

W. B. A.

## AGENDA COVER MEMO

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**DATE:** December 17, 2003

**TO:** Lane County Board of Commissioners

**DEPARTMENT:** Public Works Department

**PRESENTED BY:**

Tom Stinchfield, Transportation Planning Engineer  
Kent Howe, Planning Director  
Stephen Vorhes, Assistant County Counsel

**TITLE:** DISCUSSION AND ORDER/In the Matter of Responding to the LUBA Remand of County Decisions Amending the Eugene-Springfield Metro Area General Plan, TransPlan, West Eugene Wetlands Plan and Lane County Rural Comprehensive Plan for the West Eugene Parkway in Ordinance Nos. PA 1174 and 1175

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### I. MOTION

Move approval of Order with Exhibit A.

### II. ISSUE

Ordinance Nos. PA 1174 and 1175 related to the West Eugene Parkway were adopted by the Board of County Commissioners on July 31, 2002. This action (and similar actions by Eugene, Springfield, and LTD) was appealed to the Oregon Land Use Board of Appeals (LUBA). Four issues were remanded by LUBA to Lane County for action.

### III. DISCUSSION

#### A. Background

In November 2001, at the request of the Oregon Department of Transportation (ODOT), the Eugene City Council initiated amendments to the Metro Plan, TransPlan and the West Eugene Wetlands Plan (WEWP) to facilitate construction of the West Eugene Parkway. On July 31, 2002, the Board of County Commissioners adopted Ordinance Nos. PA 1174 and 1175 amending the Metro Plan, TransPlan, WEWP and the Lane County Rural Comprehensive Plan. The cities of Eugene and Springfield, as well as the LTD Board, took similar actions making the requested changes. The plan amendments addressed changes in the West Eugene Parkway alignment that were made to minimize impacts of the project (called the Modified Alignment).

On March 24, 2003, LUBA issued its decision upholding the local government actions on most of the issues raised by the petitioners, but remanding the actions based on four issues. On August 27, 2003, the Court of Appeals affirmed the LUBA decision. The petitioners did not seek review of this decision by the Oregon Supreme Court.

## B. Analysis

The four issues that LUBA remanded are:

1. Subassignment of Error 1(d): Adequacy of exceptions taken to Goal 3 (Agriculture).
2. Subassignment of Error 1(e): Accessibility concerns related to Goal 3 and the change in the alignment.
3. Subassignment of Error 2(d): Questions about OAR 660-012-0035(5)(c).
4. Assignments of Error 5, 6 and 7: Impact of "Planned Transportation Corridor" designation on Goal 5 resources.

County legal staff has worked with City of Eugene, City of Springfield, LTD and ODOT attorneys to respond to all of these remanded issues. Exhibit A explains the adopted findings in the Ordinances, provides arguments and describes evidence in the existing record to address all of these issues. Responding to the remand issues does not require reopening the record for additional evidence. The City of Eugene has approved a Resolution with the same Response and Explanation of Findings document. Exhibit A has been reformatted to be consistent with county procedures, but the responses are identical. Springfield and LTD have been asked to approve similar documents.

## C. Alternatives / Options

1. Adopt the Order with Exhibit A
2. Amend the Order or Exhibit A
3. Do not adopt the Order and provide additional direction on the remand

## D. Recommendation

Option 1.

## E. Timing

Eugene adopted a resolution on this matter on November 12, 2003.

## IV. IMPLEMENTATION/FOLLOW-UP

Springfield and LTD will also need to take action on the remand. The attorneys for all four agencies continue to coordinate consideration of this matter.

## V. ATTACHMENTS

Order with "Exhibit A" (Remand Response and Explanation of Findings Supporting Ordinance Nos. PA 1174 and PA 1175).

Eugene City Council Agenda Item Summary with attachments

*A copy of the LUBA decision and a copy of Ordinance Nos. PA 1174 and PA 1175 and their exhibits are available for review in the Board Office.*

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,  
OREGON**

Order No. 03-\_\_-\_\_-\_\_

- ) In the Matter of Responding to the
- ) LUBA Remand of County Decisions
- ) Amending the Eugene-Springfield
- ) Metro Area General Plan, TransPlan,
- ) West Eugene Wetlands Plan and
- ) Lane County Rural Comprehensive
- ) Plan for the West Eugene Parkway in
- ) Ordinance Nos. PA 1174 and 1175

**WHEREAS**, in July 2002, the City of Eugene, the City of Springfield, Lane County and Lane Transit District ("the local governments") took actions that collectively amended TransPlan, the Eugene-Springfield Metro Area General Plan, the West Eugene Wetlands Plan, and the Lane County Rural Comprehensive Plan, which the Board of County Commissioners did by enacting Ordinance No. PA 1174 and Ordinance No. PA 1175 on July 31, 2002; and

**WHEREAS**, the amendments were made in response to a request from the Oregon Department of Transportation ("ODOT") to enable ODOT to proceed with plans to construct the West Eugene Parkway in a modified alignment; and

**WHEREAS**, the local governments' actions were appealed to the Land Use Board of Appeals ("LUBA") and on March 24, 2003, LUBA issued its decision upholding the local governments' actions on most of the issues raised by the petitioners, but remanding the actions based on four of the issues raised by petitioners; and

**WHEREAS**, the petitioners appealed LUBA's decision to the Court of Appeals and on August 27, 2003 the Court of Appeals affirmed LUBA's decision, without providing a written opinion; and

**WHEREAS**, the petitioners did not seek Supreme Court review of the Court of Appeals' decision, the appellate judgment of the Court of Appeals became effective October 7, 2003 and LUBA issued a notice of appellate judgment on October 8, 2003 that indicated the appellate judgment required no change to the earlier LUBA decision; and

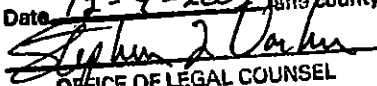
**WHEREAS**, none of the issues on remand require the local governments to reopen the record for additional evidence or to adopt additional findings and instead, for each of the four issues remanded by LUBA, the local governments need only describe the findings already adopted in support of the actions taken or, as necessary, provide additional explanation of evidence in the record that supports the findings already adopted, now, therefore, be it hereby

**ORDERED**, that the Board of County Commissioners of Lane County responds to the LUBA remand of Ordinance No. PA 1174 and Ordinance No. PA 1175 with the Remand Response and Explanation of Findings contained in the Exhibit A attached and incorporated herein by this reference.

Dated this \_\_\_\_ day of December, 2003.

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Peter Sorenson, Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM  
Date 12-9-2003 Lane County  
  
OFFICE OF LEGAL COUNSEL

**Exhibit A**  
**To Order No. 03-\_\_-\_\_-\_\_**

**Remand Response and Explanation of Findings**  
**Supporting Ordinance Nos. PA 1174 and PA 1175**

**Introduction**

In July 2002, the City of Eugene, the City of Springfield, Lane County and Lane Transit District (“the local governments”) took actions that collectively amended TransPlan, the Eugene-Springfield Metro Area General Plan, the West Eugene Wetlands Plan, and the Lane County Rural Comprehensive Plan to approve a modified alignment of the West Eugene Parkway. The local government actions were appealed to the Land Use Board of Appeals (“LUBA”). On March 24, 2003, LUBA issued its decision upholding the local government actions on most of the issues raised, but remanding the actions based on four of the issues raised by petitioners. The petitioners appealed LUBA’s decision to the Court of Appeals. On August 27, 2003, the Court of Appeals affirmed LUBA’s decision, without providing a written opinion. The petitioners did not seek Supreme Court review of the Court of Appeals’ decision. The appellate judgment of the Court of Appeals became effective October 7, 2003 and LUBA issued a notice of appellate judgment on October 8, 2003 that indicated the appellate judgment required no change to the earlier LUBA decision. None of the issues on remand require the local governments to reopen the record for additional evidence. For each of the four issues remanded by LUBA and set forth below, the local governments describe findings already adopted to support the actions taken or, as necessary, provide some additional explanations of those findings or the evidence in the record which supports the findings already adopted.

**Subassignment of Error 1(d)**

Petitioners argued that the local governments inadequately addressed Statewide Planning Goal 2, Part II(c)(4) when they adopted exceptions to Statewide Planning Goals 3, 4, 11 and 14. Specifically, Petitioners argued that the findings relating to Goal 3 (Agricultural Lands) were deficient with respect to the impacts of the Modified Project alignment on adjacent agricultural uses.

**Criterion on remand:           Statewide Planning Goal 2, Part II(c)(4):**

“A local government may adopt an exception to a goal when: \* \* \*

“(4) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”

**LUBA’s direction on remand:**

“Although we might be able to locate an adequate response to this subassignment of error from the many pages of findings, we decline to do so

without assistance from [the local governments]. On remand [the local governments] must provide an adequate explanation for why the Modified Project will be compatible with adjacent agricultural uses or what 'measures designed to reduce adverse impacts' will render it compatible with those adjacent uses. \* \* \* [A]n adequate description of the nature of those agricultural uses followed by a discussion of how they might be impacted by construction of the Modified Project would seem to be a logical way to proceed in providing that explanation."

### **Response and Explanation of Findings:**

The adopted findings specifically address the Goal 2, Part II(c)(4) requirement cited by the Petitioners and LUBA. In doing so, the findings describe the agricultural uses adjacent to the Modified Project alignment and explain that the Modified Project will be compatible with those uses. What follows is a description and explanation of how the local government findings conclude the actions adequately address Statewide Planning Goal 2, Part II(c)(4).

The local governments adopted exceptions to specific Statewide Planning Goals through the following enactments: Eugene Ordinance No. 20258, Lane County Ordinance No. PA 1174, Springfield Ordinance No. 6022 and Lane Transit District Resolution No. 2002-028. Each of the local governments based their actions on findings contained in Exhibit C to their enactments. Exhibit C is composed of four documents (Exhibit C, Exhibit C-1, Exhibit C-2 and Exhibit C-3). The findings adopted as Exhibit C-1 ("C-1 findings") quote the Goal 2, Part II(c)(4) requirement at page 8. In response to that requirement, the findings refer to and incorporate analysis provided in later portions of the findings, concluding that the requirement is satisfied. C-1 findings, page 8. On pages 9-12 of the C-1 findings, the local governments state and conclude that:

"[o]utside the UGB, most of the affected land is zoned for agricultural use. However, for reasons explained in more detail in the *Compatibility Memorandum*, incorporated herein by reference, much of the adjoining agricultural land is being used as open space for wetland mitigation or to protect threatened and endangered species. See Figure 2; see also *Compatibility Memorandum* at Figure 1. In terms of impacts on commercial farm enterprises, the northward realignment of the WEP does not result in any acreage loss of the four large commercial farms in the project vicinity. In fact, compared to the Approved Design, it reduces adverse impacts to commercial farm operations by moving the facility farther from the large cattle operation south of West 11th Avenue. West of Goble Lane, the facility essentially occupies the same area as the Approved Design, rendering no real impact differences from that alignment. Except for these places, there are no commercial farms in the project vicinity. Instead, this area is checkered with a pattern of hobby farms that do not contribute significantly to the commercial agricultural enterprise. The Modified Project creates no new parcels outside the UGB, and it should not increase the potential for encroachment beyond that associated with the Approved Design."

The referenced Figure 2 of the C-1 findings is entitled Landuse Compatibility, Rural Impacts and shows the land uses in the vicinity of the Modified Project alignment, specifying the type of agricultural use (hay, sheep, cattle) for those sites where agricultural uses are in place. The Supplemental Draft Environmental Impact Statement (“SDEIS”) for the Modified Project was cited heavily throughout the findings. The SDEIS contains two maps at figure 3-3, page 1 of 2, and figure 3-4 page 1 of 2. Figure 3-3 shows Existing Land Use along the Modified Project alignment. Figure 3-4 of the SDEIS shows the comprehensive plan designations adjacent to the Modified Project alignment. As shown in Figure 3-4 and described in the adopted findings, there is land adjacent to the Modified Project designated as Agriculture. Though the existing uses along the proposed parkway vary widely, the findings note that the great majority of the land bordering the northern side of the Modified Project alignment is in parks/open space and is managed as part of the West Eugene Wetlands Plan.

In addition, pages 47-49 of the C-1 findings are dedicated specifically to the requirement of Goal 2, Part II(c)(4). The discussion in this section of the findings largely summarizes the *Compatibility Memorandum* that was also adopted by the local governments (as Exhibit C-3) and incorporated into the C-1 findings. The C-1 findings on pages 47-49 explain the reduction of impacts on farm uses that will result from the Modified Project. They also explain the Modified Project’s effect on access to rural properties and the ways in which access is designed to “limit local access to the adjoining rural area, thereby reducing adverse farm impacts and maintaining compatibility.” C-1, page 47. The findings then explain in detail how the ownership interests and zoning of the areas adjacent to the Modified Project alignment will assist in ensuring limited access to adjacent agricultural areas. C-1, page 48-49.

The findings adopted as Exhibit C-3 and incorporated into the C-1 findings are those referred to above as ODOT’s *Compatibility Memorandum*. This ten-page memorandum identifies each tax lot that is adjacent to the Modified Project alignment and provides a detailed description of those properties and their uses. The memo contains an analysis of the six major ways that a roadway project can impact land uses in rural areas and concludes, with some detail, that “[t]he WEP would not have any major impacts on land uses in the project area. In general, it is compatible with adjacent uses.” C-3, page 10.<sup>1</sup> Based on that analysis and the additional adopted findings as described above, the local government concluded the actions complied with applicable standards for exceptions to Statewide Goals, including the requirements of Goal 2, Part II(c)(4).

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<sup>1</sup> The analysis concentrates on the impacts (or lack thereof) based on the following six categories: 1) displacement of houses and buildings; 2) acreage losses from roadway rights-of-way and/or uneconomic remnants; 3) parcelization, resulting in more complicated farming practices; 4) complication of access to properties; 5) visual modifications to the rural setting; and 6) potential induced development.

### **Subassignment of Error 1(e)**

Petitioners argued that the local governments' findings inadequately addressed OAR 660-012-0070(8) by failing to address whether the rural lands adjacent to the Modified Project alignment would be adversely affected by increased accessibility.

#### **Criterion on remand: OAR 660-012-0070(8)**

“To address Goal 2, Part II(c)(4), the exception shall:

“(a) Describe the adverse effects that the proposed transportation improvement is likely to have on the surrounding rural lands and land uses, including increased traffic and pressure for nonfarm or highway oriented development on areas made more accessible by the transportation improvement;

“(b) Adopt as part of the exception, facility design and land use measures which minimize accessibility of rural lands from the proposed transportation facility or improvement and support continued rural use of surrounding lands.”

#### **LUBA's direction on remand:**

“Subassignment of error 1(e) is sustained to the limited extent that it assigns error to respondents' failure to consider and address accessibility impacts that can be attributed to the change in the Approved Project that the challenged decisions made by approving the Modified Project corridor.”

#### **Response and Explanation of Findings:**

The local jurisdictions findings specifically address the requirements of OAR 660-012-0070(8) at pages 47-49 of the C-1 findings. In addition, the explanation provided above regarding Goal 2, Part II(c)(4) also addresses this remand item. What follows is a description and additional explanation of the findings that address accessibility impacts attributable to the changes contained in the Modified Project.

The findings discussed above show that the limited access design feature of the facility will minimize access to the neighboring agricultural land. Findings Exhibit C-1, pages 47 – 49. The Modified Project will close the existing Highway 126/Goble Lane access, and relocate it to an existing driveway west of Goble Lane. That action will help limit local access by reducing the number of access points onto the new highway. C-1 findings, page 47. Also, contrary to the Approved Design, the Modified Project will not have a direct connection with W. 11<sup>th</sup> Avenue west of Greenhill Road. That action will eliminate another access to the highway from the surrounding EFU land and is an improvement over the Approved Design. The railroad tracks south of the future Modified Project also create a barrier that minimizes accessibility to the rural lands in this area. C-1 findings, page 48. As the findings state:



“Overall, the significant wetlands resource, the large amount of acreage in public ownership, and the EFU zoning should provide adequate protection for rural and resource lands and minimize their accessibility. The presence of the railroad, the locations of wetlands and public land ownerships, particularly at Green Hill Road and in close vicinity to the Modified Project alignment terminus, will minimize pressures for highway oriented development in the area.” C-1 findings, page 48.

The only access to the Modified Project outside the UGB is the combined Goble Lane/private driveway access, a combination of two existing access onto Highway 126. An access onto W. 11<sup>th</sup>, outside the UGB, which was part of the Approved Design, will be eliminated. Access to rural lands is not provided for along the facility between Green Hill Road and the Project terminus. As the findings conclude, these measures are adequate to reduce accessibility to the neighboring rural area.

#### **Subassignment of Error 2(d)**

Petitioners argued that the local governments needed to provide findings showing that the challenged actions are consistent with the TransPlan policies that implement OAR 660-012-0035(5)(c)(D).

#### **Criterion on remand: OAR 660-012-0055(1)(a):**

“(a) If by May 8, 2000, a Metropolitan Planning Organization (MPO) has not adopted a regional transportation system plan that meets the VMT reduction standard in 0035(4) and the metropolitan area *does not have an approved alternative standard established pursuant to 0035(5)*, then the cities and counties within the metropolitan area shall prepare and adopt an integrated land use and transportation plan as outlined in 0035(5)(c)(A)–(E). Such a plan shall be prepared in coordination with the MPO and shall be adopted within three years[.]” (Emphasis added.)

#### **OAR 660-012-0035(5)(c):**

“(5) The Commission may authorize metropolitan areas to use alternative standards in place of the VMT reduction standard in 0035(4) to demonstrate progress towards achieving reduced automobile reliance as provided for in this section:

“\* \* \*

“(c) If a plan using an alternative standards, approved pursuant to this rule, is expected to result in an increase in VMT per capita, then the cities and counties in the metropolitan area shall prepare and adopt an integrated land use and transportation system plan

including the elements listed in (A) – (E) below. Such a plan shall be prepared in coordination with the MPO and shall be adopted within three years of the approval of the alternative standard: \* \* \*.”

**LUBA’s direction on remand:**

“OAR 660-012-0035(5)(c) sets out detailed requirements for ‘an integrated land use and transportation plan,’ \* \* \*.”

“We have some question whether [the state’s administrative rules] require adoption of the plan described in OAR 660-012-0035(5)(c), since respondents apparently have an approved alternative VMT reduction standard. \* \* \*

“Respondents do not respond to this subassignment of error in their brief. \* \* \* Petitioners’ approach in this subassignment of error is to fault respondents for not addressing unnamed TransPlan policies that petitioners contend must nevertheless exist \* \* \*.”

“\* \* \* [W]ithout some assistance from respondents, we cannot say this subassignment of error is lacking in merit.”

**Response and Explanation of Findings:**

The local governments’ findings do not include analysis of the Modified Project’s consistency with TransPlan policies that implement OAR 660-012-0035(5)(c)(D) because State law and TransPlan did not require that TransPlan contain such policies prior to the local government actions approving the modified alignment of the West Eugene Parkway and such policies, therefore, did not exist in TransPlan at that time.

As stated in the rules quoted above, there are two circumstantial categories in which an area must adopt policies that implement OAR 660-012-0035(5)(c)(A)-(E):

- 1) if the MPO has not adopted a regional transportation system plan that meets the VMT reduction standard in 0035(4) and the metropolitan area does not have an approved alternative standard established pursuant to 0035(5) [OAR 660-012-055(1)(a)]; or
- 2) if the MPO has adopted an alternative VMT standard that is “expected to result in an increase in VMT per capita.” [OAR 660-012-0035(5)(c)].

Neither of the above circumstances exists for the TransPlan jurisdictions. TransPlan is a regional transportation system plan that includes an approved alternative VMT standard established pursuant to OAR 660-0012-055(1)(a). Therefore, it is not required to include the 0035(5)(c)(A)-(E) policies under the first category. Further, for the reasons discussed below, TransPlan’s alternative VMT standard is not expected to result in an increase in

VMT per capita. Therefore, it is not required to include the 0035(5)(c)(A)-(E) policies under the second category, either. The local governments were not required to make findings on the nonexistent TransPlan policies and the LCDC actions on TransPlan did not require inclusion of those policies prior to the local government actions remanded by LUBA.

Chapter 4 of TransPlan contains an analysis of Daily Vehicle Miles of Travel Per Capita on page 7. It provides that “[u]nder the Financially Constrained *TransPlan*, VMT per capita decreases slightly showing no increase over the 20-year period. The Transportation Planning Rule (TPR) seeks no increase in VMT per capita over ten years and a 5 percent reduction over 20 years.” It also states “[a]mendments to the TPR require areas not meeting the VMT reduction target to seek approval from the Land Conservation and Development Commission (LCDC) for the use of alternative measures in demonstrating reduced reliance on the automobile. This process is discussed further in *Part Three: TPR Alternate Performance Measures* of this chapter.”

*Part Three: TPR Alternate Performance Measures* of TransPlan explains:

“Oregon’s Transportation Planning Rule (TPR) requires that TransPlan comply with certain performance measures (either a Vehicle Miles Traveled per capita target or alternative measures). As described in Table 6 (Chapter 4, Page 5), VMT per capita is expected to remain virtually unchanged through 2015 (1-percent decrease). As a result, the region will not meet the reduction in VMT per capita called for in the TPR. The TPR provides that, should a plan not meet the VMT reduction targets, alternative measures can be developed to demonstrate compliance with the TPR.

“\* \* \*

“Alternative Performance Measures were developed to address this requirement. While these measures have been incorporated into Table 6, a more detailed description of the measures and related interim benchmarks are presented in Table 7. These measures were approved by LCDC on May 4th, 2001.”

More specifically, Table 6 of TransPlan (Summary of Key Performance Measures) shows that VMT per capita is projected to decrease by 1 percent from 1995 levels. TransPlan then discusses the approved alternative VMT standard and addresses the conditions that LCDC attached to the alternative standards’ approval. LCDC’s Order approving the alternative standard is included in TransPlan’s Appendix G.

These provisions of TransPlan show that the local governments have an approved alternative standard established pursuant to OAR 660-012-0035(5). Therefore, TransPlan is not required to by OAR 660-012-055(1)(a) to include findings addressing OAR 660-012-0035(5)(c)(D). Further, the TransPlan provisions discussed above show that the adopted alternative VMT standard that is not “expected to result in an increase in VMT per capita.” Therefore, TransPlan is not required by the express language of OAR 660-

012-0035(5)(c) to include policies addressing OAR 660-012-0035(5)(c)(D) even if OAR 660-012-0055(1)(a) could be interpreted to require actions addressing OAR 660-012-0035(5)(c). Since TransPlan was not required to (and did not) contain a policy specifically intended to implement OAR 660-012-0035(5)(c)(D) at the time of the local government actions remanded by LUBA, petitioners subassignment of error 2(d) is without merit, as LUBA suggests.

**Assignments of Error 5, 6, and 7**

Petitioners argued that the City of Eugene and Lane County erroneously changed the designation of ‘Protect’ and ‘Restore’ wetlands at the western end of the Parkway to the ‘Planned Transportation Corridor’ designation without demonstrating that the changed designations comply with Goal 5 with respect to the Oak Hills Significant Vegetation and Wildlife site.

**Criterion on remand: OAR 660-023-0250(3)(b):**

“Local governments are not required to apply Goal 5 in consideration of a PAPA [post acknowledgment plan amendment] unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

“\* \* \*

“(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list[.]”

**LUBA’s direction on remand:**

“Although it is not entirely clear, we understand petitioners to argue that the area now designated Planned Transportation Corridor crosses \* \* \* protected Goal 5 significant vegetation and wildlife areas. \* \* \*

“\* \* \*

“\* \* \* The maps from the WEWP and the Metro Plan are not sufficiently precise in the relevant delineations to confirm respondents’ argument [that the Oak Hills Significant Vegetation and Wildlife Area lies outside the boundaries of the WEWP and is not affected by the WEWP amendments]. Another Map, entitled Figure D 3, Metro Plan Update, Natural Assets and Constraints Working Papers, Significant Vegetation & Wildlife Areas, appears to confirm respondents’ position. However, petitioners object that respondents have not demonstrated that the map is a county ‘enactment’ that is subject to official notice by LUBA. \* \* \* Because respondents do not

provide a basis for us to take official notice of that map, we do not do so. \* \*

“\* \* \* On remand, respondents may take appropriate action to confirm that the designated Significant Vegetation and Wildlife area designated on the Metro Plan is unaffected by the WEWP amendments. If that is not the case, and the disputed WEWP amendments affect the Significant Vegetation and Wildlife Area, respondents must demonstrate that such action is consistent with Goal 5.”

### **Response and Explanation of Findings:**

The City of Eugene adopted amendments to the West Eugene Wetlands Plan through its Ordinance No. 20259. Lane County did so through its Ordinance No. PA 1175. Both Ordinances included as their “Exhibit B” findings that analyzed the WEWP amendments’ consistency with Statewide Planning Goal 5 and with applicable policies from the Metro Plan. Each jurisdiction also adopted as findings three documents prepared by ODOT.<sup>2</sup> The ODOT documents also contain analysis of environmental considerations for the Modified Project alignment of the Parkway, both under Statewide Planning Goal 5 and under federal environmental laws. The findings do not contain a Goal 5 (OAR 660-023-0250(3)(b)) analysis of the Significant Vegetation and Wildlife site referred to in the LUBA appeal (the Oak Hills site identified in the 1982 Goal 5 inventory).<sup>3</sup> The reason for the lack of Goal 5 analysis of the Oak Hills Significant Vegetation and Wildlife site: the Oak Hills site was not in the area that could conflict with the WEWP redesignations.<sup>4</sup>

The wetland areas redesignated by the City and County are wetlands that are located within the Parkway’s Modified Project alignment and that were identified in the WEWP as “Protect” or “Restore.”<sup>5</sup> The Oak Hills Significant Vegetation and Wildlife site is composed of two hills north of the Parkway’s Modified Project alignment. LUBA stated: “we understand petitioners to take the position that these areas [the redesignated wetlands and the Oak Hills Significant Vegetation and Wildlife site] are the same or that they

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<sup>2</sup> These ODOT documents are: 1) West Eugene Parkway Modified Project – Consistency with Statewide Planning Goals and Transportation Planning Rule, October 7, 1999; 2) Alternatives Considered, October 4, 1999; and 3) Incompatible Adjacent Land Uses in the WEP Project, July 30, 1999.

<sup>3</sup> The Oak Hills site was included on the area’s Goal 5 inventory as a privately-owned site identified as Significant Vegetation and Wildlife Area No. 3. Metro Plan Update Vegetation/Wildlife Habitats Working Paper, April 12, 1978, pages D-11, 12.

<sup>4</sup> The findings prepared by ODOT refer to the “Oak Hills area” and to “Oak Hills” but only in providing information about the general location of the Modified Project alignment and of other alignments that were considered for the Parkway. Those findings state in several places that, for the old alignment – the “Approved Design” – the western limit of the Parkway is “west of the intersection of Highway 126 and Goble Lane near Oak Hills.” See e.g. Exhibit C-1 at 1, 2 and 44, C-2 at 5 and 22 and C-3 at 1. Various diagrams in the record show an area northwest of the Parkway terminus labeled as “Oak Hills.” See e.g. Exhibit C-1 at 4 ½, Exhibit C-2 at 16 ½. These diagram references show the Oak Hills area in a general way, in various locations. None indicate the specific location of the Goal 5 site that is identified as the Oak Hills Significant Vegetation and Wildlife site in the area’s 1982 inventory.

<sup>5</sup> Wetland sites in the Parkway alignment that were designated by the WEWP as “Develop” did not need to be redesignated to the Planned Transportation Corridor designation to accommodate the Parkway.

overlap.” The local governments asserted that the areas were different. LUBA remanded the matter so that the local governments’ governing bodies could provide a determination on this factual matter. This determination can be made based on materials already in the record.

The redesignated wetland areas are illustrated on the map adopted as Exhibit A to the Ordinances. That map shows that the most western part of the Parkway corridor redesignated by the WEWP amendments runs just north of the railroad tracks and terminates at a point east of the intersection of the railroad tracks and Highway 126 and further east of the WEWP boundary. The eastern terminus of the affected wetlands is more precisely shown on Map 3 of the WEWP, the Wetlands Designations Map. Both parts of the Oak Hills Significant Vegetation and Wildlife site are located further north of the railroad tracks, north and west of the Planned Transportation Corridor wetland area. The redesigned wetlands are not on/do not overlap the Oaks Hills Significant Vegetation and Wildlife site.

The Oak Hills site is described in the 1982 Goal 5 inventory documents as “[p]rominent oak-covered hills . . . containing the largest expanse of oak habitat type.” Metro Plan Update Vegetation/Wildlife/Wildlife Habitats Working Paper, April 12, 1978, page D-13. Though “Wetlands” was one of ten criteria considered in selecting Significant Vegetation and Wildlife sites for the 1982 Goal 5 inventory, the Oak Hills site was identified under Goal 5 only due to its attributes as a “Limited habitat type within region or metro area” and as a “Corridor.” The “Wetlands” criterion was not met for the Oak Hills site. Metro Plan Update Vegetation/Wildlife/Wildlife Habitats Working Paper, April 12, 1978, pages D-11, 12.

Even if the geographic area of the Oak Hills Significant Vegetation and Wildlife site did include wetlands that were protected by the WEWP, the removal of WEWP protection of that wetland would not have removed the other Goal 5 protections of the site. The WEWP designates wetlands either for protection, restoration or development. Amendments to these designations can only change the status of a *wetland* – allowing greater or less protection of the wetland. The WEWP does not provide any protection for resource types other than wetlands. Changing the level of protection for a wetland through a WEWP amendment does not effect the level of Goal 5 protection provided to the site due to other natural attributes.

Perhaps the clearest reason for the conclusion that the Oak Hills Significant Vegetation and Wildlife site was not redesignated as part of the WEWP amendments is that the Oak Hills site, as identified in the Goal 5 inventory, is not even within the plan boundaries of the WEWP. Therefore, the Oak Hills Significant Vegetation and Wildlife site could not have been redesignated under amendments made to the WEWP.

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## EUGENE CITY COUNCIL AGENDA ITEM SUMMARY

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Action: Resolution 4780 Responding to the Remand of  
Ordinance Nos. 20258 and 20259

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Meeting Date: November 12, 2003  
Department: City Attorney's Office  
[www.ci.eugene.or.us](http://www.ci.eugene.or.us)

Agenda Item Number: C  
Staff Contact: Emily Jerome  
Contact Telephone Number: 485-0220

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### AGENDA ITEM SUMMARY

In July 2002, the City of Eugene, along with the City of Springfield, Lane County and Lane Transit District, took actions that collectively amended TransPlan, the Eugene-Springfield Metro Area General Plan (Metro Plan), the West Eugene Wetlands Plan (WEWP), and the Lane County Rural Comprehensive Plan. The amendments were made in response to a request from the Oregon Department of Transportation (ODOT) to enable ODOT to proceed with plans to construct the West Eugene Parkway in a modified alignment. The local governments' actions were appealed to the Land Use Board of Appeals (LUBA). On March 25, 2003, LUBA issued its decision upholding the local governments' action on most of the issues raised by the petitioners, but remanding the actions based on four of the issues raised by petitioners. The petitioners appealed LUBA's decision to the Court of Appeals. On August 27, 2003, the Court of Appeals affirmed LUBA's decision, without providing a written opinion. The petitioners did not seek the Supreme Court's review of the Court of Appeals' decision.

The proposed resolution provides an explanation of the City's findings in response to the issues on remand. The local governments were not required to reopen the record for additional evidence.

### BACKGROUND

#### Council Action History

In November 2001, the council initiated amendments to the Metro Plan, TransPlan, and the WEWP to facilitate construction of the Parkway. On July 8, 2002, the council passed Ordinance No. 20258 and Ordinance No. 20259, adopting the amendments.

#### Policy Issues

The policy question for this matter was decided by the council on July 8, 2002, when it adopted Ordinance No. 20258 and Ordinance No. 20259. The matter now before the council is a technical matter, responding to LUBA's remand of the ordinances.

#### Financial and/or Resource Considerations

The financial and resource considerations were addressed by the council on July 8, 2002, when it adopted Ordinance No. 20258 and Ordinance No. 20259. There are no new considerations relating to the specific issues on remand.

### **Other Background Information**

To address LUBA's remand, Springfield, Lane County and LTD will also need to take action on remand. The City Attorney has worked with the attorneys for those governments to ensure that such actions will be taken.

### **Timing**

Staff requests that the council take action on this item at the November 12, 2003, meeting.

### **OPTIONS**

The council may choose to adopt, amend and adopt, or decline to adopt the resolution attached as "Attachment A."

### **STAFF RECOMMENDATION**

Staff recommends that the council approve the resolution attached as "Attachment A" along with that resolution's "Attachment A" (Remand Response and Explanation of Findings).

### **SUGGESTED MOTION**

Move to adopt Resolution 4780 responding to the remand of Ordinance Nos. 20258 and 20259, along with that resolution's "Attachment A" (Remand Response and Explanation of Findings).

### **ATTACHMENTS**

- A. The proposed resolution, with its "Attachment A" (Remand Response and Explanation of Findings).
- B. Pages D-10 through D-13 and Figure D-3 of the April 12, 1978, Metro Plan Update Vegetation / Wildlife / Wildlife Habitats working paper (color copy of Figure D-3 available for review in the council office).
- C. West Eugene Wetlands Plan, Map 3 Wetlands Designations Map (color copy available for review in the council office).

*A copy of LUBA's decision and a copy of Ordinances 20258, 20259 and their exhibits are available for review in the Council Office.*

### **FOR MORE INFORMATION**

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Staff E-Mail: emily.n.jerome@harrang.com



## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION RESPONDING TO THE REMAND OF  
ORDINANCE NOS. 20258 AND 20259.**

**The City Council of the City of Eugene finds that:**

A. In July 2002, the City of Eugene, the City of Springfield, Lane County and Lane Transit District ("the local governments") took actions that collectively amended TransPlan, the Eugene-Springfield Metro Area General Plan, the West Eugene Wetlands Plan, and the Lane County Rural Comprehensive Plan. The City of Eugene did so by adopting Ordinance No. 20258 and Ordinance No. 20259 on July 8, 2002. The amendments were made in response to a request from the Oregon Department of Transportation ("ODOT") to enable ODOT to proceed with plans to construct the West Eugene Parkway in a modified alignment.

B. The local governments' actions were appealed to the Land Use Board of Appeals ("LUBA"). On March 24, 2003, LUBA issued its decision upholding the local governments' action on most of the issues raised by the petitioners, but remanding the actions based on four of the issues raised by petitioners.

C. The petitioners appealed LUBA's decision to the Court of Appeals. On August 27, 2003 the Court of Appeals affirmed LUBA's decision, without providing a written opinion. The petitioners did not seek the Supreme Court's review of the Court of Appeals' decision. The appellate judgment of the Court of Appeals became effective October 7, 2003 and LUBA issued a notice of appellate judgment on October 8, 2003 that indicated the appellate judgment required no change to the earlier LUBA decision.

D. None of the issues on remand require the local governments to reopen the record for additional evidence or to adopt additional findings. Instead, for each of the four issues remanded by LUBA, the local governments need only describe the findings already adopted in support of the actions taken or, as necessary, provide additional explanation of evidence in the record that supports the findings already adopted.

**NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
EUGENE, a Municipal Corporation of the State of Oregon, as follows:**

**Section 1.** The Eugene City Council responds to the remand of Ordinances 20258 and 20259 with the Remand Response and Explanation of Findings contained in Attachment A and incorporated herein by this reference.

**Section 2.** This Resolution shall become effective immediately upon adoption.

The foregoing Resolution adopted the \_\_\_\_ day of \_\_\_\_\_, 2003.

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**City Recorder**

**Attachment A**  
**To Resolution \_\_\_\_\_**

**Remand Response and Explanation of Findings**

**Introduction**

In July 2002, the City of Eugene, the City of Springfield, Lane County and Lane Transit District (“the local governments”) took actions that collectively amended TransPlan, the Eugene-Springfield Metro Area General Plan, the West Eugene Wetlands Plan, and the Lane County Rural Comprehensive Plan. The local government actions were appealed to the Land Use Board of Appeals (“LUBA”). On March 24, 2003, LUBA issued its decision upholding the local government actions on most of the issues raised, but remanding the actions based on four of the issues raised by petitioners. The petitioners appealed LUBA’s decision to the Court of Appeals. On August 27, 2003 the Court of Appeals affirmed LUBA’s decision, without providing a written opinion. The petitioners did not seek Supreme Court review of the Court of Appeals’ decision. The appellate judgment of the Court of Appeals became effective October 7, 2003 and LUBA issued a notice of appellate judgment on October 8, 2003 that indicated the appellate judgment required no change to the earlier LUBA decision. None of the issues on remand require the local governments to reopen the record for additional evidence. For each of the four issues remanded by LUBA and set forth below, the local governments describe findings already adopted to support the actions taken or, as necessary, provide some additional explanations of those findings or the evidence in the record which supports the findings already adopted.

**Subassignment of Error 1(d)**

Petitioners argued that the local governments inadequately addressed Statewide Planning Goal 2, Part II(c)(4) when they adopted exceptions to Statewide Planning Goals 3, 4, 11 and 14. Specifically, Petitioners argued that the findings relating to Goal 3 (Agricultural Lands) were deficient with respect to the impacts of the Modified Alignment on adjacent agricultural uses.

**Criterion on remand:           Statewide Planning Goal 2, Part II(c)(4):**

“A local government may adopt an exception to a goal when: \* \* \*

- (4)    The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”

**LUBA’s direction on remand:**

“Although we might be able to locate an adequate response to this subassignment of error from the many pages of findings, we decline to do so without assistance from [the local governments]. On remand [the local

governments] must provide an adequate explanation for why the Modified Project will be compatible with adjacent agricultural uses or what ‘measures designed to reduce adverse impacts’ will render it compatible with those adjacent uses. \* \* \* [A]n adequate description of the nature of those agricultural uses followed by a discussion of how they might be impacted by construction of the Modified Project would seem to be a logical way to proceed in providing that explanation.”

### **Response and Explanation of Findings:**

The adopted findings specifically address the Goal 2, Part II(c)(4) requirement cited by the Petitioners and LUBA. In doing so, the findings describe the agricultural uses adjacent to the Modified Alignment and explain that the Modified Alignment will be compatible with those uses. What follows is a description and explanation of how the local government findings conclude the actions adequately address Statewide Planning Goal 2, Part II(c)(4).

The local governments adopted exceptions to specific Statewide Planning Goals through the following enactments: Eugene Ordinance No. 20258, Lane County Ordinance No. PA 1174, Springfield Ordinance No. 6022 and Lane Transit District Resolution No. 2002-028. Each of the local governments based their actions on findings contained in Exhibit C to their enactments. Exhibit C is composed of four documents (Exhibit C, Exhibit C-1, Exhibit C-2 and Exhibit C-3). The findings adopted as Exhibit C-1 (“C-1 findings”) quote the Goal 2, Part II(c)(4) requirement at page 8. In response to that requirement, the findings refer to and incorporate analysis provided in later portions of the findings, concluding that the requirement is satisfied. C-1 findings, page 8. On pages 9-12 of the C-1 findings, the local governments state and conclude that:

“[o]utside the UGB, most of the affected land is zoned for agricultural use. However, for reasons explained in more detail in the *Compatibility Memorandum*, incorporated herein by reference, much of the adjoining agricultural land is being used as open space for wetland mitigation or to protect threatened and endangered species. See Figure 2; see also *Compatibility Memorandum* at Figure 1. In terms of impacts on commercial farm enterprises, the northward realignment of the WEP does not result in any acreage loss of the four large commercial farms in the project vicinity. In fact, compared to the Approved Design, it reduces adverse impacts to commercial farm operations by moving the facility farther from the large cattle operation south of West 11th Avenue. West of Goble Lane, the facility essentially occupies the same area as the Approved Design, rendering no real impact differences from that alignment. Except for these places, there are no commercial farms in the project vicinity. Instead, this area is checkered with a pattern of hobby farms that do not contribute significantly to the commercial agricultural enterprise. The Modified Project creates no new parcels outside the UGB, and it should not increase the potential for encroachment beyond that associated with the Approved Design.”

The referenced Figure 2 of the C-1 findings is entitled Landuse Compatibility, Rural Impacts and shows the land uses in the vicinity of the Modified Alignment, specifying the type of agricultural use (hay, sheep, cattle) for those sites where agricultural uses are in place. The Supplemental Draft Environmental Impact Statement (“SDEIS”) for the Modified Alignment was cited heavily throughout the findings. The SDEIS contains two maps at figure 3-3, page 1 of 2, and figure 3-4 page 1 of 2. Figure 3-3 shows Existing Land Use along the Modified Alignment. Figure 3-4 of the SDEIS shows the comprehensive plan designations adjacent to the Modified Alignment. As shown in Figure 3-4 and described in the adopted findings, there is land adjacent to the Modified Alignment designated as Agriculture. Though the existing uses along the proposed parkway vary widely, the findings note that the great majority of the land bordering the northern side of the Modified Alignment is in parks/open space and is managed as part of the West Eugene Wetlands Plan.

In addition, pages 47-49 of the C-1 findings are dedicated specifically to the requirement of Goal 2, Part II(c)(4). The discussion in this section of the findings largely summarizes the *Compatibility Memorandum* that was also adopted by the local governments (as Exhibit C-3) and incorporated into the C-1 findings. The C-1 findings on pages 47-49 explain the reduction of impacts on farm uses that will result from the Modified Alignment. They also explain the Modified Alignment’s effect on access to rural properties and the ways in which access is designed to “limit local access to the adjoining rural area, thereby reducing adverse farm impacts and maintaining compatibility.” C-1, page 47. The findings then explain in detail how the ownership interests and zoning of the areas adjacent to the Modified Alignment will assist in ensuring limited access to adjacent agricultural areas. C-1, page 48-49.

The findings adopted as Exhibit C-3 and incorporated into the C-1 findings are those referred to above as ODOT’s *Compatibility Memorandum*. This ten-page memorandum identifies each tax lot that is adjacent to the Modified Alignment and provides a detailed description of those properties and their uses. The memo contains an analysis of the six major ways that a roadway project can impact land uses in rural areas and concludes, with some detail, that “[t]he WEP would not have any major impacts on land uses in the project area. In general, it is compatible with adjacent uses.” C-3, page 10.<sup>1</sup> Based on that analysis and the additional adopted findings as described above, the local government concluded the actions complied with applicable standards for exceptions to Statewide Goals, including the requirements of Goal 2, Part II(c)(4).

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<sup>1</sup> The analysis concentrates on the impacts (or lack thereof) based on the following six categories: 1) displacement of houses and buildings; 2) acreage losses from roadway rights-of-way and/or uneconomic remnants; 3) parcelization, resulting in more complicated farming practices; 4) complication of access to properties; 5) visual modifications to the rural setting; and 6) potential induced development.

**Subassignment of Error 1(e)**

Petitioners argued that the local governments’ findings inadequately addressed OAR 660-012-0070(8) by failing to address whether the rural lands adjacent to the Modified Alignment would be adversely affected by increased accessibility.

**Criterion on remand: OAR 660-012-0070(8)**

“To address Goal 2, Part II(c)(4), the exception shall:

- (a) Describe the adverse effects that the proposed transportation improvement is likely to have on the surrounding rural lands and land uses, including increased traffic and pressure for nonfarm or highway oriented development on areas made more accessible by the transportation improvement;
- (b) Adopt as part of the exception, facility design and land use measures which minimize accessibility of rural lands from the proposed transportation facility or improvement and support continued rural use of surrounding lands.”

**LUBA’s direction on remand:**

“Subassignment of error 1(e) is sustained to the limited extent that is assigns error to respondents’ failure to consider and address accessibility impacts that can be attributed to the change in the Approved Project that the challenged decisions made by approving the Modified Project corridor.”

**Response and Explanation of Findings:**

The local jurisdictions findings specifically address the requirements of OAR 660-012-0070(8) at pages 47-49 of the C-1 findings. In addition, the explanation provided above regarding Goal 2, Part II(c)(4) also addresses this remand item. What follows is a description and additional explanation of the findings that address accessibility impacts attributable to the changes contained in the Modified Project.

The findings discussed above show that the limited access design feature of the facility will minimize access to the neighboring agricultural land. Findings Exhibit C-1, pages 47 – 49. The Modified Alignment will close the existing Highway 126/Goble Lane access, and relocate it to an existing driveway west of Goble Lane. That action will help limit local access by reducing the number of access points onto the new highway. C-1 findings, page 47. Also, contrary to the Approved Design, the Modified Alignment will not have a direct connection with W. 11<sup>th</sup> Avenue west of Greenhill Road. That action will eliminate another access to the highway from the surrounding EFU land and is an improvement over the Approved Design. The railroad tracks south of the future Modified Project also create a barrier that minimizes accessibility to the rural lands in this area. C-1 findings, page 48.

“Overall, the significant wetlands resource, the large amount of acreage in public ownership, and the EFU zoning should provide adequate protection for rural and resource lands and minimize their accessibility. The presence of the railroad, the locations of wetlands and public land ownerships, particularly at Green Hill Road and in close vicinity to the Modified Project alignment terminus, will minimize pressures for highway oriented development in the area.” C-1 findings, page 48.

The only access to the Modified Project outside the UGB is the combined Goble Lane/private driveway access, a combination of two existing access onto Highway 126. An access onto W. 11<sup>th</sup>, outside the UGB, which was part of the Approved Design, will be eliminated. Access to rural lands are not provided for along the facility between Green Hill Road and the Project terminus. As the findings conclude, these measures are adequate to reduce accessibility to the neighboring rural area.

### **Subassignment of Error 2(d)**

Petitioners argued that the local governments needed to provide findings showing that the challenged actions are consistent with the TransPlan policies that implement OAR 660-012-0035(5)(c)(D).

#### **Criterion on remand: OAR 660-012-0055(1)(a):**

“(a) If by May 8, 2000, a Metropolitan Planning Organization (MPO) has not adopted a regional transportation system plan that meets the VMT reduction standard in 0035(4) and the metropolitan area *does not have an approved alternative standard established pursuant to 0035(5)*, then the cities and counties within the metropolitan area shall prepare and adopt an integrated land use and transportation plan as outlined in 0035(5)(c)(A)–(E). Such a plan shall be prepared in coordination with the MPO and shall be adopted within three years[.]” (Emphasis added.)

#### **OAR 660-012-0035(5)(c):**

“(5) The Commission may authorize metropolitan areas to use alternative standards in place of the VMT reduction standard in 0035(4) to demonstrate progress towards achieving reduced automobile reliance as provided for in this section:

\* \* \*

(c) If a plan using an alternative standards, approved pursuant to this rule, is expected to result in an increase in VMT per capita, then the cities and counties in the metropolitan area shall prepare and adopt an integrated land use and transportation system plan including the elements listed in (A) – (E) below. Such a plan

shall be prepared in coordination with the MPO and shall be adopted within three years of the approval of the alternative standard: . . .

**LUBA's direction on remand:**

“OAR 660-012-0035(5)(c) sets out detailed requirements for ‘an integrated land use and transportation plan,’ \* \* \*.

We have some question whether [the state's administrative rules] require adoption of the plan described in OAR 660-012-0035(5)(c), since respondents apparently have an approved alternative VMT reduction standard. \* \* \*

Respondents do not respond to this subassignment of error in their brief. \* \*  
\* Petitioners' approach in this subassignment of error is to fault respondents for not addressing unnamed TransPlan policies that petitioners contend must nevertheless exist . . .

\* \* \* [W]ithout some assistance from respondents, we cannot say this subassignment of error is lacking in merit.”

**Response and Explanation of Findings:**

The local governments' findings do not include analysis of the Modified Alignment's consistency with TransPlan policies that implement OAR 660-012-0035(5)(c)(D) because State law does not require that TransPlan contain such policies and such policies, therefore, do not exist in TransPlan.

As stated in the rules quoted above, there are two circumstantial categories in which an area must adopt policies that implement OAR 660-012-0035(5)(c)(A)-(E):

- 1) if the MPO has not adopted a regional transportation system plan that meets the VMT reduction standard in 0035(4) and the metropolitan area does not have an approved alternative standard established pursuant to 0035(5) [OAR 660-012-055(1)(a)]; or
- 2) if the MPO has adopted an alternative VMT standard that is “expected to result in an increase in VMT per capita.” [OAR 660-012-0035(5)(c)].

Neither of the above circumstances exists for the TransPlan jurisdictions. TransPlan is a regional transportation system plan that includes an approved alternative VMT standard established pursuant to OAR 660-0012-055(1)(a). Therefore, it is not required to include the 0035(5)(c)(A)-(E) policies under the first category. Further, for the reasons discussed below, TransPlan's alternative VMT standard is not expected to result in an increase in VMT per capita. Therefore, it is not required to include the 0035(5)(c)(A)-(E) policies



under the second category, either. The local governments were not required to make findings on the nonexistent TransPlan policies.

Chapter 4 of TransPlan contains an analysis of Daily Vehicle Miles of Travel Per Capita on page 7. It provides that “[u]nder the Financially Constrained *TransPlan*, VMT per capita decreases slightly showing no increase over the 20-year period. The Transportation Planning Rule (TPR) seeks no increase in VMT per capita over ten years and a 5 percent reduction over 20 years.” It also states “[a]mendments to the TPR require areas not meeting the VMT reduction target to seek approval from the Land Conservation and Development Commission (LCDC) for the use of alternative measures in demonstrating reduced reliance on the automobile. This process is discussed further in *Part Three: TPR Alternate Performance Measures* of this chapter.”

*Part Three: TPR Alternate Performance Measures* of TransPlan explains:

Oregon’s Transportation Planning Rule (TPR) requires that TransPlan comply with certain performance measures (either a Vehicle Miles Traveled per capita target or alternative measures). As described in Table 6 (Chapter 4, Page 5), VMT per capita is expected to remain virtually unchanged through 2015 (1-percent decrease). As a result, the region will not meet the reduction in VMT per capita called for in the TPR. The TPR provides that, should a plan not meet the VMT reduction targets, alternative measures can be developed to demonstrate compliance with the TPR.

\* \* \*

Alternative Performance Measures were developed to address this requirement. While these measures have been incorporated into Table 6, a more detailed description of the measures and related interim benchmarks are presented in Table 7. These measures were approved by LCDC on May 4th, 2001.

More specifically, Table 6 of TransPlan (Summary of Key Performance Measures) shows that VMT per capita is projected to decrease by 1 percent from 1995 levels. TransPlan then discusses the approved alternative VMT standard and addresses the conditions that LCDC attached to the alternative standards’ approval. LCDC’s Order approving the alternative standard is included in TransPlan’s Appendix G.

These provisions of TransPlan show that the local governments have an approved alternative standard established pursuant to OAR 660-012-0035(5). Therefore, TransPlan is not required to by OAR 660-012-055(1)(a) to include findings addressing OAR 660-012-0035(5)(c)(D). Further, the TransPlan provisions discussed above show that the adopted alternative VMT standard that is not “expected to result in an increase in VMT per capita.” Therefore, TransPlan is not required by OAR 660-012-0035(5)(c) to include findings addressing OAR 660-012-0035(5)(c)(D). Since TransPlan is not require to (and does not) contain a policy specifically intended to implement OAR 660-012-

0035(5)(c)(D), petitioners subassignment of error 2(d) is without merit, as LUBA suggests.

**Assignments of Error 5, 6, and 7**

Petitioners argued that the City of Eugene and Lane County erroneously changed the designation of ‘Protect’ and ‘Restore’ wetlands at the western end of the Parkway to the ‘Planned Transportation Corridor’ designation without demonstrating that the changed designations comply with Goal 5 with respect to the Oak Hills Significant Vegetation and Wildlife site.

**Criterion on remand: OAR 660-023-0250(3)(b):**

“Local governments are not required to apply Goal 5 in consideration of a PAPA [post acknowledgment plan amendment] unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

\* \* \*

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list[.]”

**LUBA’s direction on remand:**

“Although it is not entirely clear, we understand petitioners to argue that the area now designated Planned Transportation Corridor crosses \* \* \* protected Goal 5 significant vegetation and wildlife areas. \* \* \*

\* \* \*

\* \* \* The maps from the WEWP and the Metro Plan are not sufficiently precise in the relevant delineations to confirm respondents’ argument [that the Oak Hills Significant Vegetation and Wildlife Area lies outside the boundaries of the WEWP and is not affected by the WEWP amendments]. Another Map, entitled Figure D 3, Metro Plan Update, Natural Assets and Constraints Working Papers, Significant Vegetation & Wildlife Areas, appears to confirm respondents’ position. However, petitioners object that respondents have not demonstrated that the map is a county ‘enactment’ that is subject to official notice by LUBA. \* \* \* Because respondents do not provide a basis for us to take official notice of that map, we do not do so. \* \* \*

\* \* \* On remand, respondents may take appropriate action to confirm that the designated Significant Vegetation and Wildlife area designated on the Metro Plan is unaffected by the WEWP amendments. If that is not the case, and the disputed WEWP amendments affect the Significant Vegetation and Wildlife Area, respondents must demonstrate that such action is consistent with Goal 5.”

### **Response and Explanation of Findings:**

The City of Eugene adopted amendments to the West Eugene Wetlands Plan through its Ordinance No. 20259. Lane County did so through its Ordinance No. PA 1175. Both Ordinances included as their “Exhibit B” findings that analyzed the WEWP amendments’ consistency with Statewide Planning Goal 5 and with applicable policies from the Metro Plan. Each jurisdiction also adopted as findings three documents prepared by ODOT.<sup>2</sup> The ODOT documents also contain analysis of environmental considerations for the Modified Alignment of the Parkway, both under Statewide Planning Goal 5 and under federal environmental laws. The findings do not contain a Goal 5 (OAR 660-023-0250(3)(b)) analysis of the Significant Vegetation and Wildlife site referred to in the LUBA appeal (the Oak Hills site identified in the 1982 Goal 5 inventory).<sup>3</sup> The reason for the lack of Goal 5 analysis of the Oak Hills Significant Vegetation and Wildlife site: the Oak Hills site was not in the area that could conflict with the WEWP redesignations.<sup>4</sup>

The wetland areas redesignated by the City and County are wetlands that are located within the Parkway’s Modified Alignment and that were identified in the WEWP as “Protect” or “Restore.”<sup>5</sup> The Oak Hills Significant Vegetation and Wildlife site is composed of two hills north of the Parkway’s Modified Alignment. LUBA stated: “we understand petitioners to take the position that these areas [the redesignated wetlands and the Oak Hills Significant Vegetation and Wildlife site] are the same or that they overlap.” The local governments asserted that the areas were different. LUBA remanded the matter so that the local governments’ governing bodies could provide a determination on this factual matter. This determination can be made based on materials already in the record.

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<sup>2</sup> These ODOT documents are: 1) West Eugene Parkway Modified Project – Consistency with Statewide Planning Goals and Transportation Planning Rule, October 7, 1999; 2) Alternatives Considered, October 4, 1999; and 3) Incompatible Adjacent Land Uses in the WEP Project, July 30, 1999.

<sup>3</sup> The Oak Hills site was included on the area’s Goal 5 inventory as a privately-owned site identified as Significant Vegetation and Wildlife Area No. 3. Metro Plan Update Vegetation/Wildlife Habitats Working Paper, April 12, 1978, pages D-11, 12.

<sup>4</sup> The findings prepared by ODOT refer to the “Oak Hills area” and to “Oak Hills” but only in providing information about the general location of the Modified Alignment and of other alignments that were considered for the Parkway. Those findings state in several places that, for the old alignment – the “Approved Design” – the western limit of the Parkway is “west of the intersection of Highway 126 and Goble Lane near Oak Hills.” See e.g. Exhibit C-1 at 1, 2 and 44, C-2 at 5 and 22 and C-3 at 1. Various diagrams in the record show an area northwest of the Parkway terminus labeled as “Oak Hills.” See e.g. Exhibit C-1 at 4 ½, Exhibit C-2 at 16 ½. These diagram references show the Oak Hills area in a general way, in various locations. None indicate the specific location of the Goal 5 site that is identified as the Oak Hills Significant Vegetation and Wildlife site in the area’s 1982 inventory.

<sup>5</sup> Wetland sites in the Parkway alignment that were designated by the WEWP as “Develop” did not need to be redesignated to the Planned Transportation Corridor designation to accommodate the Parkway.

The redesignated wetland areas are illustrated on the map adopted as Exhibit A to the Ordinances. That map shows that the most western part of the Parkway corridor redesignated by the WEWP amendments runs just north of the railroad tracks and terminates at a point east of the intersection of the railroad tracks and Highway 126 and further east of the WEWP boundary. The eastern terminus of the affected wetlands is more precisely shown on Map 3 of the WEWP, the Wetlands Designations Map. Both parts of the Oak Hills Significant Vegetation and Wildlife site are located further north of the railroad tracks, north and west of the Planned Transportation Corridor wetland area. The redesigned wetlands are not on/do not overlap the Oaks Hills Significant Vegetation and Wildlife site.

The Oak Hills site is described in the 1982 Goal 5 inventory documents as “[p]rominent oak-covered hills . . . containing the largest expanse of oak habitat type.” Metro Plan Update Vegetation/Wildlife/Wildlife Habitats Working Paper, April 12, 1978, page D-13. Though “Wetlands” was one of ten criteria considered in selecting Significant Vegetation and Wildlife sites for the 1982 Goal 5 inventory, the Oak Hills site was identified under Goal 5 only due to its attributes as a “Limited habitat type within region or metro area” and as a “Corridor.” The “Wetlands” criterion was not met for the Oak Hills site. Metro Plan Update Vegetation/Wildlife/Wildlife Habitats Working Paper, April 12, 1978, pages D-11, 12.

Even if the geographic area of the Oak Hills Significant Vegetation and Wildlife site did include wetlands that were protected by the WEWP, the removal of WEWP protection of that wetland would not have removed the Goal 5 protections of the site. The WEWP designates wetlands either for protection, restoration or development. Amendments to these designations can only change the status of a *wetland* – allowing greater or less protection of the wetland. The WEWP does not provide any protection for resource types other than wetlands. Changing the level of protection for a wetland through a WEWP amendment does not effect the level of Goal 5 protection provided to the site due to other natural attributes.

Perhaps the clearest reason for the conclusion that the Oak Hills Significant Vegetation and Wildlife site was not redesignated as part of the WEWP amendments is that the Oak Hills site, as identified in the Goal 5 inventory, is not even within the plan boundaries of the WEWP. Therefore, the Oak Hills Significant Vegetation and Wildlife site could not have been redesignated under the WEWP.

April 12, 1978

METRO PLAN UPDATE

VEGETATION/WILDLIFE/WILDLIFE HABITATS

- I. INTRODUCTION
- II. BACKGROUND AND REGIONAL SETTING
- III. CORRELATION BETWEEN WILDLIFE AND VEGETATIVE COVER
- IV. INVENTORY AND ANALYSIS
- V. SIGNIFICANT VEGETATION AND WILDLIFE AREAS
- VI. ASSUMPTIONS AND FINDINGS

This is one of a series of working papers describing the Metro Area's natural assets and constraints. Please refer to Box 3 of the Metro Plan Update flow chart.

5. Fish Spawning Areas Major rivers and a few streams: Important resources for the reproduction of anadromous fish (i.e., those that mature in the sea and migrate to streams to spawn). Coho salmon, spring chinook salmon, fall chinook salmon, winter-run steelhead, summer-run steelhead and cutthroat trout migrate from the Pacific Ocean into the forks of the Willamette and McKenzie Rivers. Most of the river systems located in the metro area provide important gravel spawning areas.
6. Agricultural Lands Croplands and pasturelands: Provide opportunities for wildlife. When managed to provide hedgerow, wooded plots and buffers of natural vegetation, agricultural lands can be enhanced.
7. Rock Outcrop Areas Provide a very limited and yet significant wildlife habitat for the endangered western rattlesnake and other reptiles in the metro area. There are only a few large rock outcrop areas which have not been or are now being used as quarry rock sources.
8. Snags Standing dead trees represent a unique habitat requirement for a number of birds and mammals. Insect eating birds create cavities which cavity-nesting birds and mammals inhabit. Snags are decreasing in numbers as old growth stands are being cut at an increasing rate. Snag trees need to be set aside to preserve those wildlife species dependent upon this ecological niche.
9. Limited Habitats Vegetation habitat types which: 1) constitute less than 1% of the total study area, or 2) constitute a significant proportion of a type which is not abundant in either Lane County or Oregon. Based on these two criteria, seven significant habitat types were determined to be limited and therefore important to the study area: riparian woodlands, mixed conifer/deciduous woodlands, pure ponderosa pine, pure incense cedar, and wetlands, including freshwater marsh, wetland shrub and wet meadows.

#### SIGNIFICANT VEGETATION AND WILDLIFE AREAS

Thirty-five significant vegetation and wildlife geographic sites or areas have been identified in the study area. These sites were selected utilizing ten criteria derived from the vegetation and wildlife inventory

and analysis and the nine significant habitat types. These sites have significant vegetative or wildlife values and warrant some form of protection. The criteria are as follows:

1. Habitat of endangered or threatened plant and wildlife species
2. Wetlands
3. Fish spawning areas
4. Limited habitat type within region or metro area
5. Habitat of species at extent of range
6. Areas of significant vegetation diversity
7. Corridors.(ridgetops, migration routes)
8. Plant or marine fossil beds
9. Climax ecosystems
10. Significant wildlife habitat area.

Any area meeting one or more criteria is considered significant. The following matrix identifies significant areas within the metro study area and depicts the relevant criteria. Please also refer to Map D-3. The matrix also denotes whether the significant areas are in public or private ownership. A brief discussion of the areas follows the matrix.

SIGNIFICANT VEGETATION AND WILDLIFE AREAS

		SIGNIFICANT CRITERIA										OWNERSHIP				
		Endangered & Threatened Wetlands Spawning Limited Extent Diversity Corridors Fossil Beds Climate Wildlife										PUBLIC	PRIVATE			
		1	2	3	4	5	6	7	8	9	10					
1	Long Tom River Riparian Woodlands	X	X				X		X							X
2	Fern Ridge Reservoir	X	X		X		X	X		X	X			X		
3	Oak Hills				X		X									X
4	Bertlesen Slough		X		X		X		X	X						X
5	Willow Creek Wetlands		X		X		X		X							X
6	Pure Ponderosa Pine Stands	X	X													X
7	Willamette/McKenzie Confluence		X	X	X		X		X	X						X
8	McKenzie Sharp-Tailed Snake Site	X	X		X											X
9	Ayres Pure Incense Cedar Stand				X											X
10	Willamette Wetland		X	X	X		X		X	X						X
11	Delta Ponds		X		X		X		X	X			X			
12	Gillespie Butte and Ponds		X				X	X	X							X
13	Skinner's Butte Park		X				X	X				X			X	
14	Alton Baker Park		X	X			X	X				X			X	
15	Hendricks Park						X		X	X					X	
16	Amazon Park		X				X		X	X					X	
17	Portland St. Pure Ponderosa Pine Stands				X											X
18	Spencer Creek Drainage		X		X	X	X		X	X						X
19	Eastern Oregon Type Ridgetop	X				X		X				X				X
20	Spencer's Butte Park	X				X		X		X	X			X		
21	Russell Creek Drainage		X			X	X	X		X	X					X
22	Laurel Hill Natural Area		X		X		X	X		X	X					X
23	Second St. Marine Fossil Beds		X						X							X
24	Neptune Park and Ponds		X					X		X				X		X
25	Twin Butte Plant Fossil Beds								X							X
26	Mt. Pisgah (Howard Bufford Park)	X	X		X		X	X		X	X			X		
27	Wildish Construction Co. Gravel Pits		X	X	X			X						X		X
28	Mt. Pisgah Area Rookery		X	X	X			X						X		X
29	Mahogany Lane Pure Incense Cedar Stands				X											X
30	Natron Rock Outcrops	X			X			X								X
31	Cedar Creek Western Hemlock Old Growth Area				X	X				X				X		
32	Hayden Bridge West. Rattlesnake Area	X			X											X
33	McKenzie River Bend		X	X						X	X					X
34	Hayden Bridge Wildlife Area			X	X			X			X					X
35	East Fern Ridge Reservoir Wildlife Area		X		X			X		X	X					X



## Public Ownership

All publicly owned significant vegetation and wildlife areas, except for Area 31, are parkland areas. They are identified as significant areas because a portion or all of the parks have vegetation and wildlife resources of importance to the metro study area. Park management plans, if not already completed, should be completed to provide for the protection of vegetation and wildlife resource areas.

## Private Ownership

### 1. Long Tom River Riparian Woodlands

A Nature Conservancy identified natural area which contains a large tract of riparian ash woodland providing a good wildlife and waterfowl habitat.

### 3. Oak Hills

Prominent oak-covered hills located west of Eugene containing the largest expanse of oak habitat type; an important preferred wildlife habitat for some wildlife species.

### 4. Bertelson Slough

The last large freshwater marsh remaining in the metro study area outside of Fern Ridge Reservoir; an important wildlife habitat for fur-bearing mammals, song birds, amphibians and waterfowl.

### 5. Willow Creek Wetlands

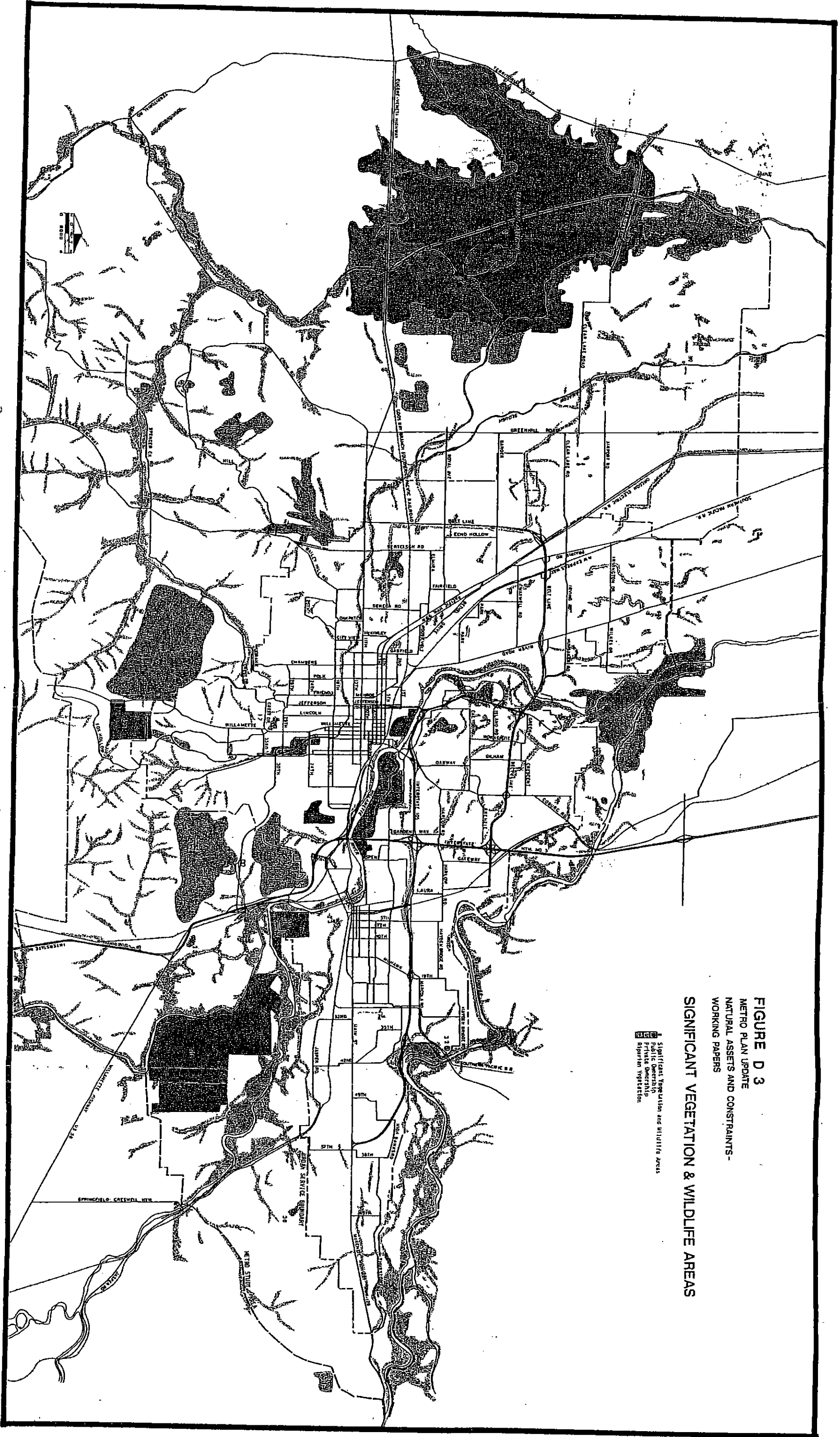
A large expanse of riparian woodlands, wetland shrub and wet grassland in close proximity to the urbanized area west of Eugene, an important habitat for many wildlife species.

### 6. Pure Ponderosa Pine Stands




The largest acreage of pure ponderosa pine stands in the metro study area; a limited and preferred habitat for some wildlife species.

### 7. Willamette/McKenzie Confluence

A Nature Conservancy identified natural area of importance which contains the largest heron rookery in the metro study area; also a good fur-bearing mammal, waterfowl, fish spawning and wildlife habitat area.



**FIGURE D 3**  
**METRO PLAN UPDATE**  
**NATURAL ASSETS AND CONSTRAINTS -**  
**WORKING PAPERS**  
**SIGNIFICANT VEGETATION & WILDLIFE AREAS**

 Significant Vegetation and Wildlife Areas  
 Public Ownership  
 Riparian Vegetation

