Date: January 4, 2023

To: Megan Channel  
Project Manager  
I-5 Rose Quarter Improvement Project  
888 SW 5th Ave.  
Suite 600  
Portland, OR 97204  
i5RoseQuarter@odot.oregon.gov

Keith Lynch  
Division Administrator  
Federal Highway Administration  
530 Center Street NE  
Suite 420  
Salem, OR 97301  
keith.lynch@dot.gov

From: Chris Smith, No More Freeways  
Joe Cortright, No More Freeways  
Aaron Brown, No More Freeways  
Mary Peveto, Neighbors for Clean Air

Subject: Comment on I-5 Rose Quarter Supplemental Environmental Assessment

“No highway engineers have a mentality … that would run an eight-lane freeway through the Taj Mahal. That is our problem.”

– Oregon Governor Tom McCall, 1970

No More Freeways and Neighbors for Clean Air (NMF/NCA) renew our concerns expressed in relation to the original Environmental Assessment.¹

We appreciate the Independent Cover Assessment process and the strong expression of community support for the Hybrid 3 design. No More Freeways supports the intent of Hybrid 3 to reconnect a neighborhood that was destroyed by racist highway planning practices.

Nonetheless we remain convinced that the proposed $1.45 billion I-5 Rose Quarter Project violates the National Environmental Policy Act (NEPA) and requires further analysis in a full Environmental Impact Statement (EIS). We do not believe that the promise of restoration of the Albina neighborhood should come with strings - or auxiliary lanes - attached.

The Environmental Assessment (EA) (2019) and the Supplemental Environmental Assessment (SEA) (2022) fail to adequately analyze or reveal the economic, social and environmental

¹ April 1, 2019 letter from Attorney Sean T. Malone, attached
effects of the proposed freeway widening. The Oregon Department of Transportation (ODOT) and the Federal Highway Administration (FHWA) are proposing in the SEA and EA to make numerous legal and policy errors. The project as currently proposed is still, at its heart, an effort to ram a 10 lane “LA style” freeway through the heart of Portland - regardless of more effective and less environmentally damaging options. The quote from Tom McCall remains spot on. Lids, not lanes, are what is needed here. Yet ODOT/FHWA's proposal to widen the freeway makes lids/caps more costly, and more difficult to construct.

1. Significant analysis removed from project website

We object that the Independent Cover Assessment (ICA) website (www.albinahighwaycovers.com) was taken down, and only a portion of the documents contained on that website were transferred to the project website. The full set of documents should be available as part of the SEA.²

2. Insufficient opportunity for public comment

We object to the public comment period occurring over a series of major holidays including Thanksgiving, Hanukkah, Christmas, Kwanzaa and New Years, limiting the ability of members of the public to effectively review and comment on the SEA. We requested that an extension of the comment period be provided, but none has. This appears to NFM/NCA to be a deliberate attempt on the part of the agencies to limit public participation in the SEA process, which is contrary to the intent of NEPA.

3. Width of proposed facility insufficiently disclosed

ODOT/FHWA have still failed to disclose the actual width of the structure they are building, and to fully analyze the traffic volumes that would be accommodated if the wider roadway that it is proposing to build is ultimately striped for 10 or 12 lanes of traffic. As No More Freeways has testified to the Oregon Transportation Commission, ODOT appears to have purposely concealed the true width of the roadway it proposed to build.³ It appears to No More Freeways that ODOT is attempting to evade environmental review of what is really a 10-12 lane roadway by claiming that it is merely including overly large "shoulders" and "egress" areas. Yet once built, those areas can (and almost certainly will at some point) be transformed into general purpose lanes by simply painting new lines on the then constructed roadway.

This is clearly not an accidental design choice. Many commentators have raised this issue previously, but the EA and SEA do not address it. ODOT is plainly planning for the possibility of

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² We have attached as many files from the ICA website as we were able to recover
³ Cortright Letter to Oregon Transportation Commission, March 17, 2021, attached
a 10-12 lane freeway. ODOT needs to disclose, and analyze the impacts, what it is actually proposing. That is the key reason for a NEPA analysis, to let the decision maker(s) know what the potential impacts really are of each alternative or option being considered.

We raised this issue in our complaint challenging the original FONSI and REA. The failure/refusal to address this issue in the SEA is inexcusable. Disclosure and discussion of potential impacts, not pretending that there is no proverbial “elephant in the room,” is what NEPA requires.

4. Failure to examine a narrower and lower cost facility

ODOT/FWHA have so far failed to examine the lessened environmental effects of building a narrower roadway. ODOT’s own consultants said that the roadway could be 40 feet narrower than designed by ODOT, and still provide adequate automobile capacity.

Also shown in Figure 18 of the Independent Cover Assessment Cost and Constructability Report, in the lower diagram, is an alternative cross section that could achieve over 40 feet in total cover width potential reduction for the RQIP. This conceptual cross section is consistent with the FHWA guidance referenced above, as well as consistent with current practice for highways with cover structures or tunnels.

5. Failure to analyze effects on Lillis-Albina Park

ODOT/FHWA fail to disclose or examine the effects of its proposed sound wall on the use and enjoyment of Lillis-Albina Park. The construction of a 1000 foot long, multi-story sound wall along the Western edge of the park would most likely impair the views of the City of Portland and the West Hills from Lillis-Albina Park. This constitutes a constructive use of Park property. ODOT/FHWA have not properly disclosed this impact, or provided the necessary opportunity for public comment, nor done the necessary analysis of impacts under Section 4(f). Nor has Portland Bureau of Parks and Recreation has made a finding that such a wall would constitute an allegedly "de minimis" impact on the Park.

We note that viewpoint CC-N04 from the Portland Zoning code title 33.480 appears to be proximate to the proposed sound wall.

From p.46 of the SEA:

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4 No More Freeways v. FHWA, attached
5 Arup, Rose Quarter Cost and Constructability Study, 2020, attached
6 33.480 Scenic Resource Zone, attached
“There are two viewpoints located at the western edge of Lillis-Albina Park that feature I-5 in the foreground and a view of the Fremont Bridge and Forest Park through the trees, with glimpses of the Willamette River and Pearl District also visible (City of Portland 2020). Noise Wall 2, if built, could block all or a portion of I-5 that is visible from these viewpoints. ODOT will work with the City of Portland through the final design process to mitigate impacts of the Revised Build Alternative on the view.”

The impacts described cannot be waived away. They must be analyzed in an EIS.7

We raised this issue in our complaint challenging the original FONSI and REA.

6. Inaccurate and insufficient traffic projections

ODOT/FHWA have not prepared true and accurate traffic projections for the I-5 Rose Quarter project. Instead of using regional travel demand modeling, ODOT has used an out-dated, 40 year old methodology for adjusting existing traffic data. Even though the agency and its partners have undertaken multiple additional studies which show very different results, ODOT has ignored the results of those studies, and in the EA and SEA continues to rely on a TOAS report generated in 2015. ODOT has failed to base its EA and SEA environmental and traffic analysis on more recent model estimates including:

- It's own 2018 analysis of value pricing, which produced different and much lower no-build estimates of traffic for I-55
- Metro's 2018 Kate regional travel demand model9 which is based on more recent data and a more precise methodology than ODOT's TOAS report

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7 Additional photos and higher resolution copies attached
9 Metro, Kate v2.0 Trip-Based Travel Demand Model Methodology Report May 2020
● ODOT’s own "tolling sensitivity analysis memo" (included in the Traffic Analysis Supplemental Technical Report) which indicates that traffic in the No-build scenario would be much lower than indicated in the EA or SEA analyses.\(^\text{10}\)

In addition, the project’s SEA fails to respond to the criticisms levied in the No More Freeways expert panel report\(^\text{11}\) on traffic modeling from 2019.

- No average daily traffic (ADT) data.
- The nature of the 2015 and 2045 transportation networks are not specified
- Volumes are inexplicably inflated from current levels
- Projections inconsistent with other ODOT projections developed contemporaneously
- Static trip assignment exaggerates no-build traffic
- Hidden assumptions and inputs
- Improper extrapolation of 2040 models to 2045
- Manual addition of trips to projections
- Unrealistic headways in traffic analysis
- Issues with Syncro modeling.
- Assumed Columbia River Crossing in no-build

Using outdated projections when more recent ones are available is a direct violation of NEPA standards.\(^\text{12}\)

> While NEPA does not require an agency to update its population forecasts whenever new forecasts become available, it ordinarily may not rely on outdated forecasts when it sets out to prepare an EIS even though more recent forecasts from the agency’s own experts are readily available. Defendants’ decision to do so here was error....Defendants cannot rely on the fact that they discussed the issue in the [post-FEIS] traffic sensitivity analysis] to excuse their failure to directly address it in the FEIS because the TSA was not subject to public comment.

We also raised this issue in our complaint challenging the original FONSI and REA, yet the SEA still refuses to address this issue.

7. Failure to use appropriate analysis methods

ODOT has failed to follow its own procedures, and those prescribed by the NCHRP in preparing


\(^{11}\) No More Freeways Traffic Technical Advisory Committee, April 1, 2019, attached

and documenting its traffic estimates. Both the NCHRP handbook and ODOT’s own "Analysis Procedures Manual" require that traffic volume estimates be documented in a way that reveals any weaknesses and allows third parties to fully understand assumptions, and duplicate. ODOT has failed to disclose at least the following weaknesses and at least the following critical information:

ODOT asserts that its travel figures are “based on” the Metro Travel Demand Model, but have failed to provide detailed sources or calculations showing how their figures were arrived at, instead asserting that they have followed some unspecified procedures contained in a 40-year old guide to traffic projections (NCHRP 255).

This is revealed in the project’s 2019 memorandum on reasonably foreseeable future actions, which describes the project’s travel figures as being derived as follows:

Likewise, for transportation, the forecast of the performance and operation of the highway and local transportation system is based on Metro’s regional travel demand model and on analysis tools that rely on the regional model data projected to the year 2040. The travel demand model is built on population and employment growth forecasts adopted by the Metro Council and the financially constrained project list included in the RTP (Metro 2014)

(Citation in original, emphasis added).

What it appears Metro actually did was take vintage 2014 traffic counts and simply inflate them using an unspecified growth factor taken from Metro’s 2014 travel demand model. NCHRP 255 was developed to provide analysts with a simple manual (i.e. pre-computer) method of extrapolating the results of regional travel demand models to areas or time periods not directly forecast in the model.

ODOT failed to follow either the practices spelled out in the professional literature for applying such methods or its own Analysis Procedures Manual. Both of these call for providing spreadsheets or similar written calculations showing input data, describing assumptions, and generally enabling a third party to understand and replicate the calculations.

The material provided in the traffic technical report is so cryptic, truncated and incomplete that it is impossible to observe key outputs or determine how they were produced. This is not merely sloppy work. This is a clear violation of professional practice in modeling. ODOT's own Analysis

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Procedures Manual\textsuperscript{15} (which spells out how ODOT will analyze traffic data to plan for highway projects like the Rose Quarter, states that the details need to be fully displayed:

6.2.3 Documentation

It is critical that after every step in the DHV [design hour volume] process that all of the assumptions and factors are carefully documented, preferably on the graphical figures themselves. While the existing year volume development is relatively similar across types of studies, the future year volume development can go in a number of different directions with varying amounts of documentation needed. Growth factors, trip generation, land use changes are some of the items that need to be documented. If all is documented then anyone can easily review the work or pick up on it quickly without questioning what the assumptions were. The documentation figures will eventually end up in the final report or in the technical appendix.

The volume documentation should include:

- Figures/spreadsheets showing starting volumes (30 HV)
- Figures/spreadsheets showing growth factors, cumulative analysis factors, or travel demand model post-processing.
- Figures/spreadsheets showing unbalanced DHV
- Figure(s) showing balanced future year DHV. See Exhibit 6-1
- Notes on how future volumes were developed:
  - If historic trends were used, cite the source.
  - If the cumulative method was used, include a land use map, information that documents trip generation, distribution, assignment, in-process trips, and through movement (or background) growth.
  - If a travel demand model was used, post-processing methods should be specified, model scenario assumptions described, and the base and future year model runs should be attached

This is also essential to personal integrity in forecasting. The American Association of State Highway and Transportation Officials publishes a manual to guide its member agencies (including ODOT) in the preparation of highway forecasts. It has specific direction on personal integrity in forecasting. National Cooperative Highway Research Project Report, "Analytical Travel Forecasting Approaches for Project-Level Planning and Design," NCHRP Report \#765\textsuperscript{16}—which ODOT claims provides its methodology—states:

\textsuperscript{15} ODOT Analysis Procedures Manual, Chapter 6, attached
\textsuperscript{16} NCHRP Report \#765, attached
It is critical that the analyst maintain personal integrity. Integrity can be maintained by working closely with management and colleagues to provide a truthful forecast, including a frank discussion of the forecast’s limitations. **Providing transparency in methods, computations, and results is essential.** The analyst should document the key assumptions that underlie a forecast and conduct validation tests, sensitivity tests, and scenario tests—**making sure that the results of those tests are available to anyone** who wants to know more about potential errors in the forecasts.

8. Failure to fully analyze impacts of road pricing

ODOT/FHWA have failed to incorporate the effects of road pricing\(^\text{17}\) (including the Regional Mobility Pricing Program, tolling for the IBR project and tolling on I-205) in its analysis of future traffic levels in the "No-Build" future. This overstates traffic, congestion and pollution in the No-build and under-estimates the added traffic due to the "Build" scenario. ODOT falsely and incorrectly claimed that pricing is not "reasonably foreseeable" on the basis that a specific pricing project is not included in the 2018 Regional Transportation Plan (RTP). But the evidence that pricing is integral to this project is overwhelming. Quoting the standard asserted in the SEA (Appendix B):

> The Environmental Protection Agency’s Consideration of Cumulative Impacts In EPA Review of NEPA Documents (EPA 1999) states that “… analysis should … incorporate information based on the planning documents of other federal agencies, and state and local governments.”

The decision to exclude pricing from the SEA flies in the face of overwhelming evidence:

- **House Bill 2017\(^\text{18}\) (2017) directed**
  (2) No later than December 31, 2018, the commission shall seek approval from the Federal Highway Administration, if required by federal law, to implement value pricing as described in this section.
  (3) After seeking and receiving approval from the Federal Highway Administration, the commission shall implement value pricing to reduce traffic congestion. Value pricing may include, but is not limited to, variable time-of-day pricing. The commission shall implement value pricing in the following locations:
    (a) On Interstate 205, beginning at the Washington state line and ending where it intersects with Interstate 5 in this state.

\(^{17}\) We use the term “road pricing” to be inclusive of congestion pricing used to manage the performance of a facility, tolling to finance a facility and other forms of pricing use of a facility.

\(^{18}\) Text of House Bill 2017
(b) On Interstate 5, beginning at the Washington state line and ending where it intersects with Interstate 205.

- Oregon submitted an application for Value Pricing to FHWA in 2018\(^\text{19}\)
- House Bill 3055\(^\text{20}\) (2021) refines direction for a tolling program and provides a revenue source for costs to implement a toll program.
- The chair of the Oregon Transportation Commission, Robert Van Brocklin in remarks on multiple occasions.

At the March 10th Commission meeting:\(^\text{21}\)

“I think it comes down kind of to this simple conclusion which is if we don't have tolling I don't see an alternative funding mechanism to do any of these. I don't think we have the resources to build the Abernethy Bridge, the Rose Quarter project or the Interstate Bridge without tolling.”

At the April 29th, 2022 Commission meeting:\(^\text{22}\)

“I guess I will just say a couple of things one is I think that since reading House Bill 2017 when I first came on the commission and realizing we had 30 million dollars initially dedicated exclusively to Rose Quarter after House Bill 3055 last year that money became available, became more flexible in terms of our regional program but tolling has always been the primary financing tool and our ability to succeed with tolling in all of the ways we've discussed. It being equitable, it being having a demand management effect, it also being implemented is the fulcrum for really being able to do this program and so we have to get that right…”

- The 2018 RTP includes this policy direction:\(^\text{23}\)

“In combination with increased transit service, consider use of congestion pricing to manage congestion and raise revenue when one or more lanes are being added to throughways.”

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\(^\text{19}\) Oregon Application to FHWA: Value Pricing Feasibility Analysis and Proposed Implementation
\(^\text{20}\) Text of House Bill 3055
\(^\text{21}\) [https://www.youtube.com/watch?v=XblcgrAprVM](https://www.youtube.com/watch?v=XblcgrAprVM) at approximately 4 hours and 29 minutes
\(^\text{22}\) [https://www.youtube.com/watch?v=qvkCV0qQcms](https://www.youtube.com/watch?v=qvkCV0qQcms) at approximately 1 hour and 8 minutes
\(^\text{23}\) 2018 Regional Transportation Plan, Chapter 3, Policy 6

No More Freeways
PO Box 83643
Portland, OR 97283

[www.nomorefreewayspdx.com](http://www.nomorefreewayspdx.com)
facebook.com/nomorefreewayspdx
@nomorefreeways
info@nomorefreewayspdx.com
Given this preponderance of evidence for pricing in the project corridor ODOT should not only include analysis of pricing impacts in the SEA but should consider a pricing-only alternative to the widening of the freeway.

We also note that between the EA and the SEA ODOT has shifted their criteria for “reasonably foreseeable pricing” from the presence of a pricing project in the RTP project list, to the inclusion of a Preliminary Engineering and Right of Way element in the RTP. This appears to be an example of an agency trying to justify a decision that it has already made, not an analysis that a decision maker can review and reasonably evaluate. ODOT’s slippery slope efforts to avoid evaluating road pricing is neither objective, or in keeping with the reality of the current situation.

We also raised this issue in our complaint challenging the original FONSI and REA, and the SEA does nothing (other than playing word games by changing the criteria for inclusion) to address this issue.

9. Shifting and inconsistent rationale regarding pricing analysis

ODOT has presented shifting and inconsistent rationales for not treating tolling as a “reasonably foreseeable.” As noted above, tolling was enacted by the Oregon Legislature in 2017, well before this project's 2019 EA. In the 2019 EA, ODOT asserted that tolling could not be regarded as a “reasonably foreseeable” action because it was not included in the 2014 Regional Transportation Plan, and project termini had not been defined. In the 2022, SEA, ODOT has changed its story, and acknowledges that tolling is included in the RTP, but now asserts that tolling is not reasonably foreseeable because the RTP doesn’t contain a project that involves “right of way and design” phases. ODOT claims that this is “consistent with federal guidance on reasonably foreseeable actions,” but cites no such guidance.

In the response to comments on the 2019 EA, ODOT claimed:

As discussed in Section 2.4 of the EA, congestion pricing (also referred to as value pricing or tolling) is subject to a separate ODOT study. Congestion pricing was not considered to be reasonably foreseeable in the analysis presented in this EA because of the potential termini for value pricing in the I-5 corridor had not been determined and was not included in the fiscally constrained list of projects in the 2014 RTP at the time the EA and related technical reports were prepared.24

In the 2022, SEA, ODOT now claims

In 2018, the planning and environmental phases of the tolling project were added to the RTP, but consistent with federal guidance on reasonably foreseeable actions,

24 ODOT, I-5 Rose Quarter Improvement Project December 16, 2019 Comment Summary Report
these projects are not included as RFFAs for the Supplemental EA because the ROW and design phases are not included in the RTP and the regional travel demand model.\textsuperscript{25}

As outlined, this approach makes no sense and is inconsistent with multiple plans, statements, and policy directives.

\textbf{10. Insufficient analysis of alternatives}

ODOT/FHWA failed to consider any number of alternatives to widening of the freeway. Alternatives analysis is the heart of NEPA and ODOT/FHWA need to consider a robust set of alternatives. Since the community has made clear, and State Government has accepted, that capping the freeway is a primary value of this project, options which keep the freeway narrower would greatly reduce the costs of the caps. Among the alternatives ODOT should have considered:

- Pricing-only management of congestion
- Pricing plus caps
- A transit alternative to manage travel demand in the corridor
- Transit plus caps
- Caps plus selective widening of shoulders, which ODOT’s consultant ARUP suggested in their analysis of the design\textsuperscript{26}
- Closing of one or more ramps (since insufficient interchange spacing is identified as a root causes of traffic issues in the area)

\underline{We raised this issue in our complaint challenging the original FONSI and REA, but the SEA has yet to address these problems.}

\textbf{11. Failure to analyze impacts of out-of-direction travel created by new design}

ODOT failed to include an analysis of the environmental, social and safety effects of additional driving in the Rose Quarter area due to the relocation of the I-5 southbound on ramp from N. Broadway to N. Wheeler. This relocation will add 1.3 million additional vehicle miles of travel on

\textsuperscript{25} Memorandum: REASONABLY FORESEEABLE FUTURE ACTIONS COMPARISON Date: Tuesday June 15, 2022 Project: K19071 I-5 Rose Quarter Improvement Project To: Steve Drahota From: Brian Bauman (Traffic Analysis Supplemental Technical Report Appendix A. https://www.i5rosequarter.org/pdfs/sea/tech_report_traffic.pdf)

\textsuperscript{26} Independent Assessment of Highway Covers for I-5 Rose Quarter Improvement (IARQ) Project Task 2.1.1 -Technical Design Review Memo Appendix E, attached, p. 13: “Given the emphasis on safety and traffic congestion in the goals and objectives of the project, there is an opportunity to better reflect the congestion and safety benefits from an extended shoulder along the entirety of the project corridor, which may mitigate the need for an additional auxiliary lane where proposed.”
area streets, increasing congestion and pollution, and creating additional dangers for persons walking and biking. It will also increase air pollution and global warming. The EA and SEA ignore these issues, despite numerous comments raising these issues throughout the process.

**12. Segmentation & Failure to analyze cumulative impacts**

ODOT/FHWA have illegally partitioned its widening of I-5 in Portland into two separate projects: (1) the Interstate Bridge Replacement; and (2) the I-5 Rose Quarter project. The environmental reviews prepared for each of these projects assume the existence of the other project in the "No-Build" circumstance. Neither project's analysis includes a true "No-build" scenario in which neither project is built.

That fact alone demonstrates that the two projects are not independent or separate projects. They are linked or interdependent. They need to be analyzed as one project. Because in the absence of added capacity from either project, traffic would not physically be able to increase, ODOT has over-estimated the traffic volumes and congestion in the artificially and inaccurate "No Build" scenario presented separately in each environmental document.

At the larger regional scale ODOT has defined an “Urban Mobility Strategy” that includes several projects already underway and four additional highway expansions including the Rose Quarter project, the Interstate Bridge Replacement Project, widening of a 7-mile segment of I-205 and widening of the Boone Bridge over the Willamette River. The Mobility Strategy also includes two tolling efforts intended to fund in full or in part these highway expansions.

ODOT’s apparent strategy is to perform an EA on each component in a discrete manner. This subverts the intent of NEPA. The region deserves an EIS on the entire collection of projects including real alternatives to management mobility in the region, including congestion pricing and transit alternatives. ODOT/FHWA cannot lawfully escape from analyzing the cumulative impacts of all these projects.

According to FHWA regulations, any action evaluated under NEPA as a categorical exclusion (“CE”), environmental assessment (“EA”), or environmental impact statement (“EIS”) must: (1) connect logical termini and be of sufficient length to address environmental matters, (2) have independent utility or significance, and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. 23 C.F.R. § 771.111(f). Independent utility or significance represents that an action is usable and is a “reasonable expenditure even if no additional transportation improvements in the area are made”. 23. C.F.R. § 771.111(f)(2).

Additionally, the CEQ regulations state that agencies evaluate “proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action.”

27 Urban Mobility Strategy, February 2022, attached
C.F.R. § 1502.4(a). Yet in the SEA (and the underlying EA) ODOT/FHWA have tried to pretend that the Rose Quarter freeway expansion and the IBR have no connection to each other. Clearly they do, or they would not each rely on the existence of the other in their traffic analysis.

NFM/NCA is concerned that FHWA may have recently adopted a practice (or policy) of trying to illegally segment freeway expansion projects. An example in the case of I-35 in Texas. Such an approach is unlawful. See e.g., Thomas v. Peterson, 753 F.2d 754 (9th. Cir. 1985) and its progeny.

We also raised this issue in our complaint challenging the original FONSI and REA, and the SEA still does not address and resolve this problem.

13. Failure to acknowledge or analyze the impacts of induced demand

ODOT/FHWA have failed to incorporate best available science on induced travel in its traffic modeling. Extensive published scientific research has demonstrated the concept of induced travel, also known as the "fundamental law of road congestion." The best available science shows that there is a unit elasticity of vehicle travel with respect to road capacity in urban areas. A one percent increase in road capacity tends to produce a one percent increase in vehicle travel. ODOT's traffic estimates contain no provision for incorporating induced travel into their calculations, and therefore under-estimate traffic levels in the "build" scenario. As a result, the

28 ReThink35 v. TxDOT, attached


ODOT analysis overstates the traffic flow benefits of the project, and understates the costs from increased driving, pollution and crashes.

A recent review of transportation models used by state highway departments concluded that these models fail to include provisions for estimating induced travel and this causes them to underestimates the environmental effects of highway expansion projects.

Despite strong evidence, the “induced travel” effect is often ignored, underestimated, or misestimated in the planning process, particularly in the assessment of the environmental impacts of roadway capacity expansions. Underestimating induced travel will generally lead to overestimation of the traffic congestion relief benefits a highway expansion project might generate, along with underestimation of its environmental impacts. A major reason that induced travel tends to be underplayed in environmental analyses is that travel demand models do not typically include all of the feedback loops necessary to accurately predict the induced travel effect.  

ODOT has officially adopted an “Analysis Procedures Manual,” which, without evidence, dismisses the scientific evidence on induced demand and prohibits consideration of induced travel in Oregon transportation modeling. This “flat earth” approach to transportation modeling violates NEPA’s requirement that agencies use the best available science in reaching their determinations. Other state transportation departments have adopted explicit provisions for analyzing induced demand, with techniques developed on the scientific literature and with models subjected to independent expert peer review.

ODOT’s denial of induced demand, and failure to include it in its analysis violates NEPA’s requirement that analysis be scientifically rigorous. CEQ regulations provide:

> Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources. Agencies may make use of any reliable data sources, such as remotely gathered information or statistical models. They shall identify any methodologies used and shall make explicit reference to the scientific and other sources relied upon for conclusions in the statement. Agencies may place discussion of methodology in an appendix. Agencies are not required to undertake new scientific and technical research to inform their analyses. Nothing in this section is intended to

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prohibit agencies from compliance with the requirements of other statutes pertaining to scientific and technical research.  
40 CFR § 1502.23 (Emphasis added).

Here again, we raised this issue in our complaint challenging the original FONSI and REA and the SEA does nothing to resolve this fundamental failure.

14. Failure to demonstrate “reasonably available” funding

ODOT has failed to demonstrate that funding is “reasonably available” for the I-5 Rose Quarter freeway widening project, which is required by FHWA regulations prior to the issuance of a Record of Decision. The original allocation of revenue to this project has been made available to several other projects via House Bill 3055. As a result, only a fraction of the original funding will be applied to this project. That is why the Transportation Commission has admitted tolling is necessary to pay for this project.

In addition the cost of the project has ballooned to as much as $1.45 billion according ODOT estimates. The EA and SEA contain no indication of how this cost will be financed. The Regional Transportation Plan also does not identify funding for this project, as required by FHWA regulations.

The Federal Highway Administration’s policies adopted in 2008, and clarified in 2011 provide that prior to entering into a Record Of Decision, FHWA must find that funding for the entire project is reasonably available. In pertinent part, this policy provides as follows:

Before the FHWA can sign the final NEPA decision (i.e., ROD, FONSI, or CE), the proposed Project (“Project”) as defined in the NEPA document must meet the following specific criteria:

For Metropolitan Planning Areas (within a MPO):

o The Project or phases of the Project within the time horizon of the MTP must be included in the fiscally constrained MTP, and other phases of the Project and the associated costs beyond the MTP horizon must be referenced in the Plan.33

The policy goes on to define what is meant by “reasonably available”:

33 Supplement to January 28, 2008 “Transportation Planning Requirements and Their Relationship to NEPA Process Completion” February 9, 2011, page 1. (hereinafter “2011 FHWA Suppl.”), attached
The term “reasonably available” in this guidance is synonymous with “reasonably anticipated to be available” and “reasonably expected to be available”. Determining whether a future funding source is “reasonably available” requires a judgment decision. Two important considerations in determining whether an assumption is "reasonable" are (a) evidence of review and support of the new revenue assumption by State and local officials and (b) documentation of the rationale and procedural steps to be taken with milestone dates for securing the funds. For example, a new tax for transportation purposes requiring local and/or State legislation and/or support from the Governor is reasonable if there is clear evidence of sufficient support (both governmental and public) to enact the new tax, and a strategy exists for securing those approvals within the time period for implementing specific projects.  

Significantly, the 2011 FHWA Supplement clearly acknowledges that these requirements are not merely “policy,” they are mandatory requirements imposed by Federal statutes and regulations. 2011 FHWA Suppl. at pages 1 and 2, citing 23 U.S.C. § 134(j)(3)(D), 23 U.S.C. § 135 (g)(4)(E), 23 C.F.R. § 450.324(h)-(i).

In 2017, FHWA further clarified and reiterated this policy:

funding for a subsequent phase of the project (e.g., final design, right-of-way (ROW) acquisition, or construction) must be shown in the STIP/TIP before FHWA can sign a Record of Decision (ROD), Finding of No Significant Impact (FONSI), or approve the Categorical Exclusion (CE). The STIP should include all sources of revenue for a project and can only include projects for which full funding can reasonably be anticipated to be available. For projects in metropolitan planning areas, estimated full project costs need to be shown in the MTP.

In the 2018 Regional Transportation Plan, the Rose Quarter project is budgeted at $375 Million.

15. Manipulation of Public Comment Record

ODOT staff have falsely summarized public comment and altered documents to conceal public opposition to the I-5 Rose Quarter project. An Oregon Judge ruled that ODOT violated the

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34 2011 FHWA Suppl. at page 2.  
36 2018 Regional Transportation Plan, Appendix A, p.64, attached
state’s public records law in manipulating documents that were supposed to outline the comments made on the 2019 EA. 37

“This is not a game. It’s about accountability, accountability to the people of Oregon…And it really undermines the public’s trust in the public records request process.” 38

16. Incorrect crash estimate method

ODOT incorrectly applied a crash estimation method called "ISATe" to calculate crashes on I-5. The "ISATe" tool is only valid on roadways that do not have ramp-meters installed. 39 This portion of I-5 is ramp-metered, which according to ODOT research has already produced a 40% reduction in crashes. 40

17. Failure to comply with Executive Order

On March 10th, 2020 Oregon Governor Brown issued Executive Order 20-04 41 directing all state agencies, including ODOT to “exercise any and all authority and discretion” to facilitate the greenhouse gas (GHG) emission targets of the order, including a 45% reduction below 1990 levels by 2035.

Given that transportation is responsible for roughly 40% of the state’s GHG emissions and those emissions are growing, there is no hope of attaining these goals unless all major capital projects contribute significantly to these GHG reduction efforts. Rose Quarter is likely to be the second largest capital expenditure by ODOT, with only the Interstate Bridge Replacement costing more.

Yet the SEA freely admits that the build scenario not only fails to reduce GHG emissions but in fact increases them over the no-build by at least 1%. We believe even this 1% number underestimates the impacts of induced demand, but in any case the project clearly flaunts the direction of the executive order.

18. Failure to significantly improve transit

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37 Alan Kessler v. ODOT, judgment 12/12/2022, attached
38 Alan Kessler v. ODOT, transcript of ruling from bench, attached
41 EO 20-04 attached
That notion that we would spend over a billion dollars on an urban transportation project and provide no noticeable improvement for transit is a huge disappointment. Indeed, the fact that some transit connections will actually be slowed confirms that ODOT’s only real interest is in moving as many automobiles as quickly as they can.

19. Degradation of active transportation safety and increase in stress

The relocation of the I-5 southbound off-ramp creates a host of issues for people walking and biking, as well as automobile users as documented in “The Rose Quarter’s Big U-Turn: Deadman’s Curve?” In addition the “Level of Traffic Stress” (LTS) metric used in the SEA is highly subjective and the rating of most intersections at Level 1 is not credible. Many of these concerns are documented in a comment letter from Portland’s Bicycle Advisory Committee.

20. Failure to adequately analyze impacts of buildable highway covers

The motivation for the Independent Cover Assessment was to reconnect the Albina community by providing buildable freeway covers in a connected street grid. While the SEA shows the street grid, it gives no hints on how to actually build atop the caps and only documents temporary uses of the highway covers. Without knowing what can be built, the impacts of the project cannot be accurately assessed, which is the entire point of NEPA.

21. Failure to re-scope Purpose and Need to match new design direction

While No More Freeways firmly supports the objective of buildable covers over the highway, this is a significant change in the project and it would be more appropriate to re-scope the Purpose and Need for the project and conduct a full EIS rather than a Supplemental EA.

22. Inconsistent and conflicting claims about safety

ODOT has made inconsistent and conflicting claims about the importance of lane and shoulder widths to safety. In regards to the overall project, ODOT has asserted that wider lanes and shoulders will reduce crashes by 50 percent. But in revisions to the project since its 2019 EA, ODOT has determined that it can narrow both the lanes and the shoulders on the existing 1,000 foot long viaduct section at the Southern end of the project, and that doing so will have virtually no impact on crash rates or safety.

42 https://cityobservatory.org/the-rose-quarters-big-u-turn-deadmans-curve/, copy attached
43 December 27th, 2022 letter from Portland BAC to Portland City Council, attached
The calculations contained in the project’s predictive safety analysis also disprove claims made in the EA that the project will reduce crashes by 60 percent. According to the predictive safety analysis, crashes will decline just 10 percent compared to the “No-Build” alternative.

Moreover, the dollar value of crash losses relative to the cost of this construction project is trivial. ODOT’s predictive safety analysis estimates this project will reduce annual crash costs by about $400,000 per year. For a project that costs as much as $1.45 billion, this means the cost of the project exceeds the net present value of crash losses by a factor of 200: You have to spend $200 on the freeway to reduce crash losses by $1. This is a cost-benefit ratio that is about 2,000 times worse than other ODOT safety projects.

23. Project is controversial

The November 2020 FONSI and Revised Environmental Assessment (REA) provoked considerable public controversy and objection from elected officials. In response, the Oregon Transportation Commission (OTC) engaged in a public process to review objections, and consider alternative paths, including the possibility of completing an EIS.

The magnitude of the project and level of public controversy surrounding it should have triggered an EIS, not another FONSI. The OTC chose to stick with the EA/FONSI, while engaging consultants committees to consider alternatives. Intervention by Oregon Governor Kate Brown led to alteration of the project and FHWA rescinding the prior Record Of Decision. Project leaders still chose to proceed with a "supplemental environmental analysis" rather than an EIS.

ODOT and FHWA may believe that even if reasonable alternatives would have much less impact than either the chosen project or the no-build alternative, the decision to do an EA is a "loophole" that allows them to consider only the chosen project and the no-build, and ignore reasonable alternatives. This point of view is set forth in Appendix I, page 11, of the Nov. 2020 FONSI and Revised EA:

"While FHWA Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents, requires consideration of TSM and mass transit alternatives when determining the range of reasonable alternatives to be evaluated in an Environmental Impact Statement (EIS), the FHWA guidance does not include such a requirement for NEPA EAs (FHWA 1987)."

We testified at the January 23, 2020 OTC meeting44 that ODOT needed to conduct a full EIS. Others also testified at that meeting to the same effect.

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44 https://www.youtube.com/watch?v=JGFTGAmQytc
At that meeting, Portland City Commissioner Chloe Eudaly, in charge of the Portland Bureau of Transportation, refers to continuing controversy (starting at 4:53:30 of video). She says inclusion of the Rose Quarter Project in the Central City 2035 Plan was contingent on the project including congestion pricing.

Subsequently, Metro Council President Lynn Peterson (starting at 5:02:15 of video) speaks about ODOT’s failure to account for cumulative impacts because they didn’t do an EIS, referring to "shortcuts" in the process and the failure to do corridor planning. She represents the Metro Council position that congestion pricing needs to be in place prior to any work on the project (at 5:07:54).

At the April 2, 2020 OTC meeting, the OTC decided not to do an EIS.

At time 2:47:40, OTC Chair Robert Van Brocklin sets forth his rationalization that this is a special project because it was ordered by the Oregon Legislature, and they have no choice about doing it. He ignores the fact that NEPA is a federal requirement, and the Oregon Legislature has no authority to limit consideration of alternatives.

From Chair Van Brocklin's remarks, it appears that the OTC has deliberately chosen to do an EA as a way of avoiding the "scoping" process required for an EIS. Commissioners Van Brocklin and Smith say they haven't seen anything in the record to suggest an EIS is required. At 3:09:15, Commissioners approve proceeding without an EIS.

The EA relies on a simple comparison of the long-term yearly impacts of the build vs. no-build alternatives, and concludes that they are not significantly different. This fails to meet NEPA standards by not considering other alternatives, particularly transit and pricing alternatives, that could well result in significant VMT reductions and much lower yearly and cumulative impacts.

Both short-term and long-term effects are relevant. There is no denying the significant disruptions that will occur during construction, including shutting down the Portland Streetcar and sending buses on detours, as well as diversion of motor vehicle traffic.

ODOT’s own consultants to the Value Pricing Policy Advisory Committee (VPPAC) said that if congestion pricing were implemented on I-5, the Rose Quarter Project would be unnecessary, because pricing would provide the equivalent of an extra lane. See video of Feb. 28, 2018 VPPAC meeting.

VPPAC member Jana Jarvis, President of Oregon Trucking Associations, asked Chris Swensen of WSP whether their analysis assumed construction of the Rose Quarter freeway widening. He says it did, but at time 1:10:38, he continues his reply with the observation that in essence, the widening is not needed if value pricing is in place to optimize freeway operation.

45 https://www.youtube.com/watch?v=SVSFzn2P-xo
46 https://www.youtube.com/watch?v=OAfpxy4W6A&t=4207s
The 2017 Oregon Legislature, in HB 2017 Section 121, defined a “mega transportation project” as one that

"...includes transportation projects... that cost at least $360 million to complete, that attract a high level of public attention or political interest because of substantial direct and indirect impacts on the community or environment or that require a high level of attention to manage the project successfully."

The Rose Quarter Project met the "mega-project" criterion under the original cost estimate of $450 to $500 million (in 2017 dollars), and more so with today's estimates, meaning there are significant opportunity costs, in terms of environmental impact, from not considering alternatives.

Current yearly greenhouse gas emissions in just the defined project area are roughly 530,000 metric tons CO2 equivalent, and are globally cumulative, according to the Climate Change Supplemental Technical Report. Every year of either the build or no-build alternatives adds to the global burden of climate change.

Alternatives that reduce VMT would be significant in terms of meeting required regional GHG reductions, and reducing other pollutants, such as particulates.

24. Conflict with FHWA direction

The proposal to expand the Rose Quarter freeway violated Federal Highway Administration guidelines that call for no expansion of general purpose freeway lanes. The agencies 2021 guidance on use of funds under the Bipartisan Infrastructure Law (which is a possible source of funding for this project) provides:

"... in most cases, Federal-aid highway and Federal Lands funding resources available through the BIL, should be used to repair and maintain existing transportation infrastructure before making new investments in highway expansions for additional general purpose capacity."47

As noted above, ODOT has designed an overly wide roadway that can be re-striped to accommodate additional travel lanes in addition to those illustrated in the project’s EA.

25. Inconsistent traffic projections between projects

ODOT has failed to reconcile its traffic projections for the I-5 Rose Quarter project with more recent traffic projections for the I-5 Interstate Bridge Replacement/Columbia River Crossing Project, which will charge tolls that will dramatically reduce the level of traffic on I-5, and

47 FHWA, Bipartisan Infrastructure Law Guidance, Stephanie Pollack, Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America, December 16, 2021, attached
invalidate the environmental analysis undertaken as part of the EA and SEA. Work on the I-5 Bridge Replacement is now proceeding, and ODOT asserts the project is reasonably foreseeable and ought to be addressed in the EA. A key part of the I-5 bridge project is tolling. As a partner in this project, Metro has prepared traffic forecasts showing how tolling I-5 will affect traffic volumes. Metro has, at the direction of ODOT, prepared forecasts that include one-way peak hour I-5 tolls of $2.54 to $5.69 (values expressed in 2022$). Metro’s travel demand model predicts that tolls in excess of $4.00 would permanently reduce traffic levels on I-5 to less than their current volumes.48

26. Lack of historical traffic data

ODOT failed to provide any historic data on travel trends on I-5, or analyze these trends. The ODOT traffic technical report omits any explicit mention of actual projected future daily traffic volumes, making it impossible to see the growth rate ODOT is relying on in making its projections and analyzing possible impacts. We have deduced from material contained in the project’s supplemental predictive safety analysis49 that ODOT is anticipating a 0.68 percent rate of traffic growth between 2019 and 204550. That is not consistent with historical trends for this freeway segment. Traffic on this portion of I-5 has been declining for the past 25 years, at an annual rate of 0.55 percent per year.

27. Improper or inadequate traffic model calibration

ODOT has failed to calibrate its traffic modeling as mandated in FHWA NEPA Guidance. Travel models are known to have errors and inaccuracies. In order to minimize such errors, FHWA guidance51 directs states preparing NEPA documents to validate their traffic modeling. 

In the context of a NEPA study, it is important for the study team to focus any calibration and validation efforts that they undertake on the study area. Typically, a regional travel demand model will have been adequately calibrated and validated at least at a regional level prior to adoption. While it is important for the study team to critically review the documentation of this effort, it is suggested that more emphasis be placed on checks at the study area level. It is suggested that the study team scale

50 Cortright, J., Traffic is declining at the Rose Quarter: ODOT growth projections are fiction, City Observatory, December 22, 2022, (https://cityobservatory.org/trending_down_rq/) (attached)
51 Federal Highway Administration, INTERIM GUIDANCE ON THE APPLICATION OF TRAVEL AND LAND USE FORECASTING IN NEPA, MARCH 2010, page 10. (Attached)
their calibration and validation effort according to the scale of the analysis, such as its geographic scope.

**Calibration** A meaningful calibration effort would include:

- Comparison of modeled traffic volumes with traffic counts both for individual roadway segments and at more aggregate levels such as throughout the study area.

ODOT’s failure to undertake this required calibration of Metro’s model is material because the Metro Model over-predicts peak hour north-bound travel on this section of I-5. This information is contained in Metro’s own model validation result. The traffic screenline corresponding to the I-5 Rose Quarter project is “Cutline E-16”. According to Metro’s validation report\(^{52}\), the Metro model overestimates PM peak hour northbound traffic at this cutline by 18 percent (Table 15). This over-estimation of traffic leads the model to predict more congestion that actually occurs, and means that the benefits of the project are exaggerated, and its environmental effects are understated.

**Conclusion**

No More Freeways reiterates our insistence that the full impact of this growing project can only be understood in the context of a full Environmental Impact Statement. We vigorously agree with the agency’s stated goal of making an investment in the Albina neighborhood that restores and heals a community destroyed by a previous century’s road building and freeway construction. Doing so provides an unprecedented opportunity to create thousands of good paying jobs employed by diverse contractors, reimagine and rebuild what was once the largest Black neighborhood in the state, and invest in a transportation system that honors Oregon’s stated public health, safety, congestion, and climate goals.

It’s difficult to overstate the immense violence that ODOT inflicted upon the Albina community sixty years ago. Estimates published in *City Observatory* suggest that state plundered the neighborhood by taking 450 homes in the name of constructing highways, freeways, and offramps.\(^{53}\) These new roads abetted white suburban commuters over the expense of Albina, adding decades of significant toxic air and noise pollution to the neighborhood, exacerbating other racist economic and political projects underway in the name of modernist governance and urban renewal.

\(^{52}\) Metro, Kate Model Validation Report, August, 2017 (attached)
In an alternate world in which these road projects were halted, these homes today would be worth countless millions of dollars, ultimately resulting in an unfathomable loss of generational wealth for Black Oregonians. This was a deliberate traumatic act that displaced and unsettled an already marginalized community struggling to achieve self-determination outside of the bounds of their own neighborhood.

The opportunity for local, state and national governments to demonstrate unapologetic commitment to cede power to let a previously harmed community hold the reins for meaningfully imagining a brighter future in their image is unparalleled. It’s truly unfortunate that ODOT, in their crass and shameless promotion of this freeway widening project, has deliberately tried to pit environmentalists and streets advocates against Black contractors and building trades, as though it’s inevitable that any investment of state resources must accept the false choice between investing in a resilient climate future and providing union-wage jobs and new economic opportunity for historically disenfranchised Oregonians.

It’s regrettable that this proposed freeway expansion has sowed unnecessary rifts between community leaders who truly have more in common than ODOT’s deliberately divisive tactics would suggest. As advocates who want to see robust investments in green infrastructure, investments that will generate tens of thousands of green collar jobs. No More Freeways pledges to partner with proponents of future initiatives for Albina or statewide transportation investments and proudly champion hiring practices that serve the best interest of state’s working families. In short, this project should be about lids, not lanes.

The most appropriate course is a full EIS for ODOT’s multiple projects on the I-5 corridor, or even more appropriately, for the entire set of projects envisioned in ODOT’s Urban Mobility Strategy. ODOT’s insistence that any investment in restoring this neighborhood be coupled with the addition of new freeway lanes (and the attendant air pollution and climate chaos that go with such an addition) suggests that ODOT’s stated interest in restorative justice is coldly transactional and performative. It’s disappointing and hypocritical that ODOT’s promises to fix historic wrongs, apparently come with strings - or what the agency Orwellianly refers to as “auxiliary lanes” - attached.

Future generations will judge us not just from what we build and create, but on what we retire. NFM/NCA believes that the paradigm in which ODOT bullies community groups into accepting their expensive, toxic, polluting, ineffective expansions in their neighborhood must be retired.

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54 “For ODOT to pin these two issues (economy and environment) against each other in the year 2020 — where they are co-mingled rather than opposing interests — is not what I expected to come from a state agency in Oregon.” - “Guest Opinion: Time for ODOT to start over or scrap the I-5 Rose Quarter project” Ka’sha Bernard, BikePortland. March 3, 2021, attached
A full Environmental Impact Statement that studies alternatives to freeway expansion will provide the Albina community greater flexibility and self-determination to honor a tragic past by building a resilient, thriving neighborhood designed to tackle current problems and imagine a bolder, brighter future free from the constraints of a tragic past.