

Date: 2 November 2023, by email

To: Kris Strickler, ODOT Director

Copy: Brendan Finn, ODOT Urban Mobility Office
Rian Windsheimer, ODOT Region 1
Megan Channell, Rose Quarter Freeway Expansion Project Manager
Oregon Transportation Commission
Keith Lynch, FHWA
Governor Tina Kotek's Office
Metro President Lynn Peterson
Mayor Ted Wheeler
Commissioner Mingus Mapps
Commissioner Susheela Jayapal
PPS Board Member Julia Brim-Edwards
TriMet General Manager Sam Desue

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

Subject: **Concerns about Proposed \$1.9 Billion Rose Quarter Expansion project governance, agency-wide transparency**

We are writing to you as the senior executive responsible for this project to share our concerns about the trajectory of governance, public involvement and transparency for the proposed \$1.9 billion Rose Quarter Expansion project. Some of the issues raised here are also potentially violations of ORS Chapter 192 (Open Meetings) although procedures of the Oregon Government Ethics Commission suggest seeking resolution with the agency before filing a complaint and we write to you in that spirit.

As we have watched the project go through at least three major design efforts (initial design and EA, Hybrid 3, and a new post-SEA design with an additional flyover) the lens of public oversight and involvement appears to have grown narrower and less transparent.

Limiting Public Opportunities for Engagement

At the beginning of the NEPA process, the project chartered both an Executive Steering Committee (ESC) composed largely of local government representatives and a Community Advisory Committee (CAC) that appeared to represent a diverse set of interests including modal representatives (e.g., Oregon Walks), place-based representatives (Go Lloyd) and more general



constituencies (Portland Business Alliance).

ODOT disbanded the CAC in 2020 when its members started asking questions about the need for and value of the Rose Quarter Project¹. ODOT replaced the CAC with the Historic Albina Advisory Board (HAAB). We are deeply respectful of the HAAB and its understanding of how freeway and other projects have impacted the Black community in Albina and believe it plays a critical role in project governance. However, we don't see how it is possible given its specific membership criteria for the HAAB to represent the same diverse set of impacts and perspectives that the CAC attempted to address.

Inexplicably, the ESC was “sunset” after accepting Governor Brown’s recommendation for the Hybrid 3 design following the Independent Cover Assessment. This left the HAAB as the primary “general purpose” advisory committee and opportunity for community input.

[Note that we acknowledge and appreciate the Community Oversight Advisory Committee (COAC), but given its very specific focus on contracting for the project, we don't believe it addresses our concerns. It also appears to be meeting relatively infrequently due to the delays in construction.]

In contrast, if we look at governance structures for the Interstate Bridge Replacement project, it has an executive group, community group and equity group (as well as a community benefits group that has some parallels to the COAC). The HAAB is apparently expected to cover all three of those perspectives. We don't see how this is possible.

ODOT’s repeated violations of public meetings laws make accountability, transparency impossible

No More Freeways also has very specific concerns about how recent HAAB activities have been conducted. We believe that since the HAAB advises, among others, the Oregon Transportation

¹ “For Foucher-Branch, it was clear that ODOT didn’t want the CAC members—which included neighborhood association representatives, climate and transportation advocates, and people with historical ties to Albina—to be critical of the project. ODOT also did not provide members with a contact list for each other so they could talk outside of meetings. Foucher-Branch, who’s served on several committees at the state and county level, said that’s unusual. “It was, ‘Oh, I’ll get back to you, we’ll get to that in the next meeting,’” she said. “And then you get to the next meeting, and there’s still no charter. As the kids would say, it was shady.”

“Inside a Contentious, Now-Shuttered Advisory Committee on the Portland I-5 Widening Plan.” *Portland Mercury*. Sept 5 2020.
<https://www.portlandmercury.com/news/2020/09/08/28796932/inside-a-contentious-now-shuttered-advisory-committee-on-the-portland-i-5-widening-plan>



Commission it is subject to the open meeting provisions of ORS 192.610-192.690. Based on recent observations and information from public records requests we are concerned that:

- While some HAAB members participate virtually, it is apparent that most members, facilitators and agency staff are gathered in the same physical space, but the location of that space is not noticed and the public does not appear welcome. The public is only welcome via YouTube feed and phone-in comments. We appreciate that the pandemic introduced a number of necessary temporary measures and helpfully opened up the possibility of hybrid participation. However, we believe that at least the spirit of ORS 192 would suggest that when a body is meeting primarily in a single physical space, the public should be invited to and welcome in that space.
- In the case of several recent HAAB meetings the YouTube livestream has started significantly AFTER the meeting has begun. This has interfered with the scheduled public comment items on HAAB agendas. In some cases recordings of the missed portion of the meeting have been made available, but these are not always complete.
- It is apparent based on comments in recent HAAB meetings that portions of HAAB discussions occur “after the camera is turned off”. We believe this is completely in contravention of ORS 192. For example, at its August 22, 2023 meeting, several members of the HAAB and its facilitators referred to a non-public meeting of HAAB members to occur immediately after the recorded, noticed public session.
- Public records requests also make clear that some subset of of HAAB members have been involved in stakeholder discussions about the project design that are not made public in any way. For example, members of the HAAB reviewed detailed design drawings for the Rose Quarter project at a private, non-noticed meeting on March 23, 2023. ODOT staff subsequently communicated that this meeting represented HAAB approval of the proposed design. Indeed, records show that even as ODOT was running a public comment period for the Supplemental Environmental Assessment (SEA) in December 2022, ODOT staff and HAAB members were in discussion with the Trailblazers, Albina Vision and the City of Portland about redesigning the southern end of the project. This makes a mockery of NEPA public involvement requirements as well as Oregon public meetings laws. Please see the attached documents as evidence of redesign and decision making occurring prior to the end of the SEA public comment period.

For example the email chain below indicates that there was a meeting with members of the HAAB on January 17th, 2023. No such meeting was noticed and no record of it



appears on the project website.

From: SNEAD Carol
Sent: Friday, January 13, 2023 3:25 PM
To: HADLOW Robert W
Cc: Carrico, Brian; Ranzetta, Kirk
Subject: I5 RQ Anchor Alterantive
Attachments: Anchor_Concept_Exhibit_0112023.pdf

Hi Bob –

Keeping you in the loop...

Attached is an Alternative proposed by CoP that has bigger encroachment on the Travelodge property with a new ramp that will have higher visibility. The Team wants to know what this means with respect to historic resource impact before 4pm Tuesday.

In your absence, Brain Carrico is reaching out to Kirk for a quick/preliminary assessment.

We'll keep you cc'd.

Carol

From: Maloney, John F. <John.Maloney@wsp.com>
Sent: Friday, January 13, 2023 2:50 PM
To: Carrico, Brian <brian.carrico@wsp.com>; SNEAD Carol <Carol.SNEAD@ODOT.Oregon.gov>
Subject: RE: Anchor

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

The goal is to have an initial opinion before we meet with HAAB members on Tuesday at 4pm.

John

From: Carrico, Brian <brian.carrico@wsp.com>
Sent: Friday, January 13, 2023 2:34 PM
To: Maloney, John F. <John.Maloney@wsp.com>; SNEAD Carol <Carol.SNEAD@ODOT.Oregon.gov>
Subject: RE: Anchor

John – I talked to Carol and Bob is out of the office and Monday is a holiday. Is the expectation that we meet the Monday deadline?

Regardless, I am going to reach too Kirk Ranzetta (Aecom) to get his take on this as he was responsible for the technical analysis.

Let me know if there is any issue with this approach.

Brian

In summary, the community governance of the Rose Quarter project has been compacted into a single advisory committee with a very specific perspective and even the operations of that single committee have become less transparent.

We'd like to be clear that these criticisms are not of the HAAB itself, or its members. We deeply



respect their participation and knowledge of the community, and we are concerned that ODOT staff are not fully providing them with crucial information about the proposed expansion, as demonstrated by the attempts to hide from the HAAB the air pollution impacts of the freeway expansion.² Our criticism is for the ODOT project management and the manner in which they have employed and managed the HAAB. The entity has never been provided an opportunity to engage with the critical question of whether the additional lanes of freeway are necessary, instead being asked to provide input on the colors of the project's new logo or proposed murals in the neighborhood.³

Continued obfuscation, refusal to provide to the public basic information about proposed Freeway Expansions

In addition, we would note that ODOT has repeatedly obstructed efforts to learn these basic facts about the Rose Quarter project. As NMF testified to the Oregon Transportation Commission on March 17, 2021, ODOT staff have repeatedly and purposefully concealed and misrepresented the actual width of the Rose Quarter project; it was only through public records requests did we (and Portland Public Schools) fully learn that ODOT intended to expand I-5 even closer to backyard of Harriet Tubman Middle School⁴

ODOT has also repeatedly and unfairly rejected NMF public records requests. For example, on June 12, 2023 we requested information about the re-design of the Rose Quarter project. ODOT denied our request for a fee waiver, claiming this information was not in the public interest and asserting NMF was biased. ODOT only relented to release information about the 2023 Rose Quarter project re-design (and un-noticed HAAB) meetings after NMF appealed to the Attorney General's Office. The Attorney General's office ruled ODOT had violated Oregon public records law in failing to promptly respond to our request. Similarly, in response to a separate public records request No More Freeways filed March 3 2022 regarding financial

² "ODOT has claimed a "peer review panel" vindicated its air pollution analysis; Now the panel says they didn't look into the accuracy of ODOT's travel forecast. Travel forecasts are critical, because they determine air and noise pollution impacts. In short: the peers have done nothing to disprove the critiques of ODOT's flawed traffic modeling. ODOT's peer review panel admits it didn't validate Rose Quarter travel

forecasts." *City Observatory*. April 14, 2021

<https://cityobservatory.org/odots-peer-review-panel-admits-it-didnt-validate-rose-quarter-travel-forecasts/>

³"ODOT unveils new logo for I-5 Rose Quarter project" *BikePortland*. March 30, 2022

<https://bikeportland.org/2022/03/30/odot-unveils-new-logo-for-i-5-rose-quarter-project-351104>

⁴ "ODOT plans to take part of school grounds for I-5 widening project" Oregon Public Broadcasting. April 13, 2021.

<https://www.opb.org/article/2021/04/13/odot-plans-to-take-part-of-school-grounds-for-i-5-project>



projections for tolling for the proposed I-205 expansion, ODOT refused a fee waiver on the grounds that the agency found that "... on balance with its other fiduciary responsibilities, the public interest is not reasonably furthered by using Highway Trust Funds to subsidize the singular point of view communicated by your organization." We are troubled by the assertion that it is not in the public interest to make available the most basic details - including the mere width of a proposed freeway expansion - about some of the largest and most expensive infrastructure projects in state history.

Separately, No More Freeways-affiliated Portland lawyer Alan Kessler also won a lawsuit in September 2022 alleging that the Oregon Department of Transportation had illegally doctored public records relating to the Rose Quarter Freeway Expansion and therefore failed to comply with the public records request.⁵

Suffice to say, ODOT staff have demonstrated a consistent pattern and practice of obstructing public access to fundamental facts about the Rose Quarter project.

Elected leaders must demand more accountability and transparency from ODOT

No More Freeways suggests that to have appropriate accountability to the community, the Rose Quarter project should:

1. Reconvene the Executive Steering Committee.

⁵ "The state transportation department failed to provide the proper documents in response to a public records request, a judge determined on Monday. Portland lawyer Alan Kessler took the Oregon Department of Transportation to trial, alleging that the agency altered public records that he requested regarding a proposed expansion of Interstate 5 in Portland. In a trial Monday, Marion County Circuit Court Judge Tracy Prall ruled that the transportation agency had failed to comply with the public records request and ruled that it must move more quickly in the future to preserve requested records that might otherwise be deleted or altered...."

Kessler said he had found another prepared response to his request on ODOT's public server — one that contained a more complete version of the public records summary, including sections that were missing from the document ODOT gave Kessler. Among them, for example, were ODOT's responses to complaints about its plan to expand the freeway over part of the Eastbank Esplanade path, a portion of the project it later eliminated because of the public outcry. The document ODOT initially provided also omitted lengthy responses to the public comments, including commentary on how the agency would address a host of issues including the project's environmental impact and safety concerns."

"Judge rules ODOT failed to comply with public records request" The Oregonian. Sept 27, 2022 <https://www.oregonlive.com/commuting/2022/09/judge-rules-odot-failed-to-comply-with-public-records-request.html>



2. Reestablish a Community Advisory Committee with a diverse set of perspectives to provide input in addition to that provided by the HAAB.
3. Notice the physical location of HAAB meetings and invite the public into the space.
4. Move the “backroom” conversations with major stakeholders into the appropriate publicly accessible committee venues.
5. Do not allow hybrid meetings to begin until the online public access is available.
6. Ensure that all advisory bodies are fully compliant with ORS 192.

Thank you for your attention to these issues.