



**Date:** March 20, 2023

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Megan Channell, Oregon Department of Transportation  
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Oregon Transportation Commission

**From:** Joe Cortright, No More Freeways  
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**RE:** **I-5 Rose Quarter Freeway Expansion failure to demonstrate “reasonably available” funding**

Community advocacy organization No More Freeways is writing to ask that the Federal Highway Administration (FHWA) take no further action to advance the proposed \$1.4 billion I-5 Rose Quarter Freeway Expansion project until it has made the necessary determination, as provided in its own regulations, that funding for the project is reasonably available.

**ODOT has not demonstrated reasonable availability of funding for the Rose Quarter**

The Oregon Department of Transportation (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 passage of House Bill 3055 in the Oregon Legislature in 2021. As a result, only a fraction of the original allocated funding will be applied to this project. That is why the Oregon Transportation Commission has admitted tolling is necessary to pay for this project.

The chair of the Oregon Transportation Commission, Robert Van Brocklin, has expressed this



point in remarks in public hearings on multiple occasions. At the March 10th, 2022 Commission meeting:

*“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.”<sup>1</sup>*

In addition the cost of the project has ballooned to as much as \$1.45 billion according ODOT estimates. The Environmental Assessment (EA) and Supplemental Environmental Assessment (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 FWHA regulations. The most recent regional transportation plan approved for the Portland metropolitan area establishes a budget of only \$375 million for this project.<sup>2</sup> This means that there is more than \$1 billion in resources needed for this project that have not been identified in any fiscally constrained plan.

The Oregon Department of Transportation has admitted that it has at least as \$500 million hole in its plans to pay for the I-5 Rose Quarter Project. *The Oregonian* reported:

*The Oregon Department of Transportation said Thursday that it doesn't have enough money set aside to complete a major Portland freeway project.*

*Agency leaders told the Oregon Transportation Commission, which sets state transportation policies, that it was short more than \$500 million of the projected \$1.18 billion to \$1.25 billion in costs to complete the Rose Quarter expansion project. . . .*

*The state Legislature has already committed between \$500 million and \$700 million for the project.*

*“We still have a substantial gap and no other committed sources of funding,” Channell said.<sup>3</sup>*

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<sup>1</sup>This comment is available here: <https://www.youtube.com/live/XblcgrAprVM?feature=share&t=16139>

<sup>2</sup> 2018 Regional Transportation Plan, Appendix A, p.64. Available here: <https://www.oregonmetro.gov/sites/default/files/2019/04/02/2018-RTP-Appendices-A-and-B-Constrained-Project-List.pdf>

<sup>3</sup> Jayati Ramakrishnian, “Rose Quarter freeway project in Portland short hundreds of millions, ODOT says, *The Oregonian*, Jan. 20, 2022, <https://www.oregonlive.com/commuting/2022/01/rose-quarter-freeway-project-in-portland-short-hundreds-of-millions-odot-says.html>



Even these estimates substantially overstate the availability of funding for the proposed I-5 Rose Quarter freeway widening project. ODOT has diverted the bulk of funds originally provided by the Oregon Legislature to other projects.

The 2017 Legislature authorized a maximum of \$30 million per year -- enough to pay for about a half a billion dollars in bonds -- to cover the cost of the proposed Rose Quarter Freeway Expansion, but subsequent Legislative action allowed this same funding to be also spent on the \$500 million Abernethy Bridge, a subsequent widening of I-205, and a prospective Boone Bridge rebuild. House Bill 3055 of the 2021 Oregon Legislative session provided:

*SECTION 130. ORS 367.095(2) is amended to read: \* . \* . \**

*(a)(A) For calendar years beginning on or after January 1, 2022, \$30 million per year shall be used to pay for:*

*(i) The Interstate 5 Rose Quarter Project;*

***(ii) The Interstate 205 Improvements: Stafford Road to Oregon Route 213 Project;***

***(iii) The Interstate 5 Boone Bridge and Seismic Improvement Project; and***

***(iv) The implementation of the toll program established under ORS 383.150***

*(bolded items represent new language added to law by HB 3055)*

FHWA took administrative notice of this fact in its re-evaluation of National Environmental Policy Act review of this project, stating:

*Recently signed into law, Oregon House Bill 3055 provides financing options that allow Phase 1a of the I-205: Stafford Road to OR 213 Improvements Project to be constructed beginning in the spring/summer 2022 without the use of toll revenue.<sup>4</sup>*

Monies that are used for these other projects cannot be considered to be “reasonably available” to pay for the I-5 Rose Quarter freeway widening project.

This lack of obvious pathway forward for funding the proposed freeway expansion was also articulated by ODOT’s Assistant Director of Revenue Travis Brouwer. In an answer to a question

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<sup>4</sup> Federal Highway Administration, Re-Evaluation of the Categorical Exclusion for the I-205: Stafford Road to OR 213 Improvements Project, May 4, 2022, page 3.



from State Senator Mark Meek and State Representative Mark Gamba in the Oregon Legislature's Joint Committee On Ways and Means Subcommittee On Transportation and Economic Development March 15, 2023, Brouwer responded:

*"We also have toll revenue, and we project and are also hopeful to get federal grants to pay for components, particularly I-205 and the Rose Quarter...It is an intermingled funding source for those finance plans. The Rose Quarter, we do not have financing for construction firmly developed."<sup>5</sup>*

### **FWHA Regulations Require Reasonable Availability of Funding Before a Project Can Proceed**

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.<sup>6</sup>*

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

*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*

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<sup>5</sup> This comment is available here:

<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2023031180&startStreamAt=864>

<sup>6</sup> Supplement to January 28, 2008 "Transportation Planning Requirements and Their Relationship to NEPA Process Completion" February 9, 2011, page 1. (hereinafter "2011 FHWA Suppl.")



*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.<sup>7</sup>*

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<sup>8</sup>:

*. . . 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.<sup>9</sup> This budget represents more than a \$1 billion shortfall from the current estimated price of this project.

The “reasonable availability” requirement has been established for well-grounded and prudent financial reasons: It is there to assure that federal (and state and local) funds are not wasted on projects for which full-funding is not available. FHWA should not grant federal approval (or funds) to projects based on insubstantial or speculative hopes that funding might some day become available.

We have raised these issues in our comments on the I-5 Rose Quarter Supplemental Environmental Analysis, but we note that the reasonable availability standards must be met for this project regardless of FHWA’s determination of any other issues related to NEPA compliance. Even if you determine that the record indicates this project has no significant environmental impact, you must still make an affirmative determination that funding is

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<sup>7</sup> 2011 FHWA Suppl. at page 2.

<sup>8</sup> Hari Kalla, FHWA. “Clarifying Guidance on Flexibilities in Fiscal Constraint” May 15, 2017.

<sup>9</sup> 2018 Regional Transportation Plan, Appendix A, p.64. Available here: <https://www.oregonmetro.gov/sites/default/files/2019/04/02/2018-RTP-Appendices-A-and-B-Constrained-Project-List.pdf>



reasonably available prior to taking any formal action, including a Finding of No Significant Impact (FONSI), under the National Environmental Policy Act (NEPA).

As of this date, neither ODOT nor FHWA have presented any material or made any findings that the necessary funding is “reasonably available.”

Indeed, FHWA has refused to release its own Project Stewardship and Oversight Plan and Risk Analysis to illustrate whether it is aware of the project’s significant cost overruns, and the current billion dollar discrepancy between its identified budget as shown the relevant MTP and its current estimated price-tag.

No More Freeways strongly urges the Federal Highway Administration to follow its own prudent policy and insist that the reasonable availability of funding for the I-5 Rose Quarter Freeway Widening project be established prior to allowing this project to advance any further. In the event that FHWA fails to follow its own policy and the law, No More Freeways will seek appropriate legal redress.