

# MEMORANDUM

CITY ATTORNEY'S OFFICE

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DATE: May 2, 2022 VIA EMAIL

TO: Monica Sather, Senior Planner

CC: Sandy Belson, Planning Section Manager  
Melissa Carino, Senior Planner  
Andy Limbird, Senior Planner  
Drew Larson, Planner  
Liz Miller, Planner  
Michael Engelmann, GIS Analyst  
Mike Travess, GIS Analyst

FROM: Kristina Kraaz, Assistant City Attorney 

RE: Comprehensive Plan Map Boundaries and Rivers/Streams

The purpose of this memorandum is to provide legal guidance related to drawing the UGB boundary and associated comprehensive plan designation boundaries where the UGB or plan designation boundaries border on a river or stream. In summary, I recommend following legal principles related to lot or parcel boundary lines when determining how the UGB boundary (and plan designation boundaries) abutting a navigable river change as the riverbed changes.

## Springfield UGB Background

The Springfield Urban Growth Boundary (UGB) (as distinct from the Eugene-Springfield combined UGB) was adopted by Ordinance 6268 (June 20, 2011). Ordinance 6361 (December 20, 2016) expanded the Springfield UGB for employment lands. Together, these Ordinances form the basis for developing the new property-specific plan diagram. Ordinances 6268 and 6361 adopted the Springfield UGB primarily based on "tax lot" map boundary lines.<sup>1</sup> OAR 660-024-0020, related to adoption or amendment of a UGB, requires that the City show particular "lots or parcels" on the UGB map. "Tax lots" are generally used as a proxy for lot and parcel boundaries because tax lots are usually consistent with lot or parcel boundaries and information on tax lots is more readily available than legal descriptions for lots and parcels. Legal principles related to lot and parcel boundaries are applicable to interpreting the UGB boundary and plan designation boundaries, even though the UGB ordinances are written to describe "tax lots," under the understanding that tax lots are generally used as a proxy for lots and parcels.

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<sup>1</sup> Ordinance 6268 also notes several locations where the UGB boundary splits a lot or parcel ("tax lot") and provides detailed information on how to determine the UGB location in those places. That is important information to include in developing a new plan diagram, but not specifically relevant to this memo because none of those locations where the UGB splits a property are areas abutting a stream or river.

### General Rules for Properties Bordering on Streams and Rivers

As stated in *State By & Through State Land Bd. v. Corvallis Sand & Gravel Co.*, 283 Or. 147, 161–62, 582 P.2d 1352, 1361 (1978), the general rule in Oregon regarding riparian and littoral ownership is this:

“The beds and shores of bodies of water tend to change location; this tendency has resulted in a general rule that, where such changes are gradual, the boundary will follow the water rather than remain where it was on the ground at the time of the original conveyance. That is, if the middle of a stream is the boundary between two parcels of land, the two parcels will continue to be bounded by the actual middle of the stream even though, as time goes by, that line moves in one direction or the other as the result of erosion on one side and the enlargement of the upland by accretion on the other. Similarly, if the line of ordinary high-water is the boundary between the bed of a navigable river, owned by the state, and the privately-owned riparian upland, that boundary will remain at the line of ordinary high water, although gradual changes in the course of the river or the contour of the banks may alter the actual location of the high-water line.”

### Navigable Waterways

Where a lot or parcel is directly bordering on a navigable waterway, the State of Oregon owns everything in the riverbed beneath the Ordinary High-Water Line. The McKenzie River and the Willamette River (downstream of the Middle Fork and Coastal Fork confluence) are the only two water bodies in or near the Springfield UGB that have been adjudicated as “navigable” to date. Other parts of the Willamette, for example, could be adjudicated navigable at some point in the future, but to date, the State has not formally asserted ownership of those riverbeds and so I am not including those areas in my description of “navigable waterways.” The Middle Fork Willamette along the Springfield UGB can be considered a non-navigable waterway at this time.

For navigable waterways, the State takes ownership of gradual changes in the riverbed as the riverbed area expands. Similarly, when the waterway gradually moves away from land or leaves new land through alluvial deposits or reliction (uncovering of land that was previously submerged), the adjacent owner adds the newly formed land to their property. The exception to this rule would occur if there was a sudden and significant flooding event, for example, or river construction project, that suddenly and significantly changed the location of the riverbed. In that case, the ownership boundaries would stay as they existed previously.

I recommend that the UGB line and plan designation boundaries, where they coincide with lots or parcels that border on the McKenzie River or Willamette River directly, be updated as new versions of the map are published, to keep the Ordinary High-Water Line as the UGB or plan district boundary.

### Non-Navigable Waterways

Where the UGB or plan designations follow waterways that are non-navigable (e.g., not the McKenzie River, or the Willamette River main stem), generally the assumption under State law is that the property boundaries run to the centerline (the thread) of the stream. ORS 93.310. These water boundaries are also subject to the general rule stated above, where gradual changes in the waterway that move the centerline also move the property boundaries. Sudden changes, like those that occur during sudden flooding events or as a result of significant human activity, do not move the property boundaries.

### Recommendation

For navigable waterways, I recommend that the UGB boundary and plan designation boundaries continue to keep the Ordinary High-Water Line as the UGB or plan district boundary where they border on the McKenzie or Willamette rivers. Similarly, where plan designation boundaries follow non-navigable streams to the stream centerline, then the plan designation boundary should continue to follow the stream centerline as minor changes to the stream location occur.

These changes can occur without an official amendment to the UGB, because the UGB remains tied to the same original lots and parcels, and it is merely the lot or parcel lines that are changing by operation of law. When the plan diagram maps are updated by GIS or new maps are published, changes in the water boundaries can be applied at that time. Similarly, if or when properties that border on a water body subject to a development application that involves determining the UGB location or underlying plan designation(s), the decision on the location of the UGB or plan designation(s) can account for changes to water boundaries that affect the property lines.

KSK