

**LANE TRANSIT DISTRICT
RESOLUTION NO. 2003-049**

A Resolution Responding to the Remand of LTD Resolution No. 2002-028

A. In July 2002, the City of Eugene, the City of Springfield, Lane County and Lane Transit District (the "local governments") took actions that collectively amended TransPlan. Lane Transit District ("LTD") took action to amend the TransPlan by adopting Resolution No. 2002-028.

B. The amendments were made in response to a request from the Oregon Department of Transportation ("ODOT") to enable ODOT to proceed with plans to construct the West Eugene Parkway in a modified alignment.

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

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

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

NOW, THEREFORE, BE IT RESOLVED:

1. That the Lane Transit Board of Directors responds to the remand of Resolution 2002-028 with the Remand Response and Explanation of Findings contained in the Exhibit A attached and incorporated herein by this reference.

Adopted by the Lane Transit Board of Directors on the 17th the day of December, 2003.

December 17, 2003
Date


Board Secretary

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**Exhibit A
To LTD Resolution 2003-049**

**Remand Response and Explanation of Findings
Supporting Resolution 2002-028**

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. Lane Transit District (“LTD”) took action to amend the TransPlan by adopting Resolution No. 2002-028. 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. Only three of those issues are relevant to Lane Transit District’s actions. Lane Transit District does not address Assignment of Error 5, 6, or 7 since Lane Transit District is not a party to and did not adopt amendments to the West Eugene Wetlands Plan. 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 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 alignment will be compatible with those uses. What follows is a description and explanation of how the local government findings conclude the actions adequately address Statewide Planning Goal 2, Part II(c)(4).

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

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

farms that do not contribute significantly to the commercial agricultural enterprise. The Modified Project creates no new parcels outside the UGB, and it should not increase the potential for encroachment beyond that associated with the Approved Design.”

The referenced Figure 2 of the C-1 findings is entitled Landuse Compatibility, Rural Impacts and shows the land uses in the vicinity of the Modified 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 alignment was cited heavily throughout the findings. The SDEIS contains two maps at figure 3-3, page 1 of 2, and figure 3-4 page 1 of 2. Figure 3-3 shows Existing Land Use along the Modified 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 alignment designated as Agriculture. Though the existing uses along the proposed parkway vary widely, the findings note that the great majority of the land bordering the northern side of the Modified 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 alignment. They also explain the Modified Project alignment’s effect on access to rural properties and the ways in which access is designed to “limit local access to the adjoining rural area, thereby reducing adverse farm impacts and maintaining compatibility.” C-1, page 47. The findings then explain in detail how the ownership interests and zoning of the areas adjacent to the Modified 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 10.¹ 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).

¹ 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 is assigns error to respondents' failure to consider and address accessibility impacts that can be attributed to the change in the Approved Project that the challenged decisions made by approving the Modified Project corridor."

Response and Explanation of Findings:

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

The findings discussed above show that the limited access design feature of the facility will minimize access to the neighboring agricultural land. Findings Exhibit C-1, pages 47 – 49. The Modified Project alignment will close the existing Highway 126/Goble Lane access, and relocate it to an existing driveway west of Goble Lane. That action will help limit local access by reducing the number of access points onto the new highway. C-1 findings, page 47. Also, contrary to the Approved Design, the Modified Project alignment will not have a direct connection with W. 11th 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. 11th, 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 alignment’s consistency with TransPlan policies that implement OAR 660-012-0035(5)(c)(D) because State law does not require that TransPlan contain such policies and such policies, therefore, do not exist in TransPlan.

As stated in the rules quoted above, there 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 that 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.

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

Part Three: TPR Alternate Performance Measures of TransPlan explains:

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

"* * *

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

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

standards' approval. LCDC's Order approving the alternative standard is included in TransPlan's Appendix G.

These provisions of TransPlan show that the local governments have an approved alternative standard established pursuant to OAR 660-012-0035(5). Therefore, TransPlan is not required to by OAR 660-012-055(1)(a) to include findings addressing OAR 660-012-0035(5)(c)(D). Further, the TransPlan provisions discussed above show that the adopted alternative VMT standard that is not "expected to result in an increase in VMT per capita." Therefore, TransPlan is not required by OAR 660-012-0035(5)(c) to include findings addressing OAR 660-012-0035(5)(c)(D). Since TransPlan is not required to (and does not) contain a policy specifically intended to implement OAR 660-012-0035(5)(c)(D), petitioners subassignment of error 2(d) is without merit, as LUBA suggests.

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