



CRAG LAW CENTER

LEGAL AID FOR THE ENVIRONMENT SINCE 2001

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March 23, 2018

VIA ELECTRONIC MAIL to foia.officer@fhwa.dot.gov

HQ: Federal Highway Administration
Attn: FOIA Officer (HCC-40)
1200 New Jersey Ave., SE
Washington, DC 20590

Re: Freedom of Information Act Request

To Whom it May Concern:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, and the implementing regulations of the Department of Transportation, 49 C.F.R. Part 7. This request is submitted on behalf of the Audubon Society of Portland (“Audubon Soc’y”) and OPAL Environmental Justice Oregon (“OPAL”), both of which are tax exempt nonprofit corporations based in Portland, Oregon.

This FOIA request relates to the I-5 Rose Quarter Improvement Project. As the project website states (i5rosequarter.org/about), the Oregon Department of Transportation is working with the Federal Highway Administration to “perform a federally required environmental review” of the project. Audubon Soc’y and OPAL are requesting all documents relating to the question of whether FHWA and ODOT intend to prepare initially an environmental assessment (“EA”) as opposed to a more thorough environmental impact statement (“EIS”) for the I-5 Rose Quarter Improvement Project. Documents subject to this request include, without limitation, electronic mail, text messages, web-based content, all writings, letters, memoranda, notes wherever they are found, summaries, working papers, schedules, draft documents, correspondence, documentation of meetings, minutes from meetings, data, graphs, charts, photos, and/or maps.

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Scope - Please identify all responsive documents, even publicly available documents, and indicate the document title in your response so that Audubon Soc’y and OPAL can confirm that they have, or have access to, any publicly available document. If FHWA should seek to prevent disclosure of any requested records, Audubon Soc’y and OPAL request that the FHWA: (1) identify each such document with particularity (including date, author, recipient, and parties copied); (2) explain in full the basis for seeking non-disclosure; and (3) provide the organizations with any severable portions of the record for which the agency does not claim a specific exemption consistent with 49 C.F.R. § 7.14.

Timing - Under FOIA, FHWA must make a determination on this request within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). A determination is a statement of whether the agency will comply with the request, its reasons for complying or not complying with the request, the requester’s right to seek assistance from the FOIA Public Liaison of the agency, and the requester’s right to appeal an adverse decision. *Id.*

Format – Audubon Soc’y and OPAL request that FHWA provide copies of the requested records pursuant to 5 U.S.C. § 552(a)(2)(D). Where appropriate and possible, please provide electronic documents in searchable .pdf, .txt, .doc, .docx, .rtf, .xls, or .xlsx form. Please do not provide the records in a single, or “batched,” .pdf file. Audubon Soc’y and OPAL appreciate the inclusion of an index. If the Service cannot provide the record in the aforementioned format, please explain why this is, as per 49 C.F.R. § 7.26.

Fees – Audubon Soc’y and OPAL request that FHWA waive any applicable fees related to this request, including document search and duplication costs. The requested material is in the “public interest” and will contribute to a “public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, NEPA requires that these NEPA-related documents be produced without charge. *See* 40 C.F.R. § 1506.6(f) (“Agencies shall [m]ake . . . any underlying documents available to the public pursuant to the provisions of the [FOIA]. . . . Materials to be made available to the public shall be provided to the public without charge to the extent practicable . . .”). DOT’s regulations implementing FOIA require FHWA to waive or reduce fees that are in the public interest and not primarily related to commercial interest based on four factors. 49 C.F.R. § 7.43. FHWA should grant the requested fee waiver for the subsequent reasons:

1) The subject matter of the requested records concerns “the operations or activities” of FHWA in conducting an environmental review for a project that would impact Interstate 5 in Portland as well as the surrounding environment and communities.

2) Disclosure of the information is “likely to contribute” to an understanding of the FHWA’s operation or activities because the content of the records will provide the public with FHWA’s reasons for proceeding with either a more truncated EA or a more thorough EIS for the project. Audubon Soc’y and OPAL are nonprofit organizations with thousands of members and supporters throughout Oregon and the Pacific Northwest. Collectively, they are dedicated to protecting human health and environmental quality in and around the Portland Metro region including the areas of Northeast Portland and the Willamette River that are adjacent to or near

the proposed project site. Specifically, Audubon Soc’y’s mission is to promote the understanding, enjoyment, and protection of native birds, other wildlife, and their habitats. A top priority for the Audubon Soc’y is developing healthy, sustainable urban landscapes for people and wildlife, and Audubon Soc’y engages its membership in projects that have significant impacts on the ecological health of the City of Portland. OPAL Environmental Justice Oregon amplifies the voices of negatively-impacted individuals to address inequalities and ensures decision-makers cannot ignore the experiences of people who have the most to gain, or lose, from policy outcomes. OPAL is the grassroots-driven hub at the center of Oregon’s movement for Environmental Justice. Both organizations have been leading voices for protection of air and water quality in the Portland metro region and provide education to their members and the public about threats to the natural resources that could be impacted by this project. Consistent with their efforts of public education and community engagement, both organizations disseminate information that they learn to the public, government agencies, and members of Congress and other elected leaders through a wide array of education and informational materials such as fact sheets, press releases, news articles, white papers, letters and testimony to agencies and elected leaders, web posts, action alerts, and social media.

3) Disclosure of this information is likely to significantly contribute to the public’s understanding of the subject. Audubon Soc’y and OPAL are seeking documents on how the environmental review process was structured and why, which relate directly to how the public can participate in that process and what information decisionmakers will have before them in advance of making a final decision on the project. The information requested is not otherwise available to Audubon Soc’y and OPAL.

4) The requested information will enhance the public’s understanding “to a significant extent” of the policies behind and reasons for the FHWA’s decision on how to proceed with the environmental review for the I-5 Rose Quarter Improvement Project. The requested information will help the public understand FHWA’s role in making the initial decision as to how to proceed with the environmental review, which other individuals and agencies may have been involved in those decisions, and what assumptions about the potential environmental impacts of the project may have been made in deciding whether to proceed with an EA or EIS in the first instance. This will help the public provide the FHWA with relevant and helpful information during the remainder of the environmental review process under NEPA.

5) The Audubon Soc’y and OPAL have no commercial interest that would be furthered by the requested information. They are non-profits devoted to protecting the environment in Oregon for the public’s benefit. The public interest is the only purpose for the information request. In addition, a fee waiver is appropriate because these organizations are seeking to better understand the environmental analysis regarding the I-5 project and to explain the scope and nature of the environmental review to be conducted.

Please send the requested information to Crag Law Center’s office at the address listed below. If you have any questions regarding this request, please do not hesitate to contact me at the email address or phone number listed below. Thank you for your time and cooperation.

Sincerely,



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cc: Mr. Bob Sallinger, Conservation Director, Audubon Society of Portland
Mr. Huy Ong, Executive Director, OPAL Environmental Justice Oregon