

# SUPPLEMENTAL MATERIAL

W. G.A.

## SUPPLEMENTAL 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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Since the original packet was prepared, concerns have been expressed by parties to the LUBA appeal that relate to the response under subassignment of 2(d). Those concerns have been raised in a letter and memo that you may have already received. A copy is attached but I would recommend you not consider those materials since the record has not been reopened and does not need to be to resolve the LUBA remand. Similar concerns were raised with the City of Eugene and I have had discussions with the city attorney. The City of Eugene is not planning to make any further revisions to the response.

After talking with representatives of the parties to the LUBA appeal some revisions to Exhibit "A" to the Board Order have been made to make it clear that the main concern about the Transportation Planning Rule requirements for an "integrated land use and transportation plan" does not have to be resolved to address the LUBA remand. A copy of the revised exhibit is attached and should replace the one that was distributed with the original packet. It appears to adequately respond to the concerns.

### ATTACHMENTS

December 16, 2003 letter from 1000 Friend of Oregon

Revised Exhibit "A" to the Board Order





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**Date:** December 16, 2003

**From:** Mary Kyle McCurdy, Staff Attorney  
Rob Zako, Transportation Advocate

**To:** Lane County Board of Commissioners  
Lane Transit District Board of Directors

**Cc:** Eugene City Council  
Springfield City Council  
Dennis Taylor, Eugene City Manager  
Susan Muir, Eugene Planning Director  
Emily Jerome, Eugene City Attorney  
Mike Kelly, Springfield City Manager  
Greg Mott, Springfield Planning Director  
Meg Kieran, Springfield City Attorney  
Bill Van Vactor, Lane County Administrator  
Tom Stinchfield, Lane County Public Works  
Steve Vorhes, Lane County Counsel  
Ken Hamm, LTD General Manager  
Mark Pangborn, LTD Asst. General Manager  
Catherine Susman, LTD Counsel  
George Kloeppe, LCOG Executive Director  
Tom Schwetz, LCOG Transportation Planning  
Bob Cortright, DLCD  
Marguerite Nabeta, DLCD

**Re:** Proposed response to LUBA remand of plan amendments for the West Eugene Parkway

Dear Lane County Commissioners and LTD Directors:

Tomorrow your legal counsels and staff will ask you to adopt a response to the remand by the Oregon Land Use Board of Appeals (LUBA) of plan amendments for the West Eugene Parkway (WEP). They may tell you that doing so is a “technical matter” needed to “move the WEP forward.”

We recommend you to decline to adopt the response *in its current form*.

The issue is not the WEP per se. The issue is the requirement for an “integrated land use and transportation plan” and the application of that plan to the WEP. In particular, we object to the proposed response to Subassignment of Error 2(d), as it is in conflict with the Transportation Planning Rule (TPR) and otherwise inadequate.

Unfortunately, if you adopt the response *in its current form*, we see no alternative but to appeal your decisions to LUBA. Allowing your action to stand could set a bad precedent for the other metropolitan areas around the state (Portland, Salem, Medford, Bend and Corvallis), which are subject to the same parts of the TPR. Of course, such an appeal won’t “move the WEP forward”:

It will slow the WEP down.

We say “unfortunate” because we hope to avoid the time and expense for all concerned parties of an appeal. We have been working with the Eugene City Attorney and your legal counsels to help craft an adequate response. We believe that local jurisdictions can respond adequately by demonstrating compliance with the Eugene/Springfield regional transportation plan: TransPlan.

We thus urge you to direct your legal counsels to continue working with us to develop a legally adequate response that will allow the WEP to move forward without running afoul of parts of the TPR.

In the attachment, we detail our concerns and what we recommend the local jurisdictions do to address them.

If you have questions or concerns, please feel free to contact either of us.

Sincerely,

/s/ Mary Kyle McCurdy  
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# Specific Concerns and Recommendations

We have two separate but related concerns with the proposed response to the remand.

First, the proposed response denies the TPR requirement for an integrated land use and transportation plan.

Second, whether or not the TPR requires an integrated land use and transportation plan, TransPlan claims to include components (policies) addressing some elements of such a plan. In Subassignment of Error 2(d) of our original appeal to LUBA, we asked the local jurisdictions to identify those policies already in TransPlan and to adopt findings that these policies were applied to the WEP. The LUBA remand directed the local jurisdictions to do so. The proposed response fails to identify or adopt such findings.

## 1. Requirement for an “Integrated Land Use and Transportation Plan”

The TPR specifies two conditions in which a metropolitan area is required to prepare and adopt an integrated land use and transportation plan.

First, OAR 660-012-0035(5)(c) states:

“If a plan using an alternative standard, 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 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.”

As TransPlan is *not* projected to result in an increase in VMT per capita, this condition does *not* apply.

Correctly but irrelevantly, the proposed response makes this argument.

Second, OAR 660-012-0055(1)(a) states:

“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;”

As TransPlan was not adopted until September 2001 and the alternative standard was not approved until May 2001, this condition *does* apply to the Eugene-Springfield metropolitan area: Pursuant to OAR 660-012-0055(1)(a), the cities and county in the metropolitan area *are* required to prepare and adopt an integrated land use and transportation plan.

The proposed response interprets this condition incorrectly, leading to the incorrect conclusion that the metropolitan area is not required to prepare and adopt an integrated land use and transportation plan. We strongly object to this incorrect reading of the TPR.

***Recommendation: Our preference is for legal counsels to modify the response to affirm the requirement for an integrated land use and transportation plan pursuant to OAR 660-012-0055(1)(a). In any case, we insist that language denying the requirement for an integrated land use and transportation plan be omitted from the response.***

Note that there is a long history that supports our interpretation that an integrated land use and transportation plan is required pursuant to OAR 660-012-0055(a)(1). This history began shortly after May 8, 2000, when the deadline in OAR 660-012-0055(1)(a) passed:

- On September 14, 2000, Bob Cortright in a memo to the LCDC Transportation Subcommittee stated:

*“With approval of an alternative standard, local governments must, within 3 years, develop and adopt an ‘integrated land use and transportation plan’ to help achieve reduced reliance [on the automobile].”* [Emphasis added.]

- In early 2001, LCOG asked LCDC to approve alternative measures for TransPlan.

On April 17, 2001, Richard Benner’s staff report stated:

*“In 1998, the Commission amended the TPR to allow MPOs to submit alternative measures to use in place of VMT. Approval of an ‘alternative measure’ triggers the requirement for the region to develop and adopt an ‘integrated land use and transportation plan.’*

*“LCOG expects to adopt TransPlan later this year. This would trigger the requirement for adoption of conforming local plans and for the development and adoption of an integrated land use and transportation plan over the next three years.”* [Emphasis added.]

In May 2001, LCDC issued Order 01-LCDC-024 approving alternative performance measures for TransPlan. The order offered the following guidance for how to better meet the requirements of the TPR:

*“LCOG should amend TransPlan to include a schedule for implementation of the nodal development strategy. This schedule should incorporate the items listed below and the requirements for an “integrated land use and transportation plan” over the next three years.”* [Emphasis added.]

- In September 2001, the local jurisdictions adopted TransPlan. Chapter 3, Part 4 of TransPlan specifies “Planning and Program Actions,” including a “Nodal Development Implementation Schedule.” This schedule quotes and addresses the recommendations of Order 01-LCDC-024. It states:

*“The Integrated Land Use and Transportation Plan referenced in the first recommendation is a requirement in the TPR (Section 0035(5)(c)) and includes the following elements:*

...

*“Much of the elements (B), (C), and (D) are addressed by components of TransPlan. Other elements either are or will be addressed in [the] subsequent implementation of the nodal development strategy.”*

[Emphasis added. Note that the reference to 0035(5)(c) should be to a reference to 0055(1)(a).]

- In December 2002, LCDC conducted an annual review of the Eugene-Springfield metropolitan area's progress in implementing the nodal development strategy and TransPlan. Bob Cortright's staff report, dated November 19, 2002, states:

“Commentators disagree with the apparent assertion in TransPlan that many of the elements of an integrated land use and transportation plan required by the TPR are in place.

*“Commission approval of an ‘alternative measure’ triggered a requirement for the Eugene-Springfield area to prepare an ‘integrated land use and transportation plan’ over the following three years — by September 2004.* TransPlan does include references, which assert that the current adopted TransPlan meets much of what is required and that other elements will be addressed in subsequent implementation of the nodal development strategy. Commentators believe that TransPlan falls short on several of the TPR requirements including significant expansion of transit service, new TDM measures and a policy to review and manage roadway improvements. Commentators recommend that the Commission request a report from area local governments detailing progress towards developing an integrated land use and transportation plan.

“The Department agrees with the commentators about the need to clarify the status of TransPlan with regards to the TPR requirements for an integrated land use and transportation plan. Findings and schedule included in TransPlan are general and leave important details unanswered. The Department proposes to work with LCOG and the cities to prepare a more specific assessment of what *remains to be done to meet requirements for an Integrated Land Use and Transportation Plan*. The Department also proposes to work with ODOT to target any TGM grants awarded in the area to carry out this work.” [Emphasis added.]

- On April 10, 2003, the Metropolitan Policy Committee (MPC), acting as the Central Lane Metropolitan Planning Organization (MPO), adopted the Unified Planning Work Program (UPWP) for FY 2003–2004. The UPWP included the development of an “integrated land and transportation plan” as a “special project” within the MPO area but allocates no funding to that project:

“Based on its review and approval of TransPlan alternative performance measures for compliance with the Transportation Planning Rule (TPR), the Oregon Land Conservation and Development Commission (LCDC) required the inclusion in TransPlan of a schedule for the development of an integrated land use-transportation plan by September 2004. At this point, no funding has been identified to support the effort required by Eugene, Springfield, Lane County and LCOG to complete this work. One or more TGM grants may be applied for to address this need.”

## **2. Application of Elements of an “Integrated Land Use and Transportation Plan” to the WEP**

The proposed response argues that policies that address elements of an integrated land use and transportation plan are not in TransPlan because they are not required by the TPR to be in TransPlan.

We actually agree that such policies are not required to be in TransPlan. Such policies are only required to be in an integrated land use and transportation plan prepared and adopted by the cities and county in coordination with the MPO.

Regardless, TransPlan itself states in Chapter 3, Part 4:

“Much of the elements (B), (C), and (D) [of an integrated land use and transportation plan] are addressed by components of TransPlan. Other elements either are or will be addressed in [the] subsequent implementation of the nodal development strategy.”

The essence of our argument in Subassignment of Error 2(d) is that if TransPlan states that such components already exist — whether or not required by the TPR — then the local jurisdictions should have adopted findings that these components (policies) were applied to the WEP when they adopted the WEP amendments in July 2002.

OAR 660-012-0035(5)(c)(A)–(E) specifies the elements of an integrated land use and transportation plan:

- (A) Changes to land use plan designations, densities, and design standards listed in 0035(2)(a)–(d);
- (B) A transportation demand management plan that includes significant new transportation demand management measures;
- (C) A public transit plan that includes a significant expansion in transit service;
- (D) Policies to review and manage major roadway improvements to ensure that their effects are consistent with achieving the adopted strategy for reduced reliance on the automobile, including policies that provide for the following:
  - (i) An assessment of whether improvements would result in development or travel that is inconsistent with what is expected in the plan;
  - (ii) Consideration of alternative measures to meet transportation needs;
  - (iii) Adoption of measures to limit possible unintended effects on travel and land use patterns including access management, limitations on subsequent plan amendments, phasing of improvements, etc.

[For purposes of this section a “major roadway expansion” includes new arterial roads or streets and highways, the addition of travel lanes, and construction of interchanges to a limited access highway.]

- (E) Plan and ordinance provisions that meet all other applicable requirements of this division.

Element (A) refers to OAR 660-012-0035(2)(a)–(d):



- (a) Increasing residential densities and establishing minimum residential densities within one quarter mile of transit lines, major regional employment areas, and major regional retail shopping areas;
- (b) Increasing allowed densities in new commercial office and retail developments in designated community centers;
- (c) Designating lands for neighborhood shopping centers within convenient walking and cycling distance of residential areas;
- (d) Designating land uses to provide a better balance between jobs and housing considering:
  - (A) The total number of jobs and total of number of housing units expected in the area or subarea;
  - (B) The availability of affordable housing in the area or subarea; and
  - (C) Provision of housing opportunities in close proximity to employment areas.

In particular, in Subassignment of Error 2(d) of our original appeal to LUBA, we focused on element (D): “Policies to review and manage major roadway improvements to ensure that their effects are consistent with achieving the adopted strategy for reduced reliance on the automobile. ...” Insofar as TransPlan states that much of element (D) is addressed by components of TransPlan, such policies should exist in TransPlan. As the West Eugene Parkway involves the construction of a limited access highway, it meets the definition of a “major roadway expansion” for the purposes of element (D). Thus the policies that TransPlan claims exist should have been applied to the WEP.

***Recommendation: The local jurisdictions should identify which components (policies) of TransPlan address which elements of an integrated land use and transportation plan. Then the local jurisdictions should point out or adopt findings that show that the WEP satisfies those policies in TransPlan.***



**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 appear to be 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)].

Although it is not necessary to resolve this issue to address the remand, it would appear 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, under this interpretation TransPlan is not required to include the 0035(5)(c)(A)-(E) policies under the first category. Even if required, OAR 660-012-0035(5)(c) would seem to eliminate the need



for such policies. Another interpretation would require TransPlan to include such 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. Even if the provisions of the Transportation Planning Rule (TPR) require an "integrated land use and transportation plan", 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

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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.

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 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.