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

THE MANY RIVERS GROUP OF THE)
SIERRA CLUB, and JUNIOR)
ROBERTSON,)
Petitioners,)
vs.)
CITY OF EUGENE, CITY OF)
SPRINGFIELD, LANE COUNTY, and)
WILLAMALANE PARK AND RECREATION)
DISTRICT,)
Respondents.)

LUBA No. 93-040
FINAL OPINION
AND ORDER

Appeal from City of Eugene, City of Springfield, Lane County, and Willamalane Park and Recreation District.

Daniel J. Stotter, Eugene, filed the petition for review and argued on behalf of petitioners.

Glen Klein, Eugene, filed the response brief and argued on behalf of respondent City of Eugene. With him on the brief was Harrang, Long, Watkinson, Arnold & Laird. Robert K. Naslund, Eugene, filed the response brief on behalf of respondents Willamalane Park and Recreation District and City of Springfield. With him on the brief was Naslund, Budge & Ford. Timothy F. Brewer, Eugene, argued on behalf of respondents Willamalane Park and Recreation District and City of Springfield. Stephen Vorhes, Assistant Lane County Counsel, filed the response brief and argued on behalf of Lane County.

KELLINGTON, Referee; SHERTON, Chief Referee; HOLSTUN, Referee, participated in the decision.

DISMISSED 06/25/93

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county order and an
4 intergovernmental agreement, to which all of the respondents
5 are parties, concerning the ownership and management of
6 certain park land.

7 **JURISDICTION**

8 Respondents contend the challenged decision is not a
9 "land use decision" subject to this Board's review
10 jurisdiction. Respondents contend the challenged decision
11 is not a "land use decision," as defined in ORS 197.015(10),
12 because it does not concern the adoption, amendment or
13 application of the statewide planning goals, or of any
14 provision of a comprehensive plan or land use regulation.
15 Respondents also contend the challenged decision will not
16 have a "significant impact on present or future land uses."
17 Petersen v. Klamath Falls, 279 Or 249, 253-54, 566 P2d 1193
18 (1977).

19 LUBA's review jurisdiction is limited to "land use
20 decisions."¹ ORS 197.825(1). A local government decision
21 is a land use decision if it meets either (1) the statutory
22 definition in ORS 197.015(10); or (2) the significant
23 impacts test established by City of Pendleton v. Kerns, 294

¹Under ORS 197.825(1), this Board also has jurisdiction to review "limited land use decisions." However, no party contends the challenged decision is a limited land use decision.

1 Or 126, 133-34, 653 P2d 996 (1982). Billington v. Polk
2 County, 299 Or 471, 479, 703 P2d 232 (1985).

3 The nature of the challenged decision is critical to
4 resolution of this appeal. The challenged decision consists
5 of an order of the Lane County Board of Commissioners
6 (order) and an Intergovernmental Agreement (agreement)
7 between all four respondents. The order is captioned:

8 "In the Matter of Authorizing Conveyance of the
9 Central Section of East Alton Baker Park to the
10 City of Eugene and Authorizing the Conveyance of
11 the Eastgate Section of East Alton Baker Park to
12 the City of Springfield, and Entering into an
13 Intergovernmental Agreement with the City of
14 Eugene, City of Springfield, and the Willamalane
15 Park and Recreation District For Such Conveyances
16 and Delegating Authority to the Acting County
17 Administrator to Sign the Agreement." Record 29.

18 Relevant portions of the agreement follow:

19 "[Lane County (County)], Eugene, Springfield and
20 [Willamalane Park and Recreation District
21 (District)] recognize that public service is more
22 efficiently and less expensively delivered when
23 the metropolitan jurisdictions provide the
24 services and facilities in the urban areas and the
25 County provides them in the rural areas. The
26 parties have therefore cooperated over the past
27 decade to transfer facilities amongst each other
28 to implement this urban transition program.

29 "District is a Park and Recreation Special
30 District * * * organized to provide park and
31 recreation facilities and programs in the
32 Springfield Metropolitan Area.

33 "County, Eugene, Springfield, and District have
34 determined that Eugene should be responsible for
35 public park and recreation services in the Eugene
36 Metropolitan area, the District should be
37 responsible for public park and recreation

1 services in the Springfield Metropolitan area, and
2 that the County should be responsible for public
3 park and recreation services in the rural areas.

4 * * * * *

5 "[T]he parties hereby agree as follows:

6 "1. * * * County agrees to convey ownership of
7 the central section of East Alton Baker Park
8 to Eugene as soon as a conveyance instrument
9 is ready for signing. Eugene agrees to
10 assume ownership of this property upon
11 recording of the deed. * * *

12 "2. * * * County agrees to convey ownership of
13 the Eastgate Section of East Alton Baker Park
14 to Springfield as soon as a conveyance
15 instrument is ready for signing. Springfield
16 agrees to assume ownership of this property
17 upon recording of the deed. * * *

18 "3. * * * Springfield agrees to convey ownership
19 of the Eastgate Section of East Alton Baker
20 Park to the District as soon as a conveyance
21 instrument is ready for signing. District
22 agrees to assume ownership of this property
23 upon recording of the deed. * * *

24 "4. * * * The parties agree that East Alton Baker
25 Park shall be used subject to the following
26 conditions:

27 "a. Eugene and District shall not sell,
28 alienate, lease or in any other way,
29 convey any real or personal property
30 interest in the East Alton Baker Park to
31 any private or public entity for the
32 purpose of developing a golf course, nor
33 shall any party expend any funds to
34 study promote develop construct,
35 approve, or in any way aid private or
36 public development of a golf course in
37 East Alton Baker Park. A 'golf course'
38 means any facility of any type that uses
39 any portion of land for the purpose of
40 the activity of golf.

1 "b. Prior to completion of the East Alton
2 Baker Park Plan (EABP) pursuant to
3 Section 7 of this Agreement, the parties
4 shall not reduce in size or alter in
5 configuration the watercourses, bike
6 paths and running trails in East Alton
7 Baker Park, except that the parties may
8 take any action deemed necessary to
9 protect the public health or safety or
10 to comply with state standards.

11 " * * * * *

12 "[7]a. The Eugene City Council and the District
13 Board of Directors shall jointly appoint a
14 15 member citizens Planning Committee [CPC]
15 as soon as practicable. * * *

16 "[7]b. Eugene and District shall charge the CPC
17 with developing a plan to determine the
18 appropriate mix of passive recreational
19 uses for East Alton Baker Park. The CPC
20 shall hold at least one public hearing.
21 'Passive recreation' means those pastimes,
22 diversions, or forms of exercise in which
23 relaxation and/or enjoyment experienced by
24 the participant is dependent on the natural
25 landscape in which the activity occurs. *
26 * *

27 "[7]c. The CPC shall adopt a plan which is
28 consistent with this Agreement and the
29 general and specific criteria for the area
30 set forth in the Alton Baker Master Plan,
31 and any direction from the Eugene City
32 Council and District Board of Directors.
33 The CPC shall provide, as part of its
34 plan, that the water courses, bike paths
35 and running trails in existence as of the
36 effective date of this Agreement shall be
37 maintained or improved and shall not be
38 reduced in size or altered in
39 configuration, except Eugene and District
40 may take any action deemed necessary to
41 protect the public health or safety or to
42 comply with state standards.

1 "[7]d. Upon the CPC's completion of the East
2 Alton Baker Park Plan, it shall be
3 submitted to the appropriate governmental
4 agencies for all appropriate action,
5 including, amendment or refinement of the
6 Alton Baker Master Plan or the
7 Metropolitan Area General Plan. * * *

8 "[7]e. Following the CPC's completion of the East
9 Alton Baker Park Plan, the CPC shall
10 continue to meet to monitor its
11 implementation, in consultation with
12 Eugene and District staff. * * *.

13 "* * * * *"

14 "9. * * * County and Eugene agree to work
15 together to amend or revise current
16 Intergovernmental Agreements with the
17 University of Oregon to reflect changes in
18 ownership of Alton Baker Park, consistent
19 with this Agreement. * * * In addition, the
20 County shall revoke the Facility Permit that
21 allows the University to use the meadow area
22 for a hammer, discus, and shot put practice
23 area * * *.

24 "* * * * *" Record 15-19.

25 **A. Statutory Test**

26 ORS 197.015(10)(a)(A) defines "land use decision" to
27 include:

28 "A final decision or determination by a local
29 government * * * that concerns the adoption,
30 amendment or application of:

31 "(i) The [statewide planning] goals;

32 "(ii) A comprehensive plan provision;

33 "(iii) A land use regulation; or

34 "(iv) A new land use regulation[.]"

35 Petitioners contend the challenged decision has the

1 effect of amending the existing Alton Baker Park Plan (plan)
2 because, although the existing plan provides that golf
3 activities are a possible land use for the park, the
4 agreement provides that the transferred land cannot be used
5 for golf purposes. Petitioners also contend the challenged
6 decision limits use of the transferred land to "passive"
7 recreational activities, whereas the existing plan allows
8 "active" recreational use of such land. Petitioners also
9 contend the challenged decision creates a new park planning
10 unit which is not recognized in the existing plan or in the
11 Eugene-Springfield Metropolitan Area General Plan (Metro
12 Plan).²

13 We agree with respondents that the challenged decision
14 does not itself amend either the plan or the Metro Plan.
15 Section 7 of the agreement states that the plan and the
16 Metro Plan may be amended in the future by the affected
17 local governments. However, the challenged decision does
18 not itself adopt or amend any land use regulations or plan
19 provision.³

20 Finally, the challenged decision was adopted pursuant

²The Metro Plan is the comprehensive plan for Lane County and the cities of Eugene and Springfield.

³It is not clear whether petitioners argue that the challenged decision concerns the application of a plan or land use regulation. However, to the extent petitioners do argue this point, they fail to identify any provision of the plan, the Metro Plan or a land use regulation governing the challenged decision to convey park land and to provide for the creation of a planning process for that land.

1 to ORS 275.330, permitting the conveyance of park land to an
2 incorporated city for public use. ORS 275.330 contains a
3 distinct process for accomplishing such transfers, and there
4 is no dispute that this statutory process was followed here.

5 We, therefore, conclude the challenged decision does
6 not satisfy the statutory test for a "land use decision,"
7 because it does not adopt, amend or apply provisions of a
8 comprehensive plan or land use regulation.

9 **B. Significant Impact Test**

10 As the parties seeking LUBA review, the burden is on
11 petitioners to establish that the appealed decision is a
12 land use decision. Billington v. Polk County, *supra*, 299 Or
13 at 475; City of Pendleton v. Kerns, 294 Or at 134 n 7; City
14 of Portland v. Multnomah County, 19 Or LUBA 468, 471 (1990);
15 Portland Oil Service Co. v. City of Beaverton, 16 Or LUBA
16 255, 260 (1987). Further, in Billington v. Polk County, 299
17 Or at 478-79, the Oregon Supreme Court stated the
18 significant impact test requires us to find that the
19 challenged decision will have a significant impact on
20 present or future land uses, not merely that it "would have
21 potential impact" or "would have any impact" on present or
22 future land uses.

23 Petitioners state the limitations on the uses of the
24 transferred park land and the process established for the
25 development of land use regulations governing the
26 transferred park land will have a significant impact on the

1 uses of the transferred park land.

2 Respondents argue the decision's impact on land uses in
3 the area is speculative only. Respondents contend the
4 challenged decision is no more than a transfer of land,
5 among local governments, with certain limitations on the
6 uses which may be made of such transferred land.
7 Respondents argue that making the transfer of land subject
8 to limitations on the manner in which the land may be used
9 under existing plan provisions and land use regulations does
10 not make the property transfer a significant impact test
11 land use decision.

12 We agree with respondents.

13 The challenged decision meets neither the statutory
14 test nor significant impact test for a "land use decision."
15 We therefore lack jurisdiction to review it.⁴

16 Under OAR 661-10-075(10)(a), any party may request that
17 an appeal before this Board be transferred to circuit court,
18 in the event the Board decides the appealed decision is not
19 reviewable as a land use decision. Such a request to
20 transfer an appeal to circuit court must be filed not later
21 than ten days after the respondent's brief is due. OAR
22 661-10-075(10)(b). We have not received a motion to
23 transfer to circuit court. Accordingly, the motion to

⁴Because we lack jurisdiction to review the challenged decision we need not address respondents' contentions that petitioners' notice of intent to appeal was untimely filed.

1 dismiss is granted.

2 This appeal is dismissed.

3