 to justify that the factors that it relied on to determine whether the “estimated
11 needs cannot reasonably be accommodated on land already inside the UGB” as
12 required by OAR 660-024-0050(4) are “essential characteristics” to meeting
13 the transportation needs. Petition for Review 25. Finally, petitioners cite OAR
14 660-012-0070(4), which applies when a local government approves an

⁶ Those factors are:

1. Reducing congestion in downtown Salem;
2. Distributing traffic within the transportation system;
3. Providing alternative routes for emergency responders;
4. Providing an alternate route for regional trips;
5. Enhancing multi-modal connectivity; and
6. Supporting planned land uses in downtown Salem and the Wallace Road/Edgewater area. Record 103-04.

1 exception to applicable resource goals to site a transportation facility on rural
2 land. Petition for Review 41.

3 The city takes the position that the single sentence petitioners rely on in
4 OAR 660-024-0050(4) is quoted out of context, and that when the entire
5 provision is considered, and considered in context with the entire rule, it is
6 clear that OAR 660-024-0050(4) does not apply where the city is not
7 evaluating the adequacy of its residential and employment land inventory and
8 determining how to address any identified deficiency.⁷ However, that is not the
9 position that the city takes in its adopted findings. The city’s adopted findings
10 apply OAR 660-024-0050(4) and conclude that it is satisfied.⁸ Record 100-02.

⁷ OAR 660-024-0050(4) provides:

“If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs determined under OAR 660-024-0040, the local government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. *If the local government determines there is a need to expand the UGB, changes to the UGB must be determined by evaluating alternative boundary locations consistent with Goal 14 and applicable rules at OAR 660-024-0060 or 660-024-0065 and 660-024-0067.*” (Emphasis added.)

⁸ OAR 660-024-0065(3) applies where the “primary purpose for expansion of the UGB is to accommodate a * * * public facility that requires specific site characteristics[,]” and appears to provide the most relevant standards for

1 We assume for purposes of this opinion that the city correctly concluded that
2 OAR 660-024-0050(4) applies to the challenged UGB amendment.

3 The city also responds that *Vincep* is simply inapposite where no reasons
4 exception is involved. We agree with the city on that point. *Vincep* involved a
5 reasons exception to Goals 3, 4 and 14 to develop a hotel on land zoned EFU,
6 and its holding interprets the rules for reasons exceptions that were applicable
7 in that case, which simply do not apply here. 53 Or LUBA 518-23. In addition,
8 for the same reason petitioners’ citation to OAR 660-012-0070(4) is
9 unavailing, where no exception to a resource goal is sought. As explained
10 above, OAR 660-012-0070 does not apply here, where the land is concurrently
11 included within the UGB.

12 Petitioners’ third assignment of error is devoted to arguing that the city
13 has not explained why the six factors that the city identified are “essential
14 characteristics” as described in *Vincep* and that those six factors are
15 inconsistent with OAR 660-012-0070(4). As we have already explained, the
16 cited principle from *Vincep* and the OAR 660-012-0070 requirements for
17 exceptions for transportation improvements on rural land simply do not apply
18 here. Having failed to identify a standard that the city’s decision fails to meet,
19 petitioners’ arguments provide no basis for reversal or remand of the decision.

20 The third assignment of error is denied.

evaluating alternative sites. The city adopted findings that OAR 660-024-0065(3) and (4) are met. Record 130-32. No party discusses OAR 660-024-0065(3) and (4), and we do not address them here.

1 **FOURTH ASSIGNMENT OF ERROR**

2 In their fourth assignment of error, petitioners argue that the city’s TSP
3 amendments fail to comply with Oregon Highway Plan (OHP) Policies 1G and
4 1F.⁹

5 **A. OHP Policy 1G (Major Improvements)**

6 OHP Policy 1G provides in relevant part that

7 “It is the policy of the State of Oregon to maintain highway
8 performance and improve safety by improving system efficiency
9 and management before adding capacity. ODOT will work in
10 partnership with regional and local governments to address
11 highway performance and safety needs.”

12 OHP Policy 1G includes several “actions” to implement the policy, including
13 as relevant here:

14 “Action 1G.1

15 “Use the following priorities for developing corridor plans,
16 transportation system plans, the Statewide Transportation
17 Improvement Program, and project plans to respond to highway
18 needs. *Implement higher priority measures first unless a lower
19 priority measure is clearly more cost-effective or unless it clearly
20 better supports safety, growth management, or other livability and
21 economic viability considerations.* Plans must document the
22 findings which support using lower priority measures before
23 higher priority measures.

⁹ The Oregon Highway Plan was originally adopted in 1999 and “defines policies and investment strategies for Oregon’s state highway system for the next 20 years.” Oregon Highway Plan Preface i.

- 1 “1. Protect the existing system. The highest priority is to
2 preserve the functionality of the existing highway system by
3 means such as access management, local comprehensive
4 plans, transportation demand management, improved traffic
5 operations, and alternative modes of transportation.
- 6 “2. Improve efficiency and capacity of existing highway
7 facilities. The second priority is to make minor
8 improvements to existing highway facilities such as
9 widening highway shoulders or adding auxiliary lanes,
10 providing better access for alternative modes (e.g., bike
11 lanes, sidewalks, bus shelters), extending or connecting
12 local streets, and making other off-system improvements.
- 13 “3. Add capacity to the existing system. The third priority is to
14 make major roadway improvements to existing highway
15 facilities such as adding general purpose lanes and making
16 alignment corrections to accommodate legal size vehicles.
- 17 “4. Add new facilities to the system. The lowest priority is to
18 add new transportation facilities such as a new highway or
19 bypass.” (Emphasis added.)

20 In sum, the OHP directs that the state and local governments should implement
21 higher priority measures first unless a lower priority measure is (1) more cost
22 effective or (2) it “clearly better supports safety, growth management, or other
23 livability and economic viability considerations.”

24 In their fourth assignment of error, petitioners argue that the city’s
25 decision to add new facilities to the transportation system — the lowest priority
26 measure — is inconsistent with the direction in Policy 1G, Action 1G1. ODOT
27 commented to the city that the bridge meets the requirements of OHP Policy
28 1G, Action 1G.1 and that the city had taken steps to resolve the identified
29 issues using higher priority measures. Record 2222-5. The city adopted

1 findings that explain the steps and measures it has taken to improve the
2 existing bridges over the past 20 years and to implement some actions
3 recommended in a 2010 study of alternate modes of transportation. Record 45-
4 49. We understand those findings to conclude that the lower priority measure
5 “clearly better supports safety, growth management, or other livability and
6 economic viability considerations.”

7 According to petitioners, the city must first implement or attempt to
8 implement all of the remaining projects and strategies identified in a 2010
9 alternate modes study before it can implement a lower priority measure such as
10 adding a new transportation facility. The city disagrees that it must show that it
11 has tried every identified project before it can implement a lower priority
12 measure, and argues that the evidence in the record supports the city’s
13 conclusion that a lower priority measure is warranted. The city argues that in
14 adding new facilities to the transportation system, it is also “protect[ing] the
15 existing system,” the highest priority measure, because the existing system is
16 over capacity and most of the measures identified in the 2010 alternate modes
17 study will not address that problem.

18 We agree with the city that OHP Policy 1G, Action 1G.1 is not as
19 absolute as petitioners argue. The city can rely on a less cost-effective and
20 lower priority measure that “clearly better supports safety, growth management,
21 or other livability and economic viability considerations.” ODOT also
22 concluded that the city could rely on the lower priority measure, based on the

1 multiple other higher priority actions it has tried. The findings also analyze
2 several other steps the city has taken to address its transportation needs, in
3 order to demonstrate that the lower priority measure “clearly better supports
4 safety, growth management, or other livability and economic viability
5 considerations.”

6 Petitioners also argue that the city’s decision fails to demonstrate
7 compliance with OHP Policy 1G, Action 1G.2, which provides in relevant part:

8 “Support any major improvements to state highway facilities in
9 local comprehensive plans and transportation system plans only if
10 the improvements meet all of the following conditions:

11 “ * * * * *

12 “The improvement would be a cost-effective means to
13 achieve the objective(s); [and]

14 “ * * * * *

15 “Funding for the project can reasonably be expected at the
16 time the project is ready for development and
17 construction[.]”

18 Petitioners argue that the bridge is not “a cost-effective means to achieve the
19 objective” because the evidence in the record shows that the cost of the bridge
20 is close to the total amount that the region expects to receive from all sources
21 over the next 20 years, and that there is no evidence in the record that funding
22 for the bridge can be expected in the next 20 years.

23 The city responds, and we agree, that OHP Policy 1G does not require
24 anything of the city, but is directed at ODOT’s support or lack of support for
25 improvements to state highways that are identified in local comprehensive

1 plans or transportation systems plans. Stated differently, the city responds that
2 “[a]ction 1G.2 is not a mandatory criterion that local governments must meet
3 before including a project in their TSP, but an evaluation factor ODOT will use
4 in their evaluation of a project for inclusion in the OHP.” Answering Brief 43.
5 We agree.

6 **B. OHP Policy 1F (Highway Mobility Policy)**

7 OAR 660-012-0060(1) requires that certain mitigation measures be put
8 in place if a comprehensive plan amendment “would significantly affect an
9 existing or planned transportation facility.”¹⁰ The OHP adopts performance

¹⁰ OAR 660-012-0060(1) provides, in relevant part:

“If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule * * *. A plan or land use regulation amendment significantly affects a transportation facility if it would:

“(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

“(b) Change standards implementing a functional classification system;” or

“(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area

1 standards, known as mobility targets, for state highways. OHP Policy 1F
2 provides that mobility targets are used to evaluate whether a plan amendment
3 has a “significant effect” on a state transportation facility within the meaning of
4 OAR 660-012-0060(1). OHP Policy 1F allows a local or regional government
5 to adopt alternative mobility standards for state highways “where it is
6 infeasible or impractical to meet the mobility targets in Table 6 or Table 7, or
7 those otherwise approved by the Oregon Transportation Commission [OTC][.]”
8 OHP Policy 1F, Action 1F.3. The decision acknowledges that the TSP

of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

“(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

“(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

“(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

1 amendments will further degrade the performance of some state highway
2 intersections, and explains that the city and ODOT are in a collaborative
3 process of developing alternative mobility targets for approval by the Oregon
4 Transportation Commission after the TSP amendments are adopted. Record
5 181-82, 310-11.

6 As we understand petitioners' argument, it is that the OTC must first
7 adopt the alternative mobility targets into the OHP before the city may rely on
8 those alternative targets to satisfy the TPR requirement that any significant
9 effects to the state highways are mitigated. However, OHP Policy 1F, Action
10 1F.3 contemplates future adoption of alternative mobility standards, and
11 specifies that the mobility targets in the OHP will continue to apply until the
12 alternative targets are adopted by the OTC:

13 "If alternative targets are needed but cannot be established through
14 the system planning process prior to adoption of a new or updated
15 transportation system plan, they should be identified as necessary
16 and committed to as a future refinement plan work item with an
17 associated timeframe for completion and adoption. In this case, the
18 mobility targets in Table 6 or Table 7, or those otherwise approved
19 by the Commission, shall continue to apply until the alternative
20 mobility targets are formally adopted by the Oregon
21 Transportation Commission."

22 Although the interface between OHP Policy 1F, Action 1F.3 and the TPR could
23 be clearer, OAR 660-012-0060(2)(c) allows the city to mitigate significant
24 effects by, as relevant here, "[a]mending the TSP to modify the * * *
25 performance standards of the transportation facility." The TSP amendments
26 include the following:

1 “Some of the intersections on the State roadway system will also
2 not meet the State mobility targets, for which the State proposes to
3 adopt Alternative Mobility Targets into the Oregon Highway
4 Plan.” Record 190.

5 We think including that language in the TSP is sufficient to satisfy any
6 requirement in the TPR to adopt measures to mitigate the effect of the bridge
7 on the state highway system.

8 The fourth assignment of error is denied.

9 **FIFTH ASSIGNMENT OF ERROR**

10 As already noted, OAR 660-012-0060 requires that local governments
11 determine whether an amendment to a comprehensive plan would
12 “significantly affect an existing or planned transportation facility” in one of
13 three ways and, if so, adopt one or more measures to offset the significant
14 effect. An existing off-ramp from Highway 22 westbound exits to the
15 Rosemont Avenue NW/Edgewater Street intersection. The TSP amendments
16 authorize a new ramp connection from the future extension of Marine Drive
17 NW to westbound Highway 22. That ramp connection will be a close enough
18 distance to the existing Rosemont Avenue NW off-ramp that it will likely
19 require closure of the existing off ramp in order to construct the project. The
20 amendments to the TSP acknowledge that and take the position that the “City
21 will not support closure of the exit at Rosemont Avenue NW until a facility
22 plan has been adopted that addresses access to the southwest portion of west
23 Salem.” Record 348.

1 In their fifth assignment of error, petitioners argue that traffic from the
2 future closure of the off ramp to the intersection of Rosemont Avenue NW and
3 Edgewater Street will shift to streets that are designated as local streets in the
4 TSP and cause them to effectively function as collector streets.¹¹ Petition for
5 Review 56. According to petitioners, that shift is a “significant effect” on those
6 streets within the meaning of OAR 660-012-0060(2) because it effectively
7 changes the functional classification of those streets from local streets to
8 collector streets. Petitioners argue that the TSP amendments fail to address
9 OAR 660-012-0060(1) and (2) or mitigate that significant effect in the vicinity
10 of Rosemont Avenue NW.

11 The city responds that the TSP amendments do not close the Rosemont
12 Avenue NW off-ramp, and that in fact the city has no authority over the
13 Rosemont Avenue NW off-ramp because Highway 22 is controlled by
14 ODOT.¹² Accordingly, the city argues, without closure of the off-ramp in this
15 decision, there can be no significant effect and petitioners’ assignment of error
16 provides no basis for reversal or remand of the decision.

17 We agree with the city that this decision specifically does not close the
18 Rosemont Avenue NW off-ramp. That potential future decision will require

¹¹ Petitioners identify Rosewood Drive and College Drive as streets currently designated as local streets in the TSP. Petition for Review 56.

¹² The city points out that future closure of the Rosemont Avenue NW off-ramp by ODOT will require coordination with the city and other affected local governments.

1 coordination between ODOT and the city, and presumably will require a new
2 amendment to the TSP, at which point the city and ODOT must demonstrate
3 that closure of the off-ramp satisfies OAR 660-012-0060.

4 The fifth assignment of error is denied.

5 **SIXTH ASSIGNMENT OF ERROR**

6 Petitioners’ sixth assignment of error argues that (1) the plan and zoning
7 designations that apply to the land added to the UGB do not comply with OAR
8 660-024-0050(6) and (7); and (2) the plan and zoning designations that apply
9 to the land subject to the Goal 15 exception do not comply with OAR 660-004-
10 0018(4)(a).

11 **A. OAR 660-024-0050**

12 OAR 660-024-0050(6) and (7) provide:

13 “(6) When land is added to the UGB, the local government must
14 assign appropriate urban plan designations to the added
15 land, *consistent with the need determination and the*
16 *requirements of section (7) of this rule, if applicable.* The
17 local government must also apply appropriate zoning to the
18 added land consistent with the plan designation or may
19 maintain the land as urbanizable land until the land is
20 rezoned for the planned urban uses, either by retaining the
21 zoning that was assigned prior to inclusion in the boundary
22 or by applying other interim zoning that maintains the land’s
23 potential for planned urban development. The requirements
24 of ORS 197.296 regarding planning and zoning also apply
25 when local governments specified in that statute add land to
26 the UGB.

27 “(7) Lands included within a UGB pursuant to OAR 660-024-
28 0065(3) to provide for a particular industrial use, or a
29 particular public facility, must be planned *and zoned* for the

1 intended use and must remain planned and zoned for that
2 use unless the city removes the land from the UGB.”
3 (Emphases added).

4 The city’s decision applies a comprehensive plan designation of Parks, Open
5 Space, and Outdoor Recreation (POS) to the land that is added to the UGB, and
6 retains the existing EFU zoning of that land until the land is annexed into the
7 city. At that time, the findings explain, the Public Amusement (PA) zoning
8 designation, which is the only zoning designation that implements the POS
9 plan designation, will be applied to the land added to the UGB. Record 296.
10 Petitioners argue that applying the POS designation, which is implemented in
11 the zoning code by a single zoning designation, the PA zone, is inconsistent
12 with OAR 660-024-0050(7).

13 The city takes the position in its findings that the city’s zoning districts
14 do not include a zoning district that is specifically limited to transportation
15 facilities or to public uses, but that “linear transportation facilities” are allowed
16 as outright permitted uses in all zones, and the PA zone that implements the
17 POS plan designation allows a “very limited set of uses.”¹³ Record 296. The

¹³ The PA zone allows a number of uses as permitted uses, including a caretaker dwelling unit, food carts, “commercial entertainment, indoor,” “major event entertainment,” “recreational and cultural community services” “emergency services,” “military installations,” “transit stop shelters,” and marinas, as well as a few uses that are “special uses” requiring additional development standards. SRC 540.005 Table 540-1.

1 city also responds that the amendments to the SACP to add the land to the UGB
2 “work to prevent the use of the newly added area for any other uses.” Response
3 Brief 52. By that we understand the city to respond that the findings that are
4 part of the SACP will limit the future use of the newly added lands for
5 transportation facility purposes.

6 We agree with petitioners that the city’s retention of the county EFU
7 zoning is inconsistent with OAR 660-024-0050(7). First, OAR 660-024-
8 0050(6) is most clearly understood to apply when land is added to a UGB for
9 reasons other than the reasons specified in OAR 660-024-0050(7), which
10 applies specifically when land is added for a particular public facility, such as
11 the case here. Second, OAR 660-024-0050(7) requires that lands added to the
12 UGB for a particular transportation facility must be planned *and zoned* for that
13 transportation facility and “remain” planned *and zoned* for that use unless they
14 are removed from the UGB. That language does not contemplate that
15 permanent zoning will occur at a future time after the land is added to the
16 UGB, and requires a concurrent plan and zone designation “for [that] intended
17 use.” Accordingly, the city may not rely on (6) to retain the existing EFU
18 zoning.

19 However, we disagree with petitioners that applying a plan district that
20 allows uses that are not limited to the transportation facilities, and that is
21 implemented by a single zoning district that allows other uses than the
22 transportation facilities, is inconsistent with the rule. OAR 660-024-0050(7)

1 requires a plan and zone designation that allows the intended uses, but does not
2 require the plan and zone designation to be exclusively limited to that intended
3 use. Petitioners agree that the PA zone allows transportation facilities, which
4 are the intended use of the land added to the UGB.

5 **B. OAR 660-004-0018(4)**

6 OAR 660-004-0018(4)(a) provides in relevant part that when a local
7 government adopts a reasons exception to a goal “plan and zone designations
8 must limit the uses, density, public facilities and services, and activities to only
9 those that are justified in the exception.” Petitioners argue that the city’s
10 decision fails to comply with OAR 660-004-0018(4).

11 The land that is subject to the Goal 15 exception is entirely within the
12 city’s UGB as it existed prior to the ordinance adoption. Stated differently,
13 none of the 35 acres added to the UGB is located within the greenway
14 boundary. Record 20-21. As we understand it, all of the land subject to the
15 Goal 15 exception is also subject to the Willamette Greenway Overlay zoning
16 district provisions at SRC Chapter 600. According to the city, the “[e]xisting
17 plan and zoning designations” will be maintained for the land subject to the
18 Goal 15 exception. Record 730. However, the city does not explain why the
19 “existing plan and zoning designations” “limit the uses * * * public facilities
20 and services, and activities” to only those that are justified in the exception.
21 Remand is required for the city to more clearly explain, if it can, why the
22 existing plan and zoning designations for the land subject to the Goal 15

1 exception satisfy the requirement in OAR 660-004-0018(4)(a) that the plan and
2 zone designations “limit the uses * * * * public facilities and services and
3 activities” to those justified in the exception, or apply plan and zone
4 designations that limit the uses to the transportation facilities that are justified
5 in the exception.

6 The sixth assignment of error is sustained, in part.

7 **INTERVENOR-PETITIONER’S FIRST AND SECOND ASSIGNMENTS**
8 **OF ERROR**

9 ORS 197.835(9)(a)(B) provides that LUBA shall reverse or remand a
10 land use decision if the local government “[f]ailed to follow the procedures
11 applicable to the matter before it in a manner that prejudiced the substantial
12 rights of the petitioner.” In his first and second assignments of error, we
13 understand intervenor-petitioner (Easterly) to argue that the city erred in failing
14 to follow procedures applicable to the appealed decision.

15 **A. Statewide Planning Goal 1, the City’s Citizen Involvement**
16 **Program (CIP), and Statewide Planning Goal 2**

17 In a portion of his first assignment of error, Easterly argues that the city
18 failed to comply with (1) a provision of Statewide Planning Goal 1 (Citizen
19 Involvement) that provides that “[c]itizens shall have the opportunity to be
20 involved in the phases of the planning process * * * including preparation of
21 Plans and Implementation Measures[;]” (2) the city’s adopted and
22 acknowledged Citizen Involvement Program (CIP) that implements Goal 1; and
23 (3) a provision of Statewide Planning Goal 2 (Land Use Planning) that requires

1 the city to provide “opportunities * * * for review and comment by citizens
2 * * * during preparation, review and revision of plans and implementation
3 ordinances.”

4 According to Easterly, the city failed to comply with Goal 1, the city’s
5 CIP, and Goal 2 in failing to notify and solicit feedback from neighborhood
6 associations, and in particular the West Salem Neighborhood Association
7 (WSNA), in the preparation of and prior to commencing proceedings on the
8 proposed SACP amendments to implement the bridge proposal. Easterly
9 Petition for Review 8-12. Easterly also argues that the city provided the
10 supporting materials and technical reports for the bridge proposal to the public
11 only six days prior to the public hearing, and that six days was insufficient time
12 for meaningful public input on the proposal, in violation of the city’s CIP.
13 Finally, in another subassignment of error under the first assignment of error,
14 Easterly argues that the city violated Goal 1 and the CIP by failing to respond
15 to three questions Easterly submitted in writing at the October 12, 2016
16 hearing. Easterly Petition for Review 17-18. In support of his arguments,
17 Easterly cites provisions of Goal 1, provisions of a prior version of the SACP,
18 and materials from LCDC’s consideration of the city’s initial comprehensive
19 plan in 1975 that reference an obligation of the city to solicit feedback from
20 neighborhood associations for issues affecting a neighborhood.

21 The city responds first by pointing out that Easterly relies on a
22 superseded provision of the city’s CIP and argues that those superseded

1 provisions do not provide a basis for reversal or remand of the decision. The
2 city also responds that the Goal 1 requirement for citizen participation in the
3 phases of the planning program is implemented through the city's CIP, which
4 in turn is implemented by provisions of the SRC.¹⁴ SACP IV, Section B, Policy
5 1 and Section J, Policy 22 require in relevant part that "neighborhood groups *
6 * * shall be included in the planning process," but does not impose any specific
7 qualitative or quantitative requirements for that participation. Accordingly, the
8 city argues, compliance with the provisions of the SRC at SRC 300.1110 is
9 sufficient to satisfy the SACP policies that implement Goal 1.

10 The city also disputes that the WSNA or any of its members were not
11 provided with the opportunity to participate in the plan preparation and
12 implementation, and provides a citation to the record demonstrating that
13 WSNA was provided mailed notice of the commencement of proceedings on
14 the bridge proposal and of the October 12, 2016 hearing. Supplemental Record
15 9666.

¹⁴ SACP IV, Section B, Policy 1 provides:

"Opportunities for broad-based citizen involvement in the development, revision, monitoring and implementation of the Salem Area Comprehensive Plan shall be provided by the City of Salem and Marion and Polk Counties. Where neighborhood groups have been officially recognized by the governing body, they shall be included in the planning process. To help assure citizen participation and information, public hearings shall be held prior to adoption of all land use ordinances."

1 Finally, the city responds that a city council resolution adopted on
2 August 8, 2016, initiated the legislative proceeding on the SACP amendments,
3 and that the city began accepting public testimony on the proposal at that
4 meeting. The city also explains that the city had engaged in a years' long
5 planning process in connection with the broader federal Draft Environmental
6 Impact Statement (DEIS) process. According to the city, that DEIS planning
7 process provided work sessions and public input on publicly available
8 documents. The city also responds that although the city provided the technical
9 documents prepared in connection with the bridge proposal on its website only
10 six days prior to the public hearing, the city left the record open for an
11 additional week after the hearing, even though no law required the city to do
12 so.

13 We agree with the city that Easterly's arguments under these
14 subassignments of error do not provide a basis for reversal or remand of the
15 decision. Where the challenged decision does not involve an amendment to the
16 CIP, the only way a petitioner can demonstrate a violation of Goal 1 is by
17 demonstrating that the local government failed to comply with the CIP. *Wade v.*
18 *Lane County*, 20 Or LUBA 369, 376 (1990). Goal 1 is satisfied when the local
19 government adheres to the provisions in its acknowledged CIP. Easterly's
20 citation to and reliance on a superseded provision of a prior version of the
21 city's CIP, and to documents that are part of the LCDC acknowledgement file
22 from 1975, do not establish that the city violated the applicable provisions of

1 the city’s acknowledged CIP, at SACP IV, Section B, Policy 1 and Section J,
2 Policy 22. Similarly, Easterly does not allege that the city violated those
3 policies in failing to respond to three of his questions, but rather relies on
4 superseded provisions of a prior version of the SACP and the CIP and
5 documents that are part of the LCDC acknowledgement file.

6 We also do not think that the city’s process in adopting the SACP
7 amendments to approve the bridge violated the provision of Goal 2 cited by
8 Easterly. The city provided opportunities for review and comment on the
9 proposed plan amendments by the public, and provided notice to neighborhood
10 associations of the plan amendment proceedings. Record 7917, 7934;
11 Supplemental Record 9666, 9671. While the single-hearing process employed
12 here provided a very compressed period of time for public input regarding a
13 fairly complex proposal, the challenged decision is a legislative decision, and
14 nothing cited to us in Goal 2 or elsewhere requires that the city provide a
15 longer time frame or additional opportunities public input regarding a
16 legislative decision. Finally, we agree with the city that the record demonstrates
17 that the WSNA was provided with notice of the proposed SACP amendments
18 and the opportunity to participate in the proceedings.

19 **B. ORS 227.186 Notice**

20 ORS 227.186 requires the city to provide notice of a comprehensive plan
21 amendment, a zone change, or a change in a land use regulation (“land use
22 change”) that may affect the permissible uses of property to be mailed to the

1 owner of each lot or parcel that the ordinance proposes to rezone or that would
2 be affected by a change in the permissible uses of the property. The city
3 provided notice of the October 12, 2016 hearing to property owners within the
4 UGB expansion area and whose properties were subject to the comprehensive
5 plan map amendment that changed the plan designation of the property to POS.
6 The notice is located at Record 7936-44 and Supplemental Record 9686.

7 In a portion of his first assignment of error, Easterly argues that the city's
8 notice failed to comply with ORS 227.186(5)(a) and (b) because the notice
9 failed to advise property owners that the comprehensive plan amendment and
10 inclusion of the property within the UGB would require a "land use change"
11 that Easterly describes as the city's eventual rezoning of the property from EFU
12 to PA, which, as explained above, is the only zoning designation that
13 implements the POS plan designation effectuated by the comprehensive plan
14 and UGB amendment. In his second assignment of error, Easterly argues that
15 the city failed to provide notice required by ORS 227.186(5)(a) to owners of
16 property located adjacent to Edgewater Street that Easterly claims will be
17 affected by the TSP amendments. Easterly also alleges that the notice provided
18 to some property owners did not "mention[]" the potential future financial
19 impact accruing to these property owners" and did not include a map as
20 required by SRC 300.1110(e)(1)(C)(ii). Easterly Petition for Review 18-19.

21 The city responds that Easterly has not alleged that any failure of the
22 city's notice prejudiced his substantial rights, and accordingly, his arguments

1 provide no basis for reversal or remand of the decision. We agree. For a
2 “procedural error” to be reversible by LUBA, it must “[prejudice] the
3 substantial rights of the petitioner.” ORS 197.835(9)(a)(B). Failure to provide
4 statutorily required notice of a hearing constitutes a procedural error and would
5 only provide a basis for reversal or remand if such a failure to provide notice of
6 such hearing prejudices the petitioner’s substantial rights. *Versteeg v. City of*
7 *Cave Junction*, 17 Or LUBA 25, 28-29 (1988); *see also Warren v. Lane*
8 *County*, 297 Or 290, 299 n 12, 686 P2d 316 (1984) (describing failure to
9 provide statutory notice of hearing as a “failure of process” and a “procedural
10 error” that would provide a basis for reversal or remand if such failure
11 “prejudiced substantial rights of the petitioner”). Accordingly, because Easterly
12 has not established that his substantial rights were prejudiced by any errors in
13 the city’s notice, his arguments provide no basis for reversal or remand of the
14 decision.

15 Easterly’s first and second assignments of error are denied.

16 **INTERVENOR-PETITIONER’S THIRD, FOURTH AND FIFTH**
17 **ASSIGNMENTS OF ERROR (GOAL 15)**

18 Goal 15 is “to protect, conserve, enhance and maintain the natural,
19 scenic, historical, agricultural, economic and recreational qualities of lands
20 along the Willamette River as the Willamette River Greenway.” These
21 assignments of error challenge the city’s decision to approve a reasons

1 exception to Goal 15 for the bridge structures and ramps on piers and/or fill to
2 be located within the greenway boundary.

3 **A. Third Assignment of Error**

4 Boiled down to its essence, Easterly’s third assignment of error argues
5 that a GIS map in the record suggests that a portion of the greenway included
6 in the Goal 15 exception is located outside of the city limits, in Polk County,
7 and therefore, Polk County is required to join in or approve its own exception.

8 The city responds that the evidence in the record demonstrates that the
9 greenway is located entirely within the city limits. The city responds that as a
10 matter of law, the official greenway overlay zone boundary is the boundary
11 mapped by ODOT, pursuant to SRC 600.010. According to the city, the ODOT
12 map confirms that the greenway overlay zone is entirely within the city limits,
13 notwithstanding that a city GIS webmap in the record may show a different
14 boundary. We agree with the city.

15 Easterly’s third assignment of error is denied.

16 **B. Fourth Assignment of Error**

17 OAR 660-004-0022(6) provides the standards for approving an
18 exception to Goal 15, in relevant part:

19 “(6) Willamette Greenway: Within an urban area designated on
20 the approved Willamette Greenway Boundary maps, the
21 siting of uses that are neither water-dependent nor water-
22 related within the setback line required by section C.3.k of
23 Goal 15 may be approved where reasons demonstrate the
24 following:

1 “(a) The use will not have a significant adverse effect on
2 the greenway values of the site under consideration or
3 on adjacent land or water areas[.]”

4 In addition, OAR 660-004-0020(2)(c) requires a reasons exception to
5 demonstrate that, as relevant here “[t]he long-term environmental, economic,
6 social and energy consequences resulting from the use at the proposed site with
7 measures designed to reduce adverse impacts are not significantly more
8 adverse than would typically result from the same proposal being located in
9 areas requiring a goal exception other than the proposed site.” SACP IV,
10 Section O, Willamette River Greenway Policies 2 and 6 also include the
11 following:

12 “2. Riparian vegetation within the Greenway Boundary shall be
13 conserved. Conservation shall include protecting and
14 managing riverbanks, sloughs, wildlife, and vegetation.

15 “ * * * * *

16 “6. Existing parks within the Greenway Boundary shall be
17 preserved and maintained. * * *”

18 Easterly’s fourth assignment of error includes citations to a large number
19 of criteria. However, we glean from the petition that Easterly argues that the
20 city’s conclusion that the Goal 15 exception complies with OAR 660-004-
21 0022(6)(a) is not supported by substantial evidence in the record, and that the
22 city’s findings are inadequate to explain why that criterion is satisfied. Easterly
23 also argues that the city failed to adopt any findings explaining why the
24 decision complies with SACP IV, Section O, Willamette River Greenway
25 Policies 2 and 6, SACP IV, Section J, Transportation, and SACP IV, Section N,

1 Scenic and Historic Areas, Natural Resources and Hazards, and unlawfully
2 defers the determination of whether the proposal complies with those policies
3 to a subsequent greenway development permit stage.

4 **1. OAR 660-004-0022(6)(a)**

5 The city adopted 14 pages of findings at Record 195-208 that identify
6 the greenway values of the site and adjacent land and water areas.¹⁵ Easterly
7 challenges the city’s finding that with mitigation, impacts to riparian habitat
8 will not be significant, and argues that the need for mitigation at all
9 demonstrates that the bridge will have a “significant adverse effect” on riparian
10 values. Easterly Petition for Review 32-33. However, the rule allows adverse
11 effect on habitat as long as the adverse effect is not “significant.” We see no
12 reason that the city cannot rely on mitigation techniques as a way to decrease
13 the impacts on riparian habitat to a level that is not “significant.”

14 Easterly makes no attempt to challenge the city’s other findings or
15 explain why they are inadequate to explain why the city concluded that OAR

¹⁵ The findings identify “natural qualities,” including aquatic and riparian habitat, floodplains, and wetlands; “scenic qualities” including landscapes that contain views of the proposed bridge; “historical qualities,” including properties listed on the National Register of Historic Places or eligible for listing; “agricultural qualities;” “economic qualities;” and “recreational qualities,” including publicly owned land used or planned for park or recreational facilities. The findings conclude that the bridge infrastructure will affect some of the greenway values but that with mitigation, the bridge will not have a “significant adverse effect” within the meaning of OAR 660-004-0022(6)(a). Record 198-99, 203.

1 660-004-0022(6)(a) was satisfied. According, Easterly’s arguments provide no
2 basis for reversal or remand.

3 **2. OAR 660-004-0020(2)(c)**

4 The city adopted 8 pages of findings, and an additional page
5 summarizing those findings, explaining why the proposal satisfies OAR 660-
6 004-0020(2). Record 218-26. Easterly cites OAR 660-004-0020(2)(c), but does
7 not include any argument addressing any of the city’s findings or otherwise
8 explaining why the city’s decision should be remanded. Accordingly,
9 Easterly’s argument provides no basis for reversal or remand.

10 **3. SACP Policies**

11 Easterly cites SACP IV, Section O, Willamette River Greenway Policies
12 2 and 6 and argues that the city failed to adopt findings addressing those
13 policies and instead unlawfully deferred the determination of whether the
14 proposal complies with those policies to a subsequent greenway development
15 permit stage. In addition, Easterly argues that the city failed to adopt any
16 findings addressing SACP IV, Section J, Transportation Policy 24 and SACP
17 IV, Section N, Scenic and Historic Areas, Natural Resources and Hazards
18 Policy 5.

19 The city does not respond to Easterly’s argument that the city unlawfully
20 deferred a determination of compliance with SACP IV, Section O, Willamette
21 River Greenway Policies 2 and 6 to the greenway permitting stage, or point to
22 any place in the record where the city adopted findings regarding the other plan

1 policies Easterly cites. Absent any response to the argument, we agree with
2 Easterly that the city's findings are inadequate to demonstrate compliance with
3 those policies.

4 Easterly's fourth assignment of error is sustained, in part.

5 **C. Fifth Assignment of Error**

6 At oral argument, Easterly withdrew his fifth assignment of error.

7 Easterly's fifth assignment of error is denied.

8 **CONCLUSION**

9 The city's decision is remanded.