

Lane Council of Governments

99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

August 3, 2005

To: Metropolitan Policy Committee
From: Paul Thompson
Subject: Item 4.e.1.iv: LUBA No. 2004-223 Final Opinion and Order

Action Recommended: None. Information only.

Issue Summary

On May 26, 2005, Friends of Eugene and Rob Handy filed a petition for review before the Land Use Board of Appeals (LUBA) of the State of Oregon. LCOG filed a Brief of Respondent and Intervenor-Respondent and a Motion to Strike on June 16, 2005. On June 30, 2005 LUBA heard oral arguments in the case.

On July 27, 2005 LUBA issued their *Final Opinion and Order* for the case – LUBA dismissed the appeal for lack of jurisdiction. In short, LUBA concluded that:

- 1) Petitioners' assertion that the RTP integrates and coordinates two local transportation system plans (TransPlan and the Coburg TSP) is factually incorrect. LUBA agreed with the MPO that TransPlan remains its own independent document.
- 2) There is a difference between the RTP demonstrating compliance with statewide planning goals and applying statewide planning goals (only if the RTP applied statewide planning goals would it be a land use decision). Stating that "the references to the RTP and local comprehensive plan provisions are merely words on the page," LUBA concluded that mere references to statewide planning goals, comprehensive plan provisions or land use regulations in a transportation planning document is not an application of those goals, plan provisions or land use regulations for purposes of ORS 197.015(10) (the definition of land use decision).

Because the RTP did not concern the application of a goal, plan provision or land use regulation is was not a land use decision and, therefore, LUBA does not have jurisdiction to review it.

As a result, the MPO action on appeal – the December 9, 2004 adoption of the update to the Central Lane Metropolitan Planning Organization's Regional Transportation Plan – stands without modification. Petitioners have twenty-one days to appeal LUBA's decision to the Oregon Court of Appeals.

Attachments: Attachment 1 – July 29, 2005 memo from George Kloepfel to MPC Members and LCOG Board Members
Attachment 2 – LUBA No. 2004-223 Final Opinion and Order