

**PASSED**

BOOK **161** PAGE **1054**

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1106

- ) IN THE MATTER OF AMENDING THE
- ) WEST EUGENE WETLANDS PLAN BY
- ) ADOPTING NEW OR REVISED PLAN
- ) POLICIES, REVISING PLAN TEXT, AND
- ) ADOPTING A SEVERABILITY CLAUSE

**WHEREAS**, on July 22, 1992, the Board of County Commissioners of Lane County enacted Ordinance No. PA 1019 adopting the West Eugene Wetlands Special Area Study, a refinement plan to the Eugene-Springfield Metropolitan Area General Plan; and

**WHEREAS**, on August 26, 1992, the Board of County Commissioners of Lane County enacted Ordinance No. PA 1019-A amending the West Eugene Wetlands Special Area Study; and

**WHEREAS**, on May 30, 1995, the Board of County Commissioners of Lane County enacted Ordinance No. PA 1075 amending the West Eugene Wetlands Special Area Study and changing the name to the West Eugene Wetlands Plan; and

**WHEREAS**, the City of Eugene has initiated additional amendments to the West Eugene Wetlands Plan to amend Plan policies and text and to adopt wetland designations for certain properties located within the Plan boundary; and

**WHEREAS**, on March 19, 1996, the Lane County Planning Commission conducted a joint public hearing in conjunction with the Eugene Planning Commission on draft amendments to the West Eugene Wetlands Plan; and

**WHEREAS**, on June 4, 1996, the Lane County Planning Commission, recommended approval of the proposed amendments to the West Eugene Wetlands Plan to the Lane County Board of Commissioners subject to review of testimony and evidence submitted after the close of the record and not available to the Planning Commission at the time of its deliberation; and

**WHEREAS**, on December 17, 1996, the Lane County Planning Commission conducted a second joint public hearing in conjunction with the Eugene Planning Commission on new evidence related to wetland designations submitted after the close of the Planning Commission record; and

**WHEREAS**, on September 16 and December 16, 1997, the Lane County Planning Commission voted to make no changes to its June 4, 1996 recommendations for wetland designations for the Speedway and Hyundai sites and took no action on the revised Eugene Planning Commission recommendation for the EWEB substation site and new Eugene Planning Commission recommendation related to underground utilities in protected wetlands; and

**WHEREAS**, on February 18 and April 8, 1998, the Board of County Commissioners conducted a joint public hearing and a joint work session with the Eugene City Council on amendments to the policy and text of the West Eugene Wetlands Plan and agreed to move forward with policy and text amendments to establish new Planned Transportation Corridor and Utility Corridor wetland designations as a separate ordinance; and

**FILED**

NOV 24 1998

COUNTY CLERK

BY *M. Bullock*

WHEREAS, on June 24, 1998, the Board of County Commissioner adopted Board Ordinance No. PA 1117 amending the West Eugene Wetlands Plan to establish the new Planned Transportation Corridor and Utility Corridor wetland designations, and directed that additional policy and text amendments to the Plan adopted by the Eugene City Council be forwarded to the Board for consideration; and

WHEREAS, evidence exists within the record indicating that the proposal meets the requirements of Lane Code Chapter 12 and the requirements of applicable state and local law as described in the findings adopted in support of this Ordinance; and

WHEREAS, the Board of County Commissioners has conducted public hearings and is now ready to take action.

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

The West Eugene Wetlands Special Area Plan, as adopted by Lane County Ordinance No. PA 1019 and amended by Lane County Ordinance No. PA 1019-A, and Lane County Ordinance No. PA 1075, and Lane County Ordinance No. PA 1117 is further amended as set forth in attached Exhibit "A" incorporated by this reference as if fully set forth here.

The City Recorder, with the concurrence of the City Attorney and County Counsel, is authorized to administratively renumber any provisions of the West Eugene Wetland Plan (Plan) at the time the provisions adopted herein are incorporated into the Plan, and to correct any cross-references necessitated by the renumbering.

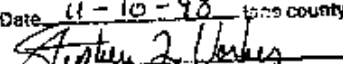
Although not part of this Ordinance, findings in attached Exhibits "B," "C," and "D" are adopted in support of this decision.

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

ENACTED this 10<sup>TH</sup> day of NOV, 1998

  
Chair, Lane County Board of Commissioners

  
Recording Secretary for this Meeting of the Board

APPROVED AND FORGIVEN  
Date 11-10-98 Lane County  
  
OFFICE OF LEGAL COUNSEL

## Exhibit A

### Amendments to the West Eugene Wetlands Plan

#### Policy Amendments

[Numbering begins with 61 to maintain consistency with numeric references to specific amendments in earlier documents. Text to be added is ~~shaded~~ and text to be deleted is struck-out.]

61. (Included in Ordinance No. 20119 adopted by the City Council on May 20, 1998 and Ordinance No. PA 1117, adopted by the Board of County Commissioners on June 24, 1998.)

62. (This amendment has been removed from this ordinance for further consideration by the Eugene City Council and the Board of County Commissioners.)

63. Add a new policy:

~~“Local governments shall not issue grading or building permits within areas mapped as jurisdictional wetland in the West Eugene Wetland Plan area unless the applicant has an approved state/federal wetland fill permit for the proposed project.”~~

64. (This amendment has been removed from this ordinance for further consideration by the Eugene City Council and the Board of County Commissioners.)

65. Add a new policy:

~~“Designations are intended to apply only to jurisdictional wetlands as determined by the Oregon Division of State Lands and the U.S. Army Corps of Engineers. Wetland Designations Map (Map 3) shows adopted designations for wetlands within the plan area, but does not necessarily depict the most current or accurate wetland boundaries. The West Eugene Wetland Conservation Plan Inventory (WCPI) Map should be used to determine existing mapped wetland boundaries. Mapping of wetland boundaries shall be revised through periodic updates to the WCPI map, which can occur without amending this plan, by administrative order of the City Manager. Following a revision in the WCPI map, designations shall apply only to the previously designated area which remains a jurisdictional wetland on the revised WCPI map. Newly-determined wetlands on the revised WCPI map shall remain undesignated until this Plan is amended to specifically designate those new wetland areas.”~~

66. (This amendment has been removed from this ordinance for further consideration by the Eugene City Council and the Board of County Commissioners.)

67. Add a new policy as follows:

~~The West Eugene Wetland Program partners shall develop a strategy for conservation of rare plant habitat in the Plan area.~~

68. Add a new policy as follows:

~~Pursue interim protection of sites which contain rare species, but do not meet the criteria for protection in Appendix B through conservation easements or other measures until either (1) the affected species are de-listed or (2) conservation agreements are reached between the property owner and affected natural resources agencies to address the rare species populations.~~

69. (This amendment has been removed from this ordinance and will be considered in conjunction with the site specific amendments.)

70. Add a new policy:

~~"Constructed roadside ditches which may exhibit wetland characteristics are not mapped or addressed by this plan."~~

71. Amend Policy 3.5 as follows:

~~Along with Lane County and the State of Oregon, protect wetlands on public lands in the west Eugene wetlands study area and restore wetlands on public lands consistent with Wetland Designations Map (Map 3).~~

72. Add a new policy:

~~The West Eugene Wetland Program partners shall continue to pursue and support the use of degraded wetlands designated for development for on-site stormwater treatment.~~

73. Add a new Policy 4.7 as follows:

~~Mitigation projects will occur within the area of the Long Tom River watershed and its tributary streams, as shown on Study Area Map (Map 2).~~

74. Add a new Policy 4.8 to read:

~~"Historic wetlands and disturbed agricultural wetland sites are the preferred areas for mitigation projects."~~

75. Add a new policy to read:

"Guided by the Conceptual Plan Map (Map 4), a three-year capital improvement plan will be prepared for the Mitigation Bank program, identifying mitigation sites, mitigation methods to be undertaken, number of mitigation areas, and approximate mitigation credits to be realized."

76. Add a new policy to read:

"While compensatory mitigation may be achieved through any one mitigation method or combination of methods (i.e., restoration, enhancement, creation), restoration is the preferred method."

77. Amend Policy 4.9 to read:

4.9 "Establish, develop, and maintain a regional wetland mitigation bank program that will provide establish a mitigation credit system capacity for serving the West Eugene Wetlands Plan Study Area, the balance of the Eugene urban growth boundary and the Eugene Airport proper."

78. Amend policy 4.14:

All mitigation must be completed in advance or concurrent with development, except as otherwise provided in approved standard individual wetland permits or signed intergovernmental agreements between the City, the Oregon Division of State Lands and the U.S. Army Corps of Engineers."

79. (This amendment has been removed from this ordinance and will be considered along with the site specific amendments.)

80. Amend Policy 4.19 as follows:

"4.19 Allow development of wetlands that meet the criteria for wetland development contained in Appendix B of the Plan as illustrated on the Wetland Designations Map (Map 3)."

81. Amend Policy 4.21 to read:

4.21 "Use the West Eugene Wetland Conservation Plan Inventory map WEWSAS wetland delineation map, the functions and Values detailed in the WEWSAS Technical Report and those sites recommended for development on Map 3, as the basic inventory for identifying wetland acres sites and functions and values to be filled developed and replaced."

82. Amend Policy 4.22 to read:

4.22 "Provide flexibility in the provisions of the mitigation program so that conditions unique to certain properties can be resolved at the administrative level provided the proposal conditions meets the basic intent, purpose, and criteria of WEWSAS this Plan."

83. Amend Policy 4.24 as follows:

4.24 "Unless designated as a mitigation site in this Plan or as part of on-site mitigation requirements, buildable lands that are within the UGB and designated for commercial or industrial use should shall not be used for mitigation."

84. (Included in Ordinance No. 20119 adopted by the City Council on May 20, 1998 and Ordinance No. PA 1117 adopted by the Board of County Commissioners on June 24, 1998. Additional changes are included here.)

Revise new policy adopted by Council Ordinance No. 20119 and Board Ordinance No. PA 1117 as follows:

Future fill or removal within the "utility corridors" as designated on the Wetland Designation Map (Map 3) shall be conducted with an applicable U.S. Army Corps of Engineers (Army Corps) and/or Division of State Lands dredge and fill permit(s), and shall be limited to the minimum impacts necessary to:

- 1) conduct emergency repairs to existing utility lines,
- 2) conduct essential maintenance (e.g., work to maintain or optimize performance) on existing utility lines, including line locating,
- 3) construct connections to existing utility lines,
- 4) construct new utility lines,
- 5) move existing utility lines when necessary to maintain service or conduct emergency repairs, and when at least one of the following is true:
  - a) the utility line must be moved to protect it from erosion or some other natural threat;
  - b) construction of public facilities that are consistent with this plan and that conflict with an existing utility line, where such public facilities cannot reasonably be constructed without moving the utility line; or
  - c) the utility line must be moved in order to maintain or repair another utility line in the same vicinity.

- 6) place new utility poles or replace existing utility poles, only when necessary to maintain performance or safety of above-ground utility lines. Above-ground utility lines may not be replaced with underground utility lines within wetlands designated for restoration or protection.

No other impacts are authorized by this policy. The following shall also apply to these corridors:

- a. The corridors for underground utility lines shall be 20 feet wide for excavations or pipes up to 10 feet below ground surface (bgs), 30 feet wide for excavations or pipes from 10 to 15 feet bgs, and 40 feet wide for excavations or pipes deeper than 15 feet bgs. Where two utility lines are close to each other, the corridors for the lines may overlap, but impacts for work on one line are allowed only within the corridor width for that line, not the combined width of both lines.
- b. The corridors for above ground utility lines shall be 10 feet wide for single pole structures and 20 feet wide for double pole ("H-style") structures.
- c. The utility corridors shall be centered on an existing utility line, extending an equal distance (half the allowed width) on both sides, except for corridors for new utility lines, which shall be located as specified in subsection d below.
- d. Construction of new utility lines and new connections to existing utility lines within wetlands designated for protection shall require an amendment of this plan to change the designation from "protect" to "utility line corridor." Such amendments will only be allowed where it is demonstrated that:
  - 1) an alternatives analysis has concluded that locating the new utility line within a protected wetland is the best alternative. The alternatives analysis shall compare alternatives that are completely outside of protected wetlands and compare them to any alternatives that impact protected wetlands. The alternatives shall be evaluated by weighing engineering requirements and total environmental impacts including impacts to ~~threatened and endangered rare~~ species and their habitat, and to wetlands designated in the Plan for restoration or protection.
  - 2) the new construction cannot reasonably be constructed completely outside of wetlands designated for protection as demonstrated in the above-referenced alternatives analysis;
  - 3) the utility lines are located so as to reduce the impact to wetlands designated for protection as much as possible, and in no case shall a cumulative area greater than 1 acre be re-designated from "protection" to "utility corridor" for a new utility line;

- 4) unavoidable impacts will be mitigated through restoration of the project's entire impact area;
  - 5) there are no impacts to wetlands from new utility lines installed within the Willow Creek Natural Area; and
  - 6) impacts to rare plant and animal species on lists 1 and 2 of the Oregon Natural Heritage Program will not occur.
- e. Other than the activities described in this policy, these corridors shall be treated as protected wetlands. Allowed activities shall be conducted in such a manner as to minimize adverse impacts to the maximum extent possible upon the wetlands within the corridor itself and within surrounding protected wetlands. Wetland impacts shall be limited to the minimum area necessary. Utility agencies shall use the best feasible technology to pinpoint the location of needed repairs prior to excavation in order to limit the area of impact.
- f. Except for emergency repairs, these activities shall be planned and timed to minimize adverse impacts to wetlands.
- g. All impacts shall be followed by restoration activities including:
- 1) backfilling with existing native soil within three feet of the surface whenever possible, and in no case less than two feet; and
  - 2) grading and re-seeding and/or replanting with appropriate native plant species.
- h. Any unavoidable impacts to rare plant species shall be mitigated through coordinated transplanting or other measures.
85. (This amendment was combined with #84 and included in Ordinance No. 20119 adopted by the City Council on May 20, 1998 and Ordinance No. PA 1117 adopted by the Board of County Commissioners on June 24, 1998.)
86. (This amendment was addressed in Ordinance No. 20119 adopted by the City Council on May 20, 1998 and Ordinance No. PA 1117 adopted by the Board of County Commissioners on June 24, 1998.)
87. Add a new policy:
- "The plant and animal species listed below shall be considered rare for the purposes and policies of this Plan."

**Rare Plants:**

white-topped aster	<i>Aster curtus</i>
Willamette daisy	<i>Erigeron decumbens var. decumbens</i>
shaggy horkelia	<i>Horkelia congesta</i>
Bradshaw's lomatium	<i>Lomatium bradshawii</i>
timwort	<i>Cicendia quadrangularis</i>

**Rare Animals:**

northwestern pond turtle	<i>Clemmys marmorata marmorata</i>
Fender's blue butterfly	<i>Icaricia icarioides fenderi</i>

88. Add a new policy:

"The plant and animal species listed below are not officially considered rare, but shall be considered for addition to the list of rare species if they are confirmed to be present within the West Eugene Wetlands Plan area:

**Plant Watch List:**

retorse sedge	<i>Carex retrorsa</i>
Howell's montia	<i>Montia howellii</i>
toothcup	<i>Rotala ramosior</i>

**Animal Watch List:**

Taylor's checkerspot butterfly	<i>Euphydryas editha taylori</i>
Pacific western big-eared bat	<i>Corynorhinus townsendii townsendii</i>

89. Amend Goal 3.5 as follows:

3.5 Protect and expand current populations and habitats of rare, endangered and threatened plants and animals that currently exist in west Eugene.

**Non-policy Amendments****Miscellaneous**

1. Incorporate WEWP logo where appropriate (cover, maps, charts, etc.).
2. Change all references to Map 3 to reflect new map title "Wetland Designations"
3. Correct typographical errors
  - a. Page 25, Recommended Action 3.11 ("management")
  - b. Page 35, Policy 4.13 ("of the this plan")
  - c. Page 52, Recommended Action 6.4. ("encourage")
  - d. Page 63, formatting in Goals 7.1 and 7.2

**Title Page**

4. Change date

**Acknowledgments**

5. Add Dave Kurkoski (ACOE), Carrie Fox (ACOE), Joel Shaich (EPA), Dana Siegfried (DEQ) to the list of TAC members
6. Update Eugene Planning and Development Department address
7. List 1992 Planning Commission members and note involvement in original plan development, add 1994-1997 Planning Commission members and note involvement of latter in revision of plan
8. Add a paragraph describing the west Eugene wetland partnership:

The west Eugene wetlands are managed through a formal partnership among the City of Eugene, The Nature Conservancy, the U.S. Bureau of Land Management, the U.S. Army Corps of Engineers, and the Oregon Youth Conservation Corps. The partnership may change over time. The goal of the partnership is to manage the wetland system in a cooperative manner. The partners dedicate resources within their respective budgets to carry out this plan with attention to their own missions and legal requirements.

9. On page iv, replace existing second sentence with the following:

Forty percent of the funds for the preceding West Eugene Wetlands Special Area Study were provided by the Environmental Protection Agency through a water quality/wetlands

planning grant. This plan is printed on recycled paper--when you are finished with it, please recycle it or share it with someone else.

### Table of Contents

10. Update page numbers.
11. Move Public Facility Projects Table (was Table 4) and Public Facility Projects Map (was Map 6) to a new appendix.
12. Update and renumber list of appendices to reflect other changes.

### List of Maps and Tables

13. Change title of Map #3 to "Wetland Designations".
14. Move Public Facility Projects Map and Public Facility Projects Table to appendix and renumber maps and tables as necessary.
15. Remove wetland and waterway setbacks from Map 4 (Concept Map).

### Preface

16. Add a paragraph summarizing the amendment adoption process.

### Chapter 1

17. On page 3, change first two sentences in third paragraph to: "To implement existing federal and state wetland law and policy, the Plan recommends protection of designates the most valuable remaining wetlands for protection. Sites with large populations of rare plants are proposed designated for protection."
18. On page 3, change last sentence in third paragraph to "Screening-Buffering techniques will be used to protect wetlands from the effects of adjacent land uses".
19. On page 4, change the first sentence in 3rd paragraph to: "The Plan-examines-and recommends calls for implementation of a number of wetland protection measures."
20. On page 4, change the third sentence in 3rd paragraph to: "Until funds become available for acquisition, the existing federal and state wetland regulatory processes will continue to be the primary means for insuring wetland protection Prior to acquisition, the existing federal and state wetland regulatory processes in conjunction with the policies in this plan will be the primary means for ensuring wetland protection."

21. On page 4, change the 5th sentence in 3rd paragraph to: "When the City obtains a federal regional permit and a state approved wetland conservation plan, the administration of the permitting process will be transferred to the City of Eugene. The plan is aimed towards transferring, in part or in whole, the administration of state and federal wetland fill permitting processes to the City of Eugene, concurrent with or subsequent to City adoption of other protection measures specified in this Plan."
22. On pages 5-6, update sections on "Stormwater Management", "Water Quality Improvements" and "Improved Flood Control" to reflect adoption of Comprehensive Stormwater Management Plan and development of Amazon Channel Enhancement project.
23. On page 6, change the 1st sentence in the third paragraph to read "Within the managed wetland system, large populations of rare plants will be protected."

## Chapter 2

24. On page 11, change 2nd sentence in third paragraph to read: "With a population of approximately 122,000 (July 1995 estimate) Eugene is second largest city in Oregon, Portland being the largest."
25. On page 12, add the following paragraph at the end of the section titled "Plan Documents":
 

Other important documents developed during the planning and implementation phases of the project include the "Final Report for West Eugene Supplemental Inventory" (Revised January 1995), the "Revised Alternatives Analysis" (an update of Chapter 7 of the Technical Report) (October 1993), "Mitigation Options for Eight Sites in West Eugene" (February 1993), "Assessment of Proposed Mitigation Areas in West Eugene" (February 1993), the "1994 West Eugene Wetlands Annual Report" (February 1995), and the "Eastern Gateway Restoration Project Annual Report" (January 1995).
26. On page 13, revise item #8 as follows: "Response to development proposals in the area Review of land use applications and building permits."

## Chapter 3

### Map 3 Legend

27. Add notation to new Planned Transportation Corridor designation:

~~Future fill within the Planned Transportation Corridor designation shall be limited to those~~

areas granted state and/or federal wetland fill permits for the construction of planned public roadway improvements. All other wetlands within these corridors shall be protected.

28. Remove label for "Upland Mitigation Sites" and add labels for "Planned Transportation Corridor" and "Utility Corridor".
29. Add a disclaimer to Map 3:  
  
"This map is a generalized map, and should not be used to identify location of wetland boundaries. For wetland boundaries refer to the accepted Wetland Conservation Plan Inventory Map."
30. Change map title to "Wetland Designations"
31. Change legend on Map 3 as follows: "Berm and Furrow Wetland Definition to be Developed"

**Conceptual Plan Map (was Map 4):**

32. Amend legend to read "This map reflects a vision for future efforts..."
33. Amend Legend to read "Areas Above 800' Contour (recommended for partial protection in the draft Natural Resources Functional Plan)".
34. (This amendment has been removed from this ordinance and will be considered in conjunction with the site-specific amendments.)
35. Remove buffers from Conceptual Plan Map (was Map 4).

**Chapter 3 Text:**

36. Add a new Recommended Action 3.14:
  - 3.14 Implement strategic plan for conservation of rare plant and animal habitat in the Plan area including:
    - a. Protection of significant rare species populations
    - b. Allowances for "takes" of small rare plant populations
    - c. Management strategies for recovery of rare species
    - d. Use of conservation easements or acquisition in fee of rare plant habitat, where appropriate, to protect rare plant habitat
    - e. City-sponsored rare plant surveys of privately-owned sites with property owner permission conducted by professional botanists during the appropriate times of year to maximize chances of

- f. Determination of threshold population sizes and other characteristics for identifying significant rare plant populations
- g. City sponsorship of program to transplant and monitor recovery of small populations of rare plants where appropriate

37. Throughout Chapter 3, replace "recommended" with "designated" and "recommendation" with "designation" to clarify that these are adopted policy now, not recommendations

#### Chapter 4

38. Replace Recommended Action 4.1 with the following new text:

4.1. "Establish procedures and review criteria for evaluating requests for participating in the WEWP's regional mitigation program. The type of procedure and level of review should be consistent with the goals and policies of WEWP. Administrative procedures should suffice for projects that are fully consistent with WEWP, while quasi-judicial procedures may be necessary for projects that are not consistent."

39. Replace Recommended Action 4.14 with the following:

"Assist with the restoration of the Lower Amazon Creek wetlands and floodplain area - bounded by Royal Avenue, Terry Street, Greenhill Road and the Southern Pacific Railroad tracks - by supporting the Army Corps of Engineer's restoration project."

#### Chapter 6

40. Move "WEWSAS Capital Improvement Program" section, Public Facility Projects Table and Public Facility Projects Map to new appendix. Update acreage figures in Capital Improvement Program discussion. Remove items 13, 14, 15, 16, 17 from Public Facility Projects Table, and add Amazon Channel Enhancement project, and "Pilot Projects" item. Add new cost estimates for observation structures to Public Facility Projects Table. Update Public Facility Projects Map consistent with Public Facility Projects Table.
41. On page 55, 2nd paragraph, amend sentence to read: "The Plan suggests improvements be made at these locations to provide additional flood capacity storage, enhance wetland and riparian habitat values and improve stormwater quality in the Upper Amazon Basin."
42. On page 55, remove the 5th paragraph (Emerald Canal).

#### Appendix A

43. Delete existing contents of Appendix A and replace with excerpts from Chapter 9 of the Eugene Code, 1971, sections on /WP Waterside Protection zoning overlay, /WB Wetland

Buffer zoning overly, and NR Natural Resource zoning district.

### Appendix B

44. (This amendment has been removed from this ordinance for further consideration by the Eugene City Council and the Board of County Commissioners.)

### Appendix C

45. (Site specific portions of the amendment have been removed and will be included with the site specific amendments.)

Delete all but the section on Wetland Value Criteria and update that section as follows:

#### Wetland Value Criteria

The following criteria shall be used to determine wetland value categories for applying setbacks, buffer requirements and other protection measures applied to wetlands designated for protection on ~~Wetland Designations Map~~ (Map 3).

High value wetland sites must meet at least five out of the following seven criteria:

- a. site is relatively undisturbed
- b. site contains rare plant species, *Deschampsia cespitosa*, or other unique and diverse plant communities
- c. site is large or is contiguous with another wetland or waterway
- d. site is actually or potentially part of a connected wetland system
- e. site contains a locally significant or rare habitat type
- f. site received a Wetland Evaluation Technique rating of 50 or greater
- g. site received a Wildlife Habitat Assessment rating of 60 or greater

Moderate value wetland sites are all those sites that do not fit under the High Value or Low Value categories.

Low value wetland sites include all disturbed agricultural sites and all "old field/fill" sites as mapped in the West Eugene Wetlands Special Area Study Technical Report.

46. (This amendment has been removed from this ordinance and will be considered in conjunction with the site-specific amendments.)

### Appendix E

47. Replace the existing Appendix E ("Comprehensive Wetland Mitigation Program") with a

new appendix describing the process for amending the West Eugene Wetlands Plan:

### **AMENDING THE WEST EUGENE WETLANDS PLAN**

A description of the process for amending the West Eugene Wetlands Plan follows. This description is intended to be both a record of the process followed in the past, and a guideline for the process for future major, city-initiated amendments to the Plan. As this provides a guideline, rather than policy, whether these guidelines are followed depends upon availability of staff and other resources and other city policies in place at the time of the amendments.

The West Eugene Wetlands Plan is a refinement plan of the Metropolitan Area General Plan. The process requirements for amending a refinement plan are set forth in Chapter 9 of the Eugene Code, 1971, in the section on Refinement Plan Amendments. The code sets forth minimum requirements for public notification, public hearings and related actions. Some of the steps taken for the amendments to the West Eugene Wetlands Plan exceed the requirements of the code and are noted as such.

#### **WEWP Amendment Process--Chronological Order**

1. Develop draft staff recommendations for amendments.
2. Send out notification regarding draft amendments and public workshop to potential affected property owners and all those on existing and previous West Eugene Wetlands interest parties list (not required by code).
3. Hold public workshop to present staff recommendations and gather feedback (not required by code).
4. West Eugene Wetlands Technical Advisory Committee (TAC)<sup>1</sup> review of staff recommendations (not required by code).
5. Incorporate public and TAC comments into revised staff recommendations to be forwarded to Eugene and Lane County Planning Commissions (not required by code).
6. Send formal notification of Planning Commission joint public hearing to affected and adjacent property owners and all those on West Eugene Wetland interested parties list.

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<sup>1</sup>The TAC is made up of staff representatives from the Oregon Division of State Lands, Oregon Department of Environmental Quality, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and U.S. Environmental Protection Agency.

7. Hold work sessions with each Planning Commission to brief them on amendments.
8. Hold public hearing, hold record open two weeks past public hearing for additional written comments (not required by code).
9. Staff prepares written responses to public testimony and prepares recommended changes (if any) to respond to testimony (not required by code).
10. Planning Commissions meet separately to deliberate and take action.
11. Interested parties are notified by mail of Planning Commission decisions.
12. Formal notification of joint elected official hearing is sent to affected and adjacent owners and interested parties.
13. Staff holds work sessions with Lane County Board of Commissioners and Eugene City Council to brief them about the amendments.
14. Joint elected official public hearing is held.
15. County Board and City Council meet separately to deliberate and take action.

### Glossary

48. Amend introductory paragraph to glossary to include disclaimer: "These definitions are intended to be explanatory, and are not adopted as policy. They may differ from definitions used in implementing ordinances."
49. Amend glossary definition of native plants: "Plants that occurred naturally in the west Eugene area prior to white settlement."
50. Add the following:  
 "RARE PLANT: See definition for "rare species."  
 "RARE ANIMAL: See definition for "rare species."
51. Amend definition of "rare species" as follows:  
 "RARE SPECIES: "Often used to describe species on the official state or federal "Threatened and Endangered Species" lists. In the West Eugene Wetlands Study, "rare" has two meanings: 1) a species which is does not have threatened or endangered status, but is present in small numbers throughout its range, and 2) a plant community wich was once widespread, but is now extremely limited in its distribution. For example, the prairie

grasslands once covered thousands of acres in the Willamette Valley, but now are restricted to fewer than 20 locations in Lane and Benton Counties. Any plant or animal species which is included on the "rare plants" or "rare animals" lists in the policy section of Chapter 3 of this plan. Those species on the "watch" lists in Chapter 3 of this Plan are suitable for future consideration as additions to the rare species lists, but are not considered "rare" for the purposes of this Plan. These lists are derived from the Oregon Natural Heritage Program (ONHP) database of Rare, Threatened and Endangered Species of Oregon, Lists 1 and 2. ONHP List 1 includes species threatened with extinction or presumed to be extinct throughout their entire range. ONHP List 2 includes species threatened with extirpation or presumed to be extirpated from the state of Oregon. The list of rare species in this Plan only includes those species known to occur within wetlands in the Plan area."

52. Add definition of "roadside ditch":

"ROADSIDE DITCH: A small, narrow ditch constructed adjacent to a roadway to convey stormwater runoff. Distinguished from larger ditches or channels that are part of the area-wide storm drainage system."

**Exhibit B****Findings of Consistency with  
Oregon Statewide Planning Goals**

The Eugene-Springfield Metropolitan Area General Plan is a local comprehensive plan acknowledged by the state's Land Conservation and Development Commission, and the West Eugene Wetlands Plan is an adopted refinement plan to the Metro Plan. This document contains findings that address the consistency of the attached amendments to the West Eugene Wetlands Plan with applicable Oregon Statewide Planning Goals.

These amendments to the West Eugene Wetlands Plan (WEWP) will result in changes to existing locally adopted policy that address four land use categories: natural resources, industrial lands, commercial lands, and residential lands. Accordingly, this analysis addresses Oregon Statewide Planning Goal 1 (Citizen Involvement), Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources), Goal 9 (Economic Development) and Goal 10 (Housing). This analysis concludes that these refinement plan amendments are consistent with applicable Oregon Statewide Planning Goals.

**Background**

The amendments analyzed herein are changes to policies and text of the West Eugene Wetlands Plan. The amendments include 1) changes that will update policies regarding mitigation, 2) changes that respond to new information about rare species and 3) changes to the text of the plan (not adopted as policy). These amendments will not change the plan designation of any land. These amendments clarify and further refine the WEWP. The findings of goal compliance made as part of initial adoption of the WEWP remain essentially unaffected by these amendments. The amendments do not significantly alter the function, design or structure of the WEWP.

**Goal 1-Citizen Involvement**

Statewide Goal 1 calls for local governments "to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process." The planning and adoption process for these amendments has incorporated many opportunities for citizen involvement at all phases of the process as detailed below.

1. Preliminary staff recommendations for policy and text amendments to the West Eugene Wetlands Plan were first presented to the public in a workshop held on June 28, 1994. Notices were sent to all affected owners, and everyone on the West Eugene Wetlands Plan interested parties list (more than 800 people).
2. Another public workshop was held on December 5, 1995 to present revised staff

recommendations for amendments to the public. Again, notice was sent to all affected property owners and more than 900 interested parties. Citizen and agency comments from this workshop were incorporated into the staff recommendations forwarded to the Eugene and Lane County Planning Commissions.

3. On March 18, 1996, a public hearing was held before the Eugene and Lane County Planning Commissions regarding these amendments to the West Eugene Wetlands Plan. Notice was sent to all affected property owners, all owners and occupants within 400 feet of affected properties, affected neighborhood groups and more than 900 interested parties. Bright orange notices were posted next to each affected property regarding the hearing.
4. On December 17, 1997, a second public hearing was held before the Eugene Planning Commission and the Lane County Planning Commission regarding four specific plan amendments. Notice was sent to all affected property owners and all who requested to receive notice, and all who participated in the Planning Commission proceedings. Notice was sent out more than 20 days before the hearing. The amendments and supporting documents were posted on the City of Eugene's World Wide Web Homepage before the hearing.
5. On February 18, 1998, a public hearing was held before the Eugene City Council and the Lane County Board of Commissioners regarding these amendments. The record was held open for 14 days (until March 4, 1998) for written comments. Notice was sent to all affected property owners and all who requested to receive notice, and all who participated in the Planning Commission proceedings. Notice was sent out more than 20 days before the hearing. The amendments and supporting documents were posted on the City of Eugene's World Wide Web Homepage before the hearing.

We find that the opportunities for citizen involvement detailed above are beyond what is necessary to achieve consistency with Goal 1.

#### **Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Areas**

The purpose of Goal 5 is to protect natural resources, and conserve scenic and historic areas and open spaces. In addition to the Goal, the Land Conservation and Development Commission has adopted an administrative rule to aid local government in achieving the requirements of the Goal. The original Goal 5 Rule, OAR 660, Division 16, was adopted in 1991; revisions to the Goal 5 Rule were adopted in 1996 as OAR 660, Division 23. The 1991 Goal 5 Rule continues to apply to post-acknowledgment plan amendments, such as the West Eugene Wetlands Plan amendments, initiated before September 1, 1996.

Goal 5 and the 1991 Goal 5 Rule focus on the process required to prepare a Goal 5 inventory and develop a program to achieve the goal on a site-specific basis, through preservation of a resource

site; allowing conflicting uses and the loss of the resource; or mitigating negative impacts associated with the conflicting uses through partial protection.

### Findings:

The West Eugene Wetlands Plan (WEWP) is an approved wetland conservation plan as defined in ORS 196.800(15). Approval for the existing plan as a Wetland Conservation Plan was granted by the Oregon Division of State Lands on September 13, 1994 and amended on September 11, 1997. ORS 196.684(8) specifies the relationship between Wetland Conservation Plan approval and compliance with Goal 5:

“Wetland conservation plans approved by the Director of the Division of State Lands pursuant to ORS 196.668 to 196.692 shall be deemed to comply with the requirements of any statewide planning goals related to wetlands, other than estuarine wetlands, for those areas, uses and activities which are regulated by the plan.” [See also, ORS 197.279]

Approval of the West Eugene Wetlands Plan by the Oregon Division of State Lands (DSL) as provided by law, satisfies all the requirements of any applicable statewide planning goal related to wetlands (including Goal 5) for those areas, uses and activities which are regulated by the plan.

The amendments clarify and further refine the WEWP. The findings of goal compliance made as part of initial adoption of the WEWP remain essentially unaffected by these amendments. The amendments do not significantly alter the function, design and structure of the WEWP.

The fundamental program developed for Goal 5 compliance remains essentially unchanged. The policies and criteria of the WEWP operate as a tool to further Goal 5 compliance by assisting in determining the significance of wetland resources, the conflicts and the economic, social, environmental and energy values involved in protecting the resource. That analysis approaches the wetlands of West Eugene as part of an interconnected natural system rather than as separate, discrete sites. The focus remains inside the West Eugene Wetlands Special Study Area, keeping in mind that the larger system of which these wetlands are a part extends beyond this and other political boundaries.

The Plan as adopted in 1992 struck a unique balance between protection and development of wetlands within the Plan area. Over 280 acres of wetlands were designated for development, but a much larger area, over 1,000 acres, was designated for protection or restoration. The magnitude of wetlands designated for both development and protection was unprecedented in Oregon. The current amendments maintain the balance established by the original plan by keeping the policies in line with those in the original Plan.

As detailed in Exhibit C, the amendments are consistent with the applicable policies of the Metro Plan and the West Eugene Wetlands Plan. Those are the same policies previously acknowledged as being in compliance with statewide planning goals; and, in the case of the West Eugene Wetlands Plan policies, deemed to be in compliance with applicable statewide goals by DSL.

approval of the WEWP as a wetlands conservation plan. The plan amendments comply with ORS 196.681 to 196.684 and OAR 141, Division 120. For those reasons, the policy and text amendments to the West Eugene Wetlands Plan comply with Statewide Planning Goal 5.

### Goal 9 - Economic Development

The purpose of Goal 9 is to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, wealth, and prosperity of Oregon's citizens.

#### Findings:

The analysis below considers effects of the proposed changes to the policies and text of the West Eugene Wetlands Plan on the supply of buildable industrial and commercial land and concludes those effects are negligible. The proposed changes do not affect the criteria used for the development or protection designations under the existing plan. The changes can be considered essentially neutral when considering their impact on future site designations. In fact, the changes approved by this ordinance would clarify existing policy, not substantially change it. There is no evidence that the proposed changes will result in more protection of industrial or commercial lands than the current plan.

#### Industrial Lands

The Metropolitan Industrial Lands Special Study, including both the Inventory Report and the Policy Report, describes the long-term supply and demand for industrial lands metro-wide. In 1992, these documents were approved by the Eugene City Council, the Springfield City Council and the Lane County Board of Commissioners. According to the data and findings contained in these reports (as of January 1, 1989), approximately 3,600 acres of buildable industrial land were inventoried in the Metro area.<sup>1</sup> The twenty-year demand projection for buildable industrial land was between 650 and 1,172 acres.<sup>2</sup>

The policy changes make no changes to the criteria used for wetland designations under the plan and contemplate further refinement to the proposed criteria previously adopted by the City of Eugene. Using the existing criteria would result in some sites being protected and some being allowed to develop. For the sake of analysis, let us assume that all the undesignated wetland sites would be designated for protection. If this were true it would reduce the buildable industrial land supply by 179.5 acres. This represents a 5% reduction in the overall supply of industrial land, leaving 3,420.5 acres of inventoried industrial land unaffected by these refinement plan amendments. This represents a supply that is 2,248.5 acres more than the maximum projected

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<sup>1</sup> Metropolitan Industrial Lands Inventory Report, Lane Council of Governments, 125 East 8th Avenue, Eugene, Oregon, 97401, July 1993, p.73.

<sup>2</sup> Ibid., p.73.

twenty-year demand for 1,172 acres.

### Commercial Lands

The Eugene Commercial Lands Study (1992), provides an analysis of the supply and demand of vacant commercial land within Eugene. The study was adopted by the Eugene City Council, and it serves as a refinement to the Metropolitan Area General Plan. According to the findings contained in this study, 702 acres (adjusted total supply) of vacant commercial land were available.<sup>3</sup> The projected twenty-year demand for vacant commercial land (within the Eugene portion of the Urban Growth Boundary only) was 532 acres, including 109 acres of developable office land and 423 acres of non-office commercial.<sup>4</sup> For the purposes of this analysis, developable office is land designated in the Metropolitan Area General Plan for commercial use, which is zoned GO General Office. There is no land zoned General Office that contains undesignated wetland. Therefore, there will be no impact to the supply of office commercial land as a result of these amendments.

The policy changes make no changes to the criteria used for wetland designations under the plan. Using the existing criteria would result in some sites being protected and some being allowed to develop. There are currently 18.8 acres of commercial land that contains undesignated wetlands within the WEWP area. If all of these acres were removed, it would represent a 2.7% reduction in the overall supply of inventoried commercial lands, leaving about 683.2 acres of inventoried commercial land. This is 150 acres more than the projected twenty-year demand.

Since no office commercial lands would be impacted, it must be assumed that all reduction would be to the non-office commercial category. The projected demand for this category is 423 acres. According to the Commercial Lands Study, the inventory of buildable commercial land includes 465 acres of land designated in the Metro Plan for commercial use, but not zoned for office use. An additional 197 acres is included in the inventory that is not categorized between office and non-office use, though a percentage of it can be assumed available for non-office commercial. Using only the 465 acres explicitly denoted in the Commercial Lands Study, after subtracting the 18.8 acres that could be removed by protection of wetlands, 451 acres are left, which is 23 acres more than the projected demand for this category.

The foregoing analysis concludes that even if all of the commercial and industrial undesignated wetlands were removed from the buildable lands inventory by designating them for protection, there would be adequate land in the inventory to meet the project 20-year demand for industrial and commercial land.

Since the policy changes include no changes to the criteria for wetland designations under the

<sup>3</sup> Eugene Commercial Lands Study, Eugene Planning and Development Department, 777 Pearl Street, Room 106, Eugene, Oregon, 1992, p. II-15.

<sup>4</sup> *Ibid.*, p. II-15.

plan, and since even removing the maximum possible acres from the land supply would leave adequate buildable land in both categories, these amendments are consistent with Goal 9.

### Goal 10 - Housing

The purpose of Goal 10 is to provide for housing needs of the citizens of the state.

#### Findings:

As discussed and analyzed above, the proposed policy amendments do not change the criteria for designating wetlands. There is no evidence that the proposed amendments will result in more protection of residential lands than the current plan.

The Metropolitan Area Residential Land Study: Supply and Demand Analysis (1991), describes the supply and demand for residential lands within the Eugene-Springfield Urban Growth Boundary. This report is the 1989 update to the residential supply and demand analysis prepared for the Metropolitan Area General Plan. According to the findings contained in this report, 11,414 acres of vacant, buildable residential land were available in the Metro area in 1989.<sup>5</sup> The twenty-year demand projection for vacant, buildable residential land was between 7,410 and 8,230 acres.<sup>6</sup>

Wetland designation changes under the existing plan criteria might decrease the available inventory of residential land. The total area of residential land that contains undesignated wetlands is 72 acres. If all of these acres were protected and removed from the buildable lands inventory it would represent a 0.6% reduction in the overall supply of inventoried residential lands, leaving about 11,342 acres of inventoried residential land. This represents a supply of several thousand acres beyond the projected twenty-year demand for between 7,410 and 8,230 acres.

The foregoing analysis concludes that even if all of the residential undesignated wetlands were removed from the buildable lands inventory by designating them for protection, there would still be adequate land in the inventory to meet the projected 20-year demand.

Since the policy changes include no changes to the criteria for designating wetlands under the plan, and since even removing the maximum possible acres from the residential land supply would leave adequate buildable land to meet the projected 20-year demand, these amendments are consistent with Goal 10.

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<sup>5</sup> Metropolitan Area Residential Lands Study, Eugene Planning and Development Department, City of Springfield Development Services Department, Lane Council of Governments, June, 1991, p.44.

<sup>6</sup> *Ibid.*, p.103.

**Conclusions**

The above findings show that these amendments to the West Eugene Wetlands Plan are consistent with Oregon Statewide Planning Goals 1, 5, 9 and 10. This conclusion is based on the following:

- 1) the abundant opportunities provided for citizen involvement throughout the planning process
- 2) the proposed policy amendments do not change the criteria for protecting or developing wetlands,
- 3) the maximum acreage that could be removed by designating currently undesignated wetlands for protection would still leave adequate industrial, commercial and residential lands to meet the projected demands for the 20-year planning period and
- 4) these amendments do not significantly alter the basic structure and function of the West Eugene Wetlands Plan and its protection of wetland resources.

No further analysis of Statewide Planning Goals is necessary for these amendments to the West Eugene Wetlands Plan.

## Findings of Consistency with Refinement Plan Amendment Criteria

Eugene Code section 9.145 provides the criteria to determine whether a proposed plan amendment should be approved. The proposed amendments must be consistent with the criteria in EC 9.145 to be approved.

Section 9.145(2) "The planning commission shall review the proposed amendment and receive evidence, and decide whether the proposed change is consistent with the following approval criteria: (a) The plan amendment is consistent with the Metropolitan Area General Plan;"

### Findings:

The attached ordinance does not contain any plan diagram changes. Therefore, these amendments are consistent with the Metro Plan diagram.

The Metro Plan contains the following policies which address the proposed amendments (related findings follow each policy):

Policy 1, page III-B-4: "Demonstrate a positive interest in existing and new industries, especially those providing above average wage and salary levels, an increased variety of job opportunities, a rise in the standard of living, and utilization of our existing comparative advantage in the level of education and skill of the resident labor force."

Several of the proposed policies indirectly acknowledge the value of existing and new industrial development. These include amendments numbers 75-78 and 82-83 (mitigation bank program policies). These policies continue to provide a framework for allowing wetland of lesser value to be developed with planned industrial uses, and for those wetlands to be replaced through the mitigation bank with greater ease.

Policy 18, page III-C-9: "Local governments shall develop plans and programs which carefully manage development on hillsides and in water bodies and restrict development in wetlands in order to protect the scenic quality, surface water and groundwater quality, forest values, vegetation, and wildlife values of those areas."

This policy sets direction for future legislative implementation of the goals and policies of the Metro Plan and is not intended to be applied to a specific action or proposal. In addition, the West Eugene Wetlands Plan as a whole is a plan which outlines a program for management of development in and around wetlands to protect values as described in Policy 18.

Policy 19, page III-C-9: "Local governments shall develop policies and local controls for protection and management of wetland areas by completion of the next Metro Plan Update."

The West Eugene Wetlands Plan, which contains policies and local land use controls for wetlands in west Eugene, was adopted in 1992. The current proposed amendments will update the 1992 Plan. The proposed text amendments do not affect policies which prescribe the primary wetland protection measures to be implemented: wetland acquisition, wetland buffers and waterside setbacks.

Policy 27, page III-C-10: "Local governments shall encourage further study by specialists of endangered and threatened plant and wildlife species in the metropolitan area."

Proposed amendments numbered 67 and 68 provide direction for the study and management of rare species within the Plan area. These amendments are consistent with the above policy.

Policy 28, page III-C-10: "Local governments shall protect endangered and threatened plant and wildlife species, as recognized on a legally adopted statewide list, after notice and opportunity for public input."

Several text amendments address protection of rare plants (proposed amendments numbered 67, 68 and 87). These amendments would 1) limit consideration of rare plants to the presence of rare species listed in the plan (taken from the Oregon Natural Heritage Program Lists 1 and 2) when determining whether to protect a site, 2) direct the City to pursue interim protection of rare species populations on sites not designated for protection in the Plan and 3) pursue development of habitat conservation strategy planning for rare species. These policies are intended to ensure the protection of rare plants on sites with potential for long-term protection and management, and to expand the populations on suitable sites, while allowing needed road improvements or development with small impacts to these species. Additional policies identify which species are considered rare within the plan area.

The proposed amendments are consistent with this policy.

Policy 29, page III-C-11: "Local governments shall work with owners of designated environmentally-sensitive areas to require that reasonable actions are taken to protect these lands, e.g., the heronry at the confluence of the Willamette and McKenzie Rivers and the site of the Aster curtus in the Willow Creek Basin."

There are two sites within the West Eugene Wetlands Plan area that are designated in the Metro Plan as environmentally sensitive. They are the Willow Creek Natural Area and Bertelsen Slough. The Bertelsen Slough area is owned and managed by the Bureau of Land Management as a protected natural resource area. The Willow Creek

Natural Area is owned by the Nature Conservancy and is also managed as a protected natural area.

The proposed amendments will not change the fact that both Bertelsen Slough and Willow Creek are being actively managed by their respective owners for protection of natural resources. The amendments do not change the status of these sites, and are therefore consistent with this policy.

Policy 2, page III-E-3: "Natural vegetation, natural water features, and drainageways shall be protected and retained to the maximum extent practicable, considering the economic, social, environmental and energy consequences in the design and construction of urban development and landscaping shall be utilized to enhance those natural features."

The proposed amendments do not change the criteria for designating wetlands sites (or portions of sites) for protection. The existing criteria and other changes to the plan policy text will prevent disturbance of wetlands, water features and natural vegetation on those sites. By protecting wildlife habitat, water quality and vegetation on sites that meet the existing protection criteria, these proposed amendments are consistent with the above policy.

The reference to "economic, social, environmental and energy impacts" comes from statewide planning Goal 5. See Exhibit B, (incorporated herein by reference) for a discussion of consistency of these amendments with Goal 5.

The overall impact of applying the policies in the proposed amendments to the West Eugene Wetlands Plan is to continue to protect the majority of wetlands and waterways in the Plan area in the manner established by the original Plan. This includes protecting natural vegetation on the most valuable wetland sites. The criteria for designation wetlands for protection or development were unchanged. Consequently, the amendments are consistent with this policy.

#### **Summary Conclusions: Metro Plan Consistency**

The findings above indicate consistency with all applicable Metro Plan policies. The proposed amendments meet the criterion of Metro Plan consistency.

**Section 9.145(2)(b): "The plan amendment is consistent with remaining portions of the refinement plan;"**

#### **Findings:**

The West Eugene Wetlands Plan contains the following applicable Goals (related findings follow each Goal):

- Goal 3.1 "Protect and enhance water quality, wildlife habitat, flood storage sediment and toxicant removal and other wetland functions and values."

The proposed amendments do not change the criteria for designating wetlands sites (or portions of sites) for protection. The existing criteria and other changes to the plan policy text will prevent disturbance of wetlands, water features and natural vegetation on those sites. By protecting wildlife habitat, water quality and vegetation on sites that meet the existing protection criteria, these proposed amendments are consistent with the above policy.

- Goal 3.2 "Minimize economic hardship on private property owners due to protection of wetlands and other valuable environmental resources."

The amendments leave intact various provisions and policies addressing economic development values that are contained in the West Eugene Wetlands Plan. These provisions support Goal 3.2. No new policies are introduced that contradict Goal 3.2.

- Goal 3.5 "Protect and expand current populations and habitats of rare, endangered and threatened plants and animals that currently exist in west Eugene."

Several text amendments address protection of rare plants (amendments numbered 67, 68 and 87). These amendments would 1) require consideration of rare plants and animals listed in the Plan (taken from the Oregon Natural Heritage Program Lists 1 and 2) when determining whether to protect a site, 2) direct the City to pursue interim protection of rare species populations on sites not designated for protection in the Plan and 3) pursue development of habitat conservation strategy planning for rare species. These policies are intended to ensure the protection of rare plants and animals on sites with potential for long-term protection and management, and to expand the populations on suitable sites.

The change proposed under amendment #87 would limit the consideration of rare plants to species that are listed in the Plan. The adopted list includes species on Lists 1 and 2 of the Oregon Natural Heritage Program.

The Oregon Natural Heritage Program is a statewide system for tracking plant and animal species of concern. It is a cooperative program of The Nature Conservancy, the Oregon Division of State Lands and other state agencies involved with identification and protection of sensitive species. Every other year the ONHP produces a document called "Rare, Threatened and Endangered Plants and Animals of Oregon". The document is separated into sections on animals and plants. For both plants and animals, there are lists numbered 1, 2, 3 and 4. These lists are produced through a consensus process of participating scientists (including both state and federal agency biologists as well as "independent" biologists) at a bi-annual conference. List 1 includes species that are threatened with extinction or presumed to be extinct throughout their entire range (List 1 generally includes federally listed and candidate species). List 2 includes species that

are threatened with extirpation<sup>1</sup> or presumed to be extirpated from the state of Oregon. List 3 includes species for which more information is needed before status can be determined, but which *may* be threatened or endangered in Oregon or throughout their range. List 4 contains species which are of concern, but are too common to be currently considered threatened or endangered.

Only lists 1 and 2 contain species which are confirmed to be threatened or endangered. These two lists most closely match the intent of the proposed amendments to the protection criterion for rare plants. The species, by List, which occur within wetlands in West Eugene are shown below:

List 1

<i>Aster curtus</i>	white-topped aster
<i>Erigeron decumbens</i> var. <i>decumbens</i>	Willamette daisy
<i>Horkelia congesta</i>	shaggy horkelia
<i>Lomatium bradshawii</i>	Bradshaw's lomatium

List 2

<i>Cicendia quadrangularis</i>	timwort
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The five species on Lists 1 and 2 have generally been considered the "rare" species within the west Eugene wetlands over the past several years. By comparison, the definition of "rare plant" in the original plan (for individual species) was "a species which does not have threatened or endangered status, but is present in small numbers throughout its range." In other words, the term "rare" is not dependent upon state or federal listing, but rather on the actual status of the plant population. The ONHP lists 1 and 2 include those species which have been confirmed to be rare either in Oregon or throughout its entire range. In summary, amendment #67, 68 and 87 would contribute to protection of rare, threatened and endangered plant species as called for in Goal 3.5.

In addition to specifying rare plants from the ONHP lists, amendment #87 adds consideration of rare animals from the same ONHP lists. As the listing below indicates, the only animal species on Lists 1 or 2 that are confirmed within the West Eugene Wetlands Plan area are Fender's blue butterfly and the northwestern pond turtle. These are listed below.

List 1

<i>Icaricia icarioides fenderi</i>	Fender's blue butterfly
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<sup>1</sup> "Extirpation" means eliminated or destroyed, in this case within a geographic area; distinguished from "extinction" which means no longer found anywhere.

List 2

*Clemmys marmorata marmorata*                      northwestern pond turtle

Amendment #67 gives direction to the City to pursue strategic planning for conservation of rare plant habitat in the Plan area. Amendment #68 directs the City to pursue interim protection of rare plant sites not designated for protection. Both of these new policies augment existing policy in the West Eugene Wetlands Plan calling for protection of rare plants and their habitat in the Plan area.

Goal 3.6 "Achieve state and federal requirement of "no net loss" of wetlands in both quantity (area) and quality (functions and values)."

The West Eugene Wetlands Plan addresses the "no net loss" policy through protection of valuable wetlands and coordinated restoration of degraded wetlands to replace those that are filled. This approach is not changed by the proposed amendments. The proposed amendments that address the mitigation bank (numbers 73, 74, 75, 76, 77, 78, 82 and 83) maintain the intent of no net loss of wetlands contained in the existing Plan.

Goal 3.7 Protect an interconnected system of wetlands within a sustainable, ecologically sound system, with a high likelihood of long-term survival.

The proposed amendments make no significant change to the existing designation criteria or policies addressing the probability of achieving long-term protection. This is consistent with the Plan Goal of protecting a wetland system with a "high likelihood of long-term survival".

The West Eugene Wetlands Plan contains the following applicable Policies (related findings follow each policy):

Policy 3.1 "Seek acquisition of protected wetland sites by federal, state and local public agencies and private, non-profit conservation organizations."

The proposed amendments do not affect the on-going efforts of the West Eugene Wetlands Program to acquire wetlands designated for development in the Plan.

### **Summary Conclusions: West Eugene Wetlands Plan Consistency**

The above findings indicate that the proposed amendments are consistent with the applicable policies in the remainder of the WEWP. In addition, the attached report (Appendix A) describes the consistency of the adopted amendments and provides direction on how proposed revisions to the criteria used to designate wetlands for protection, development or restoration (mitigation) not adopted by this ordinance could be made consistent with the WEWP. The proposed amendments adopted by this ordinance meet the criterion of consistency with the remainder of the refinement plan.

**Section 9.145 (2)(c) "The plan amendment is found to address one or more of the following: 1. An error in the publication of the plan;"**

**Findings:** The proposed amendments do not contain any corrections of errors in the original Plan. However, the amendments do address omissions from the original Plan. Proposed amendment #63 gives direction to local governments about issuance of building permits within protected wetlands. This subject was also not addressed in the original Plan.

**Section 9.145 (2)(c) 2. "A change of circumstances in a substantial manner not anticipated in the plan;"**

**Findings:** Several proposed policies are introduced as clarifications of existing policies in the Plan. Property owners, developers, and various agency staff have on numerous occasions commented on the lack of clarity in the existing plan regarding: 1) what the relationship is between wetland protection policies and the city's building permit process, 2) how mitigation sites are identified, 3) whether the wetland designations map in the plan accurately reflects wetland boundaries, 4) whether roadside ditches are protected under the plan, 5) whether all wetlands on public land were intended to be protected, and 6) what the city's policy is regarding use of degraded wetlands for stormwater quality improvement. The lack of clarity of these policy areas was not anticipated at the time of Plan adoption. These amendments include numbers 63, 65, 70, 71, 72.

**Conclusions:** The proposed amendments listed above which address lack of clarity experienced by City staff following adoption of the Plan respond to a situation not anticipated during Plan adoption and are thus consistent with this criterion.

**Section 9.145 (2)(c)3. "Incorporation into the plan of new inventory material which relates to a statewide goal; or"**

**Findings:** Proposed amendments which address rare plant protection (numbers 67 and 68) are introduced to respond to new information about rare plant distribution that was not available at the time of Plan adoption. Information gathered since adoption of the Plan shows that there are a number of small wetland sites, surrounded by development, with small rare plant populations which would be very difficult to protect due to their isolation from other habitat areas, small size, and surrounding uses. Due to their isolated nature these sites cannot be integrated or connected to the larger wetland system. When the Plan was adopted in 1992, it was thought that the rare plants existed only on the large, pristine wet prairie wetland sites such as the Willow Creek Preserve. Amendment #67, 68, 87-89 would require consideration of plant species listed in the Plan (taken from the Oregon Natural Heritage Program Lists 1 and 2) when evaluating new wetland sites for designation. This change is based upon the results of recent plant surveys, which have revealed the distribution of rare plant species on the adopted list. Therefore, these amendments address new inventory information which addresses Statewide Goal 5, and are consistent with this criterion.

Conclusions: The proposed amendments listed above regarding rare plants meet the criterion above because they respond to information about rare plants not available at the time of Plan adoption. Amendments 63, 65, 67, 68 and 87-89 are consistent with this criterion.

**Section 9.145 (2)(c) 4. "A change in public policy."**

Findings: The nine proposed amendments dealing with the mitigation program are based upon changes in how the mitigation bank operations are conducted, which in turn is based upon an intergovernmental agreement which includes the City of Eugene, Oregon Division of State Lands, Oregon Department of Environmental Quality, U.S. Environmental Protection Agency and U.S. Army Corps of Engineers (these include proposed policies numbered 73, 74, 75, 76, 77, 78, 82 and 83).

One proposed policy (amendment 81) maintains consistency with other changes being proposed.

Amendment #81 reflects a new policy added under amendment #65.

Conclusions: The proposed amendments listed above which address changes in mitigation bank operation reflect new state and federal policy and the local intergovernmental agreement implementing the City's bank program, and thus meet this criterion.  
The proposed amendments listed above which maintain consistency with other proposed changes respond to changes in local public policy and thus are also consistent with this criterion.

**Summary Conclusions:**

Each of the proposed amendments meet the criteria under Eugene Code sections 9.145(2)(a) and (2)(b) and one or more of the criteria for approval of a refinement plan amendment as set forth in Eugene Code section 9.145(2)(c). See also Exhibit D.

**Based upon the discussion, findings and conclusions herein (above) the proposed amendments are found to be consistent with the applicable criteria contained in Eugene Code Section 9.145.**

## **ANALYSIS OF WEST EUGENE WETLAND PLAN POLICY TEXT AMENDMENTS**

for  
**City of Eugene and Lane County**

**Steve Gordon, Principal Planner  
Lane Council of Governments  
November 1998**

### **Purpose**

The purpose of this analysis is to assist the elected officials of Eugene and Lane County reach consensus on proposed amendments to the West Eugene Wetland Plan text. This analysis was conducted independently from any City or County staff or officials and reflects solely the view of its author. The analysis is directed only at the policy and goal text amendments in terms of the intent and integrity of the 1992 Wetland Plan, which balanced economic development and wetland protection. Special attention was given to the criteria amendments.

There was no attempt to compare this analysis with application to any specific site or site analysis. There was no analysis conducted on proposed amendments suggested by any elected official during the process. The analysis focused on policy and goal text amendments in Exhibit A, Lane County Ordinance No. PA 1106.

### **Background**

The 1992 West Eugene Wetlands Plan (Wetland Plan) process resulted from a wildlife habitat inventory conducted in 1987 and 1988 as part of the Metropolitan Plan Natural Resources Special Study. By January 1989, the work program for preparing the wetland study and plan had been approved. LCOG was hired as the project leader and an interdepartmental staff team, the Wetheads, conducted the staff work. Instead of using a citizen advisory committee, citizen involvement consisted of an active citizen outreach program involving workshops, surveys, field trips, newsletters, and personal contacts. A technical committee of state and federal agency representatives advised the Wetheads and participated in the workshops. In 1989, a more detailed wetland inventory was conducted. Citizens were involved in reviewing wetland definitions, values, and law; identifying issues; drafting goals; reviewing inventory methodology; reviewing inventory results; commenting on draft alternatives (including maps and criteria); commenting on the draft Plan; and ultimately testifying before planning commissions and local elected officials as the Wetland Plan was adopted in 1992. By time of adoption, the invitation and interested party mailing list included over 1,200 addresses.

Despite better inventories and understanding of the science of wetlands in west Eugene in 1998 than in 1992, the public dialogue seems to have suffered. The recommendations of the 1992 Plan have stood up well over time. The public dialogue during Plan development brought the

business and development and the local environmental interests closer to a consensus. The dialogue with individual owners and the rural owner group could have been improved. But the major success of the Wetland Plan was the community consensus that allowed the Plan to be adopted and implemented.

The major controversies at the time of adoption in 1992 were concern over private property rights, particularly in the rural portions of the Wetland Plan area outside the urban growth boundary, and changing and confusing state and federal laws and rules about wetlands. Amendments were made to the draft plan to moderate the rural owners' concerns. In addition, staff was directed to return to several key sites and work with owners to obtain permission to conduct more detailed inventories on those sites.

The Plan was unique from several standpoints:

- It involved a collaborative approach to preparing a plan that balanced wetland protection and economic development with focus inside the UGB.
- It represented the first attempt in Oregon to develop a wetland conservation plan that could assist or replace the individual wetland permitting processes.
- It involved citizens in an attempt to avoid confrontation and to obtain consensus on the balance between environmental and economic values. There was an expressed desire to add certainty back to west Eugene in terms of development and protection.
- It contained a vision that helped reach consensus and aided implementation.

To that end, no one person wrote the Plan. It was a team effort and staff attempted to listen carefully to ideas and concerns expressed by citizens, agency representatives, and local decision-makers as the Plan was drafted and adopted. The Wetland Plan is innovative, has received many awards, and has gained national recognition. With a few exceptions, its implementation is even more outstanding than the Plan. The land acquisition program, the intergovernmental partnership, the scientific knowledge gained, the cooperation using youth corps, volunteers and shared staff resources in managing open spaces, the mitigation bank, and continued development in west Eugene are all a credit to the Plan and its backers. †

In 1993, as a result of Plan directive, new state wetland inventory and plan rules, a new National Wetland Inventory, new lists of wetland plants and soils, and increased knowledge of west Eugene, a new inventory was undertaken. The inventory and Plan were approved by state and federal agencies in 1994 and 1995. The current set of Wetland Plan amendments is derived from that inventory and six years of experience in dealing with the Plan.

Since 1989 and 1992, there have been other changes that should be considered. Among those changes are: the state and federal wetland field manual, state rules on wetland inventories, changes and additions to rare species lists, more information gathered from sites in west Eugene, and dramatic changes in development and land values. Also, the Plan has been implemented with tremendous success by: forming partnerships, working with willing land owners, acquiring wetlands, creating a mitigation bank, practicing restoration and enhancement, assisting owners who purchase bank credits, leveraging other dollars to make stream and wetland improvement, and making physical improvements that allow greater public enjoyment of the wetland system.

Another major difference between the Plan amendment package compared to the original Plan is that Plan development and Plan amendment fall under different sets of local code criteria. While Plan development is much more legislative and broad in nature, the refinement plan amendment process is viewed more narrowly and is more quasi-judicial in nature. When amendments to policy are mixed with site-specific amendments, the mixture can be more confusing. The amendments to the policy are legislative in nature, and can be viewed in a broader context.

**ANALYSIS**

The following analysis addresses text policy amendments included in Exhibit A, "Amendments to the West Eugene Wetlands Plan, Lane County Ordinance PA 1106, pp. 1-18. The goal and policy numbers are cited and numbers in parentheses after the analysis correspond to those in Exhibit A. Not all of the twenty-nine amendments are addressed; policies 61, 69, 79, 85 and 86 are not included because they have already been agreed to by the City and County or are undergoing further staff analysis. The policies are divided into three categories: a) criteria, b) rare species, and c) other. The analysis is presented in reverse order with "Other" amendments first, then "Rare Species" amendments, and "Criteria" amendments last.

Several text amendments have been dealt with in an earlier City and County action related to the utility corridor issues. However, number 84 is re-visited in this analysis because it includes references to rare species.

The text amendments (reference to Exhibit A) by category are:

Previously Agreed to or Being Re-considered	Criteria	Rare Species	Other
61	62	67	63
69	64	68	65
79	66 ↓	84	70 ↓
85	80	87	71
86		88	72
		89	73
			74
			75
			76
			77
			78
			81
			82
			83

**OTHER**

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The fourteen policies in this category constitute the majority of the amendments. Each is addressed separately. They are found to be consistent with the original intent of the Plan.

This new policy requires applicants to have state and/or federal wetland fill permits before receiving a city or county grading or building permit within areas mapped as jurisdictional wetlands. This is consistent with the Plan's intent and state wetland law. (63)

This new policy clarifies that the Plan is intended to deal only with jurisdictional wetlands. This policy is an improvement over the existing Plan. State and federal wetland inventory methods, laws, rules, and policies continue to change over time. For example, the 1996 Food Security Act (Farm Bill) altered definitions of agricultural wetlands. The original intent of the Plan was to address state and federal wetland laws and regulations through a local effort. This policy helps avoid a potential local "taking" of upland property rights by removing the potential imposition of a local restriction greater than state or federal wetland law requires. (65)

This new policy indicates that roadside ditches are not addressed by the Plan. The Plan's scale is such that streams were addressed, but not small drainage ditches that serve to collect runoff along streets and roads. This policy does not mean or imply that state and/or federal law may consider roadside ditches to be jurisdictional wetlands. The Plan's intent was to strengthen protection of linear wetlands and waterways that connect key wetland units, as shown on Map No. 3, the Plan diagram. (70).

This amendment to policy 3.5 clarifies and improves the relationship of the Plan text goals and policies to Map No. 3, the Plan diagram. (71)

This new policy establishes local intent to use degraded wetlands for the purpose of on-site water quality treatment for stormwater runoff. Among the many functions of wetlands is the ability to purify water by filtering, absorbing, and converting certain types of pollutants through chemical and physical processes. A major thrust of the Plan was to deal with wetlands in a multiple objective approach, realizing that urban stormwater requirements for cleaner runoff would affect west Eugene and the Amazon Creek drainage. This policy creates local opportunities to alter a lesser quality wetland and design it to specifically treat water pollution as non-point water quality issues face the City and County. (72)

This new policy 4.7 is consistent with the original intent of the Plan and the state and federal approved Memorandum of Agreement for the West Eugene Wetland Mitigation Bank. The whole discussion about rural wetlands during the 1992 adoption process was about the ability to purchase suitable sites in rural areas for wetland mitigation from willing sellers. Wetland mitigation is an allowed use in EFU zoned areas under ORS 215. Some of the urban needs for mitigation may occur on rural land outside the urban growth boundary where land is more affordable. That mitigation can occur on the wetter portions of farm land, thus reducing loss of prime agricultural capability on the region, as a whole. Plan page 39 and Map 2 outline this concept clearly, and this policy clarifies and improves that relationship. This area encompasses

portions of the lower Amazon Creek drainage, eastern Fern Ridge Reservoir area, and portions of lower Coyote Creek, all within the Long Tom River watershed. (73)

These new policies clarify thinking about the mitigation aims of the Plan. Compensation for wetland loss can occur by three means: 1) restoring wetland functions where they have been lost on an historic wetland with relatively high ratios of compensation making this method most economical; 2) enhancing one or more of the wetland parameters (soils, water, plants) on an existing, degraded wetland at lower ratios compared to restoration; or 3) creating a wetland from an upland, where wetlands have not occurred naturally. This latter type of mitigation, creation, has greater expense attached to it and a poor record of performance nationwide. The places most likely for success are where historic wetlands existed or where wetland functions have been degraded by agricultural or urban practices. These new policies clarify the intent of the Plan. (74 & 76)

This new policy is consistent with the Plan and the state and federal approved Memorandum of Agreement establishing the West Eugene Wetland Mitigation Bank. Since 1995, the City has developed a Bank Capital Improvement Plan (CIP). This CIP guides the development of more detailed plans for individual sites and approximates the credits to be derived from future restoration and enhancement efforts. The CIP assists in identification of suitable sites and the scheduling of studies, plans, financing, partnership agreements, and any local, state or federal permits necessary to carry out Bank projects. Conceptual Map No. 4 continues to be improved and refined as new information is gathered and mitigation plans and projects are completed. (75)

This amended policy 4.9 clarifies the intent of the Bank program. The state and federal approved Memorandum of Agreement for the West Eugene Mitigation Bank reflects this policy. (77)

This amended policy 4.14 provides greater flexibility than the existing Plan. It reflects the reality of the Bank program and individual permitting. Normally advance or concurrent mitigation occurs to avoid loss of wetland functions over time. There are occasional exceptions where "no net loss" and actual net gains can be achieved by providing exceptions to advanced or concurrent mitigation. This policy allows for that exception, although advanced mitigation is still the expressed goal of the West Eugene Plan and Bank program. (78)

This amended policy 4.21 is an improvement over the existing policy. It allows a separate inventory map to be updated periodically based on the latest field inventories, state and federal wetland determination approvals, and state and federal jurisdictional amendments. By referencing this official inventory map maintained by the City of Eugene, the map can be updated without requiring a formal amendment to the Plan. It is based on factual findings, rather than local policy changes. This map constitutes the local wetland inventory for the Plan area. (81)

This amended policy 4.22 reflects experience in the field since 1992 and improves the existing Plan. For example, the Plan map may contain a "protection" designation for a wetland area, but that site may contain pockets of old fill, which were placed over historic wetlands. These pockets of upland may be suitable sites for wetland restoration under the mitigation program. At \$30,000 and acre, it may be cost effective to remove the fill, prepare the underlying wetland

soils, and plant wetland seeds as part of the mitigation program. This amended policy allows that to occur without a Plan amendment. (82)

This amended policy 4.24 adds flexibility to the Plan and reflects reality of the Plan's implementation since 1992. While the Plan deals with jurisdictional wetlands and attempts to provide balanced economic development within the urban growth boundary, wetland acquisition has provided a slightly different reality and opportunity. In some cases, willing sellers have wanted to sell entire parcels as part of the program, not just the wetland portion of a lot. This has two advantages for the program: 1) sometimes there are opportunities to achieve wetland mitigation on portions of the uplands where restoration is a possibility, and 2) the uplands provide buffers for the wetlands and broader habitats for species that use uplands adjacent to wetlands. BLM, ODOT, The Nature Conservancy, and the City have acquired parcels that include some measure of uplands in conjunction with wetland purchases. There is still intent to minimize purchase of buildable uplands in west Eugene using public funds; this amendment allows the flexibility to purchase some uplands from willing sellers. (83)

### RARE SPECIES

Six amendments (#'s 67, 68, 84, 87, 88, and 89) deal with rare species issues. The protection criteria also include rare species, but are addressed in the last section of this analysis.

The rare species intent is consistent with the original Plan. The 1992 Plan addressed the broad suite of known listed species within a multiple objective context. However, the lists have changed to add new plants since 1992, and plant species list status has changed in some cases; with species' status being elevated as more about its rarity and distribution becomes known. Also, two animal species are listed. The listing of animal species has different land use implications than plant listings. It is not the intent of the Plan that is in question with these amendments, it is the fact that circumstances have changed since 1992, and we can expect further changes in state and federal lists next year and in the future. When the most critical habitat type dealt with in the Plan area, Willamette wet prairie, now exists on less than 1% of its original extent, it is not unusual to find more and more rare species listed that are associated with a habitat that is at risk in the Valley. Whether the Plan list is expanded or not, many state and federal decisions are impacted (for example, issuance of a federal wetland permit or public projects using federal funds must include consideration of and follow processes under the Endangered Species Act).

### Background

When the Plan was developed, the treatment of the rare plant community, wet Willamette Valley wet prairie, was a driving force. At that time, three species of wetland plants were considered rare (either listed by state and federal agencies as threatened or endangered or listed as candidates for threatened or endangered status). Those three species were *Aster curtus*, the white-topped aster, *Lomatium bradshawii*, Bradshaw' lomatium, and *Erigeron decumbens var. decumbens*, the Willamette daisy. In 1991, those species were known from about six sites in west Eugene. When the Plan was originally prepared and adopted, no animal species known to exist in west Eugene was on official endangered or threatened list. Fender's blue butterfly was

discovered after Plan adoption. Western pond turtle was known to exist, but was not on an official list. Subsequent plant surveys funded by public and private parties have expanded the number of sites where these three original rare plant species are found. In addition, two more plant species have gained elevated status on official lists and are known from west Eugene's wetlands; *Horkelia congesta*, shaggy horkelia, and *Cicenditia quadrangularis*, timwort, previously known as *Microcala quadrangularis*.

When the Plan was prepared, the six known locations of rare plants contained several plants and often more than one listed species. In several instances since Plan adoption, a few individual plants have been detected on sites. This has raised a new issue since 1992. How do you determine when a viable population of listed plants exists and is one or two plants a viable population? These questions are addressed in the "Criteria" section (62) under criterion #1.

Listing of animals also raises new issues. Animals are given higher status under the law than plants in terms of protections from harm to the species, especially on private land. And animals are more mobile than plants. The butterfly and turtle spend part of their life cycle in wetlands and part in uplands. The turtle lives in and near water, but builds its nests in soft upland soils with southwestern exposure so nests receive solar warmth. ODOT has paid for extensive western pond turtle studies as part of the Beltline Road and West Eugene Parkway planning processes. The turtles use the waterways as travel corridors. The pond turtles sometimes expand their territory, moving into new ponds that are created – like new beaver ponds. All known turtles in west Eugene were radio-tagged so movements could be tracked throughout the year. The butterfly larva feed on a rare upland plant, Kincaid's lupine (proposed for listing in 1999), but adults feed, at least partly, on some nearby wetland plants. Studies on the butterfly indicate that islands of habitat along a corridor between the west Eugene and Fern Ridge Reservoir populations may hold the key to this species' survival in our portion of the Willamette Valley.

Regardless of local listing of these species, state and federal agencies will have to address them as part of any federally funded project (e.g., highways, electrical transmission line), or as part of a federal permit (e.g., a wetland fill permit).

If this set of amendments is adopted, the Plan will apply only to jurisdictional wetlands. I will not control rare species impacts on uplands within the Plan area. There may be activities associated with species recovery and protection undertaken on partner managed lands, that include wetlands and some adjacent uplands. That does not mean that rare species laws may not impact uplands in the Plan area.

### Analysis

The following are comments on specific rare species text amendments.

This new policy is consistent with the Plan. It was the intent of the Plan to use existence of rare plants as an indicator for wetland protection and acquisition. It was also the intent of the Plan to address endangered species concerns by taking an approach to broad habitat protection for multiple species, rather than deal with one species at a time. The wetland partners are already working on a strategy for habitat protection on partner owned lands. (67)

This new policy is suggestive, not mandatory on wetlands where rare species exist. Where possible, site design may be used to avoid destroying rare species habitat. Since any development or restoration activity affecting a jurisdictional wetland requires a wetland fill permit, existence of a rare species will require steps that either permit the destruction or conserve the habitat. This policy allows interim steps to be pursued in advance of those activities that would require such permits. (See also recommended action 3.14, #36 in non-policy text amendments for techniques suggested to protect rare species on private property). (68)

This new policy on Utility Corridors was approved by the City and County earlier this year. It contains references to rare species in two places and is recommended for reconsideration based on those changes. Under the policy section dealing with location of new lines and new connections to existing lines within wetlands granted "protection" designation, an amendment to the Plan would be allowed only where an alternatives analysis included consideration of rare species and their habitats (if rare species are known to occur), or where impacts to rare species will not occur. These proposed modifications to this adopted policy delete the reference to "threatened and endangered" and delete reference to specific lists to be consistent with other references to "rare species" as defined in the Plan amendment package covered elsewhere in this set of analyses and are consistent with the intent of the Plan. (84)

This new policy is one of two key policies related to the rare species issue. This policy moves away from reference to existing lists of species from state, federal, or other organizations and relies on a specific list of plants and animals known to occur in west Eugene. It includes five plants and two animals. There is a good explanation of how this list of seven species was derived in Exhibit C, pp. 4-6. Having this list in policy allows local officials to control additions and understand the impact of list inclusion on the Plan's protection, restoration and development scheme. Changes to state and federal lists do not automatically result in change to the definition of rare species in the Plan. (See also non-policy text amendment to the definitions in Plan Glossary, #'s 50 and 51, Exhibit A, pp. 17 & 18). (87)

This new policy is the second of two key policies related to the rare species issue. It lists other species of concern, but does not include them in the Plan's list of rare species. It states that these species would be considered for addition if they should be found in west Eugene. The addition of any of these species would require public review and hearings before local elected officials could adopt a Plan amendment that would add those species to the Plan list. [Note: It is also possible that other species will be listed or elevated in rareness status on other official lists in the future, which could cause local officials to consider amending the Plan rare species list cited in #87 above. Again, that would require public review and hearing before adoption by local elected officials]. (88)

The amendments to Plan Goal 3.5 reflect the new definition of "rare species" as listed in the Plan and remove the reference to "endangered and threatened" status. It was the original intent of the Plan to protect known populations of rare species, and to attempt to expand their populations or distribution as part of recovery of those species. This goal amendment is consistent with that intent. (89)

The rare species amendments are consistent with the intent of the original Plan. Listing the specific species is an improvement over reference to official lists that change over time.

## CRITERIA

There are four text amendments that address the criteria, numbers 62, 64, 66, and <sup>80</sup>86.

### Background

The original criteria were developed along with a set of scenarios presented at Peterson Barn in February 1990. The scenarios ranged from one slanted toward wetland protection, to the other extreme with a slant toward development, and the third scenario in between the two extremes. The criteria were general in nature and focused on "protection" and "development". The criteria were altered from scenario to scenario to fit the outcomes. The general public and property owners were encouraged to comment on the criteria and the outcomes of the accompanying scenarios. At that point in the process, the protection and development plans were not put together with a restoration plan. Based on the testimony and comments from the technical advisory committee (state and federal agency representatives), the draft Plan emerged in spring 1991. During that process, the development and protection criteria were included as an appendix to the Plan.

No criteria were written for restoration on Plan Map No. 3 in the 1992 Plan. The unwritten criteria focused on four points: 1) Wet areas with hydric soils and a past wetland history provided good opportunities for mitigation; 2) The most suitable areas for mitigation appeared to be on disturbed agricultural wetlands with high probability for restoration or enhancement; 3) Those areas would be of greatest benefit to the stream and wetland system if they abutted those resources or helped connect them; and 4) There was an estimate of the demand for acres of restoration correlated to the number of development acres in the Plan. 288 acres were recommended for development. Assuming an average replacement ratio of mitigation to impact of 1.5:1, about 430 acres of mitigation sites would be needed. It was assumed that not all mitigation could occur within the urban area due to uncertainty with willing sellers, the exact ratios of mitigation needed as determined by state and federal agencies on a case-by-case basis, and the exact areas of restoration and enhancement that could be achieved on the lands designated for restoration (requiring more detailed field work). For that reason, the Plan goals and policies allowing mitigation on nearby rural lands was critical to the Plan's vision.

During the drafting of the Plan about 54 wetland units were treated using map overlays to compare the factors represented by the criteria. During the mapping and public meetings there were attempts to rate wetlands according to a measurable factor or to assign a high, medium or low value to the wetland unit. Through the public testimony and direct letters from property owners, only about six wetland units were suggested for reconsideration following the 1990 workshop, and the final Plan altered recommendations on about three sites. The general criteria in the appendix reflected an amazing amount of consensus given the broader controversies surrounding other wetland issues at the time.

The amended and new criteria recommended are meant to do four things: 1) to elevate the criteria from an appendix to Plan policy; 2) to add criteria for the restoration (mitigation) designation areas; 3) to clear up language through house-keeping amendments, and 4), to make the criteria language and choices during the "balancing" process more certain and less political.

In two cases, the original criteria were really standards that over-rode any other criteria. On the "protection" side, if a wetland already had a natural resource designation in the Metropolitan Plan (100 acres at Willow Creek and 35 acres at Bertelsen Slough), that area would remain in a protection status. Likewise on the "development" side, if a state and/or federal wetland fill permit or an environmental impact statement had been approved that allowed development, a "development" designation was given. In both those instances, no further criteria were considered. Policy 3.17 addresses and retains these two "standards".

In all other instances, the criteria are weighted. The weighting is separated into four possible situations: 1) Where there are "very strong" protection values: existing Plan designation, wildlife habitat and diversity, unique characteristics, or wet prairie, and no or low values for development the wetland shall be designated for protection. 2) Where there are 5 or more moderate protection values and low or no values for development, the wetland shall be designated for protection. 3) Where there are 3 or more high values for development and no or low values for all protection criteria, the site shall be designated for development. And 4) all other situations will be determined on a case by case basis.

Policy 3.17 is to be applied to the new inventory (1993 as published in 1994 and supplemented with any new information) through this amendment process and to all newly discovered wetlands (Refer to amended policy 4.20 in (66) below. These criteria would be applied to the 20 or so potential small wetlands identified as "PW" on the official inventory map, but are not included in the wetland amendment package currently before the City and County. They would be applied to lands that are newly defined as wetlands due to changes in lists of hydric soils or wetland plants over time, or where changes in local hydrology may result in wetland conditions where none exist today. The new and amended criteria are not intended to be applied to wetlands already included in the Plan where no new consideration was given in the 1993 inventory.

This weighting system is different than that used in the original Plan. The original Plan looked at mixed values for a site and made a general determination that allowed for broad judgment. The new draft is less vague. Unofficial weighting used in the 1992 Plan is unstated, and any bias among staff in making recommendations is hidden. In the draft amendments, flexibility for making a local decision is sacrificed for greater certainty based on factual circumstances. That is, if conditions A, B, and C exist and Z does not exist, the answer is P; or if X condition exists and A, B, and C are low or non-existent, the answer is D. In the original Plan process, it was possible to look at the recommendations in the broad overall context and to achieve a balance based on the wetlands and development on the entire region. In the amendments, attention is focused on selected sites. Achieving balance is more difficult to address at the Plan level.

In the original Plan, the wetlands recommended for protection and restoration constituted 75%-80% of the total wetland area. About 20% to 25% were recommended for development. The application of the new criteria results in about the same range of protection and restoration to

development – about 80% of the 240 acres of wetlands in the protected or restored designation. In both instances, the balance favors wetland protection and restoration values over development values. That is to be expected with a bias in law toward protecting wetlands from non-water dependent uses.

**The crux of the concern over the criteria is in the preamble to Policy 3.17. Do you want more logic and certainty (and can you agree on what that logic entails based on key factors and the formula for decision-making), or do you want general criteria that result in greater vagueness and greater flexibility in final decision-making? Are the factors the correct ones and are they complete? The original Plan was vague and general, the proposed amendments are more specific and tied to the “balancing” formula.**

The policy 3.17 introduction was addressed above. The “protection” criteria are addressed in order.

Rare plants. This criterion improves the original criterion, which mentioned only the “presence” of rare plants. This criterion, in general terms, states that the population of species is as important as mere presence in determining whether protection is likely to work. The policy is still general; it does not identify the number of plants that constitute a viable population. (See also the discussion under the previous section of this analysis on rare species. (62 – Protection #1)

Metropolitan Plan designation. There is language clarification and improvement made to this original criterion. (62 – Protection #2)

Floodplain. This language improves the existing criterion. It states that the wetland site is primarily in the floodplain. Before, if any portion of the wetland site was in the floodplain, the entire site fit this criterion. (62 – Protection #3)

Proximity to Perennial Waterway. This language ties the wetland to a fixed distance (100 feet) from the only two major perennial waterways, Amazon Creek and the A-3 Channel. This criterion is more specific in naming the streams and the distance, and its meaning is clearer than the original Plan. (62 – Protection #4)

Connection. This language is still confusing. For means of illustration, two extreme views of the wetlands could be presented: 1) They are all fragmented and disconnected due to land uses, roads, railroads, levees, and utilities which have been placed on the natural landscape over time. or 2) The wetlands are all connected by surface flows, groundwater, and wind. The original intent was to focus on surface water connections and physical proximity since little was known about underground water connections. The original intent was to view sets of wetland hydrologic units in proximity to each other and the major stream systems (Amazon Creek, the A-3 Channel, Willow Creek, for example). Wetlands that were abutting another wetland unit or were next to those streams, or that could be connected by a probable mitigation site, got points for protection. More isolated wetlands did not get points under this criterion. This criterion could be written to express its intent more clearly. (62 – Protection #5)

Wildlife. This criterion is not changed. (62 – Protection #6)

Uniqueness. This criterion introduces the “unique characteristics” of importance to the larger wetland system or to the Plan’s goals and objectives. The term unique was used in the original criteria under #8 referring to the Willamette wet prairie, and existing criterion #7 referred to furthering Plan goals and objectives. The original intent of existing criterion #7 was to recognize Willamette wet prairie as a rare plant community and unique due to its rarity. The recognition of furthering Plan goals and objectives was more of a “catch-all” criterion that reflected the decisions on where to designate units of protection and restoration together into a landscape system approach. (62 – Protection 7)

Wet Prairie Habitat. This criterion is more precise than the original #8. It refers to the indigenous wet prairie and specifically lists sites that qualify as being large or of moderate to high value. Since the 1989 inventory was completed, staff has more field experience with individual wetland sites. Many have small and degraded patches of wet prairie, but not of sufficient size or value to merit “protection” designation. This language improves the original intent. (62 – Protection 8)

Protection Probability. This is a new criterion. Again, experience in the field with the partners (possible owners and managers) leads to this addition. There are some wetlands that have wet prairie and even rare species, but are so small or so isolated that their long-term survival, even if purchased and managed as public natural areas, is in jeopardy. Type and degree of surrounding land uses, lack of any buffering area, access problems, limited hydrology, and small size are all limiting factors. This criterion is really a negative protection measure. Even though the wetland may meet several protection criteria and have high to moderate values, it may still be discounted because of its location and size. Although unstated, the implication of this criterion is that it could over-ride other protection criteria and result in a development designation, because it could not be managed for protection or restoration. (62 – Protection 9)

Each of the “development” criteria in policy 3.17 is discussed in order.

Permit or EIS. This amendment improves the existing criterion language. (62 – Development 1)

Isolation. Only minor language amendment from the original criterion is made. (62 – Development 2)

Public Services. Only minor language amendment from the original criterion is made. (62 – Development 3)

Adjacent or Surrounded. Only minor language amendment from the original criterion is made. (62 – Development 4)

Street Frontage. Only minor language amendment from the original criterion is made. (62 – Development 5).

Uniqueness. This new criterion adds a factor allowing economic consideration on an equal par with "unique" wetland characteristics and is in keeping with the original intent of the balance represented in the Plan. (62 – Development 6)

This new policy adds criteria for a restoration (mitigation) designation. First it recognizes that any site designated for mitigation through the wetland permitting process shall be designated as "restoration". The closest the existing Plan comes to defining criteria for restoration is in the rural area in policy 4.28, page 39, which reads

"Seek restoration and enhancement of wetlands for mitigation purposes based on the following factors: a) presence of hydric soils, b) indication of past wetland conditions, c) proximity to water features, d) proximity to the floodplain, and e) capability of providing adequate wetland hydrology."

Five criteria follow, and each is discussed separately.

Soils. Existence of hydric soils is critical for restoration to occur with high likelihood of success. This criterion is patterned after existing policy 4.28, #a, p. 39. (64 – Restoration 1)

Prior wetland. This factor reflects two considerations: wetland historic conditions and a wetland disturbed by agricultural practices. The first consideration is patterned after existing policy 4.28, #b, p. 39. The second reflects the intent of the Plan. Most of the sites designated for restoration were disturbed by agricultural practices. Often in agricultural areas in this region, soils and hydrology are adequate for restoration. By removing non-native vegetation and preparing soils, wetland seeds can be re-introduced to achieve mitigation objectives. (64 – Restoration 2)

Hydrology. Hydrology is one of the key factors in selecting a restoration site. This criterion is similar to existing policy 4.28, #3e, p. 39. (64 – Restoration 3).

Public Infrastructure and Services Benefit. This criterion is not reflected in any written policy in the Plan. It reflects the converse of Development criterion #3 (See analysis of 62 above). Also, the major area recommended for restoration on the Plan Map No. 3 is along Greenhill Road. That portion of the Plan area included major wetlands, Amazon Creek floodplain, hydric soils, historic wetlands, and no public water, sewer, or local streets serving the area. The urban growth boundary was drawn along Greenhill Road. While unstated in the Plan, these factors combined result in that area's inclusion in a restoration designation. There was little likelihood that services could be paid for by the private sector to finance development through assessments once wetland issues were added to the urbanization formula. It is logical to add this factor. Wetland restoration may not be the "highest and best use" of areas where significant public and private investment has been made on urban services and facilities. (64 – Restoration 4)

Size and Contiguity to Waterway. Size was not a factor in the original Plan, although, fairly large areas were designated for restoration. Proximity to waterways is consistent with existing policy 4.28, #c, p. 39. (64 – Restoration 5).

This amended policy 4.20 is moved to Chapter 3 to fit with the other policies on criteria. It states that the protection and development criteria in policy 3.17 are to be applied to any newly delineated wetlands. (Refer to general analysis in the introduction to this section). (66)

This amended policy 4.19 clarifies the intent of the Plan that wetlands designated for development (meeting wetland development criteria) should be able to obtain wetland fill permits and be developed according to their Metropolitan Plan land use designation and zoning. This is consistent with the intent of the Plan. (80)

## CONCLUSIONS

The proposed amendments, with the exception of the criteria in policy 3.17 (62) are clarifications and improvements to the existing Plan policy and goal text. They reflect current experience, are housekeeping in nature, and improve language. They are consistent with the original Plan's general intent. They often correct or fill in gaps in the original Plan.

### Other

This set of proposed amendments refine, clarify and improve the Plan. They are consistent with the original intent of the Plan.

### Rare Species

These amendments generally improve the Plan's approach to rare species. They reflect the intent of the Plan to deal with the suite of rare species in the Plan area in a more holistic approach. They deal with a clearly defined set of rare species in a locally adopted list.

Since 1992, two more plant species and two animal species were added to or elevated in status on state or federal lists. The ramifications of these listings have little impact on the wetland decisions in the Plan. The listings could impact public wetland management decisions and activities for the partners. Animal listings could impact a select few remaining wetlands in private ownership. Any upland impacts are not likely to be the result of the Wetland Plan, since it deals little with upland matters. The impacts are more likely to result from state and federal decisions apart from the Wetland Plan (for example impacts on federally funded highway projects).

### Criteria

Amended policy 4.20 (66) makes it clear that the criteria in policy 3.17 are to be applied to newly discovered wetlands. Once agreement is reached on policy 3.17, this amendment is logical to add to the Plan.

Amended policy 4.19 clarifies that wetlands designated for development should be able to develop. This is consistent with the Plan's intent.

Amendments to Policy 3.17 (62) should be re-considered for two reasons:

1. The general intent of the balancing formula in the preamble to the policy differs from the original Plan intent.
2. Some of the specific criteria need clarification to remain consistent with the original Plan intent.

The original Plan dealt with the decision to designate protection (directly for protection or protection for restoration purposed) through application of broadly worded criteria. In both the development and protection instance, one criterion each was really treated as a standard. The Metropolitan Plan natural resource designation and the wetland permit or EIS standard. The remaining sites were addressed by applying the criteria and local judgment. The new application of policy 3.17 directs the decision in a much more deliberate fashion, thus removing much of the local judgement.

Amended policy 3.17 works as follows in terms of designations:

Protect if designated Natural Resource in the Metropolitan Plan [A standard].

Protect if strong values for population of rare species, high wildlife diversity, unique characteristics, large site or moderate to high value wet prairie.

Protect if moderate values for five or more protection criteria and no or low values for development.

Develop if prior to adoption of this plan or prior to inclusion of site in the Plan, state and federal wetland fill permit allows development or an EIS has been approved allowing development [A standard].

Develop if high values for three or more development criteria and no or low values for protection.

All sites that have high values for both protection and development are decided on a case-by-case basis. It is implied that a site can be receive a split designation under this case-by-case application.

The original Plan used the two standards and all other sites were treated on a case-by-case basis. This provided greater flexibility at the staff and decision-maker levels to guide final designations. Clear and objective standards may be difficult to devise and apply. Terms like "high", "low", "large", "small", "moderate", "very strong" and "suitable" leave room for interpretation. Concerns over the number of criteria in the various categories take on more relevance when the formula for making determinations is based on a certain number of scores for protection or development.

Many of the individual criteria additions or amendments are improvements to the existing Plan and clarify existing language. If policy 3.17 (62) is reconsidered, the criteria should be reviewed in the context of the general policy application.

The new restoration designation policy (64) fills a gap in the Plan and follows closely the direction identified in existing Plan policy #4.28, p. 39, which applies in the rural, Lower Amazon Drainage area. However, it is not clear how a decision about restoration designation

(64) versus development would be made. If policy 3.17 is reconsidered, this new restoration designation policy should be reconsidered at the same time.

**Matrix of Consistency  
 With Refinement Plan Amendment Criteria**

Amendment Number	All Amendments must meet these criteria		Each Amendment must meet at least one of these criteria			
	EC 9.145(2)(a)	EC 9.145(2)(b)	EC 9.145(2)(c)1.	EC 9.145(2)(c)2.	EC 9.145(2)(c)3.	EC 9.145(2)(c)4.
63	X	X		X		
65	X	X		X		
67	X	X		X		
68	X	X		X		
70	X	X		X		
71	X	X		X		
72	X	X		X		
73	X	X				X
74	X	X				X
75	X	X				X
76	X	X				X
77	X	X				X
78	X	X				X
80	X	X				X
81	X	X				X
82	X	X				X
83	X	X				X
84	X	X			X	
87	X	X			X	
88	X	X			X	
89	X	X			X	

An "X" in this table means the criterion at the head of the column is met for the amendment in the leftmost column.

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