

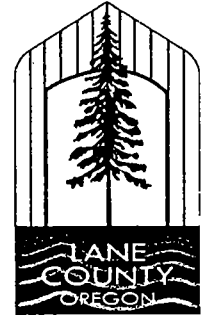
W. T. A.

AGENDA COVER MEMO

DATE: AUGUST 28, 2006 (Memo)  
SEPTEMBER 13, 2006 (First Reading)  
SEPTEMBER 27, 2006 (Second Reading/Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

FROM: STEPHANIE SCHUEZ, PLANNER  
LAND MANAGEMENT DIVISION



TITLE: ORDINANCE NO. PA 1234: IN THE MATTER OF UPDATING THE GOAL 5 INVENTORY AND ADOPTING THE GOAL 5 WATER RESOURCES CONSERVATION PLAN; REPEALING ORDINANCE NO. PA 1198; AMENDING CHAPTER 10 OF LANE CODE TO AMEND THE EUGENE LAND USE REGULATIONS AND ADD A WATER RESOURCES CONSERVATION OVERLAY ZONE FOR APPLICATION TO URBANIZABLE LANDS WITHIN THE EUGENE URBAN GROWTH AREA; APPLYING THAT ZONE TO SPECIFIC PROPERTIES; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (Metro Plan Periodic Review Task No.7; File No. 06-5195)

I. MOTION

For September 13, 2006: I move approval of the first reading and setting the second reading and public hearing on Ordinance No. PA 1234 for September 27, 2006 at 1:30 p.m.

For September 27, 2006: I move approval of Ordinance No. PA 1234.

II. ISSUE OR PROBLEM

Should the Board of Commissioners adopt the Eugene Goal 5 Inventory and a Water Resources Conservation Plan and implementing overlay zone for application outside the Eugene city limits and within the Urban Growth Area of Eugene?

The City of Eugene has adopted the updated Goal 5 Inventory and a Goal 5 Water Resources Conservation Plan for application within the city. The city is now requesting consideration and adoption by the Board of County Commissioners for application of the Goal 5 inventory, Plan, code amendments, and water resources conservation overlay to the urbanizable land located outside Eugene's city limits and within the Eugene UGB. Approval of the Ordinance will complete the Metro Area periodic review work program.

III. DISCUSSION

Background

The Goal 5 Inventory has its roots in the Metropolitan Natural Resources Special Study that was drafted in 1991. The Natural Resource Study was launched to fulfill planning requirements for wetlands, natural

areas and wildlife habitat areas under statewide planning Goal 5. The Study was considered by elected officials on a number of occasions, but never adopted by all three jurisdictions. In 2002, the three jurisdictions decided to separate what had been a single Metro-wide project into jurisdictional specific adoption processes for Goal 5 Natural Resources. Lane County adopted Goal 5 Inventories and riparian protection measures applicable to the area outside the UGB of both cities and within the Metro Plan Boundary in 2004. Lane County and Springfield completed adoption of the Springfield Natural Resources Study for application within the Springfield UGB in July, 2006. The Board will now consider co-adoption of Eugene's Goal 5 Water Resources Conservation Plan and zoning overlay for the urbanizable area of Eugene.

The Ordinance under consideration today identifies and establishes the level of protection for Eugene's Goal 5 inventory sites outside the city limits and co-adopts protection measures as a Water Conservation Plan and Zoning Overlay as it applies within the UGB.

### Analysis

*Lane Code 12.225 (2) Criteria for Approval of Plan Amendment. The following criteria shall be applied by the Board of Commissioners in approving or denying a plan amendment application:*

- (a) the amendment must be consistent with the relevant statewide planning goals adopted by the Land Conservation and Development Commission; and*
- (b) adoption of the amendment must not make the Metro Plan internally inconsistent.*

The detailed discussion of consistency with Statewide Planning Goals, Lane Code, and Eugene Development Code is found in Exhibit G to this Ordinance.

The Goal 5 Water Resources Conservation Plan uses criteria approved by Eugene City Council and Lane County to determine which sites are significant. The City Council chose to apply the "standard process" (OAR 660-23-090 and 100) to riparian corridors, wetlands and Wildlife Habitat Resource Sites. The "standard process" allows cities to exercise more flexibility in protecting resource sites, but requires site by site analysis of the impacts that might exist on each site. The standard process leads to a decision about how to protect resource sites in a way that weighs the economic, social, environmental, and energy (ESEE) consequences of the protection measures. The Eugene Goal 5 Water Resources Conservation Plan provides the analysis required by the "standard process" and recommends a program for protecting sites on the NR Inventory.

Under the standard process, cities are required to make a decision to 1) prohibit conflicting uses (development); 2) limit conflicting uses; or 3) allow conflicting uses. A decision to prohibit conflicting uses will fully protect resource sites, in many cases not even allowing passive recreational trails or paths. Limiting conflicting uses allows some development, but seeks to protect the most important functions and values of each resource site. A decision to allow conflicting uses will provide no protection for resource site.

Based on the ESEE analysis conducted for each site on the Wetland Inventory and the NR Inventory, this Study proposes a protection program based on a decision to "limit conflicting uses." This Study only addresses "locally significant" wetlands and riparian corridors that are listed on the NR and Wetland Inventories. **There are several lower quality wetlands and watercourses that are not recommended for protection by this study.** The sites not recommended for protection by this study remain under the jurisdiction of the Oregon Division of State Lands and/or the Army Corps of Engineers. These agencies will continue to be the sole authority for issuing permits to impacted wetlands and streams. To implement a "limited" protection program, this study uses the following criteria applied to sites for analysis:

### Significance Criteria

A riparian corridor or an upland wildlife habitat stream corridor site shall be included on the list of significant resource sites if (in addition to consideration of the criteria at OAR 660-23-0090 (4) for riparian corridor sites and to those at OAR 660-023-0110(3) for upland wildlife habitat stream corridor sites) it is described in at least one of the following Tier One Criteria and if its listing is consistent with both of the following Tier Two Criteria:

#### Tier One Criteria

1. Areas mapped as wetland on the State/National Wetland Inventory (S/NWI).
2. Streams and other water bodies identified by the Oregon Department of Fish and Wildlife and Department of Forestry as fish bearing streams.
3. Undeveloped areas that contain natural vegetation (non-cultivated, including forests, natural prairies and meadows) and are within sites larger than 1 acre.
4. Undeveloped natural areas that are contiguous with a water feature.
5. Areas that are undeveloped, and which in their natural state are un-vegetated (e.g., rock outcrops, gravel bars).
6. Locations of plants listed as threatened or endangered, or considered official candidates to be listed as threatened or endangered by state or federal government.
7. Documented habitat of animals listed as threatened or endangered, or considered official candidates to be listed as threatened or endangered by state or federal government.
8. Native plant communities within the Federal Emergency Management Agency (FEMA) floodway and 100-year floodplain.
9. Ecologically significant areas identified by local experts in the natural resource sciences such as wildlife biology, botany, fisheries, hydrology, and landscape architecture.

#### Tier Two Criteria:

1. At the time of inventory adoption, areas that have been filled or substantially altered to the degree that they no longer meet any of the Tier 1 criteria shall be removed from the Goal 5 inventory.
2. Sites with a Wildlife Habitat Assessment (WHA) rating of 17 or greater shall be included on the Goal 5 inventory.

The degree of protection for all sites located entirely or partially within the Eugene UGB are shown site-by-site in Section IV of Exhibit A to this Ordinance and are identified in both table form and shown on maps that follow the table.

### Ballot Measure 37 Considerations

City of Eugene analysis and process to consider Ballot Measure 37 claims for these areas will be provided in a supplemental to the Board prior to the first reading.

## Lane County Planning Commission (LCPC) Action

The Eugene Goal 5 Inventory and protection measures were presented to LCPC for its evaluation in two workshops, one in May 2005 and one in March 2006. A public hearing was held by the Planning Commission on March 7, 2006. Deliberations on March 21, 2006 followed, and the Commission voted 5 to 1 to forward a recommendation to the Board to approve the adoption of the Water Resources Protection Plan and implementing code regulations for application within the Eugene UGB. Commission reasoning is set forth in the Minutes of the meetings, Attachment 2 to this packet. A summary of the citizen testimony submitted at the LCPC hearing and staff responses to that testimony is provided in Attachment 3.

City staff are expected to be on hand at the Board hearing to present the proposal and respond to questions. Should additional written materials or testimony be produced concerning this item, it will be delivered to the Board in a supplement or delivered at the hearing.

### C. Alternatives/Options

1. Approve the Ordinance as presented. This will apply the Goal 5 Plan and protection measures to the adopted Inventory for the area outside the Eugene city limits and within the UGB and will complete this Metro Plan periodic review work task.
2. Revise the Ordinance as directed by the Board and return for approval of the revised ordinance on a date and time certain set by the Board.
3. Do not approve the Ordinance and deny the adoption of the Goal 5 protection measures for application within the Eugene UGB. This alternative would affect completion of the DLCD Metro Plan Periodic Review work program.

### D. Recommendation

I recommend Option 1, approval of the Ordinance as presented for the following reasons.

- The Goal 5 NR Inventory has been adopted by the Board.
- These protection provisions are consistent with the Goal 5 Rule requirements.
- These provisions complete the Goal 5 protection measures for the entire Metro Plan area and will complete the Periodic Review Work Program.

### E. Timing

The Ordinance does not contain an emergency clause.

## **IV. IMPLEMENTATION/FOLLOW-UP**

Notice of Board action will be provided to DLCD and parties. If the Board adopts the Ordinance as presented or modified, notice will also be provided.

Should the Board choose to deny the Ordinance, it will be necessary to direct staff preparation of alternatives to address Goal 5 under the Metro Plan Periodic Review. Modification of the Ordinance will require returning to the Board for further actions .

## V. ATTACHMENTS

(NOTE: Ordinance Exhibits were provided to BCC with 8-23-06 worksession packet.)

### 1. Ordinance No. PA1234

Exhibit A – Goal 5 Water Resources Conservation Plan

Exhibit B – Conflicting Uses and ESEE Analysis (Hardcopy in Board Office, electronic copy at [www.eugenenr.org/Eug\\_G5/ordinance\\_ex\\_B.htm](http://www.eugenenr.org/Eug_G5/ordinance_ex_B.htm) )

Exhibit C – Eugene Local Wetland Inventory Plates

Exhibit D – Revisions to Eugene Land Use Code

Exhibit E – Amendment of Lane Code 10.600-25 (the County applicable code section amendment)

Exhibit F – List of Properties in the Urbanizable Area with NR sites that the /WR Overlay Zone applies to

Exhibit G – Legislative Findings

Exhibit H – Native and Non-native Plant List

### 2. Planning Commission Minutes

May 10, 2005 joint work session with Eugene Planning Commission

March 7, 2006 work session and public hearing

March 21, 2006 deliberations

### 3. Memo in response to site specific testimony received at the Planning Commission hearing.

### 4. Measure 37 memo from City of Eugene (to be provided in a supplemental submittal).

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

**ORDINANCE NO. PA 1234** ) **IN THE MATTER OF UPDATING THE GOAL**  
) **5 INVENTORY AND ADOPTING THE**  
) **GOAL 5 WATER RESOURCES**  
) **CONSERVATION PLAN;**  
) **REPEALING ORDINANCE NO. PA 1198;**  
) **AMENDING CHAPTER 10 OF LANE CODE**  
) **TO AMEND PROVISIONS OF THE**  
) **EUGENE LAND USE REGULATIONS AND**  
) **ADD A WATER RESOURCES**  
) **CONSERVATION OVERLAY ZONE FOR**  
) **APPLICATION TO URBANIZABLE LANDS**  
) **WITHIN THE EUGENE URBAN GROWTH**  
) **AREA; APPLYING THAT ZONE TO**  
) **SPECIFIC PROPERTIES; AND ADOPTING**  
) **SAVINGS AND SEVERABILITY CLAUSES.**

**WHEREAS**, Statewide Planning Goal Five requires local governments to inventory and protect significant riparian corridors, wildlife habitat and wetlands. In order to conserve these resources and the biological systems they contain and support, this Ordinance adopts provisions to conserve the physical resources and also protect the water quality within the resource areas as a fundamental and essential requirement for continued survival of these biological systems; and

**WHEREAS**, Ordinance No. PA 1198, adopted by the Lane County Board of County Commissioners on April 14, 2004, adopted as Exhibit A to that Ordinance, a list of criteria for use in determining the significance of riparian corridor sites and wildlife habitat sites for purposes of updating the Goal 5 inventory within the Eugene Urban Growth Area. The list of criteria is now more appropriately located in the Goal 5 Water Resources Conservation Plan; and

**WHEREAS**, Exhibit B to Ordinance No. PA 1198 is a list and a map, both entitled “Goal 5 Riparian and Upland Wildlife Habitat Sites Within the Eugene Urban Growth Boundary.” The list and map, which updated the inventory of significant riparian corridor sites and wildlife habitat sites based on the criteria listed in Exhibit A to Ordinance No. PA 1198, are now more appropriately included in the Goal 5 Water Resources Conservation Plan. Further, updates to the list and map are needed to more accurately depict the location and/or acreage of some of the riparian corridor and wildlife habitat sites and to remove from the inventory a portion of site E-76, which an order of the Land Conservation and Development Commission determined had not been demonstrated to meet the definition of a riparian area under Oregon Administrative Rules; and

**WHEREAS**, the Oregon Department of State Lands (DSL) has approved a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 et seq. The City of Eugene and Lane County have determined which wetlands (located on the LWI within

the Eugene Urban Growth Area) are “significant wetlands” for purposes of Statewide Planning Goal 5 using the criteria adopted by DSL for that purpose (OAR 141-086-0350). The County is required to adopt an inventory of these significant wetlands for application to any properties within the Eugene urban growth area; and

**WHEREAS**, in addition to the inventories of riparian, upland wildlife habitat and wetland sites referred to above, the following inventories make up the entire current inventory of significant Goal 5 resources within the City of Eugene Urban Growth Boundary: the April 12, 1978 Sand and Gravel Working Paper, the April 12, 1978 Scenic Sites Working Paper, the April 12, 1978 Willamette River Greenway Working Paper, the April 12, 1978 Archeological Sites Working Paper, the December 1, 1976 list of historic land marks, and the West Eugene Wetlands Plan.

**WHEREAS**, on April 8, 1987, the Lane County Board of Commissioners enacted Ordinance No. 18-86 to adopt the City of Eugene land use regulations for application to urbanizable land within the Eugene Urban Growth Boundary in accordance with the urban transition agreement with the City of Eugene; and

**WHEREAS**, Article VII of that urban transition agreement provides for County adoption of changes to land use regulations made by the City for application to urbanizable land within the Eugene Urban Growth Boundary; and

**WHEREAS**, the provisions of the Eugene land use regulations adopted by Lane County Ordinance No. 18-86 and further amended by Lane County Ordinance Nos. 16-87, 5-88, 6-88, 7-88, 1-89, 2-89, 13-89, 2-90, 2-91, 12-91, 14-91, 7-92, 10-00, 2-02 and 3-02 were completely revised and replaced by the comprehensive revisions to the Eugene Lane Use Code regulations adopted by Lane County ordinance no. 5-00; and

**WHEREAS**, the City of Eugene has requested that Lane County adopt the updated Goal 5 inventories in the Water Resources Conservation Plan and revisions to the land use regulations implementing that plan for application to the urbanizable lands within the Eugene urban growth boundary; and

**WHEREAS**, in May 2005 and March 2006, the Lane County Planning Commission reviewed the proposed plan and land use regulation amendments, held a hearing on March 7, 2006, and made a recommendation of approval to the Board of County Commissioners; and

**WHEREAS**, on September 27, 2006 the Lane County Board of County Commissioner conducted a public hearing on the proposed plan and land use regulation revisions; and

**WHEREAS**, evidence exists within the record indicating that the proposal meets the requirements of applicable state and local law as described in the findings adopted in support of this Ordinance.

**NOW, THEREFORE**, the Board of County Commissioners of Lane County **ORDAINS** as follows:

2 – IN THE MATTER OF UPDATING THE GOAL 5 INVENTORY AND ADOPTING THE GOAL 5 WATER RESOURCES CONSERVATION PLAN; REPEALING ORDINANCE NO. PA 1198; AMENDING CHAPTER 10 OF LANE CODE TO AMEND PROVISIONS OF THE EUGENE LAND USE REGULATIONS AND ADD A WATER RESOURCES CONSERVATION OVERLAY ZONE FOR APPLICATION TO URBANIZABLE LANDS WITHIN THE EUGENE URBAN GROWTH AREA; APPLYING THAT ZONE TO SPECIFIC PROPERTIES; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES

**Section 1.** Ordinance No. PA 1198 is repealed, as of the effective date of this Ordinance. This repeal, however, does not affect the validity of any actions taken pursuant to the provisions of that Ordinance.

**Section 2.** The Goal 5 Water Resources Conservation Plan attached as Exhibit A hereto, is hereby adopted as a refinement of the Eugene-Springfield Area Metropolitan Area General Plan for those areas that, as of November 14, 2005, were located outside the Eugene city limits and within the urban growth boundary of the City of Eugene (“the Eugene Urban Growth Area”).

**Section 3.** As they pertain to the Eugene Urban Growth Area, the following Exhibits are adopted as findings in support of this Ordinance: (a) Conflicting Uses and ESEE Analysis attached as Exhibit B; and (b) the Eugene Local Wetland Inventory, attached as Exhibit C.

**Section 4.** Sections 9.0500, 9.1040, 9.2751, 9.6885, 9.7025, 9.7055, 9.7105 9.7205, 9.7230, 9.7305, 9.7810, 9.8025, 9.8030, 9.8055, 9.8215, 9.8220, 9.8320, 9.8325, 9.8415, 9.8460, 9.8465, 9.8470, 9.8515, 9.8520, 9.8855, and 9.8865 of the Eugene Land Use Code as adopted by Lane County Ordinance No. 5-00 are hereby amended and replaced and new Sections 9.4900 through 9.4980, and 9.8472 and 9.8474 are added thereto, all as reflected in Exhibit D. These provisions are adopted and incorporated herein by this reference for application by the City of Eugene on the urbanizable lands within the Eugene Urban Growth Boundary and shall not be codified into the Lane Code.

**Section 5.** Chapter 10 of Lane Code is hereby amended by removing and substituting the following section:

**REMOVE THIS SECTION**

10.600-25(1)  
located on page 10-814  
(a total of one page)

**INSERT THIS SECTION**

10.600-25(1)  
located on page 10-814  
(a total of one page)

This section is attached hereto as Exhibit E and incorporated herein by this reference. The purpose of this substitution is to include specific reference to this Board of County Commissioners action adopting updated versions of the City of Eugene land use regulations to be applied by the City of Eugene on urbanizable lands within the Eugene Urban Growth Boundary.

**Section 6.** The /WR Overlay Zone as described in the plan and land use regulations adopted above is hereby applied to the properties listed on the attached Exhibit F and shall be reflected as such on the Eugene Overlay Zone Map.

**Section 7.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and that holding shall not affect the validity of the remaining portions of this Ordinance.



**Section 8.** Although not part of this Ordinance, the Board of County Commissioners adopts the Legislative Findings set forth in the attached Exhibit G in support of this action.

**Section 9.** The Plant List attached as Exhibit H is adopted, and amendments may be effected by administrative order of the Eugene City Manager pursuant to Section 2.019 of the Eugene Code, 1971.

**Section 10.** The Eugene City Recorder, at the request of, or with the concurrence of the City Attorney and Lane County Counsel, is authorized to administratively correct any reference errors contained in the provisions hereby adopted consistent with LC 2.020.

**ENACTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Chair, Lane County Board of Commissioners

\_\_\_\_\_  
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM:  
Date: \_\_\_\_\_

\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

Note: Hardcopies of the Exhibits A – H (except for B) were provided to the BCC with the DRAFT Ordinance in the August 23, 2006 worksession packet.

A complete hardcopy Ordinance, with all Exhibits attached, will be available prior to the first reading for the Board and is currently available as the Public Record in Land Management Division.

A large, wall-size map of all the sites is now available in LMD and will be provided at the first reading and at the Public Hearing.

## MEETING NOTES

Lane County Planning Commission  
Work Session  
McNutt Room – Eugene City Hall

May 10, 2005  
4:30 p.m.

PRESENT: Juanita Kirkham, Marion Esty, Steve Dignam, James Carmichael, Ed Becker, Jozef Siekiel-Zdzienicki, Lisa Arkin, Members;

Kent Howe, Stephanie Schulz, Staff. Neil Bjorklund, Emily Jerome, City of Eugene.

Mr. Dignam opened the work session at 4:40.

Mr. Bjorklund provided a power point overview of the Eugene Water Conservation Plan. This Plan is the culmination of the Metro Periodic Review process for Goal 5; it is the final step in completing the Eugene Goal 5 requirements. He explained that only the water-based resource areas are included in the inventory; upland habitats in the South Hills are not included because of a policy decision made by the elected officials earlier in the Periodic Review process. There are two general types of water resources on the Metro Goal 5 Inventory, linear ones such as streams, swales, and ditches, and wetlands as included on the Eugene Local Wetland Inventory. The Local Wetlands Inventory is being adopted under this action because, although the Oregon Department of State Lands has already adopted the Local Wetland Inventory, it also must be adopted by the local government.

Benefits from having functional Natural Resources sites considered for enhancement and/or protection in the Metro area include improvements to human health, economic and employment benefits.

Mr. Dignam asked about the process, noting that there have been Goal 5 inventories adopted for the Metro area already, how does this step fit in?

Mr. Bjorklund responded that the decisions needed now are: (1) whether or not to protect each site, and (2) what is the appropriate level of protection for each site or group of sites. The protection measure category is derived from the Environmental, Social, Economic, and Energy (ESEE) analysis conducted by city staff. There are two categories of protection assigned to sites in the inventory: to 'fully allow conflicting uses', and to 'limit conflicting uses'.

In response to a question about conservation of sites, Mr. Bjorklund explained that conservation is covered under the category 'limit conflicting uses', and that it is important to have flexibility built into the category because in an urban situation, there are multiple potential uses on a site, and the idea is to work with property owners to balance development with conservation of natural resources.

Mr. Siekiel-Z said that he had requested Ordinance PA 1198 from staff, as it is to be repealed with this Ordinance, and was not included in the packet. Ms. Jerome explained that all of Eugene's Goal 5 Natural Resource requirements and overlays are pulled together with this Ordinance and put under this one action, so all the regulations and requirements for Goal 5 are shown under a single ordinance, not piecemeal over time, which is how this Periodic Review task evolved and was adopted.

Ms. Arkin asked for clarification on Ordinance wording regarding the City Manager being the authority to approve changes to the plant list in Ordinance Exhibit H. Ms. Jerome pointed out that while the City Manager has the official approval authority, a person with scientific background on staff would do the actual work and report.

Mr. Dignam asked how and when the criteria was established and adopted. Mr. Bjorklund stated the criteria had been adopted with previous Ordinance PA 1198.

Mr. Becker noted that there were no protections stated for sensitive species, especially plants, and that only Threatened & Endangered species were listed for protection. Mr. Bjorklund said that was correct, and that many of the sensitive species were often located in the riparian vegetative zones and wetlands that are recommended for conservation, so that their habitat was considered indirectly. The policy decision does address T&E specifically, and sensitive species are indirectly addressed through the conservation of key habitat.

The protection recommendations are derived through the Environmental, Social, Economic, and Energy (ESEE) analysis being applied to the sites as a whole, not just the delineated area.

In answer to a question from Mr. Siekiel-Z, Mr. Björklund stated that mapping of wetlands is based on the three parameters that indicate wetlands: plants, soils, and water. All three taken together determine if a site is considered a wetland. In the Eugene-Springfield Metro area, it is common and normal for wetlands to be dry in the summer. These areas are still considered wetland, even though they dry up in summer.

Ms. Arkin asked if the Planning Commissioners could ask about specific sites in the Inventory, or are they limited to general questions and comments? Mr. Bjorklund said they can comment and deliberate on any of the sites, and/or in a general way.

Mr. Dignam adjourned the work session at 5:50 pm.

(Notes taken by Stephanie Schulz)

# MINUTES

Lane County Planning Commission  
Harris Hall - Lane County Courthouse

March 7, 2006  
5 p.m.

**PRESENT:** Lisa Arkin, Ed Becker, Steve Dignam, John Sullivan, Juanita Kirkham (arrived at 6:05), Nancy Nichols, Jozeph Zdzienicki, Lane County Planning Commission members;

Kent Howe, Stephanie Schulz, Planning Staff;

**ABSENT:** James Carmichael, Todd Johnston

## **I. Approval of December 20, 2005 Minutes**

Commission Vice Chair Ed Becker convened the meeting at 5:35 pm.

Commission member John Sullivan, seconded by Commission member Nancy Nichols, moved to approve the minutes of December 20, 2005. The motion passed 5:0:1 with Commission member Steve Dignam abstaining.

There was general discussion of upcoming agenda item topics in future meetings. Commission member Lisa Arkin requested having an on site commission visit to Delta Sand and Gravel.

Mr. Becker said a visit had also been on his mind. He questioned what the opportunities/abilities/policy of the commission was when visiting a site.

Planning Director Kent Howe said the matter was a timing issue as well as a legal issue. He stressed that time had to be allowed for everyone on the commission to see the same things on the site and added that the opportunity would be to see the property and not have discussion since the site tour would not be a noticed public meeting. He said there would also need to be an opportunity for the opposition to speak to whatever was said during the site tour. He said the logistics of setting up a visit would be a 'nightmare.' He stressed that the applicant had the responsibility to provide enough information in the application to leave the commission no doubts about recommending approval. He said if the commission wanted to visit a high profile land use application location because of its complexity or high public interest arrangements could be made to do so but added that the commission would have to travel in the same vehicle. He added that the Eugene Planning commission would also have to attend the visit and remarked that this would make the logistics of a site visit even more complicated. He said every part of the visit would be legally challengeable and the courts could remand the matter to the planning commission and start the process all over again.

Commission member Steve Dignam acknowledged that there could be a benefit to visiting the Delta site but supported Mr. Howe's comments/concerns about a site visit. He added his concern that he was spending a lot of time analyzing data and remarked that it would be more challenging to find time to visit

the site with the rest of the commission. He added his concern that every applicant viewed their case as a high profile case and would not generally receive a site visit from the commission.

Ms. Arkin said every case was as important as the next but stressed that the Delta application had an immense impact on the community. She expressed her confidence that a site visit was warranted if staff could set up the visit so as to address all of the logistical complications. She suggested that commissioners could write their questions down and submit them to staff at a later time.

Commission member Jozef Zdzienicki noted that some of the opposition's experts had not walked on the site and suggested that opposing experts should go on a site visit.

Mr. Becker said his concern was that paid experts of the applicant were testifying about the site without any access granted to the opposition or objective experts from County staff. He said he did not feel the need to visit the site but reiterated Mr. Zdzienicki's suggestion of allowing opposing experts on the site. He added that the applicants paid consultants had no peer review from anyone else on the material that had been submitted into the record.

**II. WORK SESSION: In the Matter of Updating the Goal 5 Inventory within the Eugene Urban Growth area; adopting the Goal 5 water resources conservation plan within the Eugene Urban growth area; repealing ordinance No. PA 1198; amending Chapter 10 of Lane Code as adopted by Ordinance No. 5-00, and adding new provisions to that code to establish a water resources conservation overlay zone; applying that zone to specific properties; adopting a severability clause; and providing an effective Date**

Lane County Planning Staff Stephanie Schulz said there had been new information submitted into the record since the last joint meeting with the Eugene Planning Commission (May 2005) on Goal 5 updates. She said staff felt that the new information needed to be presented to the Lane County Planning Commission and another public hearing needed to be held.

City of Eugene Natural Resources Planner Neil Björklund made himself available to answer questions from the commission.

Mr. Björklund said there had been a joint public hearing with both planning commissions as well as joint deliberation with the Eugene Planning Commission since May. He said the Eugene Planning Commission had taken eight meetings to make a recommendation to the City Council in early July. He said there had been a hearing before the City Council and the Council had taken unanimous action on November 18. He said two ordinances had been passed:

1. Applied the protections and adopted the amendments for inside Eugene City limits
2. Addressed the urban transition area. When protected sites were annexed to the City they would automatically be rezoned to have the adopted protections implemented.

Mr. Björklund said the action to be taken by the County was to address the properties within the area between the City limits and the urban growth boundary until such time as the properties were annexed. He said the majority of the land in question was in Santa Clara, the Royal Avenue area, Willow Creek and a

few scattered sites in the South Hills area. He displayed a map of the sites to the commission and outlined the areas that were recommended for protection.

In response to a question from Mr. Sullivan regarding whether the sites had to be contiguous, Mr. Bjorklund said they did not. He said only the recommended sites that were shown on the map were subject to County action. He said the set of sites was the same as the sites that had been reviewed by the planning Commission in May, 2005. He said the changes that had occurred were the recommendations of the levels of protection and regulatory measures for those sites. He said every site that had been recommended for protection in the urban transition area was still in the application but noted that for some sites the proposed level of protection had changed. As an example he cited a section of the Black Creek system which had originally been recommended for a 25 foot setback. He said the City Council had directed that the stream corridor be protected but that there be no set back area. He said the habitat values along the stream were very low but the water connection to other protected areas was still important. He said the regulations (proposed code amendments) were the biggest source of changes and that was why the Eugene Planning Commission had spent eight meetings to deliberate the proposal. He reiterated that the City Council had taken action in November and noted that, as of January 1, the ordinance had been implemented within the City Limits of Eugene.

In response to a question from Mr. Dignam regarding Exhibit F and how many parcels were listed, Mr. Björklund said there were 500 listed in Exhibit F and approximately 2000 inside city limits.

In response to a question from Ms. Arkin regarding the original timeline from the State, Mr. Bjorklund said that the original plan was a Eugene-Springfield Metropolitan Area General Plan update process which included an update of the Goal 5 process. He said that work had started in 1988. He said the State had adopted a new goal 5 rule that required that wetlands and riparian areas be examined in the Metropolitan Area General Plan. He said the current periodic review had been worked on since 1996.

In response to a question from Ms. Arkin regarding whether there were some sites that were in both the transitional area and within city limits, Mr. Björklund said there were areas where one side of a stream was proposed to be protected because the other side was outside of the urban growth boundary. He said he had not done analysis to look for that sort of occurrence.

In response to a question from Mr. Becker regarding when protection measures for wetlands would be implemented, Ms. Schulz said wetlands would be identified for protection before development occurred.

Mr. Becker commented that developers generally would not allow experts on their land to identify protected areas.

Mr. Howe said aerial would be used to identify wetland areas from a high level. He added that the applicant would have to work with the Division of State Lands to determine the protection measures needed.

Mr. Becker raised concern over relying on consultants hired by developers to provide wetland delineations on a property.

Mr. Bjorklund said wetlands were a mapped resource and the proposal was to apply regulations that would be established before development. He said the commission discussion would only apply to lands within

the urban growth boundary but outside of city limits. He said there would be a very clear set of regulations in terms of what was and was not allowed.

In response to a question from Ms. Arking regarding whether city staff had actually visited every site, Mr. Bjorklund said staff had been to each wetland site but had not been to every affected tax lot because of lack of permission to walk the land. He said every site had been viewed in multiple places. He said the sites were connective corridors between protected areas.

In response to a question from Ms. Nichols regarding why the Amazon canal was sometimes listed as a river channel and sometimes a potentially jurisdictional creek or drainage, Mr. Bjorklund said potentially jurisdictional drainage was a term used by the Division of State Lands in the wetland arena where the boundaries of the wetland area was not required to be mapped but it was known that there were wetlands nearby. He said the local wetland inventory had mapped areas along the canal that had wetlands present but noted that every other channel that carried water was, by default, a potentially jurisdictional drainage.

In response to a question from Mr. Dignam regarding the criteria for determining the significance of riparian corridors and wildlife habitat resource sites within the Eugene urban growth boundary and whether staff had used those criteria to come up with the proposal for the lands to be protected, Mr. Bjorklund said it was not. He said listed criteria were what had already been adopted by the City and the County and had been approved by LCDC to determine what went on the entire goal 5 inventory. He said the criteria were included in the plan so people could understand what was *considered* for protection.

In response to a question from Mr. Dignam regarding how the list was generated, Mr. Bjorklund said it was the result of a 14 year public process with thousands of pages of public input. He specified that the commission was not voting on the list of criteria that evening since the list had already been adopted by the City and the County.

In response to a question from Mr. Dignam regarding how many of the criteria were based on state laws or regulations and how many were created locally, Mr. Bjorklund said wetlands were treated differently. He said every wetland that's listed was because there was a series of state mandated criteria. He said the criteria that were applied to upland wildlife habitat streams and riparian corridors were all chosen locally.

In response to a question from Mr. Dignam regarding what should be the basis of analysis and decision for the public hearing that evening, Mr. Bjorklund said the action before the commission was minor amendments to the boundaries of the Goal 5 sites that were already adopted and acknowledged, a recommendation for which of the sites on the inventory to protect and at what level, and to adopt code amendments to provide protections for those that were designated for protection and to approve a legislative zone change to approve those sites. He said each site was considered and reviewed from a variety of perspectives and, by law, the decision had to be based on analysis of environmental, economic, social, and energy consequences. He said in most cases the fundamental balance was between economic and environmental values. He said the sites that were recommended for protection are the ones where the environmental values of the protected areas were judged to be more important to the community than any potential economic value. He stressed that the regulations before the commission were not attached to an entire tax lot, it was only the portion of the tax lot adjacent to the protected resource that could have restrictions placed upon it.



In response to a question from Mr. Zdzienicki regarding whether the jurisdictional matters had all been settled, Mr. Bjorklund said there was an administrative agreement between the City and the County that the City would administer code provisions which the County had adopted for the urban transition area.

In response to a question from Mr. Zdzienicki regarding how Measure 37 would affect the ordinances, Mr. Bjorklund said the measure was a state law and any property owner had the right to apply for relief under that law.

In response to a question from Mr. Dignam regarding whether any of the properties on the list had existing Goal 5 protections or restriction, Mr. Bjorklund confirmed that none had existing protections or restrictions.

Ms. Arkin said protections under Goal 5 resources called for minimal protections to wetlands or riparian areas and were not for the whole property. She commented that the recommendations seemed sensible enough. She said exceptions allowed for site review plans, conditional use permits and subdivisions. She stressed that 'restrictions' were only for the actual resource areas and not the whole tax lot. She raised concern over getting 'hung up' on the proposed restrictions.

Mr. Sullivan clarified that the all the proposed action for the commission that evening was bundled under one motion.

Mr. Bjorklund confirmed that the commission needed to include all four pieces of the recommended action. He noted that the commission could vote to amend one of the pieces but said if the commission decided that there was a particular site that needed to have the recommended protections changed then several of the pieces of the recommended action would need to be amended.

In response to a question from Mr. Sullivan regarding exhibit G on page 6 of the staff report, (legislative findings), and the impact on inventory of lots and whether any groups had raised objections to residential impacts, Mr. Bjorklund said there were comments submitted by the Home Builders Association and the Realtor's Association. He said they had not taken issue with the analysis but said a new inventory of buildable residential lands was needed within the urban growth boundary. He noted that those groups had challenged the buildable lands analysis in virtually every Metro Plan amendment that had been done for some time.

Mr. Sullivan said his issue was to understand whether the commission should only consider the transitional area outside the city limits.

Ms. Schulz said it was an issue for consistency purposes. She said the piece that the commission did not have responsibility for had already been done and adopted. She said the commission was responsible for the 'edges' and was not responsible for the buildable lands inventory outside of the area between the city limits and the urban growth boundary of the City of Eugene.

The work session adjourned at 6:55 pm.  
(Recorded by Joe Sams)

# MINUTES

Lane County Planning Commission  
Harris Hall - Lane County Courthouse

March 7, 2006  
7 p.m.

**PRESENT:** Lisa Arkin, Ed Becker, Steve Dignam, Juanita Kirkham, Nancy Nichols, John Sullivan, Jozeph Zdzienicki, Lane County Planning Commission members;

Kent Howe, Stephanie Schulz, Planning Staff;

**ABSENT:** James Carmichael, Todd Johnston

- I. Public Hearing: In the Matter of Updating the Goal 5 Inventory within the Eugene Urban Growth area; adopting the Goal 5 water resources conservation plan within the Eugene Urban growth area; repealing ordinance No. PA 1198; amending Chapter 10 of Lane Code as adopted by Ordinance No. 5-00, and adding new provisions to that code to establish a water resources conservation overlay zone; applying that zone to specific properties; adopting a severability clause; and providing an effective Date**

Commission Vice Chair Ed Becker convened the Regular Session of the Lane County Planning Commission at 7 pm.

Mr. Becker outlined the public hearing process. He said the recommendation of the commission would be submitted to the Board of Commissioners who would make a final decision based on established findings of fact showing compliance with the applicable comprehensive plan policies and Lane Code Criteria that were included in the staff report. He said evidence and testimony must be directed toward the approval criteria.

Lane County Planning Staff Stephanie Schulz provided the staff report. She said the recommended action would be for the completion of Periodic Review Work Task Number 7. She said Oregon statewide planning goals provided the framework for land use planning in the state. She said Planning Goal 5 required all cities and Counties in the state to conserve open space and protect natural and scenic resources. She said the City of Eugene was required by the Oregon Department of Land Conservation and Development through the periodic review work program to address Goal 5 requirements for wetlands, riparian corridors and wildlife habitat sites. She said Lane County was required to co-adopt the Eugene plan for application in the urban transition area in order for the requirements to apply between the Eugene city limits and the Urban Growth Boundary, excluding sites that were previously considered for protection as part of the West Eugene Wetlands area. She said there were stream segments in the west Eugene wetlands area that were not previously considered for protection and were therefore included in the Goal 5 plan amendments.

Ms. Schulz said Section 2 of the staff report included criteria for establishing significance. She said Sections 3-4 contained the maps of the sites and the extensive economic, social, environmental, and energy analysis (known as the ESEE analysis) which was used to establish protection measures. She said the

protections were to be applied through the adoption and implementation of land use code provisions in the form of the Water Resources Conservation overlay zone. She said the plan did not contain any provisions directly applicable to development but rather served as background information for use in applying the code provisions pertaining to the Water Resources overlay zone. She said Lane County would amend Chapter 10 of its code to adopt the City of Eugene's code for the urban transition area.

Mr. Becker called for declarations of *ex parte* contact or conflict of interest. None were declared.

Mr. Becker reminded the audience that written material submitted prior to or during the public hearing would be considered part of the record and failure to raise an issue could result in the inability for an appeal to the Land Use Board of Appeals.

Mr. Becker opened the public hearing.

**Debby Jefferies**, 3800 North Delta Highway, said she did not have property that was within the transition area being considered but raised concern over the East 76<sup>th</sup> site (Group 14). She said she had been part of that site at one time and took the City back to LCDC. She said the north end of the site held a hole in the ground which was considered a pond even though it did not hold water. She said the City felt that the area was a riparian corridor and was a natural abandonment of the McKenzie River. She noted that the original owner of the property who had dug the pond had testified at the time. She said the City was proposing that the area was riparian habitat and connected to the river and were proposing setbacks. She stressed that the pond did not connect to anything and there should not be setbacks imposed. She added that the area had houses surrounding it. She said LCDC had ruled that the pond was a hole in the ground and had been dug for irrigation.

**Karl Stoner**, 637 Ruby, said he was a residential structure designer. He said if important wetlands existed in the areas proposed then they should have been discovered in the 1970s. He said the proposed protections and restrictions were effectively taking property from people which amounted to government theft.

**Carol Titus**, 29936 Kelso, said her property had a waterway that traversed her property. She said it was a drainage ditch and the proposed setback would cause her to lose 9600 square feet of her property. She said the property would not be taken off the tax records and she still had to maintain the land. She reiterated that the city identified waterway was a ditch that did not go anywhere and did not have water for seven months out of the year.

**Niki Scully**, 3989 Sundial Road, said she was very much in favor of protecting wetlands. She said she had tried very hard to identify waterways on the adjacent land when it was being developed. She said, as a result of that development, the pond on her property only stayed full because she irrigated her property in the summer. She said she was not sure how riparian setbacks would affect her ability to develop her land but stressed that she wanted to protect what was left of the wetlands. She stressed the importance of keeping wetland corridors intact.

**Ron Bounds**, 5670 Royal Avenue, submitted written material into the record. He said his family had lived built on his property since 1900. He said the maps used to make the protection zone determination were not adequate to describe the area. He said there were no houses, property lines, or streets listed on the maps and remarked that the area was a neighborhood and not bare fields. He questioned whether any of

the commissioners present could look at the maps provided by the city and really tell what was going on in the areas proposed for Goal 5 resource protections. He stressed that all of the original wetlands and plant life had been destroyed by the City, the Bureau of Land Management and the Army Corps of Engineers long ago. He reiterated that most of the water flow on his property was a result of the City changing flows during the construction of a bike path. He said the City had been required to install a drainage ditch at the base of the levy the City had constructed. He stressed that the ditch had been built too small and had caved in. He remarked that the City now wanted to widen the ditch to a 100' width, and make cropland into wetland sites. He said his land had been agricultural for over 100 years and opined that the City was trying to steal land from property owners. He said he would look at his options under Ballot Measure 37. He said the pictures he had submitted into the record showed restricted water from the City of Eugene flowing on to his and adjacent property owner's land. He said wetlands were not in repeatedly farmed land and accused the City of putting wetlands where it wanted and not putting wetlands where it wanted bridges or roads.

**Nick Crosby**, 29984 Kelso, said a drainage ditch went through his property. He said 12,000 square feet of his property would be lost if the proposed amendments were eventually approved. He said the ditch only had water for half the year. He said he did not agree with the City's maps and did not think it was fair to impose the suggested restrictions and protections. He said his property was zoned for Industrial use and remarked that there were only 1200 acres of industrial land in the entire County.

**Paul Jeffery** 1685 Rosy Turn, said he had submitted written testimony. He urged the commission to pass the proposal and enforce it vigorously. He noted that there were adjacent land owners pushing tires into areas proposed for protections. He said he would lose land if the proposed regulations were imposed but said he did not think of it as a loss but rather as a benefit since it would maintain the quality of life of people living along waterways and protect natural resources.

Mr. Becker closed the public hearing and called for deliberations among the commission.

In response to a question from Commission member Jozef Zdzienicki regarding whether there were provisions in the proposed rules for people to appeal to the City to prove they had a drainage ditch rather than a natural waterway, City of Eugene Natural Resources Planner Neil Björklund said there were very specific rules defining a wetland and if an area of land did not meet that definition then it would not be designated as a protected area. He said if the area was both a stream corridor and a wetland, then just showing that the area was not a wetland would not get rid of protective measures. He noted that 90 percent of the stream corridors in the proposed protected areas were dry for a number of months out of the year. He said there were stream segments included in the inventory that were there specifically to carry water between two other wetlands. He said to allow those stream segments to be filled would create havoc in the drainage system in the area. He said the proposed regulations were proposed for a reason.

Mr. Sullivan, seconded by Ms. Kirkham, moved to reopen the public hearing so he could ask questions of Mr. Bounds. The motion passed unanimously.

Mr. Becker re-opened the public hearing.

In response to a question from Mr. Sullivan regarding the concerns he had raised and how the ditch on his property was classified, Mr. Bounds said the area had never been considered as a wetland and had been farmed by his family for decades. He said his family had dug the ditch and had deeded it to the City. He

said the City had not maintained the ditch and he was doing that work. He said the ditch was adequate to flow water but noted that the pipe under the street was too small. He added that the City wanted to put a wetland in the center of his field. He said the wetland was being proposed because water had invaded his property after the City had built a bike path.

In response to a question from Mr. Sullivan regarding whether the area proposed as a wetland had usually been farmed, Mr. Bounds said the land had been farmed every 2-5 years with fescue and rye grass. He stressed that he needed the revenue from those crops.

Mr. Becker closed the public hearing and continued deliberations.

In response to a question from Ms. Arkin regarding whether the bike path and wetlands surrounding it were part of the mitigation bank process, Mr. Bjorklund said the bike path and everything to the south and west were not part of the study. He said the portions of land to the north and east were included in the study. He stressed that the only areas that were recommended for protection were areas that were already protected in the adopted Royal Avenue Nodal Development Plan for the area. The Goal 5 study did nothing new but repeated what the Nodal Plan already adopted and acknowledged.

In response to a question from Mr. Zdzienicki regarding whether the nodal area was strictly within city limits, Mr. Bjorklund confirmed that the Nodal Area was not inside city limits. He said that in order for the land to develop the areas would have to be annexed into the City of Eugene.

In response to a question from Ms. Nichols regarding whether the proposed restrictions would prohibit Mr. Bounds from farming his land, Mr. Bjorklund said he did not believe the regulations would restrict him from continuing the farming he had been doing on the property. He said the proposed protections would prohibit removing native vegetation that still existed on the site. He said the protected area was essentially the channels that were described by Mr. Bounds. He said the protection would prevent future building in an area that was designated for open space. He said he would consult with the City Attorney to address the question of farming in a protected area.

In response to a question from Mr. Sullivan regarding the industrial property owned by Mr. Crosby and whether the overlay would make a setback, Mr. Bjorklund said he could not speak to the specific site but said the setback in that area was a large regional drainage facility that provided drainage for a large area of Eugene. He remarked that building to the top of the bank would create structural issues. He said he would have to study the specific maps of the property to answer in more detail.

Mr. Dignam said he would need more specific information on the individual properties before making a decision. He recommended tabling the matter until staff could provide a detailed response to the questions raised by the commissioners.

Ms. Kirkham agreed with Mr. Dignam and asked if the properties were designated "Safe Harbor."

Ms. Kirkham said ditches dug by property owners and areas flooded because of human activity should not be considered wetlands. She called for more information on the properties involved.

Ms. Nichols said sometimes channels had been moved by people but were still waterways.

Mr. Zdzenicki reiterated the request for more information on individual properties.

Mr. Dignam, seconded by Ms. Kirkham, moved to close the meeting and continue deliberations on March 21 with the objective of getting specific site information and further information on whether land listed in the inventory could be farmed.

Ms. Arkin requested to see more information about what the waterways were connected to.

Mr. Sullivan said the commission needed a better understanding of the areas with questionable wetlands. He expressed the hope of more education than just site specific information.

Mr. Bjorklund also suggested that the commission study what the regulations allowed and disallowed and the adjustment processes.

The motion passed unanimously.

The meeting adjourned at 8 pm.

# MINUTES

Lane County Planning Commission  
Harris Hall - Lane County Courthouse

March 21, 2006  
5:30 p.m.

**PRESENT:** Lisa Arkin, Ed Becker, Steve Dignam, John Sullivan Nancy Nichols, Jozeph Zdzenicki,  
Lane County Planning Commission members; Kent Howe, Stephanie Schulz Staff;

**ABSENT:** James Carmichael, Todd Johnston, Juanita Kirkham

**I. WORK SESSION: Deliberations – Ordinance 06-5195 In the Matter of Updating the Goal 5 Inventory Within the Eugene Urban Growth Area; Repealing Ordinance No. PA 1198; Amending Chapter 10 of Lane Code to Amend Provisions of the Eugene Land Use Code; As Adopted by Ordinance 5-00, and Adding New Provisions to that code to establish a Water Resources Conservation Overlay Zone; Applying that Zone to Specific Properties; Adopting a Severability Clause; and Providing an Effective Date.**

Commission Vice-Chair Ed Becker convened the work session at 5:40 pm. He called for public comment on items not related to the evening's agenda.

**Charles Biggs**, Friends of Eugene, 1192 Willamette, said Friends of Eugene felt that the laws, regulations, and rules that governed the urban transition zone should be consistent with those used within city limits since the area would eventually become part of the City.

In response to a question from Commission member John Sullivan regarding whether he could mention an example, Mr. Biggs cited a situation about rules for design standards and said design standards in urban transition areas should be the same as those within city limits.

In response to a question from Commission member Jozef Zdzenicki regarding whether setbacks in both codes were the same, Mr. Biggs said they were the same.

Mr. Becker opened deliberations for PA 06-5195.

Lane County Planning Staff Stephanie Schulz provided the staff report. She said the public comment from the last meeting had been provided in writing to the Commissioners in the staff report. She said there were some recommendations for changes in the proposal regarding specific properties;

- Mr. Yahner, McClure Lane, has had a closer look on the larger maps of property with city staff, and there is agreement that it should not have been part of the mapped territory; and
- Mr. Bounds, Royal Avenue, had concerns on his and his father's property, and staff has responded with proposing adding language that would allow farming on that property until such time as it was annexed to the City of Eugene for development as the Royal Node.

Regarding the language about seeding, planting, or harvesting of agriculture crops and associated agriculture practices, Ms. Schulz said the legal counsel for the City of Eugene had reviewed the proposed language and requested that the language be changed from 'effective date' to 'effective date of the ordinance.'

In response to a question from Mr. Sullivan regarding the reason Eugene was not aware of the Yahner property, City of Eugene Natural Resources Planner Neil Björklund said the City had been made aware of the error. He said it was a very small error that did not show up on the map at the scale it is printed in the NR document, so when the property was looked at in detail, it was determined to be appropriate to recommend the change.

In response to a question from Mr. Becker regarding whether the property owners had been notified of the changes to the proposed regulations, Ms. Schulz said the people had not been contacted. Mr. Björklund said the information on the proposed regulations was available on the Goal 5 website for people to access.

Mr. Zdzienicki expressed his surprise that people from the public hearing two weeks previously had not shown up for the commission's deliberations.

In response to a question from Mr. Becker regarding why none of the property owners who had testified during the public hearing had been notified of staff's proposed changes to the amendments, Ms. Schulz said she did not call people who had testified in every public hearing. She said she would happily respond to people who called with questions but the public hearings process did not include calling people who had testified in previous public hearings.

In response to a question from Mr. Sullivan regarding whether the City staff would have to go back to the City Council to have the proposed regulations approved, Mr. Björklund said it would be a staff decision since the regulations would only apply in the transition area where the county had the authority to make a decision.

In response to a question from Mr. Sullivan regarding whether Mr. Bounds was the only individual who would be impacted by the County decision and how other people would be impacted, Ms. Schulz said the regulation said that farming could occur until the time of annexation.

In response to a question from Mr. Zdzienicki regarding whether the proposed language would go beyond the Royal Node, Ms. Schulz said it would not. Mr. Björklund added that the Royal Node would only apply once property had annexed to the City of Eugene. He said the provision before the commission only applied before that annexation took place.

In response to a question from Mr. Becker regarding the wording about how seeding, planting, and harvesting applied, Mr. Björklund said the practices that would be allowed were seeding, planting and harvesting. He said there was also a clarifying statement regarding the uses in the area that would not be allowed.

Commission members reviewed a map showing the waterways in the area of the discussion.

Mr. Becker called for comments/questions from the commission.



Mr. Zdzienicki, seconded by Commission member Lisa Arkin, moved to approve PA 06-5195 with the proposed changes as recommended by staff.

Ms. Arkin offered a friendly amendment, which was accepted, to include the site specific recommendations/amendments as presented by staff in the memorandum dated March 21, 2006.

Mr. Dignam said he would not support the motion. He said the ordinance was a clear example of regulatory taking. He said he could support the motion if he felt that the commission was living up to and abiding by the terms of Goal 5 but said the motion went well beyond that. He added that OAR 660-116 stated that; “. . .*this analysis also includes whether a particular natural area is ecologically and scientifically significant*” He said he believed the 400 properties listed in Exhibit F were not being well served by the ordinance because the criteria used to establish the list were flawed. He said he felt that he had to consider those criteria and question why those 400 parcels were chosen. He said he could support the motion if the criteria were significantly reworked such as amending tier one criteria regarding undeveloped areas containing natural vegetation that were larger than one acre. He said if an acre larger than one area had a fern then it would have to be listed. He acknowledged that staff had indicated that it would not look at the situation that way but stressed that the criterion wording was stated that extremely. As a further example he cited Criterion 7 regarding documented habitat of animals listed as threatened or endangered. He said he would support the criterion if it stopped with that wording but the added wording; “. . .*or considered candidates to be threatened or endangered.*” He said that list could be significantly longer. He said there were other criteria included that he believed were egregious criteria that did not adequately or accurately capture the intent of Goal Five which was to conserve open space and protect natural and scientific resources. He said it was not part of his decision to vote against the motion but expressed a hope that the Board of County Commissioners would also consider Ballot Measure 37 issues when deliberating the matter.

Mr. Sullivan said he had reread the public testimony and extended those representative issues to the other 400 properties listed. He cited the testimony of Debby Jefferies, Carl Stoner, Carol Titus, Ron Bounds, and Nick Crosby. He agreed with Mr. Dignam that it was too sweeping to include drainage ditches and culverts in wetland inventories.

Mr. Zdzienicki responded that the staff memo the commission had received had reduced the amount of land taken from the Titus land. He added that the connectivity issue was relevant. He noted that sometimes the connection was a drainage ditch or a culvert but stressed that the connections were important to maintaining healthy wetlands.

Regarding the hope stated by Mr. Dignam for the Board to examine Measure 37 issues, Mr. Zdzienicki said every decision made by the commission would need to consider Measure 37 and the planning commission needed to make advisory decisions to the Board of Commissioners without holding up the process with Measure 37 concerns. He noted that there were 31 lawsuits against Measure 37 in courts at the current time.

Mr. Dignam reiterated that Measure 37 issues had not influenced his decision to vote against the motion. Ms. Arkin said the inventory was created through scientific methods having to do with valuating water resources, hydrology, connectivity, ecology and habitat. She stressed that there was a solid scientific basis behind the development of the list of properties. She said she would support the motion. She said many of

the properties had been eliminated from the list. She said the commission owed it to the livability of Lane County to approve the list and protect the resources on the land.

Commission member Nancy Nichols said riparian protections would be much less than on F1 land. She said the protections did not seem unreasonable. She added that connectivity between wetlands was important. She said the proposal seemed fair and reasonable.

Mr. Zdzenicki noted that the setbacks had diminished from what had been initially proposed. He added that state and federal laws said the land in the setbacks could not even be sprayed with chemicals.

The motion passed 5:1 with Mr. Dignam voting in opposition.

## **II. Co-Adoption of Coburg Comprehensive Plan Text and Map Amendments and Updates to the City's Land Division and Development Ordinances Under the City of Coburg's Periodic Work Task No's. 3,4, and 7**

Ms. Schulz introduced Milo Mecham acting for the City of Coburg. She said the deliberations were for a co-adoption of the Coburg Comprehensive Plan. She said Mr. Mecham had provided a legislatively tracked document of the plan for the use of the commission during deliberations.

Mr. Mecham said the Comprehensive Plan was the result of Coburg going through its periodic review process. He said the previous plan had been adopted in 1982 and had not been changed since that time. He said the new plan was an update that would take the city into the 21<sup>st</sup> century. He said Coburg had worked with a citizen's advisory committee as well as DLCDC. He said one of the main issues had dealt with the issue of installation of sewers in the city as well as design standards for development. He said Coburg was happy with the changes and was proud of the process but said the difficulty arose around errors in the process due to communication problems with the consultant in Portland. He said the end result was that the first Comprehensive Plan document sent to the County contained some errors. He said some of the errors were typographical and some were substantive errors. He said one of the advantages of the Lane County staff review was that those errors were identified and addressed. He said he had made the corrections that were identified in the document but noted that he had also included the original language that had been changed.

Citing some of the errors, Mr. Mecham said one of the things that the consultant had missed was that there was a cooperative agreement between the County and the City of Coburg regarding area of influence and the role the City of Coburg would play in issues that arose outside its urban growth boundary. He said the consultant had assumed that the City of Coburg would have jurisdiction outside of the urban growth boundary and would assume control of those areas. He said that was not true and noted that there was an existing agreement between the County and the City around the area of influence. He said Coburg could comment to the Board of County Commissioners on areas outside of its jurisdiction and the comments would be included in the record but the requests were not binding. He said it was the desire of Coburg to set up a buffer and to preserve the farm land surrounding the City.

In response to a question from Ms. Nichols regarding how Coburg functioned as a city without a sewer system, and Mr. Mecham said Coburg had large lots with enough room to allow septic systems. He said there was a ground water problem in Coburg but noted that the city water system was not contaminated. He noted that there were wells in the area around Coburg that were polluted by the density of existing

MEMO  
August 28, 2006

PA 06-5195 –Eugene Goal 5 Natural Resources Water Conservation Overlay Zone

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Site Specific Issues & Responses

Planning Commissioners requested staff responses to the public testimony provided at the Eugene Goal 5 Hearing held on March 7, 2006. Staff has researched each of the properties, and responded to each person's testimony below. Recommendations for changes or additions to the material provided to the planning commission are so noted and will be incorporated into the Board of Commissioners recommendation upon concurrence from the PC.

**Tom Yahner, 130 McClure Lane** – Reviewed the map upon receipt of the notice of public hearing, and disputes the inclusion of his property in the Inventory.

Recommendation: Staff review concludes that this property (1704244200200) is appropriately withdrawn from the Goal 5 Inventory and will revise the Inventory Map of sites for this property.

**Debbie Jeffries, 3800 N. Delta**—Testified regarding Goal 5 sites E76 B-2 and E76 B-3.

**Response:** Ms. Jeffries provided testimony regarding Goal 5 sites E76 B-2 and E76 B-3, both of which are within city limits and therefore not within the purview of the county's review. Protection measures have already been applied to E76 B-2 and E76 B-3. The only portion of site E76 that is outside city limits (E76 B-1), and therefore within the purview of county review, is not recommended for protection.

Recommendation: No change.

**Carl Stoner, 637 Ruby**—Testified regarding property owned by his wife that is affected by the proposed regulations, and opposed the proposed protection on this parcel.

**Response:** According to current assessor records, Alice Stoner is a co-owner with Gary Crosby of lot 1704102201901, on the south side of Kelso Street, which contains a 360 foot segment of the A-1 channel.

The A-1 Channel is a regional stormwater facility, which is classified as a Goal 5 Riparian Corridor (Site E60), and is also a significant Goal 5 Wetland (Site RSC-2). The A-1 Channel is a 9-mile long channelized stream, of which 3.6 miles are within the urban growth boundary. The A-1 Channel connects the Flat Creek system near Beltline and Highway 99 to the Amazon Creek system, more than 5 miles north of the UGB. It is the largest waterway within the River Road/Santa Clara drainage basin. The original natural drainage that the A-1 channel follows was channelized from the Amazon Creek system by the Soil Conservation Service (now called the Natural Resources Conservation Service) several decades ago to enhance its flow capacity.

Staff contacted the Junction City Water Control District (JCWCD), which has jurisdiction over this channel, and the Water Control District has an existing 10'-12' easement on the A-1 channel.

This parcel is zoned I-2/UL Medium Industrial, but is currently undeveloped. The property can be developed with a new industrial use only by signing an agreement to annex to the city no later than January 1, 2010. The city has already adopted an ordinance that requires the /WR Water Resources Overlay Zone to be automatically applied upon annexation.

*Recommendation:* No change.

**Carol Titus, 29936 Kelso**—Testified that her property is affected by a 20 foot setback that restricts development on 9,000 square feet of her property and opposed the proposed protection on her parcel.

**Response:** Ms. Titus owns a 1.8 acre parcel (170491100100) on the south side of Kelso Street, on the west side of the parcel owned by Mrs. Stoner. The parcel contains a 245 foot segment of the A-1 Channel. See response to Carl Stoner, above, for information regarding the A-1 Channel. Assuming that the channel cannot be filled or moved, the impact of the proposed setback would primarily be on the south side of the channel as there is only a narrow strip of land (approximately 16 feet wide) between the north side of the channel and the north property line. The area within the proposed setback on the south side of the channel is approximately 0.13 acre or 5,700 square feet (7% of the total lot area). The area of the existing driveway would be exempt from the /WR provisions.

Staff contacted the Junction City Water Control District (JCWCD), which has jurisdiction over this channel, and the Water Control District has an existing 10'-12' easement on the A-1 channel.

Ms. Titus' lot is zoned I-2 Medium Industrial and currently is in residential use. The property can be developed with a new industrial use only by signing an agreement to annex to the city no later than January 1, 2010. The city has already adopted an ordinance that requires the /WR Water Resources Overlay Zone to be automatically applied upon annexation.

*Recommendation:* No change.

**Nicky Scully, 3989 Sundial**—Testified that she is in favor of protecting wetlands, including those on her property, but noted that she did not understand the potential impacts on her property of the proposed regulations.

**Response:** Ms. Scully's property at 3989 Sundial (18031822, lot 700) is partially within the Eugene city limits and partially outside city limits. It contains a portion of Goal 5 upland wildlife habitat site E37 C-1, which is within city limits and is now protected under the ordinance that went into effect on January 1, 2006. A very small area (approximately 240 square feet) of site E37 C-1 extends onto that portion of lot 700 that is outside city limits. Therefore, the purview of the county review is restricted to this 240 square foot portion of the site.

*Recommendation:* No change.

**Ron Bounds, 5670 Royal Avenue**—Testified regarding numerous city actions and projects that he felt had a negative effect on him and his land. He was concerned about whether he could continue to farm areas that would be affected by the conservation area.

**Response:** Current assessor records indicate that Mr. Bounds owns two parcels adjacent to Royal Avenue that are affected by the proposed Goal 5 protection measures. Lot 1704200002700 is a 9.6 acre parcel on the north side of Royal Avenue, and lot 1704290001300 is a 13.5 acre parcel on the south side of Royal. Both parcels are entirely within the boundary of the Royal Node Specific Plan that was adopted in 2003, and whose provisions must be applied upon annexation to the city. Since new development on these parcels requires annexation to the city, any new development on the Bounds parcels will be subject to the provisions of the Royal Node plan.

The proposed Goal 5 protections exactly match the protected open space areas in the Royal Node Specific Plan. Therefore, there would be no additional impact on new development on these two parcels as a result of the county applying the /WR overlay zone to these parcels.

Based upon an analysis of the proposed provisions of the /WR overlay zone conducted by staff and the city attorney, pre-existing farming operations within the conservation area would not be allowed under the /WR provisions as they are currently drafted. It was not intended that /WR overlay zone provision would prohibit pre-existing farming uses (with the exception of animal grazing) from continuing within the conservation area, as long as the area affected by farming is not expanded within the conservation area.

**Recommendation:** To address this intent, and to recognize interim farming uses that occur within the Urban Transition area, staff recommends adding the following outright use to the ordinance that applies outside of city limits, to 9.4930(3):

(p) Seeding, planting or harvesting of agricultural crops and associated agricultural practices integral to the cultivation of such crops within an area that, prior to [date of adoption] was cleared of native vegetation and in active farm use. Animal grazing and expansion of the farm use through additional clearing of native plants within the /WR conservation area are prohibited.

This provision would apply as long as the parcel remains outside city limits.

**Nick Crosby, 29984 Kelso**—Testified that he has 12,000 square feet of industrial land within the proposed conservation area, and that he would lose substantial land value if the protections were applied to his property, and opposed the proposed protections on his property.

**Response:** The owner of record for 29984 Kelso is Gary Crosby. This parcel does not contain any portion of the channel. The Crosby parcel (1704102201901) is immediately to the east of lot 1704102201901, which is co-owned by Alice Stoner and Gary Crosby. As noted above, the Stoner/Crosby parcel contains a 360 foot segment of the A-1 Channel. See the response to Carl Stoner for information on the A-1 Channel.

Based upon a review of aerial photography, it appears that the operations on the Crosby parcel extend onto a portion of the Stoner parcel. Most of the area between the channel and the Stoner/Crosby property line is within the proposed conservation area. March 2004 aerial photos indicate there were approximately 35 vehicles stored in the area of the proposed conservation area at that time. Vehicle storage is a prohibited use within the proposed /WR overlay zone.

GIS analysis indicates that the combined conservation area on the east side of the channel on the two parcels includes 10,323 square feet (0.24 acre). Based upon assessor's office ownership records, of this total, 218 square feet are on the Crosby parcel and 10,105 square feet are on the Stoner/Crosby parcel.

Staff contacted the Junction City Water Control District (JCWCD), which has jurisdiction over this channel, and the Water Control District has an existing 10'-12' easement on the A-1 channel.

The Crosby parcel is zoned I-2 Medium Industrial. The property can be developed with a new industrial use only by signing an agreement to annex to the city no later than January 1, 2010. The city has already adopted an ordinance that requires the /WR Water Resources Overlay Zone to be automatically applied upon annexation.

Recommendation: No change.

**Paul Jeffry, 1685 Rosy Turn**—Testified that he supported the application of protective setbacks to the stream on this property and that he felt the protection of the stream was a benefit to him rather than a loss.

**Response:** The property at 1685 Rosy Turn contains a portion of Flat Creek which is proposed for a 20 foot protective setback.

Recommendation: No change.