



City of Portland
Historic Landmarks Commission

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July 19, 2016

Item 12-Exhibit 1

Jim Rue, Director

Oregon Department of Land Conservation and Development 635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

Re: Proposed Initiation of Rulemaking Regarding
Protection of Historic Resource Sites Under
Statewide Planning Goal 5

Dear Mr. Rue,

On July 6, 2016, the Portland Historic Landmarks Commission (PHLC) received an email from Ian Johnson, Associate Deputy State Historic Preservation Officer in regards to the Oregon Department Land Conservation and Development's (DLCD) intent to propose amendments to the Goal 5 Rule for Historic Resources. The PHLC strongly objects to minimal notice given, the timing of the release of important documents, the location of the DLCD's initial public meeting as it decides to consider initiation of the rule making, the unjustified alacrity of the proceedings that are intended to close prior to the next state legislative session, and advancing rulemaking without being informed by the pending decision of the Oregon Supreme Court in *Lake Oswego Preservation Society v. City of Lake Oswego*.

Minimal Notice

As noted in the memorandum dated July 7, 2016, "the department expects considerable interest in this rulemaking by stakeholders." Due to the expectation that there would be considerable public interest and the Goal 1 expectations for public involvement, we would have expected DLCD to have provided more than fourteen days' notice that a meeting is being held to reconsider a fundamental part of the protections offered to historic resources across the state of Oregon.

Document Release

In addition, while the "Initiation of Rulemaking" memorandum was provided on July 7, 2016, the accompanying staff report was deliberately withheld until just after the last public information session held by the Oregon State Historic Preservation Office on July 15th. The electronic time and date of the document indicates it was completed hours before the first meeting on July 14th and could have been provided to stakeholders prior to the meetings. Instead, it was intentionally not released and therefore could not be openly questioned in a group setting.

Location of the DLCD Meeting

The decision as to whether or not to engage in rulemaking is not insignificant as acknowledged by DLCD. Given the importance and "considerable interest" that the department anticipates, it is profoundly disappointing that the DLCD has elected to initially consider the rulemaking in Boardman, Oregon. Boardman is a municipality that does not have any National Register-listed properties and nearly a three

hour drive from the City of Portland, the community with the largest number of National Register-listed properties in the state and, as such, a community that would be disproportionately affected by the DLCD's proposed rulemaking. Boardman is even further from other Willamette Valley communities – the region with the greatest concentration of National Register properties in the state.

Speed of the Proceedings

The DLCD has expressed a desire to complete the rule-making procedure by November 2016 or January 2017 and yet provides little justification as to why such alacrity is necessary or in the public interest particularly as the Oregon Supreme Court is attempting to decipher the legislature's intent behind the regulations that the DLCD is attempting to reconsider. The only justification that the DLCD offers is "so that historic preservation does not become an issue at the next legislative session." This can only be viewed as a means to circumnavigate the role of the Oregon Supreme Court and the public at-large in settling these important issues.

The DLCD threatens "terminating the rulemaking project" if the project extends past January 2017. This kind of political posturing and condensed timeline does not bode well for reasoned decision-making, adequate stakeholder involvement, or adequate research into the nature of the problems described by the department and whether the solutions proffered by the department would accomplish a desired result. Furthermore, the proposed timeline overly restricts the public's ability to digest and debate the changes that are ultimately proposed.

As the DLCD is aware, the proposed timeline would cripple several National Register nominations currently being reviewed by the Oregon State Advisory Committee on Historic Preservation. The advancement of these and several other previous district nominations flies in the face of the prevarication that "property owners and local jurisdictions [are] reluctant to participate in the federal program because they do not want to trigger state or local Goal 5 requirements. The disincentive to participate in the federal program is particularly evident in discussions surrounding listing historic districts in the National Register." The PHLC objects to this assertion considering one of the largest historic districts in the United States (Irvington) was listed in 2010 under the existing land use framework and included nearly 2,807 properties. Despite the staff's intent to minimize the need to revise local zoning regulations, this rulemaking effort will result in creating yet another tiered approach to managing resources in historic districts and potentially needing to differentiate between properties where owner consent was or was not received. This is simply inefficient and unacceptable.

Given these concerns, the PHLC requests the DLCD remove the proposed initiation for amending the Goal 5 historic resources rulemaking from the July 21-22 agenda and consider it at a meeting that is in closer proximity to the City of Portland, reconsider the timeline for the proposed rulemaking, provide a more timely and forthright approach to document and information releases, and offer a more adequate justification as to why a rulemaking process is needed while the Oregon State Supreme Court is already considering many of these questions.

The process that has been outlined in the DLCD meeting notification and staff report will only serve to erode the protections of historic resources and create an uneven management of resources. While Goal 5 directs local governments to "protect" historic resources, the discussions in the staff report brings to the fore whether owner consent should preclude the conservation of the state's assets that have historical significance and hence community value. The intentions behind Goal 5 and the owner consent provisions in ORS 197.772 are admittedly in conflict, but undertaking an ill-advised, under-informed, and rushed rule

making is not the solution and will prove profoundly detrimental to the future of the City of Portland's historic preservation program.

Sincerely,

A handwritten signature in blue ink that reads "Kirk Ranzetta". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kirk Ranzetta
Chair

A handwritten signature in black ink that reads "Paul Solimano". The signature is cursive and somewhat stylized, with a prominent loop at the beginning.

Paul Solimano
Vice Chair

cc
Brandon Spencer-Hartle, BPS
Hillary Adam, BDS