

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

3
 4 NO MORE FREEWAYS and)
 5 CHRISTOPHER SMITH,)
 6)
 7 Petitioners,)
 8) LUBA No. _____
 9 vs.)
 10)
 11 OREGON DEPARTMENT OF)
 12 TRANSPORTATION and OREGON)
 13 TRANSPORTATION COMMISSION,)
 14)
 15 Respondents.)
 16

17 NOTICE OF INTENT TO APPEAL

18 I.

19 Notice is hereby given that Petitioners intend to appeal the decision of the
 20 Respondents adopting “findings of compatibility for the I-5 Rose Quarter
 21 Improvement Project in compliance with OAR 735-015-0075 of the State
 22 Agency Coordination Program.” *See* Exhibit A (“I-5 Rose Quarter
 23 Improvement Project: Findings of Compatibility with Acknowledged
 24 Comprehensive Plans per Oregon Administrative Rule 731-015-0075”). The
 25 decision occurred on April 5, 2021, and Petitioners file this Notice of Intent to
 26 Appeal on April 26, 2021.

27 II.

28 Petitioners are represented by:

1 Sean T. Malone, OSB # 084060
2 Attorney at Law
3 259 E. 5th Ave, Ste 200-C
4 Eugene OR 97401
5 (303) 859-0403
6 seanmalone8@hotmail.com

Mike Sargetakis (OSB # 174607)
Oxbow Law Group LLC
735 SW 1st Ave, Ste 200
Portland OR 97204
(503) 694-9361
mike@oxbowlaw.com

8 III.

9 Respondents have as their mailing address and telephone number:

10
11 Oregon Department of Transportation
12 355 Capitol St. NE, MS11
13 Salem, OR 97301-3871
14 (888) 275-6368

15
16 Oregon Transportation Commission
17 355 Capitol St. NE, MS11
18 Salem, OR 97301-3871
19 (888) 275-6368

20 and has as its legal counsel:

21
22 Renee Stineman, OSB # 994610
23 Oregon Department of Justice
24 100 SW Market St.
25 Portland OR 97201
26 (971) 673-1880
27 renee.stineman@doj.state.or.us

28
29 IV.

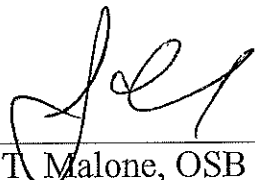
30
31 The agency's decision was not the result of a process whereby the public
32 could provide testimony and comments, and the agency's decision was posted
33 on the Project Library website for the I-5 Rose Quarter Improvement Project.
34 At this time, it does not appear that other persons were provided written notice

1 of the decision.

2 NOTICE:

3 Anyone designated in paragraph IV of this Notice who desires to
4 participate as a party in this case before the Land Use Board of Appeals must
5 file with the Board a Motion to Intervene in this proceeding as required by
6 OAR 661-10-0050.

7 Dated: April 26, 2021



8
9 Sean T. Malone, OSB # 084060
10 Attorney at Law
11 259 E. Fifth Ave, Ste 200-C
12 Eugene OR 97405
13 (303) 859-0403
14 seanmalone8@hotmail.com

15
16 Certificate of Service

17 I hereby certify that on April 26, 2021, I served a true and correct copy of
18 the foregoing on all persons listed in paragraphs III and IV of this Notice
19 pursuant to OAR 661-010-0015(2) by first class mail.

20 Certificate of Filing

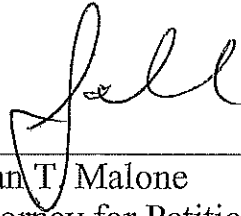
21 I hereby certify that on April 26, 2021, I filed the original of the
22 foregoing, together with two copies, with the Land Use Board of Appeals, DSL
23 Building, 775 Summer Street NE, Suite 330, Salem OR 97301-1283, by
24 certified mail, return receipt requested.

1 Dated this 26th Day of April, 2021

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A handwritten signature in black ink, appearing to read "Sean T. Malone". The signature is written in a cursive style with a large initial "S" and "M".

Sean T. Malone
Attorney for Petitioners

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I-5 Rose Quarter Improvement Project: Findings of Compatibility with Acknowledged Comprehensive Plans per Oregon Administrative Rule 731-015-0075

These findings address compliance with the applicable provision of the Oregon Department of Transportation's (ODOT) State Agency Coordination Program, which is Division 15 of Oregon Administrative Rule (OAR) Chapter 731. The purpose of ODOT's State Agency Coordination Program is to ensure that ODOT plans and projects "are carried out in compliance with the statewide planning goals and in a manner compatible with acknowledged comprehensive plans."¹

Background

The I-5 Rose Quarter Improvement Project (Project) has been developed through a coordinated planning process between the Oregon Department of Transportation (ODOT) and the City of Portland, considering potential solutions to Interstate 5 (I-5) and local street concerns in the Broadway/Weidler interchange area. Between 2010 and 2012, ODOT and the City of Portland initiated a partnership to begin co-developing land use and transportation concepts for the N/NE quadrant of the Central City through an iterative process involving the public and area stakeholders, including a 30-member Stakeholder Advisory Committee. The planning process evaluated over 70 design concepts to improve I-5 between I-84 and I-405 and the I-5 Broadway/Weidler interchange area.

This joint effort represented a new land use–transportation approach in planning improvements to urban highway interchanges. This approach combined the planning of local strategies for land use, urban design, and local transportation improvements, typically a City responsibility, with the planning of interstate highway improvements, which is an ODOT responsibility. This approach for highway improvements was to address long-demonstrated safety and operational issues that would contribute to the continued vitality of the Central City and the mobility needs of the region and state.

The planning process culminated with the issuance of the North/Northeast Quadrant Plan², which was incorporated into the City's Central City 2035 Plan in 2018, and the I-5: Broadway/Weidler Interchange Facility Plan³ in 2012. The recommended design concept developed in the land use and transportation plans is the design for the I-5 Rose Quarter Improvement Project.

The Project is subject to ODOT's State Agency Coordination Program, which is Division 15 of Oregon Administrative Rule (OAR) Chapter 731.

OAR 731-015-0075, a provision of ODOT's State Agency Coordination Program, addresses coordination with local jurisdictions in project development for Class 1 and Class 3 projects, as defined by federal criteria under the National Environmental Policy Act (NEPA). The Project is a Class 3 project, as an Environmental Assessment was the defined level of documentation under NEPA. As documented in the Project's 2019 Environmental Assessment⁴ and 2020 Finding of No Significant Impact (FONSI) and

¹ Oregon Administrative Rule (OAR) 731-015-0005.

² City of Portland, N/NE Quadrant Plan, 2012. Available at: <https://www.portlandoregon.gov/bps/60195>

³ Oregon Department of Transportation and City of Portland, Facility Plan: I-5 Broadway/Weidler Interchange Improvements, 2012. Available at: https://www.i5rosequarter.org/wp-content/uploads/2017/08/I-5_BW_FacilityPlan.pdf

⁴ Federal Highway Administration and Oregon Department of Transportation, Environmental Assessment, 2019. Available at: https://www.i5rosequarter.org/wp-content/uploads/2019/03/508_20190225_I5RQ_Draft-EA_SCREEN_508_RELINK_TAGGED.pdf

Revised Environmental Assessment⁵, the Project's requirements of OAR 731-015-0075(1) – (6) have been met and the Project's requirements of OAR 731-015-0075(8), related to design review and permits, will be addressed as the Project design is advanced and prior to construction. However, ODOT did not "adopt specific findings of compatibility with the acknowledged comprehensive plans of affected cities and counties when it grants design approval for a project" per OAR 731-015-0075(7). This document restates the findings from the FONSI and Revised Environmental Assessment and sets out the findings per OAR 731-015-0075(7) for consideration for adoption.

On March 11, 2021, the Oregon Transportation Commission (OTC) delegated adoption of findings of compatibility with acknowledged comprehensive plans of affected cities and counties, as described in OAR 731-015-0075(7), to the ODOT Director when the respective project is consistent with a previous OTC-adopted facility plan.

OAR 731-015-0065, also a provision of ODOT's State Agency Coordination Program, defines the process and coordination procedures for adopting facility plans. Per OAR 731-015-0065, ODOT must involve stakeholders and work with affected local jurisdictions to ensure any facility plan is consistent with both statewide planning goals and applicable acknowledged local comprehensive plans. In compliance with this rule, the OTC adopted the I-5: Broadway/Weidler Interchange Facility Plan and the findings of compliance per OAR 731-015-0065 on December 11, 2012. Prior to the OTC's adoption of the Facility Plan, the Portland City Council also approved Resolution No. 36972⁶ on October 25, 2012 to adopt and support the I-5: Broadway/Weidler Interchange Facility Plan with the City's N/NE Quadrant Plan.

As described above, the I-5 Rose Quarter Improvement Project is the product of the I-5: Broadway/Weidler Interchange Facility Plan and the Project design is deemed to be consistent with the Facility Plan's recommended design concept as adopted by the OTC and Portland City Council in 2012. The Project's purpose and need, as defined in the Project's 2020 FONSI and Revised Environmental Assessment, also is consistent with the purpose and problems/issues defined in the Facility Plan.

ODOT SAC Requirements: OAR 731-015-0075 – Applicable to the I-5 Rose Quarter Improvement Project

As set forth above, ODOT's SAC Rule, OAR 731-015-0075, applies to the I-5 Rose Quarter Improvement Project. Each requirement is set forth below with findings as to how ODOT and the Project complied with the requirements. The findings for OAR 731-015-0075(1) – (6) and (8) were documented in the 2019 Environmental Assessment and 2020 FONSI and Revised Environmental Assessment and are restated herein. The 2020 FONSI and Revised Environmental Assessment stated that OTC's final design approval under OAR 731-015-0075(7) is anticipated to be made based on the Federal Highway Administration's (FHWA) approval of the Revised Environmental Assessment, evidenced by its issuance of the Revised Environmental Assessment.

⁵ Federal Highway Administration and Oregon Department of Transportation, I-5 Rose Quarter Improvement Project Finding of No Significant Impact and Revised Environmental Assessment, 2020. Available at: https://www.i5rosequarter.org/wp-content/uploads/2020/11/COMPLETE_I5RQ-Final-Decision-Documents_10.30.20.pdf

⁶ City of Portland, Resolution No. 36972, adopted by City Council October 25, 2012. Available at: <https://www.portlandoregon.gov/citycode/article/422365>

OAR 731-015-0075: Coordination Procedures for Adopting Plans for Class 1 and Class 3 Projects

(1) The Department shall involve affected cities, counties, metropolitan planning organizations, state and federal agencies, special districts and other interested parties in the development of project plans. The Department shall include planning officials of the affected cities, counties and metropolitan planning organization on the project technical advisory committee.

Findings: ODOT complied with OAR 731-015-0075(1) by jointly developing with the City of Portland what ODOT adopted as the Facility Plan for the Project and the City adopted by resolution as the N/NE Quadrant Plan, now part of the City's Central City 2035 Plan, a component of the City's Comprehensive Plan. In addition, the Project is in the City's Transportation System Plan (TSP). ODOT and the City of Portland jointly convened the Stakeholder Advisory Committee to advise this joint planning process and transportation and land use plan development. Therefore, the Project complies with and implements the City's Comprehensive Plan.

(2) Goal compliance and plan compatibility shall be analyzed in conjunction with the development of the Draft Environmental Impact Statement or Environmental Assessment. The environmental analysis shall identify and address relevant land use requirements in sufficient detail to support subsequent land use decisions necessary to authorize the project.

Findings: The Land Use Technical Report⁷ prepared for the Project's Environmental Assessment meets the requirements of OAR 731-015-0075(2). As described in the subsection on the state agency coordination requirements of the Oregon Statewide Planning Program, OAR 660-030-0065 states that "a state agency shall comply with the statewide goals by assuring that its land use program is compatible with the applicable acknowledged comprehensive plan(s)." Section 3.9.2.2 of the Environmental Assessment and Section 6.4.2.3 of the Land Use Technical Report demonstrate that the Project is compatible with Portland's comprehensive plan, and no further land use decisions are required. Project features like street furniture and public art may be subject to design review prior to construction.

(3) Except as otherwise set forth in section (4) of this rule, the Department shall rely on affected cities and counties to make all plan amendments and zone changes necessary to achieve compliance with the statewide planning goals and compatibility with local comprehensive plans after completion of the Draft Environmental Impact Statement or Environmental Assessment and before completion of the Final Environmental Impact Statement or Revised Environmental Assessment. These shall include the adoption of general and specific plan provisions necessary to address applicable statewide planning goals.

Findings: The Project is identified as a major transportation improvement project in the City's Comprehensive Plan, as Transportation System Plan project numbers 20119, 20120, and 20121.

⁷ Oregon Department of Transportation, I-5 Rose Quarter Improvement Project: Land Use Technical Report, 2019. Available at: https://www.i5rosequarter.org/wp-content/uploads/2019/02/I5RQ_Land-Use-Technical-Report_010819.pdf

Therefore, the Project is compatible with the City's acknowledged Comprehensive Plan. As a result, no plan amendments are necessary.

(4) The Department may complete a Final Environmental Impact Statement or Revised Environmental Assessment before the affected cities and counties make necessary plan amendments and zone changes in the following case:

(a) The Final Environmental Impact Statement or Revised Environmental Assessment identifies that the project be constructed in phases; and

(b) The Department finds:

(A) There is an immediate need to construct one or more phases of the project. Immediate need may include, but is not limited to, the facility to be improved or replaced currently exceeds or is expected to exceed within five years the level of service identified in the Oregon Highway Plan; and

(B) The project phase to be constructed meets a transportation need independent of the overall project, is consistent with the purpose and need of the overall project as identified in the FEIS, and will benefit the surrounding transportation system even if no further phases of the project are granted land use approval.

Findings: OAR 731-015-0075(4) does not apply because the City of Portland has already made the necessary plan amendments when it incorporated the Project into its Comprehensive Plan prior to the publication of the Environmental Assessment.

(5) If a Final Environmental Impact Statement or Revised Environmental Assessment is completed pursuant to section (4) of this rule, all necessary plan amendments and zone changes associated with the particular phase of the project to be constructed shall be made by the city or county prior to constructing that phase of the project.

Findings: OAR 731-015-0075(5) does not apply because the City of Portland has already made the necessary plan amendments when it incorporated the Project into its Comprehensive Plan prior to the publication of the Environmental Assessment.

(6) If compatibility with a city or county comprehensive plan cannot be achieved, the Department may modify one or more project alternatives to achieve compatibility or discontinue the project.

Findings: OAR 731-015-0075(6) does not apply because the City of Portland has already made the necessary plan amendments when it incorporated the Project into its Comprehensive Plan prior to the publication of the Environmental Assessment.

(7) The Commission or its designee shall adopt findings of compatibility with the acknowledged comprehensive plans of affected cities and counties when it grants design approval for the project. Notice of the decision shall be mailed out to all interested parties.

Findings: The I-5 Rose Quarter Improvement Project is located in the City of Portland and as such, these findings address compatibility with the adopted City of Portland Comprehensive Plan.

The Project, as the recommended design concept from the 2012 Facility Plan and as documented as the Build Alternative in the 2020 FONSI and Revised Environmental Assessment, is compatible with the City of Portland's Comprehensive Plan.

The Project is an identified transportation improvement included in the City of Portland's Comprehensive Plan⁸ and Transportation System Plan⁹. Inclusion of the Project in the City's Comprehensive Plan is the consequence of an integrated land use and transportation planning process undertaken jointly by ODOT and the City of Portland from 2010 to 2012. The process resulted in both the I-5: Broadway/Weidler Interchange Facility Plan, which is ODOT's adopted facility plan for the Project, and the N/NE Quadrant Plan, which directs land use in the Project area and is a component of the City's adopted Central City 2035 Plan¹⁰. The Central City 2035 Plan, originally adopted in July 2018, is part of the City of Portland's Comprehensive Plan.

By formulating a plan that integrated transportation improvements, including the Project, with land use, the joint ODOT and City of Portland planning process addressed the Project's compatibility with the City's Comprehensive Plan. In addition, by including the Project in the City's Transportation System Plan, the City determined that the Project supports existing and planned land use in the Project area. As such, the Project implements and is consistent with the City's Comprehensive Plan.

The Project is identified in the City's 2035 Transportation System Plan, which is the long-range plan guiding transportation investments in the City and is both an implementation tool and a supporting document to Portland's Comprehensive Plan. The Transportation System Plan includes the Project as project numbers 20119, 20120, and 20121, all located on I-5 between I-84 and I-405 in the N/NE Quadrant.¹¹ The description of project 20119 reads, "Conduct planning, preliminary engineering and environmental work to improve safety and operations on I-5, connection between I-84 and I-5, and access to the Lloyd District and Rose Quarter." The description of project 20120 reads, "Acquire right-of-way to improve safety and operations on I-5, connection between I-84 and I-5, and access to the Lloyd District and Rose Quarter." The description of project 20121 reads, "Construct improvements to enhance safety and operations on I-5, connection between I-84 and I-5, and access to the Lloyd District and Rose Quarter. Project includes a pedestrian/bicycle bridge across I-5 at Clackamas St." Therefore, the Project is part of and compatible with the City's Transportation System Plan as an implementation tool to the City's Comprehensive Plan.

8 City of Portland, 2035 Comprehensive Plan. Available at: <https://www.portland.gov/bps/comp-plan/2035-comprehensive-plan-and-supporting-documents>

9 City of Portland, 2035 Transportation System Plan. Available at: <https://www.portlandoregon.gov/transportation/77358>

10 City of Portland, Central City 2035 Plan. Available at: <https://www.portland.gov/bps/cc2035>

11 City of Portland, 2035 Transportation System Plan, Appendix A: Major Projects and Programs. Available at: <https://www.portlandoregon.gov/transportation/article/756145>

Because the Project is identified as a planned transportation improvement in the City of Portland's Comprehensive Plan and ODOT developed the Project in cooperation with the City of Portland as part of an integrated transportation and land use planning process, the Project is compatible with the City of Portland Comprehensive Plan and would support the City's existing and planned land use.

(8) The Department shall obtain all other land use approvals and planning permits prior to construction of the project.

Findings: Some Project improvements may require future City design review and permits. ODOT will obtain any design review approvals or permits prior to construction.

Staff Recommendation

Staff recommends that the ODOT Director adopt the above findings that the I-5 Rose Quarter Improvement Project is compatible with the City of Portland Comprehensive Plan.

Signature: Megan Channell
Digitally signed by Megan Channell
Date: 2021.04.05 12:54:32 -07'00'

Date: 4/5/2021

Megan Channell
Rose Quarter Project Director, Oregon Department of Transportation

Signature: Erik M. Havig
Digitally signed by Erik M. Havig
Date: 2021.04.02 13:19:30 -07'00'

Date: 4-2-2021

Erik Havig
Statewide Policy and Planning Manager, Oregon Department of Transportation

Signature: Brendan Finn

Date: 4/5/2021

Brendan Finn
Urban Mobility Office Director, Oregon Department of Transportation

ODOT Director Action

As delegated by the Oregon Transportation Commission, the Oregon Department of Transportation adopts these findings of compatibility for the I-5 Rose Quarter Improvement Project in compliance with OAR 731-015-0075 of the State Agency Coordination Program.

Signature: Kristopher W. Strickler
Digitally signed by Kristopher W. Strickler
Date: 2021.04.05 15:59:42 -07'00'

Date: 04/05/2021

Kris Strickler
Director, Oregon Department of Transportation