

EXECUTIVE ORDER NO. 33

EFFECTIVE DATE: April 10, 1987

SUBJECT: SUBMITTAL OF SUPPLEMENTARY MATERIAL ON PETITIONS
FOR AMENDMENT OF THE URBAN GROWTH BOUNDARY

Issue:

The procedures for hearing petitions for major amendments of the Urban Growth Boundary (UGB) establish twice yearly deadlines for submittal of petitions, but do not specify when or how a petition is determined to be "complete." The complexity, cost and consequences of the major amendment hearing process militate against adopting the procedure used for the simpler locational adjustments, for which a petition must be determined complete by an established deadline. On the other hand, the need to consolidate hearings to consider the possible interrelationships among major amendment petitions necessitates some protection of the rights of other petitioners and of Metro's own interests. This order addresses this issue by clarifying the process for review of supplemental petition materials submitted after the filing deadline has passed. Although this order is prompted by the need for clarification for major amendments, it applies to the locational adjustment process as well, except as noted.

Conclusion and Order:

The following procedures shall apply in contested case proceedings on UGB amendment petitions:

1. For the purposes of qualifying for hearing following a given filing deadline, petitions must include:
 - a. A set of findings addressing all applicable standards (the goal requirements for major amendments are listed in Attachment A to this Order);
 - b. The applicable filing fee and Hearings Officer deposit;
 - c. A valid petition to annex to Metro, if needed, along with a statement of intent to file that petition with the Portland Metropolitan Area Local Government Boundary Commission; a petition to annex to a city will meet this requirement;
 - d. For major amendments, letters or other evidence that comment from the affected local jurisdiction and applicable service districts has been requested (the Metro Code for locational adjustments requires that local government comment must actually be received before those petitions are considered complete); and

- e. A list of all property owners within 500 feet of the subject property (250 feet for locational adjustments) and copies of current tax assessors maps showing all tax lots listed, with the subject property outlined in red.
2. Following the filing deadline, petitioner shall be advised if its petition is missing any of the pertinent documents.
3. The hearing schedule for major amendments shall be set as follows:
 - a. The Hearings Officer shall identify any issues that are common to two or more petitions and require consolidated hearings.
 - b. If a petition identified for consolidation does not yet contain all the items listed in #1, petitioner shall be so advised and given at least one week to provide the missing documents. If all such documents have not been submitted by the time staff is prepared to issue notice of the consolidated hearings as provided in #3c, the incomplete petition shall be dropped from the consolidated hearing and common issues addressed as provided in #4.
 - c. Consolidated hearings shall be scheduled for the earliest practicable time requested by at least one of the affected petitioners, provided the specific date and time is convenient for all petitioners.
 - d. Individual hearings shall be scheduled to follow any consolidated hearings, at times requested by each petitioner, all in the same week if all petitioners agree.
4. If new material is submitted by a petitioner after hearing notice for that petition (including notice of any consolidated hearings) have been sent, the Hearings Officer shall determine whether anything in that new material requires a new consolidated hearing. If the Hearings Officer finds a new consolidated hearing is needed, it shall be scheduled prior to Council action on the other affected petitions only if: (a) the Hearings Officer determines that the new hearing will not delay the release of his or her recommendations on the other affected petitions by more than one week, or (b) all other affected petitioners agree to any delay. When neither of these conditions is met, the hearing on the issues raised by the new material that appear to require consolidation shall be scheduled to occur only after the Council has adopted findings in the other related cases, and the adopted findings shall become part of the record in the remaining case.
5. In any case in which new material has been submitted by any party after the hearing notice has been issued, the Hearings Officer shall set over or continue the hearing as needed if any party requests additional time to review and respond to that

material and: (a) all parties agree to the set over or continuance; or (b) the Hearings Officer determines that the request is reasonable because one or more of the parties have not had a reasonable opportunity to respond the new material, considering its length and complexity and when it was made available. When the hearing is continued, the Hearings Officer, after consulting with the affected parties, shall determine whether the continuance shall be solely to leave the record open for additional written submittals or whether a new hearing date needs to be set.

6. As provided in Metro Code 2.05.047, parties are responsible for serving copies of materials submitted to other parties. Since parties cannot be identified prior to the hearing, parties should assume responsibility for reviewing at Metro all materials submitted prior to the hearing date. At the hearing, Metro staff, in consultation with the Hearings Officer, shall prepare a list of parties present who have requested service of documents and others who submitted written testimony. Parties shall be responsible for serving those on this list with all material submitted at or after the hearing, including any exceptions. Failure to serve parties may be grounds for a set over or continuance as provided in #5.

So Ordered this 8 day of April, 1987.

SIGNED:

Rena Cusma
Rena Cusma, Executive Officer

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7078C/495-3

ATTACHMENT A

STANDARDS FOR REVIEW OF PETITIONS FOR MAJOR AMENDMENT OF THE URBAN GROWTH BOUNDARY

In considering this petition, Metro must apply the standards and procedures for taking an LCDC goal exception. These standards, as established by Goal 2 Part II (Exceptions), Goal 14 (Urbanization) and OAR 660 Division 4, require the petitioner to show:

1. Reasons justify why the state policy embodied in the applicable goals should not apply. (This factor can be satisfied by compliance with the seven factors of Goal 14: (1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals; (2) Need for housing, employment opportunities, and livability; (3) Orderly and economic provision for public facilities and services; (4) Maximum efficiency of land uses within and on the fringe of the existing urban area; (5) Environmental, energy, economic and social consequences; (6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and (7) Compatibility of the proposed urban uses with nearby agricultural activities);
2. Areas which do not require a new exception cannot reasonably accommodate the use.
 - a. The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified.
 - b. To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative areas factor the following questions shall be addressed:
 - (i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?
 - (ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

c. This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

3. The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the increased costs to special service districts.

4. The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated

in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

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