



SPECIAL MEETING NOTICE

There will be a Special Session of the Keizer City Council on Thursday, October 12, 1995 at 5:30 p.m. This meeting will be held at Keizer City Hall, Robert L. Simon Council Chambers, 930 Chemawa Road NE, Keizer, Oregon. This will be a joint meeting of the Keizer City Council, Salem City Council, Marion County Commissioners and Polk County Commissioners to discuss the dual interest agreement and regional planning issues with respect to the Willow Lake Wastewater Treatment Plant.

Questions regarding this special meeting may be directed to Dotty Tryk, City Manager at 390-3700, extension 112.

DATED this 10th day of October, 1995.

Tracy L. Davis
City Recorder

NOTICE FOR INFORMATION ONLY



Marion County

OREGON

**COMMUNITY DEVELOPMENT
DEPARTMENT**

DIRECTOR
Craig O. Luedeman

10 October 1995

BUILDING INSPECTION
(503) 588-5147

TO: Board of Commissioners

**PLANNING &
ENFORCEMENT**
(503) 588-5038

FR: Willow Lake SWAT Team (Luedeman, Hansen, Anderson) *COJ*

**BOARD OF
COMMISSIONERS**
Randall Franke
Gary Heer
Mary Pearmine

SUB: Report of Staff Meeting with Salem and Keizer
Staff Re SKAPAC Process

ISSUE: Should the Board propose a compromise solution at
the Thursday, October 12 meeting?

**ADMINISTRATIVE
OFFICER**
Ken Roudybush

BACKGROUND:

On Monday, October 9 the Board directed staff to meet with Keizer and Salem staff to articulate the county's position, namely, that this is a regional issue affecting both counties, as well as the cities, and to offer some possible compromises concerning the boundaries of the Willow Lake treatment plant SPA.

Following a reasonably harmonious discussion of the various interests needing consideration, all parties focused on a proposal that appears to have potential for a win-win-win, to wit:

1. Assuming that the values of the properties within the SPA are reasonable (e.g. not artificially inflated based on potential for residential development) the City of Salem would offer to purchase them (or condemn if required). This proposal recognizes that the rate payers are receiving a benefit from the potential development of the properties if they are zoned AI.

Note: At first, City of Salem staff were cold to this idea because they have the authority to regulate the treatment plant and could see no benefit to rate-payers if revenues are used to purchase lands originally bought for speculation. Later in the discussion, they warmed to the idea based on arguing that land values are increasing and the A/I zone could be the tool needed to defend such a purchase. City of Keizer staff also made it clear that their council thinks they need to support landowners who have expectations about development based on their land being in the UGB.

2. The county would consider allowing the City of Keizer to expand its UGB in recognition that they have lost potential for residential development (once the City of Salem purchases the land). This is a win for them because they would gain more developable land on an acre for acre replacement basis than is currently within the SPA. They are running short of residentially-zoned land and would profit from this expansion.

3. Finally, if the assumptions in paragraph one above are valid, the county will benefit from the land acquisition too, and avoid the no-win costs associated with litigation. The East Salem Sewer District rate-payers in the county would derive benefit from potential revenues coming in as the land is farmed or developed.

CONCLUSION:

The meeting ended with my agreeing to write this report and asking the Board to play the role of mediator by presenting this proposal to the group on Thursday night.



MEETING - KEIZER CITY HALL
THURSDAY OCT. 12 5:30 p.m.

City of Keizer

MEMORANDUM

DATE: October 9, 1995

TO: Keizer City Council
Salem City Council
Marion County Commissioners
Polk County Commissioners

FROM: Dotty Tryk, City Manager *Dotty*

SUBJECT: SKAPAC Joint Elected Officials Meeting

Thank you for agreeing to meet together as the next step in the SKAPAC Process. This meeting will be held this Thursday, October 12, 1995 at 5:30 p.m. in the Keizer Council Chambers. At issue is the modification of the Dual Interest Agreement between the Cities of Keizer and Salem covering the Special Policy Area surrounding the Willow Lake Treatment Plant.

I have attached several documents to provide background for the discussion. They are in chronological order as follows:

My report to the Mayor on the staff subcommittee recommendations concerning the Dual Interest Agreement

Mayor Koho's letter to Mayor Gertenrich requesting the individual elected officials' meeting

Councilor Collins' letter with the City of Salem's response from the individual elected officials' meeting as outlined in the SKAPAC Process

Mayor Koho's letter to Councilor Loren Collins asking for this meeting

Please call me if you need any additional information. I look forward to seeing you this Thursday.



City of Keizer

MEMORANDUM

DATE: July 10, 1995
TO: Mayor Dennis Koho
FROM: Dotty Tryk, City Manager *Dotty*
SUBJECT: Willow Lake Treatment Plant Dual Interest Agreement

The staff subcommittee designated in the SKAPAC process met twice to consider the City of Keizer's position relative to the Willow lake Treatment Plant Special Policy Area. The subcommittee consisted of Bill Healy, Salem Community Development Director, Sterling Anderson, Marion County Senior Planner, John Anderson, Polk County Administrator and myself.

THE ISSUES

We addressed five issues as follows:

The Special Policy Area Boundary

City of Keizer proposed a reduction of the SPA to one half mile radius from the plant; the removal of all land south of the westerly extension of Lockhaven Drive and; zoning the land within the new special policy area to a new zone called Agricultural-Industrial.

Property Owner Notification

The City proposed that any property sold within the SPA would require a "hold harmless" agreement to be signed by the property owner protecting all governments against law suits. In addition, the City offered to insure the City of Salem against law suits based on odor within the Special Policy Area.

Operation of the Plant

The City wanted a commitment from the City of Salem to continue to improve the odor problem.

Planning for the Plant

The City requested a formal role in the master planning process for the plant.

Termination of the Agreement

The City requested a time certain for termination of the agreement.

NEGOTIATED LANGUAGE

The subcommittee was able to agree to language for the last three of these issues. I have attached a draft agreement containing the agreed upon language. In essence the agreed upon clauses were:

Property Owner Notification

The City of Keizer will require that property owners in the SPA sign and record a hold harmless agreement from adverse impacts of odors which do not exceed the maximum values in figure 1-2 of the 1993 Noise and Odor study (Section 5). The reason for citing the Noise and Odor Study is that it is the most objective measure we have. I have attached a copy of that figure.

Operation of the Plant

The City of Salem agrees to minimize odor as best as practical given the existing facility by utilizing effective and economically practical technology and techniques. And they agree to include the full range of odor control improvement options in any major plant expansion study (Section 7).

Planning for the Plant

The City of Salem agreed to give Keizer a seat on the Salem Water-Sewer Task Force which is the body reviewing the master plan. In addition, we will be noticed and invited to attend Planning Commission and Council workshops affecting the Willow Lake Master Planning activities. And, at the request of either City Council, a joint workshop will be conducted to discuss Willow Lake Planning activities. In exchange, the City of Keizer will invite Salem to participate in Keizer utility study groups (Section 8).

Termination of the Agreement

We agreed that some agreement would need to be in effect as long as the plant exists. We did agree to review the agreement at the initiation of either party, but no later than the next Periodic Review for the purpose of determining the appropriateness of any section and to adopt appropriate amendments to the agreement (Section 10).

REMAINING ISSUES

The staffs could not find any agreement to the exact boundary of the Special Policy Area. A final map is referred to as an attachment (Section 1).

The City of Keizer proposed language which will indemnify the City of Salem against any action brought against the City of Salem brought by interested parties within the Special Policy Area for noise and odor impacts unless they are in excess of the values established by figure 1-2 of the 1993 study. We offered this, however, only if we could mutually agree to a boundary (Section 6).

The City of Salem asked to be noticed prior to issuance of building permits in excess of 2500 square feet or occupancy of more than 5 people. We did not agree to this and the language offered is tentative (Section 4).

NEXT STEPS

Although the staff subcommittee reached acceptable compromises on several issues, we did not come to a unanimous agreement. If you have further instructions for me, I can continue to work with the staff subcommittee. However, we may have progressed as far as we can at a staff level. Therefore, I recommend that you call together a meeting of the elected officials subcommittee to continue the SKAPAC process. I would be happy to discuss this with you in detail.

I have attached in chronological order for your information:

The original dual interest agreement

The City of Keizer's proposed implementation strategy

The minutes of the Salem City Council meeting April 24 pertaining to the proposed strategy

Your letter to Mr. Gertenrich requesting the initiation of the SKAPAC process

Mr. Wacker's letter to me responding

The current draft agreement as negotiated by the staffs along with figure 1-2 of the Noise & Odor Study

DUAL INTEREST AREA AGREEMENT FOR WILLOW LAKE TREATMENT PLANT AREA

WHEREAS, the Salem/Keizer Area Comprehensive Plan provides for establishment of dual interest areas, land use decision making for which may be provided by agreement between affected jurisdictions; and

WHEREAS, Marion and Polk Counties and the Cities of Salem and Keizer have identified the area of the Willow Lake Treatment Plant as a dual interest area, and wish to establish the nature and scope of coordinated land use regulation in the area by dual interest area agreement.

NOW THEREFORE, Marion County and the Cities of Salem and Keizer, the parties having jurisdiction in the Willow Lake Treatment Plant Area, agree as follows;

1. Establishment of Willow Lake Sewage Treatment Plant Dual Interest Area

The Willow Lake Treatment Plant dual interest area is established and described by the legal description attached hereto and incorporated herein.

2. Study to Identify Allowed Uses and Land Use Controls

The three jurisdictions with an interest in the Willow Lake Treatment Plant Interest Area (hereinafter "Area") are the Cities of Keizer and Salem and Marion County. These jurisdictions shall participate jointly in studies to identify 1) those uses and improvements in the area that are compatible with treatment plant operation, 2) those land use policies that operate to minimize the adverse impact of allowed uses on the treatment plant, and 3) practical plant modifications that reasonably mitigate noise and odor. These studies shall be completed by June 30, 1993. Study recommendations should be implemented within a reasonable time thereafter.

3. Interim Controls

Until the above-noted studies are implemented, the following policies shall govern development within the area:

a. Only those industrial, commercial, and agricultural and related uses that will not be adversely affected by treatment plant noise and odor will be allowed.

b. Prior to the establishment of any use or issuance of any development/building permit, the affected property owner shall acknowledge the existence of nuisance impacts associated with the treatment plant and shall, in a signed and recorded document, hold the operator of the Willow Lake Treatment Plant harmless from any adverse impacts from noise or odor related to treatment plant operations.

c. Subdivision of parcels within the area shall not be allowed.

4. Regulation Procedure

Quasi judicial procedural rights to notice and opportunity to comment shall be extended to the interested jurisdictions prior to any land use decisions in the area. Should disagreements arise, the SKAPAC conflict resolution process, or an agreed upon lesser process, shall be pursued prior to a final land use decision affecting the area.

5. Amendments

Amendment to this dual interest agreement shall be in writing and approved by all parties to this agreement.

CITY OF KEIZER

By: [Signature]
Title: MAYOR

Approved as to form:

[Signature]
City Attorney

CITY OF SALEM

[Signature]
Title:

Approved as to form:

[Signature]
City Attorney

MARION COUNTY

By: [Signature]
Title: Chairman

Approved as to form:

[Signature]
Marion County Counsel

Tract No. 1
Inside UGB

Beginning at the section corner common to Sections 27, 28, 33, and 34, Township 6 South, Range 3 West, Willamette Meridian, City of Keizer, Marion County, Oregon, said point being on the now existing City Limits Line; thence North 89° 33' West along the South Line of said Section 28 a distance of 580 feet, more or less, to a point on the East Line of Windsor Island Road NE;

thence North 12° 34' West along the East Line of said Windsor Island Road NE 30 feet, more or less, to the point of intersection of the easterly extension of the North Line of County Road No. 605 (commonly known as Naples Street NE);

thence west along the easterly extension of the North Line and the North Line of said Naples Street NE 160 feet, more or less, to the point of intersection of the northerly extension of a tract of land conveyed to Clifford B., Jr., and Janice A. Bentson by instrument recorded in Reel 690, Page 138, Records, Marion County, Oregon;

thence South 0° 27' West along the northerly extension of the West Line and the West Line of said Bentson tract 238 feet, more or less, to the southwest corner thereof;

thence South 89° 33' East along the South Line of said Bentson tract 239 feet, more or less, to a point on the West Line of said Windsor Island Road NE, said point also being on the existing Keizer City Limits Line;

thence South 31° 28' East along the West Line of said Windsor Island Road NE 1,711.36 feet;

thence South 55° 48' West a distance of 97.03 feet;

thence along the arc of a 316.48-foot radius curve to the right (the chord of which bears South 86° 24' West 322.20 feet) 323.37 feet;

thence North 63° West 269.32 feet;

thence South 527.10 feet;

thence West 287 feet;

thence South 885 feet to a point on the South Line of a tract of land conveyed to PGE by instrument recorded in Reel 1, Page 721, Records, Marion County, Oregon;

thence west along the South Line of said PGE tract 250 feet, more or less, to the point of intersection of the northwest corner of a tract of land conveyed to Thomas W. and Inez Bowden by instrument recorded in Reel 742, Page 33, Records, Marion County, Oregon;

thence south along the West Line of said Bowden tract 1,048 feet, more or less, to the southwest corner thereof;

thence east along the South Line of said Bowden tract 445 feet, more or less, to the southeast corner thereof;

thence south along the southerly extension of the East Line of said Bowden tract 383 feet, more or less, to a point on the South Line of Bowden Lane NE;

thence east along the South Line of said Bowden Lane NE 709.03 feet to the southeast corner of a tract of land conveyed to David H. and Mary L. Wallace by instrument recorded in Reel 122, Page 1180, Records, Marion County, Oregon;

thence north along the East Line of said Wallace tract 662.56 feet to the northwest corner of a tract of land conveyed to Leonard E. and Lavelle Cook by

instrument recorded in Volume 671, Page 64, Deed Records, Marion County, Oregon;

thence east along the North Line of said Cook tract 1,220 feet, more or less, to a point on the West Line of said Windsor Island Road NE;

thence North 26° 45' West along the West Line of said Windsor Island Road NE a distance of 932 feet, more or less, to the point of intersection of the South Line of a tract of land conveyed to Arleen Olson, trustee by instrument recorded in No. 27606PCJ, Records, Marion County, Oregon;

thence east along the South Line of said Olson tract 1,245 feet, more or less, to the southwest corner of the Nimrod Ford Donation Land Claim No. 40, in Section 34, Township 6 South, Range 3 West, Willamette Meridian, Marion County, Oregon; also being the southeast corner of said Olson tract;

thence North 0° 9' 14" East 174.86 feet to the northeast corner of said Olson tract;

thence west along the North Line of said Olson tract 64.44 feet to the point of intersection of the East Line of a tract of land conveyed to Zillah Schooley, et al., by instrument recorded in Reel 697, Page 354, Records, Marion County, Oregon;

thence North 0° 7' East along the East Line of said Schooley tract 529.30 feet to the northeast corner thereof;

thence North 89° 30' West along the North Line of said Schooley tract 82.87 feet to the point of intersection of the East Line of a tract of land conveyed to Hayden Island, Inc., by instrument recorded in Reel 312, Page 1626, Records, Marion County, Oregon;

thence North 0° 38' East along the East Line of said Hayden Island, Inc., tract and the northerly extension of the East Line a distance of 1,158.01 feet to the northeast corner of a tract of land conveyed to John N. Olson, et al., by instrument recorded in Reel 133, Page 658, Records, Marion County, Oregon;

thence North 89° 22' West a distance of 543.87 feet to a re-entrant corner in the North Line of said Olson tract;

thence North 0° 35' East 235.83 feet to the point of intersection of the most easterly East Line of a tract of land conveyed to John W. and Barbara B. Weeks, et al., by instrument recorded in Reel 685, Page 462, Records, Marion County, Oregon;

thence North 38° 31' East 360.83 feet;

thence North 57° 27' East 203.10 feet;

thence North 0° 38' East 66 feet to the northeast corner of the James Smart Donation Land Claim No. 42 in Section 34, Township 6 South, Range 3 West, Willamette Meridian, Marion County, Oregon, said point being on the section line common to Sections 27 and 34 of Township 6 South, Range 3 West, Willamette Meridian, Marion County, Oregon;

thence west along the North Line of said Section 34 a distance of 1,676.64 feet to the southwest corner of the Alvis Smith Donation Land Claim No. 69 in Section 27, Township 6 South, Range 3 West, Willamette Meridian, Marion County, Oregon;

thence North 89° 37' 30" West 502.20 feet to the point of beginning.

Implementation Strategy

Willow Lake Noise and Odor Study

Introduction

The Willow Lake Treatment Plant provides wastewater treatment services for the Salem/Keizer Urban Area. It is owned and operated by the City of Salem. The plant is located within the Salem/Keizer Urban Growth Boundary. It is within unincorporated land immediately adjacent to the Keizer City Limits.

The land around the treatment plant was largely agricultural when it was originally sited. Since then, Keizer has grown to occupy all land to the south, east, and northeast. In 1979, prior to Keizer's incorporation, a zone of influence was established within the Salem Urban Growth Boundary as part of the Comprehensive Plan Revision. This zone was designed to prevent the encroachment of incompatible uses around the treatment plant, and to protect Salem's investment from liability related to nuisance issues.

As a result of an increase in odor complaints and development pressures, the Cities of Keizer and Salem, and Marion County, drafted an agreement in March of 1990 to address land use issues and the impact of the treatment plant on surrounding properties. The agreement required:

1. Establishment of a "Dual Interest Area" around the treatment plant within which land use and development restrictions would apply;
2. Implementation of studies to identify: 1) uses and improvements compatible with treatment plant operations; 2) land use policies that operate to reduce the impact on allowable uses around the treatment plant; and 3) practical plant modifications that reasonably mitigate noise and odor.
3. Establishment of interim land use control measures in the Dual Interest Area to 1) restrict development to compatible uses, 2) requirement to sign hold harmless agreements against the treatment plant operator prior to issuing any development or building permits; and 3) forbid subdivision of property.

The study was completed in the summer of 1993. On September 30, 1993, a joint meeting of the Keizer and Salem City Councils and Planning Commissions was held to receive a briefing on the study from the project consultants, and to develop a strategy for implementation.

An outline of a three part implementation strategy was concurred in by the decision makers. The strategy was to:

- Adjust the SPA boundary to better reflect the results of the Noise and Odor Study.
- Develop a new zone to be used inside the SPA that will allow economic use of the land while minimizing concentrations of people.
- Explore economic development efforts that can help foster development of the SPA area, especially uses that may be able to take advantage of by-products of the treatment plant.

This document is the detailed refinement of the first two points. It includes specific recommendations for boundary adjustments and the new zone. It also includes recommended language for amending the Dual Interest Agreement to reflect these changes. It speaks to the third element of the strategy which, by its nature, will take longer to refine and implement.

Objectives

The objectives of this Strategy are:

- Use the Noise and Odor Study to refine the land use controls necessary to assure compatible development in the vicinity of the sewer treatment plant.
- Minimize community pressure for expensive actions to control noise and odor impacts from the Willow Lake Treatment Plant.
- Modify the geographic boundaries of the Special Policy Area to better reflect areas of significant impact.
- Create a land use pattern providing a benefit to property owners while minimizing opportunities for large concentrations of people.
- Assist property owners by implementing viable alternative urban land uses.
- Create a commitment to continue to improve the plant operation so that odor problems are minimized.
- Develop a formal role for the City of Keizer in planning for the future of the Willow Lake Treatment Plant.

Implementation Strategy

General Strategy

Several assumptions go into developing a general strategy for implementing the Noise and Odor Study. These are:

- There is a need to reasonably protect the Willow Lake Treatment Plant from community pressure to stop odor problems by fully or partially encapsulating the plant, resulting in a significant sewer rate increase.
- There is a need to assure reasonable and economic use of property within the Special Policy Area in keeping with the area's long term inclusion within the Urban Growth Boundary and Keizer City Limits.
- There is a need to have a special policy area boundary that is credible and defensible, based on the fair application of scientific knowledge and equal treatment of properties.
- The Dual Interest Agreement and Special Policy area cannot be structured to perfectly protect the Willow Lake Treatment Plant and its owners and operators from any public criticism or political attention relative to noise and odor complaints. A reasonable amount of exposure will occur as protection of the Willow Lake Treatment Plant is balanced with the interest of land owners in its vicinity in order to assure fair and equitable use of privately held land. The only option for approaching total protection for the Plant is for public acquisition of all impacted properties, which would include hundreds of existing homes. Even acquisition of all vacant property, while it would reduce the number of citizens that potentially may complain, would not assure that pressure could not be mounted to reduce Plant impacts.
- The City of Salem, as the plant operator, has an obligation to continue to operate the plant in the best manner possible, and to continue to strive to improve operations thereby reducing noise and odor impacts.
- The Willow Lake Treatment Plant is a regional facility having regional benefits and impacts. Therefore, it is appropriate for the City of Keizer to have a formal role in the planning for its future.
- The need for the Special Policy Area will change over time as technology improves, development patterns are established, and public policy evolves through master planning for the treatment plant. Therefore, it is appropriate to re-evaluate the need for and extent of the Special Policy Area when the master plan is completed, or at a date certain in the future.

Special Policy Area Boundary

The Special Policy Area is proposed to be amended to be circle with a one-half mile radius from the center of the treatment plant. This is consistent with the original SPA boundary proposal.

Within the land to be removed from the SPA are lands outside of the 350/300 "plume" identified in the Noise and Odor Study. They are less impacted than many developed and developable areas within the plume. In order to help assure maximize utilization of urbanizable land, these parcels are to be removed.

There are also some lands to be removed within the 350/300 plume. These are excluded primarily to assure a fair treatment of lands around the treatment plant. There are three inherently unfair aspects of the existing SPA boundary which includes all properties that that are at least partially within one-half mile.

- Many properties are within the boundary while others which are actually closer to the treatment plant are without, creating an unfair application of the policy and development restrictions.
- Several properties have a major portion of their area outside of the one-half mile circle, yet because a portion is within they are placed in the SPA. Yet, there are other properties closer to the treatment plant which only by merit of the placement of a property line are excluded from the SPA.
- There are residentially developed areas closer to the treatment plant than undeveloped lands within the boundary. If the fear is that people will complain about the plant's impacts and the answer is to prohibit people from living near the plant, then the reality of development patterns is being ignored. Using a one-half mile radius includes no lands developed to urban densities and provides equal treatment for all property owners.

This change to a one-half mile radius places land outside of the SPA that is within the 300/350 plume. This is an acceptable situation as the definition of the plume's location is imprecise at best. Also, there are many fully developed lands within the plume as mapped that are far outside of the SPA. Again, fairness and equitable application of the policy and property restrictions demand that the SPA be based on a single dimension.

The need for a Special Policy Area is based on the experiences of the 1980's and early 1990's where significant odor problems occurred late each summer and on into fall. However, with technology improvements, during 1994 odor problems were minimal. The need to keep the Special Policy Area boundary as it is today, or at all, will change as technological improvements continue to help the Plant successfully control odors.

Therefore, it may become inappropriate to maintain the existing boundaries as additional or all properties are no longer significantly impacted. The Dual Interest Agreement includes a new provision requiring the Special Policy Area boundary be reviewed and changed if appropriate within six months of the adoption of the new master plan for the treatment plant. The agreement also sunsets three years from the date of its adoption unless it is readopted.

There is a responsibility to notify any purchaser of property within the Special Policy Area, and lands removed from that area, of the potential odor impacts from the Willow Lake Treatment Plant. Therefore, this strategy includes a proposed policy requiring disclosure. There is also a need to require purchasers of property to agree to hold the cities harmless for odor impacts as long as those impacts are within current operating levels. The policy will be incorporated into the Keizer Comprehensive Plan and the Agriculture-Industrial Zone. The policy is:

A disclosure statement shall be recorded against all properties within the Special Policy Area, and against all properties now or ever removed from the Special Policy Area, informing potential purchasers of property that there is a potential odor impact. This statement will describe the potential impact, including sources, reasons, when it may occur, duration, nature of the potential odor, and any other relevant information. The statement will run perpetually with each property. Every purchaser will acknowledge receipt of the disclosure statement, and by such acknowledgment, hold the operator of the Willow Lake Treatment Plant and the Cities of Keizer and Salem harmless from any adverse impacts from noise or odor related to treatment plant operations, unless noise and odors increase due to the City of Salem failing to conform to its NPDES operating permit (Section B.1.), Oregon Administrative Rules 340-41-445(1) and 340-41-120(C), or the limits prescribed in the Treatment Plant's operations and maintenance manual.

Special Policy Area Zoning

A new zone will be implemented within the SPA. This zone, called AI, or "Ag-Industrial," focuses on agricultural uses and on industrial uses that do not generally involve large concentrations of employees or customers. The AI zone is designed to provide the opportunity for viable economic use of property, while minimizing the number of people that are potentially impacted by the Willow Lake Treatment Plant. The zone text is included in the appendix of this report.

The AI zone allows farm housing as defined in State Statute. No land divisions or subdivisions for the purpose of providing new housing outside of farm use are allowed.

While most agricultural uses listed within the AI zone are permitted outright, many other uses are listed as conditional, meaning that there is review and approval with public notice. The purpose of the conditional use listing is a recognition that this area is surrounded on two

sides be developed residential neighborhoods and is separated from major arterials and Interstate-5 by some distance. There are potential industrially related aesthetic, noise, and traffic impacts on the existing developed portions of Keizer that must be considered before uses are allowed. This will provide an opportunity to analyze potential impacts and require mitigating conditions of approval.

Economic Development Initiative

The Keizer staff has been working with the Mid-Willamette Valley Economic Development District Staff to secure a grant from the Economic Development Administration for the purpose of studying the technical and financial feasibility of utilizing treatment plant by-products in surrounding agricultural and industrial operations. As of the date of this report, no response has been received on the grant request.

The Salem Department of Public Works has pledged to participate in any economic development study by providing technical information, assisting in the analysis, and providing any necessary local match funds.

Operation of the Willow Lake Treatment Plant

While much of this strategy focuses on protecting the Treatment Plant from surrounding land uses, it is important to also address the impacts the plant has on existing developed properties.

The odor from the plant negatively impacts many parts of Keizer, especially during the late summer and early fall. The staff at the Plant, however, has made many significant small improvements during 1994 that have lead to a greatly reduced odor problem.

This strategy calls for Salem to continue its successful work in incrementally improving the odor problem as new technologies and techniques are made available. The Dual Interest Agreement includes language to this effect.

Planning for the Willow Lake Treatment Plant

Keizer has no role in the planning and management of the Willow Lake Treatment Plant. Yet, the City has two strong interests in the Plant. First, it plays host to the facility and must deal with its negative impacts such as noise, odor, and truck traffic. Second, the people of Keizer are rate payers and help support the sewer system and treatment plant, yet they have no role as the electorate in influencing the plant's management and planning.

This strategy calls for a strengthening of Keizer's formal role in the management of the Plant. This is proposed to be taken in two steps:

First, the Dual Interest Agreement is revised to include a provision granting Keizer a formal role in any master planning for the Treatment Plant. Second, the agreement sets the stage for a new Salem/Keizer cooperative agreement for the provision of sewer services as required by SB 122. The agreement calls for the negotiation process to include consideration of broader roles for Keizer, including analysis of making planning for the Treatment Plant a Regional Issue within the Comprehensive Plans, and analysis of the feasibility of regionalizing the ownership and operation of the Plant.

Revision of Dual Interest Agreement

A new Dual Interest Agreement draft is attached. This draft reflects the changes outlined in the three part strategy above.

Conclusion and Summary

This strategy sets in place the actions necessary to bring closure to the Willow Lake Treatment Plant regional policy issues first identified in the late 1980's. It establishes a policy and regulatory framework that balances public versus private interests, while looking to the future and improving on the sometimes contentious issues that surround the treatment plant.

Following is a summary of the specific actions to be taken and the responsible parties:

Action	Responsible Agencies
Adopt Revised Dual Interest Agreement with new SPA boundary description	• City of Keizer • City of Salem • Marion County
Revise Comprehensive Plan to incorporate Disclosure Policy	• City of Keizer
Revise Comprehensive Plan Land Use Map to reflect revised SPA Boundary, Ag-Industrial plan designation within the SPA, and Low Density Residential plan designation outside the SPA	• City of Keizer
Adopt and map Ag-Industrial zone within SPA and RS (Residential Single Family) zone outside the SPA	• City of Keizer
Define specific role for Keizer to play in all master planning for the Willow Lake Treatment Plant	• City of Keizer • City of Salem
Adopt new cooperative agreement for the provision of sewer service in accordance with ORS 195	• City of Keizer • City of Salem • Marion County
Pursue economic development initiative for lands surrounding the Willow Lake Treatment Plant.	• City of Keizer • City of Salem

DRAFT

April 24, 1995

City of Salem Council Meeting

To: John Morgan	From: Jean Kay
Co. Rep: Keizer	Co. Salem
Phone #	Phone # 588-6091
Fax # 393-9437	Fax # 361-2202

9.2.f

Response to City of Keizer's Proposed Implementation Strategy for the Willow Lake Wastewater Treatment Plant Comprehensive Noise and Odor Study (CD/PW)

Motion

Councilor Burgess moved approval of the staff recommendation with the exception that the property south of Lockhaven that has presently requested to be taken out of the special treatment zone be left in that zone. The motion was seconded.

Burgess

Councilor Burgess asked staff why the City of Salem is allowing some of the area that has been in the special treatment zone to be taken out of that zone, adding that the City may be opening itself up to liability. He explained that the intent of the motion is not to get in the way of development in the City of Keizer; that he is attempting to protect the tax payers of the City of Salem from having to have liability in the future on any development that might go in and then declare damage. He added that the most prudent action is to not change the City's agreement at this time and not allow any further building in that area.

Mauldin

Public Works Director Mauldin stated that the area called the "Area of Influence" was in the special policy area; that in September, 1993, there was a work session with the City of Keizer Planning Commission, the Salem Planning Commission and the Salem City Council at which it was agreed as a last adjustment of the SBA that area south of Lockhaven would come out of the special policy area; and that staff agreed because of the shape of the odor contours. He added that most of the odor was going east rather than south; and that the agreement was intended to be the last adjustment to this special policy area.

Burgess

Councilor Burgess asked if staff can guarantee that the City will not have any liability for odor or noise in this area.

Mauldin

Mr Mauldin responded that no guarantee can be made; that there is still quite a bit of odor in the subject area and it is still a liability. He added that the only wisdom in making that agreement was because staff felt that if they could make that agreement, it was worthwhile.

April 28, 1995



CITY OF SALEM,
OREGON

City Hall / 555 Liberty St. S.E.
Zip Code 97301-3503

MAYOR'S OFFICE
Telephone (503) 588-6159

COPY

Mayor Dennis Koho
City of Keizer
930 Chemawa Road NE
Salem OR 97307-1000

SUBJECT: **IMPLEMENTATION STRATEGY
WILLOW LAKE WASTEWATER TREATMENT PLANT**

Dear Mayor Koho:

In response to your letter of April 10, 1995, the City Council deferred action upon Agenda Item 9.2(m) in order to allow time for us to meet and discuss this issue. As you recall, we did so on April 19, 1995.

Subsequently, the Council reviewed the issue on April 24, 1994, and adopted the staff recommendation as shown on the enclosed staff report, Attachment 1, except the Council chose to retain the 23.42 acres located south of Lockhaven Drive within the boundary of the Special Policy Area.

Enclosed, Attachment 2 is the City of Salem's suggested modification to the Dual Interest Agreement as submitted by Keizer. This document represents our suggested changes to your draft amendments of the 1991 Dual Interest Agreement.

It is our desire to reach a mutually acceptable position relative to land use issues affecting the existing Dual Interest Area. Should Keizer concur with the proposed amendment to the 1991 Dual Interest Agreement as suggested by Salem, the process requires finalization and concurrence by Marion County. Absent reaching such a position, the 1991 Dual Interest Agreement remains in full force.

Should you or your staff desire to further address this issue, please contact Mr. William Healy, Community Development Director. He will coordinate the internal effort of the City of Salem.

Sincerely,

Roger Gartenrich
Mayor

jpl/corr8/wltp.imp

- Attachments: 1. Staff Report April 24, 1995
2. Draft Amendment to 1991 Dual Interest Agreement

cc: Larry J. Wacker, City Manager
William Healy, Community Development Director
Paul Lee, Assistant City Attorney
Frank Mauldin, Public Works Director



RECEIVED
95 MAR 28 PM 4 01
CITY OF KEIZER
OREGON 97303

-- AN EQUAL OPPORTUNITY EMPLOYER --

FOR COUNCIL MEETING OF: April 10, 1995
AGENDA ITEM NO.: 9.2.m

TO: MAYOR AND CITY COUNCIL

THRU: LARRY J. WACKER, CITY MANAGER *L. Wacker*

FROM: FRANK MAULDIN, PUBLIC WORKS DIRECTOR *F. Mauldin*
WILLIAM HEALY, COMMUNITY DEVELOPMENT DIRECTOR *Wm. Healy*

SUBJECT: RESPONSE TO CITY OF KEIZER'S PROPOSED IMPLEMENTATION
STRATEGY FOR THE WILLOW LAKE WASTEWATER TREATMENT
PLANT COMPREHENSIVE NOISE AND ODOR STUDY

ISSUE:

Should the City of Salem comment on the City of Keizer's proposed implementation strategy for the Willow Lake Comprehensive Noise and Odor Study?

RECOMMENDATION:

It is recommended that Council adopt alternatives A and B, which are:

- A. Accept the staff recommendation on Attachments 4 and transmit the City's position to the City of Keizer; and
- B. Recommend that the City of Keizer revise their Comprehensive Plan Final Implementation Strategy (Attachment 2) to be consistent with Attachment 4 (as amended by Salem), the Dual Interest Area Agreement;

BACKGROUND:

A dual interest agreement between the City of Keizer, the City of Salem, and Marion County was executed in 1991. This agreement was written to establish land use policies for a buffer area between the Willow Lake Wastewater Treatment Plant (WLWTP) and City of Keizer residential developments. The Special Policy Area (SPA) was originally defined using a semi-circle with a one-half mile radius from the plant, adjusted to follow actual property lines. The agreement established:

- a. the WLWTP Dual Interest Area,
- b. the requirements for a noise and odor study, and
- c. interim land use policies for the SPA until the study was completed.

To meet agreement issue b) (above), the City of Salem hired CH2M-Hill of Corvallis in August 1991 to prepare the Comprehensive Noise and Odor Study. Noise level data and odor samples were collected during the summers of 1991 and 1992. The consultant used this data in computer models to evaluate noise and odor levels surrounding the plant area. Using the computer model, odor contour lines were drawn based on different hydrogen sulfide (H₂S) concentrations and frequencies of occurrence (Attachment 1). These contours show that property closer to the WLWTP sense greater and more frequent odors than the properties farther from the plant.

CH2M-Hill also evaluated various alternatives to mitigate noise and odors at the plant and made recommendations. Alternatives ranged from chemical control of odors to completely enclosing the plant so all odors could be captured and neutralized. The cost for chemical addition was estimated to be \$25,000 per year. The capital cost to completely enclose the plant was \$33.5 million. Staff at WLWTP experimented with chemical additives during the summer of 1994. The results indicate that chemical additives are highly effective at reducing, but not eliminating, plant odors. The building enclosure alternatives are prohibitively expensive; staff plans to further evaluate them as part of the WLWTP Master Plan. This Master Plan is now under way and scheduled for completion in 1996. Noise enclosures for the aeration basin mixers have been purchased. A contract is out to bid for the installation of the enclosures. These enclosures should reduce the objectionable noise levels.

The Comprehensive Noise and Odor Study was completed in 1993, and a staff report presenting the results of the Study was presented to Council on August 2, 1993. A workshop was held on September 30, 1993, at Keizer City Hall with members of both City Councils attending and discussing the issue.

FACTS & FINDINGS:

Salem staff has met several times with City of Keizer staff to discuss the preparation of a strategy for implementing the WLWTP Noise and Odor Study. The three original components of the strategy discussed between Salem and Keizer staffs were:

- I. Remove all properties south of a westward extension of Lockhaven Drive from the SPA;
- II. Create a more appropriate zoning designation for the SPA; and
- III. Salem and Keizer to work together to explore the feasibility and options for using by-products of the treatment plant to support economic activity in the immediate area.

The three original strategies were part of the August 1993 staff report.

Recently, the City of Keizer has formally moved to amend their Comprehensive Plan and Land Use Regulations in accordance with their final version of the Implementation Strategy (Attachment 2). As part of their implementation strategy, Keizer has submitted Attachment 2 as their logic for amending the Dual Interest Agreement. The existing Dual Interest Agreement is attached for the Council's information (Attachment 3). Attachment 4 is the City of Keizer's recently proposed amendment of the Dual Interest Agreement with Salem staffs' proposed revisions in strikeover (deletions) and shaded (added). Keizer has set a public hearing for April 17th, 1995, at 7:00 pm, at the Keizer City Hall and have sent the City of Salem a notice of the hearing and a copy of their final proposed Implementation Strategy.

Salem staff believes that the proposed Implementation Strategy is not in the best interest of the City of Salem and should not be adopted by the City of Keizer for the following reasons:

1. The proposed strategy (Attachment 2) addresses issues not included in the original "Dual Interest Agreement." Specifically, it proposes a formal role for the City of Keizer in planning for the future of Willow Lake and references ORS 195. Although ORS 195 may require a "cooperative agreement" between communities, to make the agreement part of the Comprehensive Noise and Odor strategy obfuscates other issues. Staff believes that the City of Keizer already has a role in the WLWTP through the current sewer service agreement.
2. The proposed strategy redefines the Special Policy Area boundary to be all land within a circle with a one-half mile radius from the center of the treatment plant and goes on to state "this is consistent with the original SPA boundary proposal." The proposed strategy would divide some property into two zones, one within and one outside the SPA, and would allow more sensitive residential development closer to the WLWTP and the higher noise and odor contours.

As previously noted, the original SPA boundary was defined by drawing a circle with a one-half mile radius from the center of the WLWTP and included the entire parcel of any property the circle cut across. This process was agreed to by all parties at the time the SPA was defined and truly maximized the protection of the WLWTP.

The only change to the SPA that Salem staff considers potentially feasible is to remove all property outside the 300/100 Odor Contour that is south of a westward extension of Lockhaven Drive. Staff's willingness to consider deleting this area was based on results

of the Comprehensive Noise and Odor study by CH2M-Hill (Attachment 1, the 300/100 contour) and is additionally contingent on agreement with other sections of the strategy (all or nothing).

3. The proposed disclosure statement (page 5 of Attachment 2) has been reviewed by the Salem Legal Department. As proposed, the disclosure statement does not provide adequate protection for the City of Salem.

ALTERNATIVES

The City Council has the following alternatives:

- A. Accept the staff recommendations on Attachment 4 (as revised by Salem) and transmit the City's position to the City of Keizer;
- B. Recommend that the City of Keizer revise their Comprehensive Plan Final Implementation Strategy (Attachment 2) to be consistent with Attachment 4 as revised by Salem;
- C. Revise the Salem staff recommendations and transmit the City's position to the City of Keizer; or
- D. Take no action on Keizer's proposed implementation strategy for the Comprehensive Noise and Odor Study.

lnlstr4/wlccrpt.495

April 6, 1995

- Attachments:
1. Figure 1-2 CANNING SEASON-300PPB Odor Impact Footprint
 2. City of Keizer's Final Implementation Strategy
 3. Existing Dual Interest Agreement
 4. Dual Interest Area Agreement for Willow Lake Wastewater Treatment Plant Area
[as amended by the City of Salem]

**DUAL INTEREST AREA AGREEMENT FOR
WILLOW LAKE ~~WASTEWATER~~ TREATMENT PLANT AREA**

WHEREAS, the Salem and Keizer Comprehensive Plans through their mutually adopted Regional Policies provide for establishment of dual interest areas, land use decision making for which may be provided by agreement between affected jurisdictions; and

WHEREAS, Marion and Polk counties and the Cities of Keizer and Salem have identified the area of the Willow Lake ~~Wastewater~~ Treatment Plant as a dual interest area, and wish to establish the nature and scope of coordinated land use regulation in the area by dual interest area agreement; and

WHEREAS, a Dual Interest Agreement was established for the Willow Lake ~~Wastewater~~ Treatment Plant area in 1991 that initiated a study of the impacts of the treatment plant and established interim controls until that study was completed and an implementing strategy put in place; and

WHEREAS, that study was completed in 1993 and the implementing strategy adopted by Keizer in the fall of 1994, thereby fulfilling a portion of the purpose of the 1991 Dual Interest Agreement.

NOW THEREFORE, the Cities of Keizer and Salem, and Marion County, parties having jurisdiction in the Willow Lake ~~Wastewater~~ Treatment Plant Area, hereby adopt this Dual Interest Agreement that replaces and supersedes the 1991 Dual Interest Agreement, and agree as follows:

1. Establishment of Willow Lake ~~Wastewater~~ Treatment Plant Dual Interest Area.

The Willow Lake ~~Wastewater~~ Treatment Plant Dual Interest Area is established and described by the legal description attached hereto and incorporated herein. ~~This boundary shall be reviewed and adjusted as appropriate through an amendment of this Dual Interest Area Agreement within six months of the adoption of any master plan for the Willow Lake ~~Wastewater~~ Treatment Plant.~~

2. Land Use Control

Keizer shall establish and place upon all land within the Dual Interest Area the AI (Ag-Industrial) zone. Any substantive amendment to the zone text shall be subject to the Regulation Procedures outlined in paragraph 4, below.

3. Economic Development

Keizer shall work to foster economic development within the Dual Interest Area in accordance with the Ag-Industrial zone. Salem shall cooperate with Keizer in the study and implementation of the use of by-products of the Willow Lake ~~Wastewater~~ Treatment Plant in surrounding agricultural and industrial uses.

4. Regulation Procedures

Quasi judicial procedural rights to notice and opportunity to comment shall be extended to the interested jurisdictions prior to any land use decisions in the area. Should disagreements arise, the SKAPAC conflict resolution process, or an agreed upon alternative process, shall be pursued prior to a final land use decision affecting the area.

5. Notification to Property Purchasers

The Keizer Comprehensive Plan will be amended to include a policy stating that all property within the Special Policy Area, or removed from the Special Policy Area by adoption of this Dual Interest Agreement, shall have recorded against the property, by the City of Keizer, a disclosure informing potential purchasers of property that there

is a potential odor impact. This statement will describe the potential impact, including sources, reasons, when it may occur, duration, nature of the potential odor, and any other relevant information. The statement will run perpetually with each property. Every purchaser will acknowledge receipt of the disclosure statement, and by such acknowledgment, hold the operator of the Willow Lake Treatment Plant and the Cities of Keizer and Salem harmless from any adverse impacts from noise or odor related to treatment plant operations, unless noise and odors increase due to the City of Salem failing to conform to its NPDES operating permit (Section B.1); Oregon Administrative Rules 940-41-445(1) and 940-41-120(3), or the limits prescribed in the Treatment Plant's operations and maintenance manual.

5. Prior to the establishment of any use or issuance of any development or building permit, the affected property owner shall acknowledge the existence of nuisance impacts associated with the treatment plant and shall, in a signed and recorded document which runs with the land, hold the operator of the Willow Lake Treatment Plant harmless from any adverse impacts from noise or odor related to treatment plant operations.

6. Operation of the Willow Lake Wastewater Treatment Plant

Salem agrees to minimize the odor as best as practicable given the existing treatment plant facilities as determined by the City of Salem continue incrementally improve the odor problem as new technologies and techniques are made available while meeting the requirements of the National Pollution Discharge Elimination System permit as issued by the Department of Environmental Quality.

7. Planning for the Willow Lake Wastewater Treatment Plant

It is agreed that the City of Keizer will have a formal role in any master planning affecting the Willow Lake Wastewater Treatment Plant. This role will include, at a minimum, participation of the Staff during all stages of plan development, regular briefings to the Keizer Planning Commission and City Council, and formal presentation of any public hearing drafts to the Keizer City Council for review and comment. These comments will be strongly considered. It is further agreed that during the development of a new Salem/Keizer Cooperative Agreement for the provision of sewer services, as required by SB 122, consideration will be given to ways for Keizer to have a greater role in management and planning for the treatment plant, including but not limited to analysis of making planning for the Treatment Plant a Regional Issue within the Comprehensive Plans, and analysis of the feasibility of regionalizing the ownership and operation of the Plant.

78. Amendments

Amendment to this dual interest agreement shall be in writing and approved by all parties to this agreement. The amendment procedure shall utilize the Salem/Keizer Urban Area (Regional) Procedures and Policies as cited in the respective comprehensive plans of the City of Salem and the City of Keizer.

89. Cessation of this Agreement Duration

This Dual Interest Area Agreement shall automatically terminate, and the requirement for having such an agreement as found in the Comprehensive Plans shall be null and void, three years from the date this agreement is adopted unless it is renegotiated and readopted.

This Agreement shall be in effect so long as the Willow Lake Wastewater Treatment Plant exists at the current

site;

LRPW.dwslog KZR

CITY OF KEIZER

by: _____

Title: _____

Date: _____

Approved as to form:

City Attorney

MARION COUNTY

by: _____

Title: _____

Date: _____

Approved as to form:

Marion County Counsel

CITY OF SALEM

by: _____

Title: _____

Date: _____

Approved as to form:

City Attorney

Beginning at the section corner common to Sections 27, 28, 33, and 34, Township 6 South, Range 3 West, Willamette Meridian, City of Keizer, Marion County, Oregon, said point being on the now existing City Limits Line; thence North 89° 33' West along the South Line of said Section 28 a distance of 580 feet, more or less, to a point on the East Line of Windsor Island Road NE;

thence North 12° 34' West along the East Line of said Windsor Island Road NE 30 feet, more or less, to the point of intersection of the easterly extension of the North Line of County Road No. 605 (commonly known as Naples Street NE);

thence west along the easterly extension of the North Line and the North Line of said Naples Street NE 160 feet, more or less, to the point of intersection of the northerly extension of a tract of land conveyed to Clifford B., Jr., and Janice A. Bentson by instrument recorded in Reel 690, Page 138, Records, Marion County, Oregon;

thence South 0° 27' West along the northerly extension of the West Line and the West Line of said Bentson tract 238 feet, more or less, to the southwest corner thereof;

thence South 89° 33' East along the South Line of said Bentson tract 239 feet, more or less, to a point on the West Line of said Windsor Island Road NE, said point also being on the existing Keizer City Limits Line;

thence South 31° 28' East along the West Line of said Windsor Island Road NE 1,711.36 feet;

thence South 55° 48' West a distance of 97.03 feet;

thence along the arc of a 316.48-foot radius curve to the right (the chord of which bears South 86° 24' West 322.20 feet) 323.37 feet;

thence North 63° West 269.32 feet;

thence South 527.10 feet;

thence West 287 feet;

thence South 885 feet to a point on the South Line of a tract of land conveyed to PGE by instrument recorded in Reel 1, Page 721, Records, Marion County, Oregon;

thence west along the South Line of said PGE tract 250 feet, more or less, to the point of intersection of the northwest corner of a tract of land conveyed to Thomas W. and Inez Bowden by instrument recorded in Reel 742, Page 33, Records, Marion County, Oregon;

thence south along the West Line of said Bowden tract 1,048 feet, more or less, to the southwest corner thereof;

thence east along the South Line of said Bowden tract 445 feet, more or less, to the southeast corner thereof;

thence south along the southerly extension of the East Line of said Bowden tract 383 feet, more or less, to a point on the South Line of Bowden Lane NE;

thence east along the South Line of said Bowden Lane NE 709.03 feet to the southeast corner of a tract of land conveyed to David H. and Mary L. Wallace by instrument recorded in Reel 122, Page 1180, Records, Marion County, Oregon;

thence north along the East Line of said Wallace tract 662.56 feet to the northwest corner of a tract of land conveyed to Leonard E. and Lavelle Cook by

instrument recorded in Volume 671, Page 64, Deed Records, Marion County, Oregon;

thence east along the North Line of said Cook tract 1,220 feet, more or less, to a point on the West Line of said Windsor Island Road NE;

thence North $26^{\circ} 45'$ West along the West Line of said Windsor Island Road NE a distance of 932 feet, more or less, to the point of intersection of the South Line of a tract of land conveyed to Arleen Olson, trustee by instrument recorded in No. 27606PCJ, Records, Marion County, Oregon;

thence east along the South Line of said Olson tract 1,245 feet, more or less, to the southwest corner of the Nimrod Ford Donation Land Claim No. 40, in Section 34, Township 6 South, Range 3 West, Willamette Meridian, Marion County, Oregon; also being the southeast corner of said Olson tract;

thence North $0^{\circ} 9' 14''$ East 174.86 feet to the northeast corner of said Olson tract;

thence west along the North Line of said Olson tract 64.44 feet to the point of intersection of the East Line of a tract of land conveyed to Zillah Schooley, et al., by instrument recorded in Reel 697, Page 354, Records, Marion County, Oregon;

thence North $0^{\circ} 7'$ East along the East Line of said Schooley tract 529.30 feet to the northeast corner thereof;

thence North $89^{\circ} 30'$ West along the North Line of said Schooley tract 82.87 feet to the point of intersection of the East Line of a tract of land conveyed to Hayden Island, Inc., by instrument recorded in Reel 312, Page 1626, Records, Marion County, Oregon;

thence North $0^{\circ} 38'$ East along the East Line of said Hayden Island, Inc., tract and the northerly extension of the East Line a distance of 1,158.01 feet to the northeast corner of a tract of land conveyed to John N. Olson, et al., by instrument recorded in Reel 133, Page 658, Records, Marion County, Oregon;

thence North $89^{\circ} 22'$ West a distance of 543.87 feet to a re-entrant corner in the North Line of said Olson tract;

thence North $0^{\circ} 35'$ East 235.83 feet to the point of intersection of the most easterly East Line of a tract of land conveyed to John W. and Barbara B. Weeks, et al., by instrument recorded in Reel 685, Page 462, Records, Marion County, Oregon;

thence North $38^{\circ} 31'$ East 360.83 feet;

thence North $57^{\circ} 27'$ East 203.10 feet;

thence North $0^{\circ} 38'$ East 66 feet to the northeast corner of the James Smart Donation Land Claim No. 42 in Section 34, Township 6 South, Range 3 West, Willamette Meridian, Marion County, Oregon, said point being on the section line common to Sections 27 and 34 of Township 6 South, Range 3 West, Willamette Meridian, Marion County, Oregon;

thence west along the North Line of said Section 34 a distance of 1,676.64 feet to the southwest corner of the Alvis Smith Donation Land Claim No. 69 in Section 27, Township 6 South, Range 3 West, Willamette Meridian, Marion County, Oregon;

thence North $89^{\circ} 37' 30''$ West 502.20 feet to the point of beginning.



City of Keizer

Administration
930 Chemawa Rd. N.E. • P.O. Box 21000
Keizer, Oregon 97307-1000 • (503) 390-3700

COPY FOR YOUR
INFORMATION

May 19, 1995

The Honorable Roger Gertenrich
Mayor of the City of Salem
555 Liberty St. S.E.
Salem, OR 97301-3503

Re: *Implementation Strategy and the
Willow Lake Wastewater Treatment Plant*

Dear Mayor Gertenrich:

I am in receipt of your April 28, 1995 letter. You stated in such letter that it is Salem's desire to reach a mutually acceptable position relative to land use issues in the Dual Interest Area. That is Keizer's desire also. However, Salem's position set forth in your letter is unacceptable to Keizer.

I believe the terms of the Dual Interest Agreement have been met and it is no longer in effect. However, in a good faith effort to reopen dialogue, the City will consider the Agreement in effect at this time for the limited purpose of settlement discussions.

In the event of a disagreement, the Dual Interest Agreement requires the SKAPAC process or some lesser process be pursued. Due to Salem's response, it can be fairly said that this matter constitutes a "disagreement." Therefore, this letter constitutes formal notice that Keizer is initiating the SKAPAC process.

The SKAPAC process calls for the matter to be considered initially by a staff subcommittee. Such staff subcommittee consists of only one staff person from each of the four jurisdictions. It is unclear what role Marion County or Polk County will play in this matter; however, copies of this letter are being sent to those governmental bodies to give them an opportunity to participate.

The SKAPAC staff subcommittee has 21 days after the issue is presented to attempt to reach unanimous agreement and make a recommendation. The City of Keizer has chosen its City Manager, Dorothy Tryk, to be its staff representative on the subcommittee. Keizer would like to formally present the matter at a meeting with your selected staff person within seven days of the date of this letter.

"Pride, Spirit and Volunteerism"

The Honorable Roger Gertenrich
May 19, 1995
Page 2

Please arrange to have your staff representative meet with our City Manager as soon as possible. Thank you for your prompt attention to this matter.

Yours truly,

Dennis Koho, Mayor
City of Keizer

ESJ/DK:clt

cc: Marion County Board of Commissioners
Polk County Board of Commissioners



CITY
OF SALEM,
OREGON

City Hall / 555 Liberty St. S.E.
Zip Code 97301

CITY MANAGER'S OFFICE
Telephone (503) 588-6255

May 30, 1995

Dotty Tryk, City Manager
City of Keizer
930 Chemawa Road N.E.
Keizer, Oregon 97307-1000

IMPLEMENTATION STRATEGY; WILLOW LAKE WASTEWATER TREATMENT PLANT

Dear Dotty:

This letter is in response to Mayor Koho's letter of May 19, 1995, which states that Keizer believes the Dual Interest Agreement to be no longer in effect, and requests that we initiate the Salem/Keizer Area Planning Advisory Committee (SKAPAC) in an attempt to resolve disputes with regard to the area encumbered by the agreement.

In discussions with Salem staff and legal counsel, we believe the agreement remains in effect, and that any proposed amendment must be in writing and approved by all parties to the agreement (see section 5 of the current agreement). No single jurisdiction can unilaterally take action to amend the dual interest agreement, and under the Comprehensive Plan, no land use decision affecting the area can be taken except in accordance with the dual interest agreement.

In addition, the dual interest area is specified in the Salem Area Comprehensive Plan as a Regional Policy. Regional Policy III-I (Comprehensive Plan page 23) specifically states that the Willow Lake Treatment Plant dual interest area is defined by an adopted legal description, and that the development requirements are established by the agreement. Any revision to the acknowledged regional policies must be concurred in by all of the



--AN EQUAL OPPORTUNITY EMPLOYER--

other jurisdictions before they are considered effective (Comp. Plan Policy III-C.1.a). No single jurisdiction can amend a regional policy without the concurrence of the other affected jurisdictions.

Having said that, the City of Salem is very willing to use the SKAPAC process to see if we can reach a mutually satisfactory resolution of the issues, including amendment of the current agreement.

Salem's Community Development Director, William Healy, will serve as our City's "designated representative" on the staff subcommittee, supported by staff from the Public Works and Legal Departments.

We would be willing to hold the first meeting of the staff subcommittee when it is mutually convenient to Keizer, Salem and the two counties. The times that fit best with our schedule would be Monday, June 5 at 4:00 pm, or Friday, June 9 at anytime.

Please let me know the specific date, time and place of the meeting after you have been contacted by the other jurisdictions, and I will so inform our staff.

As I understand the process, you will present your position to the Subcommittee at our initial meeting, and we will have 21 days to attempt to reach unanimous agreement and to make a recommendation on the issue. If we can reach unanimous agreement to resolve the issue, we would then docket our consensus recommendation with each of the city councils for concurrence.

If the staff subcommittee does not reach unanimous agreement, then the outstanding issues would be referred to the elected officials subcommittee. Failure by that subcommittee to reach unanimous agreement would result in a joint meeting of the governing bodies. Should all jurisdictions ultimately be unable to reach agreement, the individual governing bodies can take whatever action they deem appropriate. Any affected jurisdiction, or any interested citizen with standing, would then be able to contest an associated land use decision at the Land Use Board of Appeals (LUBA).

Finally, I have been advised that some land development activity may be taking place within the dual interest area. As part of your material to be presented at the first meeting of the subcommittee, I would appreciate receipt of copies of land use actions or permits that Keizer may have issued within the dual

interest area, within the preceding two years, or that are now pending when the staff subcommittee meets.

I hope that the SKAPAC process resolves any existing disagreements between the two cities. Please call me directly if you need any further clarification with regard to the content of this letter, or if the City of Salem staff can be of assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry", with a long horizontal flourish extending to the right.

Larry Wacker, City Manager

LW:WH:

cc: Mayor Koho
Mayor Gertenrich
Marion County Commissioners
Polk County Commissioners
Salem City Attorney
Salem Community Development Director
Salem Public Works Director

**DUAL INTEREST AREA AGREEMENT FOR
WILLOW LAKE WASTEWATER TREATMENT PLANT AREA**

WHEREAS, the Salem and Keizer Comprehensive Plans through their mutually adopted Regional Policies provide for establishment of dual interest areas, land use decision making for which may be provided by agreement between affected jurisdictions; and

WHEREAS, Marion and Polk counties and the Cities of Keizer and Salem have identified the area of the Willow Lake Wastewater Treatment plant as a dual interest area, and wish to establish the nature and scope of coordinated land use regulations in the area by dual interest area agreement; and

WHEREAS, a Dual Interest Agreement was established for the Willow Lake Wastewater Treatment Plant area in 1991 that initiated a study of the impacts of the treatment plant and established interim controls until that study was completed and an implementing strategy put in place; and

WHEREAS, that study was completed in 1993 and the implementing strategy process was initiated in the fall of 1994, thereby fulfilling a portion of the purpose of the 1991 Dual Interest Agreement.

NOW THEREFORE, the Cities of Keizer and Salem, and Marion County, parties having jurisdiction in the Willow Lake Wastewater Treatment Plant Area, hereby adopt this Dual Interest Agreement that replaces and supersedes the 1991 Dual Interest Agreement, and agree as follows:

1. Establishment of Willow Lake Wastewater Treatment Plant Special Policy Area.

The Willow Lake Wastewater Treatment Plant Special Policy Area is established and described by the legal description attached hereto and incorporated herein.

2. Land Use Control

Keizer shall establish and place upon all land within the Special Policy Area the AI (Ag-Industrial) zone, the text of which is attached and made part of this agreement. Any deletion or amendment to the zone text shall be subject to the concurrence of all parties of this agreement.

3. Economic Development

Keizer shall work to foster economic development within the Special Policy Area in accordance with the Ag-Industrial zone. Salem shall cooperate with Keizer in the study and implementation of the use of by-products of the Willow Lake Wastewater Treatment Plant in surrounding agricultural and industrial uses.

4. Regulation Procedures

Quasi judicial procedural rights to notice and opportunity to comment shall be extended to the interested jurisdictions prior to any land use decisions and/or issuance of building permits involving in excess of 2500 square feet construction or employing or enabling approved occupancy loading of more than 5 people. Should disagreements arise, the SKAPAC conflict resolution process, or an agreed upon alternative process, shall be pursued prior to a final land use decision affecting the area. [To be revised]

5. Prior to the establishment of any use of issuance of any development or building permit in the Special Policy Area as adopted in 1991, the affected property owners shall acknowledge the existence of nuisance impacts associated with the treatment plant and shall, in a signed and recorded document which runs with the land, hold the operator of the Willow Lake Wastewater Treatment Plant harmless from any adverse impacts from noise or odor related to treatment plant operations. Such harmless agreement shall not apply to odors which exceed the maximum values established in Figure 1-2 of the 1993 Willow Lake WWTP Comprehensive Noise and Odor Study, prepared by CH2M Hill of Corvallis, Oregon (copy attached).

6. The City of Keizer shall defend and indemnify the City of Salem against any action brought against the City of Salem or the City of Keizer concerning noise and odor impacts by legal and equitable owners, invitees, other parties, or occupants of property located in the Special Policy Area as adopted in 1991. Such defense and indemnification are limited to the coverage extended by the Insurance policy covering the City of Keizer (applicable to general operations) and specifically do not include defense and indemnification in cases of plant operation in excess of the maximum values established in Figure 1-2 of the 1993 Willow Lake WWTP Comprehensive Noise and Odor Study, prepared by CH2M Hill (copy attached). The City of Keizer will annually provide the City of Salem with a certificate of insurance.

Should the City of Keizer self insure in the future, defense and indemnification shall be to the level and extent that would apply as if the City of Keizer were the entity against whom the action is brought, and subject to the limits of the Oregon Constitution and Tort Claims Act.

7. Operation of the Willow Lake Wastewater Treatment Plant

Salem agrees to minimize the odor as best as practicable given the existing treatment plant facility by utilizing effective and economically practical technology and techniques for plant operations, while meeting the water quality requirements of the National Pollution Discharge Elimination System permit as issued by the Department of Environmental Quality.

Salem agrees to include the full range of odor control improvement options in any major plant expansion Master Plan study.

8. Planning for the Willow Lake Treatment Plant

It is agreed the City of Keizer will have a role in any master planning affecting the Willow Lake Wastewater Treatment Plant. This role will be a seat on the Salem Water-Sewer Task Force, and notice and invitation to attend Salem Planning Commission and City Council workshops affecting the Willow Lake Master Planning activities. At the request of either City Council, a joint workshop of both Councils will be conducted to discuss Willow Lake Master Planning activities. Salem shall be invited to participate in any Keizer water, drainage, sanitary sewer, or treatment plant study groups.

9. Amendments

Amendment to this dual interest agreement shall be in writing and approved by all parties to this agreement. The amendment procedure shall utilize the Salem/Keizer Urban Area (Regional) Procedures and Policies cited in the respective comprehensive plan of the City of Salem and the City of Keizer.

10. Duration and Review

This Agreement shall be in effect so long as the Willow Lake Wastewater Treatment Plant exists at the current site.

This agreement shall be reviewed using the SKAPAC process at the initiation of either party, but not later than the next Periodic Review of the urban area comprehensive plan. The purpose of the review will be to determine the appropriateness of each section and adopt appropriate amendments given then current plant operations and plans, and community characteristics.

CITY OF KEIZER

by: _____

Title: _____

Date: _____

Approved as to form:

City Attorney

Date: _____

CITY OF SALEM

by: _____

Title: _____

Date: _____

Approved as to form:

City Attorney

Date: _____

MARION COUNTY

by: _____

Title: _____

Date: _____

Approved as to form:

County Counsel

Date: _____

- Attachments:
- A) Legal Description for 1991 Boundary
 - B) Legal Description of Special Policy Area - 199X
 - C) AI Zone Text
 - D) CH2M Hill Figure 1-2



CITY
OF SALEM,
OREGON

City Hall / 555 Liberty St. S.E.
Zip Code 97301-3503

CITY COUNCIL
Telephone (503) 588-6255

August 28, 1995

The Honorable Dennis Koho
Mayor, City of Keizer
930 Chemawa Road NE
Keizer, Oregon 97307-1000

SKAPAC PROCESS REGARDING THE WILLOW LAKE SPECIAL POLICY AREA

Dear Mayor Koho:

In follow up to our meeting on August 9, I asked our staff if there was anything that they believed the Keizer City Council could do to hold the City of Salem harmless from legal and administrative liabilities and penalties.

Our legal department responded saying in essence that they believe Article XI, Section 9 of the Oregon Constitution, which prohibits cities from lending credit, is sufficiently broad to preclude such an indemnification. It is therefore our attorney's opinion that such an agreement between cities may ultimately be found unenforceable.

Given this potentiality, I cannot in good faith recommend a change to the SKAPAC boundary which is predicated on the existence of such indemnification.

However, I do believe the revised text which was drafted by our joint staffs is superior to the existing text of the Dual Interest Agreement, and that it would be in the interests of both cities to pursue such changes. I would also continue to support removal of the area south of Lockhaven from the Special Policy Area, if Keizer is willing to: (1) retain the balance of the SPA boundary; (2) adopt the A-I zoning (with recently amended language by staff); and (3) provide an insurance policy satisfactory to the City, wherein Salem is a named insured, and with policy limits sufficient to cover individual and collective claims against the City, including inverse condemnation and tort claims, arising within the currently defined Special Policy Area.

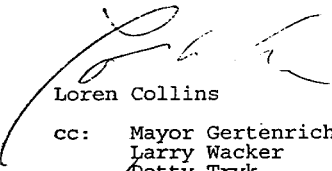


-- AN EQUAL OPPORTUNITY EMPLOYER --

The proposed Lockhaven boundary change, to reduce the area currently restricted, is predicated on the odor plume analysis previously prepared by CH2M Hill, and is obviously subject to the concurrence by our full council, as would be the text amendments.

Given these circumstances, I would like to know how the City of Keizer wishes to proceed. Salem, I'm sure, would agree to the joint meeting of councils and county commissions per the SKAPAC process if you so desire.

Sincerely,



Loren Collins

cc: Mayor Gertenrich
Larry Wacker
Dotty Tryk

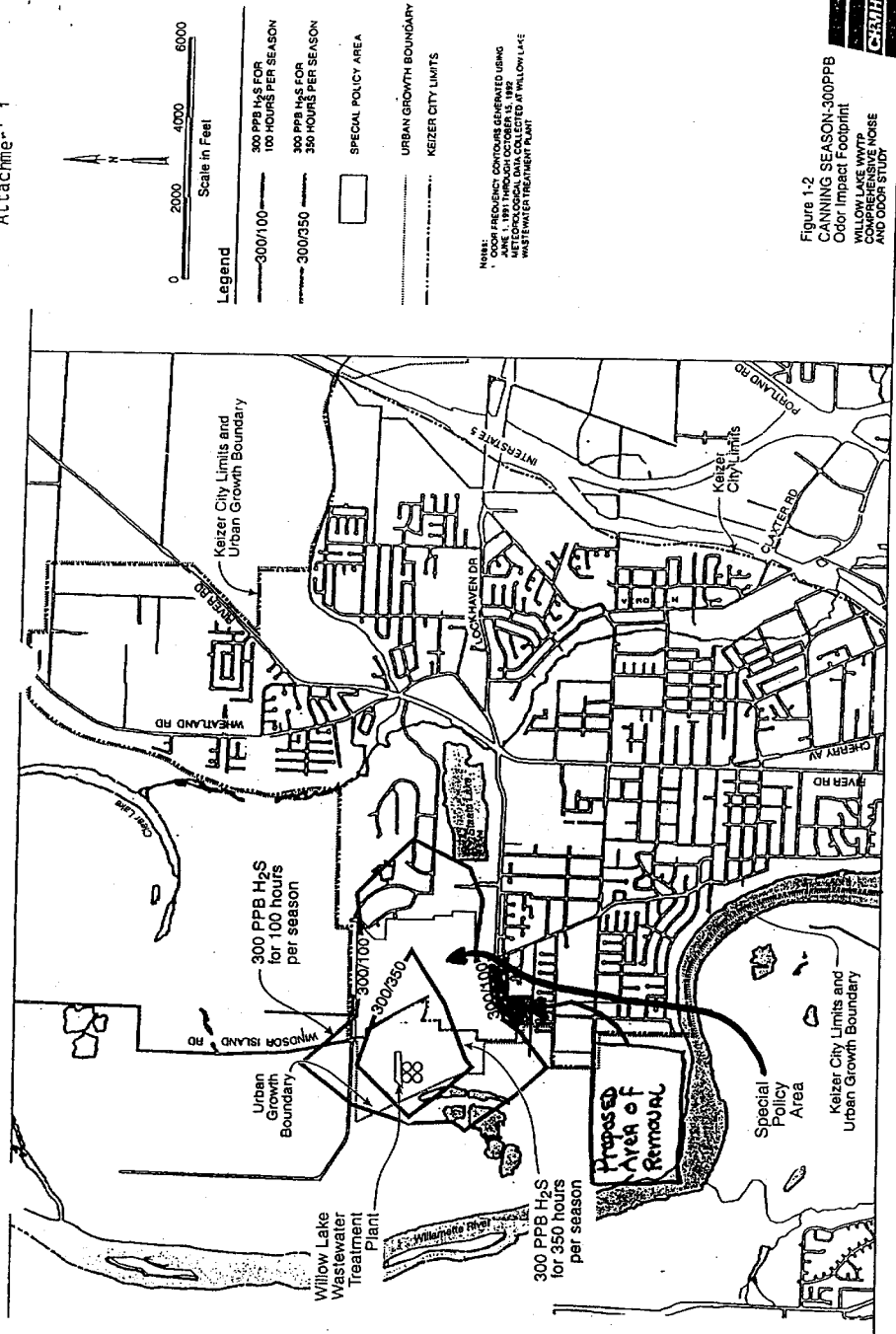


Figure 1-2

CANNING SEASON-300PPB
Odor Impact Footprint
WILLOW LAKE WWTP
COMPREHENSIVE NOISE
AND ODOR STUDY

CH2M

July 18, 1995



330 Chemawa Rd. N.E.
P.O. Box 21000
Keizer, Oregon 97307-1000

The Honorable Roger Gertenrich
Mayor of the City of Salem
555 Liberty St. S.E.
Salem, OR 97301-3503

RE: SKAPAC Process Regarding the Implementation Strategy for Special Policy Area
Around the Willow Lake Wastewater Treatment Plant

Dear Mayor Gertenrich:

I have received a report from my City Manager as a result of the SKAPAC staff subcommittee process convened to negotiate the issues surrounding the Special Policy Area and the Dual Interest Agreement. This report is attached for your information.

Although the staff subcommittee was able to make recommendations for resolving some of the issues, the question of the boundary remains unresolved along with a few ancillary issues. I believe that these problems must be resolved by the policy making bodies. Therefore, the City of Keizer is advancing the SKAPAC process to the next step and is referring these matters to the elected officials sub committee. According to the process, this committee consists of one elected official from each of the affected jurisdictions; in this case, the Cities of Keizer, Salem and Marion and Polk Counties. I will represent the interests of the City of Keizer. I wish to formally present the City's position at a meeting with you or your appointed representative within seven days of the date of this letter.

I am also requesting that Marion and Polk Counties send a representative each to assist us in reaching a mutually acceptable solution.

Please have your staff coordinate an acceptable meeting time with our City Manager. Thank you for your prompt attention to this matter.

Very Truly Yours,

Dennis Koho
Mayor

•
Administration
Public Works
Community Development
Municipal Court
Phone 503.390.3700
Fax 503.393.9437
Police (business only)
Phone 503.390.3713
Fax 503.390.8295
•

Incorporated 1982
Pride, Spirit, Volunteerism

September 1, 1995

The Honorable Loren Collins
City Council President
City of Salem
555 Liberty St. SE
Salem, Oregon 97301-3503



Dear Councilor Collins:

I am disappointed in your response on behalf of the City of Salem regarding the Willow Lake Special Policy Area. As I understood the SKAPAC process, this was the opportunity for the elected officials of the jurisdictions to work together in reaching a mutually acceptable solution to the issue. It is clear from your letter that the City of Salem has again relied upon staff to make their policy decision.

Your letter is troubling in two other points. First, you state that your staff suggests indemnification would be unenforceable. This suggests to me that your staff believes Keizer would not live up to its word and Salem would need to enforce the agreement. Please do not be mistaken. Keizer will, in fact, live up to its word in any agreement we reach.

Secondly, I am somewhat confused when you follow that statement with one requesting Keizer provide an insurance policy as staff has suggested. I thought your staff believed such indemnification is unenforceable.

In any event, it is apparent Salem is unwilling to consider any alternative solution that would allow Keizer to control land use decisions on those few acres within its city boundaries. Accordingly we should move the process along to the final level in which both councils meet jointly. I would like this to occur in September.

I also want to make clear one more time that the City of Keizer fully intends to make its own land use decisions in this area. We are more than willing to discuss ways in which that will be done and what assurances we can and should give the City of Salem. However, if we are unable to arrive at a mutually acceptable solution, we will consider the SKAPAC process concluded. At that point, we will zone the property in an appropriate manner and issue building permits where proper. That will leave Salem in the position of having to institute some form of litigation where negotiations have failed.

Administration
Public Works
Community Development
Municipal Court
Phone 503.390.3700
Fax 503.393.9437
Police (business only)
Phone 503.390.3713
Fax 503.390.8295

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Our two cities have made great progress in cooperation over the past three years. I will be greatly disappointed to see that progress nullified by our failure here. And make no mistake about it: this is a failure. There is only one sticking point and Keizer is willing to consider any proposal that will allow Salem to agree to that one final point. There must be a solution. Please, help us find it.

Sincerely,

Dennis Koho
Mayor

cc: Marion County Commissioners
Polk County Commissioners
Keizer City Council

100

100

100