

January 28, 2011

Sandi Cassanelli, Commissioner Chair
Dwight Ellis, Commissioner
Simon Hare, Commissioner
Josephine County
Room 154, Courthouse
Grants Pass, Oregon 97526

Re: For “The Record” Testimony At Walker v. Josephine County, 60 Or LUBA 186 (2009) Remand Hearing To Be Before The Josephine County Board of County Commissioners

Dear Commissioners:

Rogue Advocates is a non-profit organization dedicated to the promotion of responsible land use planning to ensure a more livable and sustainable Rogue Valley region. Along with our members in Jackson and Josephine counties, we are particularly concerned with the protection and preservation of farmland, forestland and open space. In addition, several of our members live in the Merlin travelshed and they are impacted by the increasing level of traffic congestion at the failing I-5 Louse Creek Interchange 61. Our organization writes these comments to voice our concerns about two county policies that are pertinent to *Walker* remand hearing.

Oregon’s Transportation Planning Rule May be Being Implemented Improperly in Josephine County:

Rogue Advocates is concerned about how the Oregon Transportation Planning Rule (TPR) is being implemented in Josephine County. As prescribed in OAR 660-012-0060, the TPR requires that when a local government entity considers a proposed amendment to its comprehensive plan, it must also take into consideration the amendments’ potential impacts on transportation facilities.

When Josephine County, for example, considers a plan amendment, its first step is to determine whether or not the amendment would “significantly affect” one or more state transportation facilities as measured by the end of the planning period. Where the county finds that the proposed amendment will have a significant effect on a transportation facility, it has the further responsibility to apply one or a combination of the remedies in OAR 660-012-0060(2). Although ODOT is a major player in the implementation of the TPR and has crucial responsibilities to provide certain information and recommendations, the county is the sole decision-maker when implementing the significant effects analysis and all sections of the TPR.

In considering the proposed zone change that is the subject of the *Walker* remand

hearing, the county is required to determine whether amendment has the potential to impact transportation facilities, which in this case includes the Louse Creek I-5 Interchange. The county is required to make the determination whether the plan amendment would have a significant effect on this interchange.

Rogue Advocates is concerned that Josephine County may be illegally delegating the responsibility to make the significant effect determination to ODOT in the case of the Louse Creek Interchange. Where the interchange is already below state standards and is the 45th worst chokepoint in Oregon, it is urgent that the county, who is intimately acquainted with the state of this transportation facility, make this determination. See TRIP Report: "*Oregon's Transportation Chokepoints: The Top 50 Chokepoints and Remedies for Relief*," available at www.tripnet.org/Oregon_Chokepoints_Appx_051310.pdf.

RLDC 33.130(D) Illegally Limits Participation in Land Use Remand Hearings:

Rogue Advocates challenges the legality of RLDC 33.130(D), which limits the parties to those that had standing at LUBA No. 2006-150. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

It is quite clear from ORS 197.763(7) that when the record is reopened (including in remand hearings) to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which applies to the matter at issue. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007), goes further in clarifying ORS 197.763(7). *Siporen v. City of Medford* (pgs. 18-26) identifies that a remand hearing is open for all interested participants to testify. A party who otherwise has standing to participate in a local government's land use public hearings under the government's land use legislation may not be denied standing to participate in public hearings following a remand from LUBA, simply because he or she failed to participate in the LUBA appeal. See *Id.*

As a party to *Walker* and as an organization that promotes citizen involvement in local land use issues, Rogue Advocates requests that the county clarify that all individuals interested in providing testimony at the *Walker* remand hearing are invited to do so. We further urge the county to amend RLDC 33.130(D) to be in compliance with ORS 197.763(7) and *Siporen*.

Conclusion:

Rogue Advocates supports Josephine County's important goals of reducing congestion and improving operational conditions around the I-5 Louse Creek Interchange area. We understand the hard work that has gone into the proposed amendment, which we want to acknowledge, but at the same time we cannot emphasize enough the critical need to manage growth in a way that limits the impacts to our region's important resources (i.e., productive farmland, clean water and air and open space). As you know, the Louse Creek Interchange is presently failing state standards. Moving forward with the proposed amendment without

guarantees that funding and timing for the mitigation are sufficient to avoid further degradation will continue unsustainable development in the Merlin travelshed, and will degrade the region's quality of life.

Thank you for this opportunity to comment.

Sincerely,

/s/ Jimmy MacLeod

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