

SUPPLEMENTAL MATERIAL

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SUPPLEMENTAL AGENDA COVER MEMO



DATE: DECEMBER 8, 2006 (Memo)
DECEMBER 12, 2006 (Fourth Reading/Deliberation)

TO: LANE COUNTY BOARD OF COMMISSIONERS

FROM: STEPHANIE SCHULZ, PLANNER
LAND MANAGEMENT DIVISION

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http://www.LaneCounty.org/PW_LMD/

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 ISSUE

On November 8, 2006, the Board requested staff return with information addressing these two questions raised during the third reading.

- 1) How did we get here and why should the Board adopt the Ordinance as written? What are the consequences of not adopting the Ordinance?
- 2) If the Ordinance is not adopted, what would be the cost to have the work program amended to have Lane County staff apply Safe Harbor regulations to the identified sites in the urban transition area?

II. BACKGROUND

The Goal 5 Natural Resources Inventory has its roots in the Metropolitan Natural Resources Special Study that was drafted in 1991.

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| 1996 | BCC adopts the Metro Plan Periodic Review Work Program set forth for all three jurisdictions. |
| 2002 | Lane County, Eugene, and Springfield jointly amend the Periodic Review Work Program Task No. 7 to separate the jurisdictional responsibility for completing Task No. 7, the identification and development of an inventory and protection measures for Goal 5 Natural Resources. |
| 2004 | BCC adopts the Goal 5 Inventory of Significant Natural Resource Sites for the sites identified within the entire Metro UGB (both Eugene and Springfield) as part of the Chapter III-C Environmental Resources Element. |
| 2004 | BCC adopts Goal 5 NR Safe Harbor protection regulations for the area between the Metro UGB and the Metro Plan Boundary, the area of County responsibility. |

- 2005 BCC adopts the protection regulations for the Goal 5 NR Sites identified and adopted by the Springfield City Council for the area between the Springfield City Limits and the UGB.
- 2006 Eugene requests BCC adopt the protective regulations for the Goal 5 NR Sites identified and adopted by the Eugene City Council for the area between their city limits and the UGB.

II ANALYSIS

A table comparing the setback distances under adopted Lane County Safe Harbor provisions that apply outside the UGB and within the Metro Plan Boundary with the Standard Process provisions as presented under the Eugene City Goal 5 Water Resources Conservation Plan is shown below. Setbacks are measured from top-of-bank in all cases. Eugene ‘Type’ descriptions ‘B’ through ‘E’ apply to both streams and wetlands, and they include any riparian vegetation that extends beyond the setback distance as part of the ‘site’. Cfs means ‘cubic feet per second’ as it applies to the speed of water in a stream or river. The Willamette and McKenzie Rivers are the only ones with flows greater than 1000 cfs in the Metro area. The map of sites provided by the city shows that Types ‘A’ and ‘B’ affect approximately ten percent of the sites, Type ‘C’ appears to affect fifteen percent, and Types ‘D’ and ‘E’ affect the remaining seventy-five percent of the sites.

	<u>Over 1000 cfs</u>	<u>Under 1000 cfs</u>	<u>Wetlands</u>
Lane Code	75’	50’	50’
Eugene Code	‘A’ 120’	‘B’ 75’	‘B’ 75’
		‘C’ 50’	‘C’ 50’
		‘D’ 25’	‘D’ 25’
		‘E’ 0’	‘E’ 0’

Eugene’s system describes four types of impact areas for wetlands, riparian areas and upland wildlife habitat sites that are determined by criteria listed in the ESEE (Environmental, Social, Economic, & Energy) Analysis in Exhibit B to the Ordinance.

Type B: Streams have high connectivity to regional habitat systems, including wildlife corridors, that have high quality riparian habitat. They are generally more pristine and highly likely to be adversely impacted.

Type C: Streams where the riparian vegetation extends beyond 50 ft. with steep slopes, connections to wetlands, higher quality plant community sites, and some are fish bearing. Relatively vulnerable to impacts.

Type D: Highly disturbed streams, narrow fragmented corridors that are somewhat vulnerable to adverse impacts.

Type E: Stream corridors where the adjacent land is separated from the hydrology of the stream. Adjacent riparian vegetation (if any) is not functionally or hydrologically connected to the stream.

WORK PLAN

The Oregon Administrative Rules (OAR 660-23) allow jurisdictions to choose between the “standard process” and “safe harbor” approach for completing their Goal 5 planning responsibilities. The safe harbor approach allows little discretion in deciding which sites are significant and placed on the Natural Resource Inventory. Jurisdictions following safe harbor also must adopt prescriptive protection measures. Under safe harbor, the state defined protection measures are accepted for inventoried resource sites. The up side to the safe harbor is that the Goal 5 planning timeframe is dramatically shortened because the inventory of sites and prescriptive protection measures are not discretionary. The down side is that you

lose flexibility to work out conflicts between development and resource sites. A jurisdiction just use the 'standard process' if they choose to not use the 'safe harbor' inventory and protection measures.

The standard process described in OAR 660-23 allows communities broad latitude in deciding what criteria are used to determine which resource sites are "significant." Once a resource inventory is adopted, cities then must complete an analysis of the potential for conflicts that might impact individual natural resource sites and develop a program of protection that works out if and how development would be allowed to proceed. The up side for the standard process is that when the jurisdiction is confronted with a conflict between a potential development that is in the jurisdiction's interest and a significant resource site, there is a process for working out a win-win solution. Under safe harbor, protection measures are fixed, and there is little (virtually none) room for compromises that might allow for sensitive development that preserves the most important values and functions of a resource.

In discussion with DLCD staff, an amendment to the Periodic Review Work Program would be necessary for Lane County staff to revise the protection measures to 'safe harbor' in the area between Eugene city limits and the UGB. The cost estimate assumes that Lane County would use the adopted inventory, and the protection measures would be converted from the 'standard process' as presented by the City of Eugene to the 'safe harbor' approach applied to the significant inventory already adopted by the Board. The cost to transition to a Lane County staff effort to adopt safe harbor regulations for the identified Eugene urban transition area sites is estimated at \$15,000 – \$20,000, and would include salary, notice costs (Ballot Measure 56 level re-notice to all properties), and reproduction costs. The amendment would be conducted under a public process timeframe, estimate a joint Planning Commission hearing in March/April and joint Board and Council Hearing in May/June.

- Draft Code Text Amendment
- Public Process & Adoption

OTHER EFFORTS

There are two other efforts underway by the city of Eugene that are NOT related to this Periodic Review task.

1. Eugene Parks, Recreation and Open Space Plan (PROS) for acquisition of land for city parks.
2. Eugene Public Works stormwater management regulations to protect water quality impaired waterways as part of the City's overall program to reduce urban stormwater pollution.

These two efforts in some cases apply to the same properties that have identified Goal 5 resources, however these city actions are being undertaken irregardless of the Periodic Review Goal 5 adoption of protection measures under Work Task No. 7.

IV. RECOMMENDATION

Staff recommends 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.
- Practically speaking, significant development proposals will only occur upon annexation, and the protective provisions should be consistent for properties located either inside or outside the UGB.
- These provisions complete the Goal 5 protection measures for the entire Metro Plan area and will complete the Periodic Review Work Program.