



EMILY N. JEROME

March 25, 2005


Clerk
Land Use Board of Appeals
550 Capitol Street NE, Suite 235
Salem, OR 97301-2552

Re: *Friends of Eugene, et al v. Lane Council of Governments, et al*
LUBA No. 2004-223

Dear Clerk:

Enclosed herewith for filing is an original and one copy of Response to Record Objections and the original Supplemental Record. Pursuant to the enclosed request by Petitioners, we are using an alternative address for Petitioners for this filing.

Sincerely,


Emily N. Jerome

ENJ:abm
Enclosures

cc: Jannett Wilson (w/encs.)
Bonnie Heitsch (w/encs.)
Client (w/encs.)

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OFFICES IN EUGENE,
PORTLAND & SALEM,
OREGON

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

FRIENDS OF EUGENE AND
ROB HANDY,

Petitioners,

vs.

LANE COUNCIL OF GOVERNMENTS
(LCOG) AND METROPOLITAN POLICY
COMMITTEE (MPC),

Respondent,

and

STATE OF OREGON DEPARTMENT
OF TRANSPORTATION,

Intervenor-Respondent.

LUBA NO. 2004-223

RESPONSE TO RECORD
OBJECTIONS

This Response to Record Objections is organized to follow Petitioners' Objections to the Record ("Objections").¹ Under their main heading "Missing Record Items (OAR 661-010-0026(2)(a)),¹" Petitioners include four categories of allegedly missing materials. Each category, and its specific allegations, is addressed below.

OAR 661-010-0026(2)(a), the identified basis for all of Petitioners' objections, pertains to Petitioners' allegations that "[t]he record does not include all materials included as part of the record during the proceedings before the final decision maker." That

¹Petitioners' Objection to the Record includes neither page numbers or line numbers, so, to orient LUBA, Respondent refers to the underlined headings in Petitioners' Objections.

1 subsection provides that “[t]he omitted item(s) shall be specified, as well as the basis for the
2 claim that the item(s) are part of the record.” (emphasis added).

3 **A. TPC Materials and Minutes.**

4 The final decision maker for the matter on appeal is the Metropolitan Policy
5 Committee (“MPC”), whose authority is derived from an express delegation of the Lane
6 Council of Governments (“LCOG”). Under their heading “TPC Materials and Minutes,”
7 Petitioners allege that, although the Transportation Planning Committee (“TPC”) – another
8 LCOG Committee – was not the final decision maker for the appealed decision, the record
9 must contain “TPC meeting materials and minutes to the extent that they were ‘incorporated’
10 into the record before the decision-maker.” Respondent agrees that any document
11 incorporated into the MPC record as part of the challenged proceedings must be included in
12 the LUBA record for this matter. The record filed with LUBA by Respondent complies with
13 this rule of law. Numerous documents that were originally placed before the TPC were
14 incorporated into the record for this matter and appear in the LUBA record. *See* Rec. 453,
15 464, 844, 1141, 1198, 1272, 1273, 1290.

16 In this section of their Objections, Petitioners do not identify any specific TPC
17 materials or minutes that are missing from the record. In fact, the TPC does not take minutes
18 of its meetings, so no such minutes *could* have been incorporated into the MPC’s record for
19 this matter. To the extent that TPC meeting materials were placed before the MPC (or
20 specifically incorporated into the MPC record), they have been included in the record filed
21 by Respondent on February 22, 2005.

22 **B. Materials Dated Prior to September 11, 2003.**

23 Under this heading, Petitioners list 22 items, in reverse chronological order, that are
24 purportedly missing from the record. Petitioners argue that the record should begin with
25 documents that were generated in July 2002, rather than the September 11, 2003 start-date
26

1 of the filed record. In fact, MPC's consideration of the action on appeal began with its
2 September 11, 2003 meeting.

3 As pertinent to Petitioners' Objections, a LUBA record is required to include items:

4 "specifically incorporated into the record or placed before, and not rejected
5 by, the final decision maker, during the course of the proceedings before the
6 final decision maker"

7 and

8 "[m]inutes and tape recordings of the meetings conducted by the final
9 decision maker as required by law, or incorporated into the record by the final
10 decision maker."

11 OAR 661-010-0025(1)(b), (c).

12 Petitioners' Objections identify selected documents that they assert are "relevant" to
13 the MPC's consideration of the appealed decision. "Relevance" is not the standard for record
14 compilation. Each of the documents Petitioners identify predates the MPC's consideration
15 of the appealed decision. They are documents that, by Petitioners' own description, were
16 provided to other individuals or bodies, or that relate to other MPC issues. Petitioners do not
17 specify when any of the 22 documents were "specifically incorporated into the record or
18 placed before, and not rejected by, the final decision maker, during the course of the
19 proceedings before the final decision maker." A more specific response to each item follows.

20 1. Petitioners do not specify when, and Respondent found no record to show
21 that, the 8/28/03 e-mail to Schwetz and Thompson ("LCOG staff") was specifically
22 incorporated into the MPC's record or placed before, and not rejected by, MPC during the
23 course of its proceedings on this matter.

24 2. Petitioners do not specify when, and Respondent found no record to show
25 that, the 8/14/03 e-mail to "TPC Agenda" was specifically incorporated into the MPC's
26 record or placed before, and not rejected by, MPC during the course of its proceedings on
27 this matter.

28 3. The TPC does not, and is not legally required to, take minutes of its meetings.
29 Since no such minutes exist, Petitioners' argument that the "Minutes of the 8/14/03 TPC

1 Meeting” were made a part of the record for the MPC decision at issues in this proceeding
2 is impossible.

3 **4. and 5.** Petitioners do not specify when, and Respondent found no record to show
4 that, the materials or the agenda for the 8/14/03 TPC meeting were specifically incorporated
5 into the MPC’s record or placed before, and not rejected by, MPC during the course of its
6 proceedings on this matter. Further, with respect to Objection 4., Petitioners do not specify
7 the “materials” they wish to add to the record. This is insufficient to satisfy the specificity
8 requirement of 661-010-026(2)(a).

9 **6.** Petitioners do not specify when, and Respondent found no record to show
10 that, the 7/30/03 e-mail to LCOG staff was specifically incorporated into the MPC’s record
11 or placed before, and not rejected by, MPC during the course of its proceedings on this
12 matter.

13 **7., 8., and 9.** Petitioners do not specify when, and Respondent found no record to
14 show that, the minutes for the 7/10/03 MPC meeting, materials presented at that meeting, or
15 the agenda for that meeting were specifically incorporated into the MPC’s record or placed
16 before, and not rejected by, MPC during the course of its proceedings on this matter. That
17 meeting did not include consideration of the decision on appeal.

18 **10.** Petitioners do not specify when, and Respondent found no record to show
19 that, the 7/9/03 e-mail to “TransPlan Joint Adopting Officials” was specifically incorporated
20 into the MPC’s record or placed before, and not rejected by, MPC during the course of its
21 proceedings on this matter.

22 **11.** Petitioners do not specify when, and Respondent found no record to show
23 that, the 6/9/03 e-mail to Patron (FHWA staff), Fort (FTA staff) and LCOG staff was
24 specifically incorporated into the MPC’s record or placed before, and not rejected by, MPC
25 during the course of its proceedings on this matter.
26

1 **12.** Petitioners do not specify when, and Respondent found no record to show
2 that, the 5/22/03 e-mail to LCOG staff was specifically incorporated into the MPC's record
3 or placed before, and not rejected by, MPC during the course of its proceedings on this
4 matter.

5 **13., 14. and 15.** Petitioners do not specify when, and Respondent found no record
6 to show that, the minutes for the 4/10/03 MPC meeting, materials presented at that meeting,
7 or the agenda for that meeting were specifically incorporated into the MPC's record or placed
8 before, and not rejected by, MPC during the course of its proceedings on this matter. That
9 meeting did not include consideration of the decision on appeal.

10 **16., 17. and 18.** Petitioners do not specify when, and Respondent found no record
11 to show that, the minutes for the 7/25/02 LCOG Board meeting, materials presented at that
12 LCOG Board meeting, or the agenda for that meeting were specifically incorporated into the
13 MPC's record or placed before, and not rejected by, MPC during the course of its
14 proceedings on this matter. Further, with respect to Objection 17., Petitioners' only
15 specification as to the precise "materials" they wish to add to the record are those for "Item
16 10.A" of that LCOG Board meeting. This is insufficient to satisfy the specificity requirement
17 of 661-010-026(2)(a).

18 **19., 20., 21. and 22.** Petitioners do not specify when, and Respondent found no
19 record to show that, such ordinances (ordinances of LTD, Lane County, Springfield and
20 Eugene "adopting July 2002 TransPlan") were specifically incorporated into the MPC's
21 record or placed before, and not rejected by, MPC during the course of its proceedings on
22 this matter.

23 **C. Agenda, Meeting Materials, and Minutes for MPC and LCOG Board Meetings.**

24 Petitioners argue that minutes and notices of "all LCOG board meetings and MPC
25 meetings between July 2002 and December 2004" must be included in the record. As
26 discussed above, the LCOG board was not the final decision maker for the decision on

1 appeal. With respect to MPC, the final decision maker, Petitioners seem to argue that *every*
2 MPC meeting that took place within the same time-frame that the body considered the
3 appealed decision must be represented in a LUBA record. In fact, a decision making body
4 may, as the MPC did, meet on a number of *other* issues in that same time frame. Meetings
5 at which there is no discussion of the subject decision need not be represented in a LUBA
6 record.

7 Specifically, Petitioners object to the omission of minutes and notices for the MPC
8 meetings on December 11, 2003, January 8, 2004, February 12, 2004 and March 11, 2004.
9 A specific response to each objection follows.

10 - The December 11, 2003 MPC meeting was cancelled and did not take place.

11 - The agenda for the January 8, 2004 MPC meeting did not include consideration of the
12 decision on appeal. The minutes for that meeting confirm that no discussion of the decision
13 on appeal took place.

14 - The agenda for the February 12, 2004 MPC meeting did not include consideration of the
15 decision on appeal. The minutes for that meeting confirm that no discussion of the decision
16 on appeal took place.

17 - The agenda for the March 11, 2004 MPC meeting did not include consideration of the
18 decision on appeal. The minutes for that meeting confirm that no discussion of the decision
19 on appeal took place.

20 **D. Other Testimony of Rob Zako, Transportation Advocate for 1000 Friends of Oregon.**

21 Petitioners list ten specific e-mails that they argue, based on OAR 661-010-025(1)(b),
22 should have been in the LUBA record filed on February 22, 2005. Each is addressed below.

23
24 1. Contemporaneous with the filing of this Response to Record Objections,
25 Respondent is filing a Supplemental Record that includes the e-mail to MPC members from
26

1 Rob Zako dated 11/17/04, as it appears that this e-mail was placed before, and not rejected
2 by, MPC during the course of its proceedings on this matter.

3 2. Petitioners do not specify when, and Respondent found no record to show
4 that, the 10/15/04 e-mail “to TPC via Tom Schwetz, Paul Thompson [both LCOG staff], cc
5 Fred Patron [FHWA staff], Bob Cortright [DLCD staff]” was specifically incorporated into
6 the MPC’s record or placed before, and not rejected by, MPC during the course of its
7 proceedings on this matter.

8 3. Petitioners do not specify when, and Respondent found no record to show
9 that, the 10/14/04 e-mail to the Lane Transit District Board was specifically incorporated into
10 the MPC’s record or placed before, and not rejected by, MPC during the course of its
11 proceedings on this matter.

12 4. Petitioners do not specify when, and Respondent found no record to show
13 that, the 10/14/04 e-mail to the Lane County Board of Commissioners was specifically
14 incorporated into the MPC’s record or placed before, and not rejected by, MPC during the
15 course of its proceedings on this matter.

16 5. Petitioners do not specify when, and Respondent found no record to show
17 that, the 10/14/04 e-mail to the Eugene Mayor and Council was specifically incorporated into
18 the MPC’s record or placed before, and not rejected by, MPC during the course of its
19 proceedings on this matter.

20 6. Petitioners do not specify when, and Respondent found no record to show
21 that, the 2/13/04 e-mail to staff of LCOG, Eugene, Springfield, Lane County and Lane
22 Transit District was specifically incorporated into the MPC’s record or placed before, and
23 not rejected by, MPC during the course of its proceedings on this matter.

24 7. Petitioners do not specify when, and Respondent found no record to show
25 that, the 1/22/04 e-mail to attorneys for Eugene, Springfield, Lane County, LTD and 1000
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1 Friends of Oregon was specifically incorporated into the MPC's record or placed before, and
2 not rejected by, MPC during the course of its proceedings on this matter.

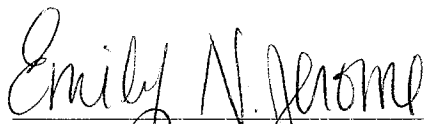
3 8. Petitioners do not specify when, and Respondent found no record to show
4 that, the 1/6/04 e-mail to a long list of recipients, not including the MPC, was specifically
5 incorporated into the MPC's record or placed before, and not rejected by, MPC during the
6 course of its proceedings on this matter.

7 9. Petitioners do not specify when, and Respondent found no record to show
8 that, the 12/8/03 e-mail to LCOG staff was specifically incorporated into the MPC's record
9 or placed before, and not rejected by, MPC during the course of its proceedings on this
10 matter.

11 10. Petitioners do not specify when, and Respondent found no record to show
12 that, the 10/30/03 e-mail to "TPC Agenda" was specifically incorporated into the MPC's
13 record or placed before, and not rejected by, MPC during the course of its proceedings on
14 this matter.

15 Dated this 25th day of March, 2005.

16 HARRANG LONG GARY RUDNICK P.C.

17 

18 Emily N. Jerome, OSB #95365
19 Of Attorneys for Respondent Lane
20 Council of Governments
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CERTIFICATE OF FILING AND SERVICE

I certify that on March 25, 2005, I filed the original of this **Response to Record Objections** with the Land Use Board of Appeals, 550 Capitol Street NE, Suite 235, Salem, OR 97301-2552, by causing the same to be deposited in the U.S. Mail at Eugene, Oregon, enclosed in a sealed envelope with postage prepaid.

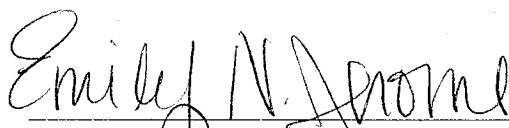
I further certify that on the same date I served a true and complete copy of said document on the party or parties listed below, by causing the same to be deposited in the U.S. Mail at Eugene, Oregon, enclosed in a sealed envelope with postage prepaid, and addressed as follows:

Jannett Wilson
P.O. Box 70753
Eugene, OR 97401

Attorney for Petitioners

Bonnie Heitsch
Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Of Attorneys for Intervenor-Respondent



Emily N. Jerome, OSB #95365
Of Attorneys for Respondent Lane
Council of Governments

SUPPLEMENTAL RECORD OF PROCEEDINGS

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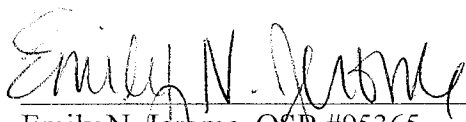
FRIENDS OF EUGENE AND ROB HANDY
vs.
LANE COUNCIL OF GOVERNMENTS AND
METROPOLITAN POLICY COMMITTEE
and
STATE OF OREGON DEPARTMENT OF TRANSPORTATION

LAND USE BOARD OF APPEALS, NO. 2004-223

The filed record may include black and white copies of maps/diagrams/photos originally submitted in color and/or maps and plans reduced from their original size. These materials, in their original color and/or size, will be included in the oversize exhibits delivered to the Board on the date of oral argument. Oversize exhibits are referred to as "OE."

<u>NO.</u>	<u>ITEM DESCRIPTION</u>	<u>PAGE</u>
1.	E-mail to MPC members from Rob Zako, 100 Friends of Oregon, dated 11/17/04	1

I, Emily N. Jerome, certify that the items described above and included herein are true copies of the originals.



Emily N. Jerome, OSB #95365
Of Attorneys for Respondent Lane
Council of Governments

From: Rob Zako <rob@friends.org>
To: MPC Members <MPCMBRS@lane.cog.or.us>
Date: 11/17/2004 12:31:42 AM
Subject: Policy issues with RTP update?

Dear MPC Members,

I regret that I will miss the public hearing on the Central Lane Regional Transportation Plan that you are holding on November 18. I will be in Portland at an all-day Regional Planning and Business Symposium sponsored by a bunch of different business groups in the Portland metro area.

But in your packet you have two memos from me that address procedural issues. I hope that these speak for themselves. But I would be happy to respond to any questions.

Beyond that, I ask you to consider: What are your choices in updating the RTP, and what are the pros and cons of each choice?

Perhaps you believe that you have only one choice: to adopt the draft that staff has prepared (Certainly NOT adopting the RTP update isn't a reasonable choice, as that would jeopardize federal funding for transportation project.)

But I submit that you actually have a fair amount of choice. Just follow the money and see where it is going -- and if that is where you want it to go.

In particular, look at some of the largest projects: WEP, I-5/Beltline Interchange and I-5/Franklin Interchange. The draft includes the first two in the financially constrained list, but not the third. Indeed, you can choose to build one or at most two of these big projects, but not all three.

So maybe you don't really want to build the I-5/Franklin Interchange. Implicitly, that is the choice being made in the draft RTP update. But please understand that is but one choice and that there are other choices.

As you know, the purpose of the Central Lane MPO is to think REGIONALLY about transportation. Because funding is limited, not everyone will get the projects they want, so it is important to determine what is best for the region. So are the major funding choices in the draft RTP the ones you collectively support? Are the transportation projects supporting a regional vision for the Central Lane area?

I don't have the answers to these questions, which is partly why I am going to the Regional Planning and Business Symposium in Portland -- to learn how business people up there are thinking about transportation, housing, the economy, the environment and the role of government in improving the region. Check it out!

http://www.agc-oregon.org/public/resource_center/2040_agenda.shtml

Thanks,
Rob

--
Rob Zako

Transportation Advocate
1000 Friends of Oregon
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(541) 343-5201 (home office)
(541) 683-6333 (fax)
rob@friends.org

Become an Oregon donor
<http://www.friends.org/support>

CERTIFICATE OF FILING AND SERVICE

I certify that on March 25, 2005, I filed the original of this **Supplemental Record of Proceedings** with the Land Use Board of Appeals, 550 Capitol Street NE, Suite 235, Salem, OR 97301-2552, by causing the same to be deposited in the U.S. Mail at Eugene, Oregon, enclosed in a sealed envelope with postage prepaid.

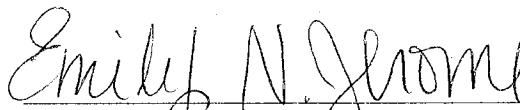
I further certify that on the same date I served a true and complete copy of said document on the party or parties listed below, by causing the same to be deposited in the U.S. Mail at Eugene, Oregon, enclosed in a sealed envelope with postage prepaid, and addressed as follows:

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Eugene, OR 97401

Attorney for Petitioners

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Of Attorneys for Intervenor-Respondent



Emily N. Jerome, OSB #95365
Of Attorneys for Respondent Lane
Council of Governments