



Date: 15 May 2023

To: Administrator Shailen Bhatt
Federal Highway Administration
1200 New Jersey Ave SE
Washington, DC 20590

CC: Keith Lynch, FHWA Division Administrator
Oregon Transportation Commission
Portland Commissioner Mingus Mapps
Megan Channell, Rose Quarter Freeway Expansion Project Director

From: Chris Smith, No More Freeways
Joe Cortright, No More Freeways
Aaron Brown, No More Freeways

Re: **Supplemental Comment on SEA - Rose Quarter Freeway Expansion
Continues to Violate Federal Law**

This letter includes significant new information revealed since the closure of the public comment period for the Supplemental Environmental Assessment (SEA) for the proposed Rose Quarter Freeway Expansion. No More Freeways requests this document be included as a relevant addition to the existing public comment for the SEA.

The proposed I-5 Rose Quarter Freeway Expansion project continues to proceed in violation of federal environmental laws and US Department of Transportation regulations. **We strongly urge the Federal Highway Administration (FHWA) to correct these violations before proceeding further with this project or granting the Oregon Department of Transportation (ODOT) a Finding of No Significant Impact (FONSI) on the proposed Rose Quarter Freeway Expansion.** The Environmental Assessments of the project prepared by the ODOT falsely claim that tolling is not reasonably foreseeable for this project, and use that claim to exclude consideration of tolling from the environmental review, in violation of NEPA. Simultaneously, ODOT has failed to show that the needed \$1.45 billion in funding for this is “reasonably available” as required by FHWA regulations.

The Oregon Department of Transportation’s plans to widen I-5 at the Rose Quarter are based on a fundamental and irreconcilable contradiction. The agency is counting on tolls to pay for the project, but denies that it needs to include an analysis of the effect of tolls in its Environmental Assessment.



ODOT cannot have it both ways. If this project is to be paid for, and tolls are an essential component of the project's financing, as the agency has repeatedly stated, then tolling must be included in the project's Environmental Analysis.

Yet ODOT has consistently and preposterously maintained that tolling need not be included in the EA because tolling is "not reasonably foreseeable."

If the Environmental Analysis incorporated an analysis of the effect of tolling on traffic in the Rose Quarter area, it would show that the project is vastly oversized, and that all of the project's congestion reduction benefits could be achieved without widening the freeway.

Indeed, an ODOT consultant's study shows that congestion pricing would be more effective in reducing congestion, and do so at a lower cost. A July 2022 memorandum attached to the Rose Quarter Supplemental Environmental Assessment shows that road pricing would reduce traffic volumes and increase freeway speeds more than spending \$1.45 billion to widen the freeway.

ODOT maintains it doesn't need to include the effect of tolling in its federally required environmental analysis of the \$1.45 billion Rose Quarter freeway widening project, claiming that tolling isn't "reasonably foreseeable."

At the same time, ODOT is counting on tolling to actually pay for some (or perhaps all) of the cost of the widening project. They are telling the federal government that toll revenues will enable it to meet the requirement that funding for the project be "reasonably available."

So, if you're ODOT, the traffic and congestion reducing effects of tolling aren't "reasonably foreseeable," but the revenue from tolling is "reasonably available."

For ODOT, tolling exists in a kind of quantum state. Whether I-5 can and will be tolled is simultaneously reasonable and not reasonable, like Schrodinger's cat.

For years, ODOT has maintained it doesn't need to include a study of tolling in its I-5 Environmental Analysis, based on specious claims that it couldn't anticipate tolling (even after the 2017 Legislature enacted tolling into law and directed and authorized ODOT to implement tolling on I-5 and I-205 in the PORTland area.

While that that claim that tolling wasn't reasonably foreseeable was plainly wrong in 2019 (when ODOT issued its first draft environmental assessment), and also in 2022, when it issued a supplemental environmental assessment, it is blatantly and obviously wrong today: ODOT officials have publicly and repeatedly stated that they can't finance the Rose Quarter project (or other metro area freeway expansion projects without toll revenues.



ODOT/FHWA have failed to incorporate the effects of road pricing (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" analysis of the Rose Quarter project. This omission 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 claim that pricing isn't reasonably foreseeable, and the subsequent decision to exclude pricing from the from the I-5 Rose Quarter freeway widening Environmental Assessment flies in the face of overwhelming evidence:

- Oregon Law requires ODOT to price I-5: Enrolled House Bill 2017 (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.*
 - (b) *On Interstate 5, beginning at the Washington state line and ending where it intersect with Interstate 205.*
- Oregon submitted an application for Value Pricing to FHWA in 2018.¹
- Enrolled House Bill 3055 (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, 2022 Commission meeting:

"I think it comes down kind of to this simple conclusion which is if we don't have tolling I

¹ Oregon Application to FHWA: Value Pricing Feasibility Analysis and Proposed Implementation



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.”²

- At the April 29th, 2022 Oregon Transportation Commission meeting:

“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...”³

- Senior ODOT officials testified to the Oregon Legislature that they would use pricing to pay for the Rose Quarter. Most recently, on March 7 2023, ODOT Assistant Director Travis Brouwer testified to the Oregon Legislature's Joint Transportation Committee that:

*“...**Most of the money** for those projects [the Rose Quarter and other Portland area freeway widening project] you mentioned **will actually come from tolling** and some federal grants and other sources along those lines.” (NMF Emphasis added)⁴*

- The 2018 RTP includes this policy direction:

“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.”⁵

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.

Between the 2019 Environmental Assessment and the 2022 Supplemental Environmental Assessment, ODOT has shifted its criteria for “reasonably foreseeable” pricing from the presence of a pricing project in the RTP project list, to the inclusion of a Preliminary Engineering

²Remarks available 4:29:00 into the OTC meeting: <https://www.youtube.com/watch?v=XblcgrAprVM>

³ Available at approximately 1:08:00 <https://www.youtube.com/watch?v=qvkCV0gQcms>

⁴ Oregon Legislature, Joint Transportation Committee, March 7, 2023 <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2023031138>, at about 1:05:00

⁵ 2018 Regional Transportation Plan, Chapter 3, Policy 6.



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.

ODOT has offered inadequate contradictory rationales for excluding pricing from the Environmental Assessment

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.⁶

In the 2022, Supplemental Environmental Analysis, 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, 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.⁷

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

⁶ ODOT, I-5 Rose Quarter Improvement Project December 16, 2019 Comment Summary Report

⁷ 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)



Funding for the Rose Quarter Expansion Project is not demonstrated to be reasonably available.

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.⁸

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 purposes requiring local and/or State legislation and/or support from the Governor is

⁸ Supplement to January 28, 2008 "Transportation Planning Requirements and Their Relationship to NEPA Process Completion" February 9, 2011, page 1. (hereinafter "2011 FHWA Suppl.")



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.⁹

In the 2018 Regional Transportation Plan—which is the MTIP for the Portland metropolitan area—the Rose Quarter project is budgeted at \$375 Million. That’s more than \$1 billion short of the \$1.45 billion that would be needed to be shown to be “reasonably available.”¹⁰

On May 11th, 2023 the Oregon Transportation Commission provided yet another extension to the date by which a financial plan for the Rose Quarter project must be submitted. Originally requested by December 2021, that deadline has now been pushed out to July 2024. One reason cited for this delay was a decision made by Oregon Governor Tina Kotek to delay the implementation of tolling on Oregon highways until no earlier than 2026.¹¹

At that meeting, OTC Commissioner (and former chair of the Oregon Legislature’s Joint Transportation Committee) Lee Beyer stated:

“I have to say that given what we all know about our financial picture at this point, I’m not sure how we finance this project. I think it’s going to require some additional legislative action and commitment that we’re going to move forward on this... It’s a challenge financially. And so that’ll be something that I want to make sure from a fiduciary

⁹ Hari Kalla, FHWA. “Clarifying Guidance on Flexibilities in Fiscal Constraint” May 15, 2017.

¹⁰ 2018 Regional Transportation Plan, Appendix A, p.64

¹¹ Governor Tina Kotek letter to Senate President Rob Wagner, House Speaker Dan Rayfield and others, May 4, 2023.



standpoint that we limit our financial exposure while still supporting the project until those finance decisions are made.”¹²

It is evident to all observers that ODOT simply does not have a funding source for this project.

ODOT’s own technical work shows pricing outperforms freeway widening

The Oregon Department of Transportation commissioned consultants to analyze the effect of road pricing on traffic levels in Portland, and appended this material to the Supplemental Environmental Assessment, but without reconciling it to other claims made about traffic levels in the SEA. This memorandum demonstrates the road pricing would produce superior traffic improvement results to widening the I-5 freeway at the Rose Quarter.¹³

This memo summarizes the results of traffic modeling that look at traffic levels in the Rose Quarter area depending on whether the I-5 freeway is widened (or not) and whether road pricing is implemented. Road pricing has yet another new name in this memo (RMPP-ICPC: "Regional Mobility Pricing Project/Initial Congestion Pricing Concept"). The idea is that ODOT will charge time-based tolls (that vary hourly) to regulate traffic on I-5 and I-205 in the Portland area. This modeling shows how that very basic pricing program will affect traffic levels depending on whether ODOT widens the I-5 freeway or leaves it just as it is.

Here's a key table summarizing the results for the section of I-5 North of the Broadway-Weidler interchange and the Fremont Bridge. **This is at the very heart of the area affected by the Rose Quarter project.** The two left hand columns (RMPP No Action) correspond to no pricing of I-5 and I-205; the two right hand columns (RMPP ICPC) correspond to variable time based tolls. Each pair of columns corresponds to either not building (not widening) I-5 or "RQ Build" spending up to \$1.45 billion to widen a 1.5 mile stretch of the freeway.

¹² Quoted in Jonathan Maus, “Funding picture for ODOT’s Rose Quarter freeway expansion looks bleak,” *BikePortland*, May 11, 2023. <https://bikeportland.org/2023/05/11/the-funding-picture-for-odots-rose-quarter-freeway-expansion-looks-bleak-374810>

¹³ Memorandum: To I-5 Rose Quarter Improvement Project Team, From Regional Mobility Pricing Project Team Subject RMPP/RQ Regional Travel Demand Model Sensitivity Test Results Summary Date July 21, 2022.



Table 4. 2045 Average Weekday Traffic Speed (in mph) on I-5 between I-405 and Broadway/Weidler Interchange

8-9 AM	RMPP No Action		RMPP ICPC	
	RQ No Build	RQ Build	RQ No Build	RQ Build
NB	22	33	39	44
SB	39	37	45	44

5-6 PM	RMPP No Action		RMPP ICPC	
	RQ No Build	RQ Build	RQ No Build	RQ Build
NB	31	39	43	46
SB	31	35	42	45

Source: Metro Regional Travel Demand Model

The bottom half of this table covers the PM peak hour and shows the change in travel times in each alternative scenario. Average travel speeds are 42-43 miles per hour with pricing—even if the freeway isn't widened. This is noticeably faster than if you widen the freeway but don't implement pricing (in which case traffic moves at 35-39 miles per hour). In short: pricing I-5 would result in a bigger improvement in highway speeds on this key segment of I-5 than spending \$1.45 billion to widen it. Of course, if you widen the road and price it, you get even higher speeds (45-46 miles per hour—but that's only a 3 mile per hour increase in peak hour speeds for spending \$1.45 billion.¹⁴

If this analysis is used to compare pricing as an alternative to road widening, it clearly demonstrates the superior performance of pricing. One can use this data to compare two possible alternatives for 2045: Road pricing the existing (No-build) roadway or spending \$1.45 billion to widen I-5 but not implement pricing. It turns out that pricing alone is far more effective in speeding traffic than widening alone. Pricing results in vastly lower peak hour traffic volumes and faster peak hour speeds that widening the freeway and not pricing it. This table shows how traffic volumes and speed change from the "No Build" scenario with two different alternatives: widening the freeway (without pricing), and just implementing congestion pricing.

¹⁴ "Another exploding whale: ODOT's freeway widening cost triples" *City Observatory*. https://cityobservatory.org/rosequarter_cost_overrun/



Change from No Build, 2045				
Speed & Average Weekday Traffic Volumes on I-5 between I-405 & Broadway Weidler Interchange				
	Traffic Volume		Speed (change in MPH)	
	Widen Freeway	Congestion Pricing Only	Widen Freeway	Congestion Pricing Only
8-9 AM				
NB	686	-1,696	11	17
SB	585	-1,834	-2	6
Total	1,271	-3,530	5	12
5-6 PM				
NB	634	-1,696	8	12
SB	86	-1,340	4	11
Total	720	-3,036	6	12

Source: Computed from Sensitivity Analysis Table 2 and Table 4.

If congestion pricing were treated as an alternative (which it should be) in the Environmental Assessment, pricing alone would dramatically outperform the freeway widening alternative. Congestion pricing alone would reduce traffic by 6,500 vehicles in the two peak hours compared to the no-build, while freeway widening increases traffic by 2,000 vehicles in the peak hours. The difference between the two alternatives is dramatic: In 2045, if we implement congestion pricing but don't widen the freeway that means there would be 8,500 fewer vehicles transiting the Rose Quarter in the peak two hours. That's over 3.1 million fewer vehicles per year traveling through the Rose Quarter during just two peak hours.

At the same time, congestion pricing results in higher speeds on I-5 than widening the roadway. Congestion pricing would increase speeds on I-5 by about 12 miles per hour on average during peak hours, about twice as much as widening the freeway--widening the freeway, but not pricing it increases average peak hour speeds by only about 6 miles per hour. The data here clearly show what economists have been saying all along: Only by pricing roadways can you reduce congestion and improve travel times. Wider roads are less effective in speeding traffic than road pricing.

Importantly, this memorandum conflicts with the traffic analysis presented in, and relied upon in the Supplemental Environment Assessment. This memorandum shows that the SEA contains false or unreliable claims about future traffic levels in the "Build but don't toll" assessment.



FHWA needs to address these violations of federal law in the Rose Quarter Freeway widening project

Consistent with its regulations and federal law, FHWA needs to suspend further work on the Rose Quarter project until ODOT corrects this contradiction.

Specifically, FHWA should require:

- ODOT seek an amendment to the Portland Metro MTP that demonstrates the reasonable availability of funding for the Rose Quarter project. Such an amendment should demonstrate that funding is available in the full amount of the latest project cost estimates (\$1.45 billion) and should specify the sources of funding, including any expected toll revenues.
- ODOT prepare a full Environmental Impact Statement for the project that incorporates the effects of road pricing, both in the No-Build scenario, and also as an alternative to widening the I-5 freeway. The EIS should have updated traffic projections that replace the outdated information in the 2019 EA and 2022 SEA, and which fully addresses the impact of tolling in the Portland metropolitan area on the traffic levels on I-5 through the Rose Quarter.

No More Freeways will continue to vigilantly watch ODOT as they attempt to move forward with this proposed expansion, and is prepared for litigation to hold this agency to account for its myriad of transgressions of violating federal law in planning this proposed freeway expansion. Immediate federal leadership now to hold the agency accountable will save Portland residents and taxpayers time and money by ensuring ODOT doesn't continue to move forward with a project that is ultimately doomed due to mismanagement and escalating costs.

We implore you to save time and taxpayer money and reject ODOT's request for a Finding Of No Significant Impact on the Proposed \$1.4 Billion Rose Quarter Freeway Expansion.