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Re: Testimony for I-5 Rose Quarter Project, Environmental Assessment

Please accept this testimony on behalf of No More Freeway Expansions, Aaron Brown, Chris Smith, Joe Cortright, Bob Sallinger, and Sarah Iannarone, regarding the Environmental Assessment (EA) prepared by the Federal Highway Administration (FHWA) and Oregon Department of Transportation (ODOT) (collectively agencies). For roughly one-half of a billion dollars (and likely more when all is said and done), the agencies propose business as usual, by adding lanes to increase capacity¹, under the guise of increasing safety and reliability.

By increasing capacity that will simply be met by additional motorists, the agencies are failing to address the underlying problems of congestion, and this frustrates the intended purpose and need of the project, which include improving safety and reliability. Alternatives exist that address congestion without expanding the highway,

¹ These additional lanes are referred to as “auxiliary lanes” and the project includes new retaining walls, retaining wall tieback anchors, widened roadway prisms, and stormwater and utilities installations; removal of existing local street overcrossings, including demolition activities and new grading; surface street modifications, including new traffic signals and street lighting; and new bicycle and pedestrian facilities.

including pricing congestion schemes, which the agencies concede is the single most viable and sustainable approach to reducing traffic congestion. Here, however, the agencies simply refused to consider such an alternative.

The EA is also deeply flawed because the agencies admit that the Columbia River Crossing is part of the EA's baseline (despite the fact that the Columbia River Crossing was terminated in 2014). The obvious problem is that the agency has never accounted for the cumulatively significant effects of the Columbia River Crossing in conjunction with this project. Either the Columbia River Crossing's impacts must be considered in conjunction with this project, or the agencies must remove the Columbia River Crossing from the baseline. In the former scenario, the two projects are cumulatively significant, thus requiring the preparation of an Environmental Impact Statement (EIS); and in the second scenario, the agencies will have to significantly amend their impacts analysis because the transportation data is the basis for the impacts to air quality, climate, noise, and so forth. The agencies cannot have their cake and eat it too by including the Columbia River Crossing into the baseline but never accounting for the significant impacts of the project (as confirmed by the preparation of an EIS for the Columbia River Crossing).²

As demonstrated below the agencies have failed to consider a reasonable range of alternatives, failed to take a hard look at a host of environmental impacts, failed to disclose all relevant data supporting the agencies' conclusions, and failed to disclose the significant impacts of the project (including in addition to other projects), thereby necessitating the preparation of an EIS.

I. The agencies failed to prepare a reasonable range of alternatives

The agencies failed to consider a reasonable range of alternatives. Agencies are required to "rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a). The alternatives section is the "heart" of the NEPA document. *Id.* § 1502.14; *see also Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1120 (9th Cir. 2002) (agency must "sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public."). "NEPA requires that alternatives ... be given full and meaningful consideration,' whether the agency prepares an EA or an EIS." *Ctr. for Biological Diversity v. Nat'l Hwy Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (quoting *Native Ecosystems Council*, 428 F.3d at 1245). The "touchstone" for the Court's inquiry is whether the "selection and discussion of

² See Environmental Impact Statement, *Interstate 5 Columbia River Crossing Project*.

alternatives fosters informed decision-making and informed public participation.” *Californai v. Block*, 690 F.2d 753, 767 (9th Cir. 1982). Reasonable alternatives are those that are viable, feasible, meet the stated goals of the project, or are reasonably related to the purposes of the project. *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992). “The existence of a viable but unexamined alternative renders an [EIS] inadequate.” *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985); *Southeast Alaska Conservation Council v. Federal Highway Administration*, 649 F.3d 1050 (9th Cir. 2011).

Specifically, the agencies failed to consider, in detail, an alternative that would not require an expenditure of funding at the levels proposed here, but the agency limited its analysis to two alternatives – build and no-build. Other fiscally conservative alternatives are also available, and at least one alternative could actually generate revenue.

For example, congestion pricing (also known as value pricing) uses the power of the market to reduce the waste associated with traffic congestion. Congestion pricing recognizes that trips have different values at different times and places and for different individuals. Premium charges during periods of peak demand would encourage road users to eliminate lower-valued trips, take them at a different time, or choose alternative routes or modes of transportation. According to the FHWA, “[t]here is a consensus among economists that congestion pricing represents the single most viable and sustainable approach to reducing traffic congestion.” *Welcome to the FHWA Congestion Pricing Web Site*.³ Moreover, in *Synthesis of Congestion Pricing-Related Environmental Impact Analyses*, FHWA analyzed an Oregon Mileage Fee Concept, and the “[a]nalysts concluded that the premium charged in the peak periods motivated participants to change

³ In *The Efficacy of Congestion Pricing*, Zachary J. Riddler, University of Tennessee, the author lends support to the viability of a successful congestion pricing plan:

“The idea of road pricing is not a new one, but its successful implementation in major metropolitan areas across the world in the last forty years has given considerable support to its application as a useful urban transport policy. From the seminal example of Singapore to the recent developments in London, Milan, Stockholm, and dozens of other cities and towns the trend has been slowly moving towards forcing motorists to internalize the full cost of their decision to drive, and to do so in an equitable manner. The basis of the policy, marginal cost pricing and a congestion charge to move commuters back along the demand line until they reach their willingness to pay, has been more and more rigorously applied, first with area licensing, then with vehicle type, and finally with sophisticated electronic pricing that varies by time and place.”

See also Congestion Pricing: Examples Around the U.S., Value Pricing by the Numbers,

the timing of their trips, seek alternate routes outside the congested zone, or use transit more.”⁴

Congestion pricing would not require a costly expansion, and it could also generate revenue. The amount of potential revenue gained in addition to the amount saved by not expending roughly one-half of a billion dollars is unknown because a congestion pricing alternative was never considered. The EA dismisses analysis of a congestion pricing alternative on the basis that it will be considered at a future time. Such an excuse is antithetical to NEPA, which requires reasonable forecasting and consideration of all reasonable alternatives.⁵

Congestion pricing falls squarely within the purpose of the need of the project because a congestion pricing plan is capable of reducing congestion.⁶ Congestion pricing is an effective means to improve the safety and operations on I-5 between I-405 and I-84, of the Broadway/Weidler interchange, and on adjacent streets in the vicinity of the Broadway/Weidler interchange. A congestion pricing plan is also fully capable of enhancing multi-modal facilities in the project area. Congestion is the source of the project needs for safety, reliability, and high traffic operations. Despite the ability to

⁴ This is simply the result of one example of a congestion pricing study in Oregon, and indicates that a congestion pricing plan can be effective.

⁵ In *Scientists' Institute for Public Inf. v. Atomic Energy Comm.*, 481 F.2d 1079 (1973), the Court explained that:

“The agency need not foresee the unforeseeable, but by the same token neither can it avoid drafting an impact statement simply because describing the environmental effects of and alternatives to particular agency action involves some degree of forecasting. And one of the functions of a NEPA statement is to indicate the extent to which environmental effects are essentially unknown. It must be remembered that the basic thrust of an agency's responsibilities under NEPA is to predict the environmental effects of proposed action before the action is taken and those effects fully known. Reasonable forecasting and speculation is thus implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as ‘crystal ball inquiry.’ ‘The statute must be construed in the light of reason if it is not to demand what is, fairly speaking, not meaningfully possible * * *.’ But implicit in this rule of reason is the overriding statutory duty of compliance with impact statement procedures to ‘the fullest extent possible.’”

⁶ A congestion pricing alternative can be paired with local street improvements, as well as improvements to bicycle and pedestrian facilities.

satisfy the purpose and need of the project, the agencies failed to consider such an alternative in detail in violation of NEPA.

The agencies also erred in failing to consider an alternative to close ramps at certain times of the day, allowing traffic to flow without interruption from incoming motorists. Ramp closures have been used to reduce congestion in other cities. Reducing congestion can increase reliability and safety of the of the transportation system. Again, however, the agencies failed to consider an alternative for ramp closures, and, therefore, there is no analysis of how effective closures could be at addressing congestion.

II. The project will not satisfy the project's purpose and need

The agencies' proposal is short-sighted because the capacity created by the project will, in the short- and long-term, be filled by additional motorists, thereby creating even greater congestion. This undermines the purpose and need for the project. Specifically, if congestion becomes worse as a result of the project, then safety and reliability will not improve. Because the effect of the project will undermine the project's purpose and need, the project violates NEPA.

III. The agencies misconstrued the baseline by including projects that are not part of the baseline and are not past, present, or reasonably foreseeable actions

The EA fails to take a hard look at the environmental baseline. "Without establishing the baseline conditions ..., there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA." *Half Moon Bay Fisherman's Mktg v. Carlucci*, 857 F.2d 505 (9th Cir. 1988); *Am. Rivers v. FERC*, 201 F.3d 1186, 1195 n. 15 (9th Cir. 1999) (the establishment of a "baseline is not an independent legal requirement, but rather, a practical requirement in environmental analysis often employed to identify the environmental consequences of a proposed agency action."); *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1084 (9th Cir. 2011). The failure to accurately represent the baseline skews the alternatives and the impacts analysis.

The agencies arbitrarily included a host of projects in the baseline that contain no analysis as to whether they are, in fact, past, present, or reasonably foreseeable projects. More surprisingly, the agencies included one project that was terminated and may never be proposed again. For example, the Columbia River Crossing – a controversial \$ 3 billion project – was assumed as part of the baseline. The Columbia River Crossing, however, was scrapped in 2014 and there is currently no plan moving forward for the Columbia River Crossing. The agencies cannot simply assume that the Columbia River

Crossing is part of the baseline when it has not yet been constructed or even approved. If the agencies consider the Columbia River Crossing as a reasonably foreseeable project (because it cannot be a past or present project and therefore should not be part of the baseline), then the agencies must account for the cumulative effects of the Columbia River Crossing project and the I-5 Rose Quarter project. The agencies cannot have their cake and eat it too – the agencies must either remove the Columbia River Crossing from the baseline (and redo the analysis of the project) or include it as a reasonably foreseeable action, in which case the effects to the human environment will unequivocally be significant, thereby requiring an EIS.⁷ Either way, the current EA is inadequate and violates NEPA.

Finally, it appears that one reason the Columbia River Crossing was included in the baseline is that the Columbia River Crossing is irrevocably bound up with the current project. That is, the project lacks “independent utility,” and, therefore, the two projects are connected actions, cumulatively significant actions, or similar actions that must be considered in a single NEPA document. *See* 40 C.F.R. 1508.25(a).

IV. The agencies failed to take a hard look at, disclose, and consider the cumulative impacts from past, present, and reasonably foreseeable actions

The agencies failed to take a hard look at the cumulative effects of the project. NEPA requires federal agencies to analyze and disclose the past, present, and reasonably foreseeable environmental impacts, including cumulative impacts, of “major federal actions,” 42 U.S.C. § 4332(2)(C), regardless of “what agency (Federal or non-Federal) or person undertakes such other action.” 40 C.F.R. § 1508.7. “Cumulative impacts” result from the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions” and can “result from individually minor but collectively significant actions taking place over a period of time.” *Id.* The Ninth Circuit has opined that an agency must assess cumulative effects of actions outside of the agency’s control in the context of climate change impacts. *Ctr. for Biol. Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008).

⁷ Because an EIS was prepared for the Columbia River Crossing, there should be no dispute that adding the significant effects of the Columbia River Crossing to this project will result in a significant effect, which means that the agencies should have prepared an EIS for this project.

An EA must “provide sufficient evidence and analysis for determining whether” a project will have a significant impact on the environment. 40 C.F.R. § 1508.9(a)(1). “The analysis ‘must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.’ *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 994 (9th Cir. 2004) (citations omitted). Furthermore, “[g]eneral statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998). Importantly, “some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing [the agency’s] decisions, can be assured that the [agency] provided the hard look that it is required to provide.” *Id.* at 1379. “Given that so many more EAs are prepared than EISs, *adequate consideration of cumulative effects requires that EAs address them fully.*” *Kern v. BLM*, 284 F.3d 1062, 1076 (9th Cir. 2002) (emphasis in original).

As noted above, the agencies included the Columbia River Crossing in the baseline for the project. The agencies, however, have never accounted for the admittedly significant effects of the Columbia River Crossing.⁸ Because the Columbia River Crossing was terminated in 2014, there is simply no reason to include it in the baseline – and similarly no reason to include it as a past or present action under the cumulative impacts analysis. The Columbia River Crossing should have been assessed under the cumulative impacts section of the EA to determine whether it is a reasonably foreseeable action.⁹ Once the agencies establish that a future project is reasonably foreseeable, then the agencies must disclose the cumulative impacts of the project and the Columbia River Crossing. The agencies attempt to include the Columbia River Crossing in the baseline without ever appropriately accounting for the admittedly significant environmental impacts.

V. The agencies failed to take a hard look at the direct and indirect effects of the construction phase of the project

NEPA’s procedural requirements require agencies to take a hard look at the environmental consequences of their actions. A hard look includes “considering all foreseeable direct and indirect impacts.” *Idaho Sporting Congress v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002). A hard look requires agencies to “undertake a thorough environmental analysis before concluding that no significant impact exists.” *Native*

⁸ See Environmental Impact Statement, *Interstate 5 Columbia River Crossing Project*

⁹ The same is true of the host of impacts included in the baseline.

Ecosystems Council v. U.S. Forest Serv., 428 F.3d 1233, 1239 (9th Cir. 2005). An adequate EA must consider both direct and indirect environmental impacts of the proposed action. 40 C.F.R. § 1508.8. Direct effects are caused by the action and occur at the same time and place as the proposed project. *Id.* § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. *Id.* § 1508.8(a).

The agencies repeatedly dismiss construction impacts based on the allegation that such impacts will be “short-term.” Other than that vague disclosure, the agencies have not disclosed the estimated amount of time – whether months or years – that it would take to implement the project. Because this project is one-half of a billion dollars, it is not unreasonable to expect construction to take years. There are also a host of construction-related impacts, including air and noise pollution from construction equipment, that have not been disclosed or analyzed. This is important because the construction would be occurring immediately adjacent to parks and schools. It also important to understanding what type of impacts construction would have on existing congestion. In all likelihood, a lengthy construction project, such as this, will exacerbate congestion. The agencies, however, have not taken the requisite hard look at the environmental impacts of the construction-related activities.

Moreover, the Bicycle Master Plan and Climate Action Plan for the city call for increasing bicycle mode share to 25% by 2030, which means that the city will have to double bicycle mode share in the corridor at issue here and triple bicycle ride share city-wide within the next decade. Depending on the length of the construction (as well as their impacts), which remain undisclosed, it is possible that the construction could frustrate the Bicycle Master Plan and Climate Action Plan. Exacerbating the problem is that the project area is home to the most bicycle-friendly neighborhoods in the City, allowing access to the center of the city.

VI. The agencies failed to take a hard look at induced demand/travel and increased capacity

The agencies largely ignore the simple fact that the project would add capacity to the existing highway, and that the capacity would soon be filled by “induced demand,” the notion that increasing roadway capacity encourages more people to drive, thus failing to improve congestion¹⁰. Indeed, despite proposing to spend one-half of a billion dollars

¹⁰ “Nearly all freeway expansions and new highways are sold to the public as a means of reducing traffic congestion.... But that’s not what always happens once these projects

to widen the highway, the agencies have denied the possibility that the project will increase capacity: “the Build Alternative would not create new capacity or add substantial capacity to the existing highway.” EA at 26. Regardless of whether the project purports to focus on safety and reliability, the effect of the project is to increase capacity of the highway. Ironically and in apparent contradiction to numerous allegations in the EA and supporting documents, the agencies concede that the highway is operating at or near capacity. As history has demonstrated time and time again with attempts to widen highways in an effort to reduce congestion, increased capacity will soon be filled with additional cars. *See Los Angeles v. FAA*, 138 F.3d 806 (9th Cir. 1998) (“Other cases involve highways and bridges, where increases in capacity more directly affect usage.”).¹¹ Here, the agencies have not explained – much less addressed – whether induced demand will occur as a result of the project, and, if so, then the agencies must reconcile that with the purpose and need of the project because congestion is the source for the issues surrounding safety and reliability. If the agencies do not anticipate induced demand, then the agencies must explain how this project is different than the many projects where induced demand did occur. As of yet, there is no explanation supporting the agencies’ rationale.

Apart from increasing capacity on the highway itself, the EA also increases the capacity of the built-environment by converting 2.5 miles of land and creating 81,626 square feet to be dedicated to commercial uses. Whether the “lids” will allow commercial or residential uses is a significant consideration that has gone unanalyzed. Creating new urban land has a host of impacts that accompany such development, and would be, in and of itself, a prime example of increased capacity for the urban environment. It can only be assumed that such capacity would be filled by commercial or residential uses, likely increasing congestion even more. Most recently, representatives for ODOT considered placing two-story buildings on the lids, but the EA contains no analysis of the effects of such a proposal. Not only must the agencies provide a clear understanding of whether the “lids” will be buildable but the agencies must also provide a coherent street-level vision for what is proposed. NEPA is not a piecemeal exercise where the agencies can present a moving target. If the agencies are going to include

are completed.” *CityLab University: Induced Demand*. Indeed, the “Law of Peak Hour Traffic Congestion” states that “on urban commuter expressways, peak-hour traffic congestion rises to meet maximum capacity.”

¹¹ *See What’s Up With That: Building Bigger Roads Actually Makes Traffic Worse, Wired; Th Science is Clear: More Freeways Equals More Traffic; CityLab University: Induced Demand*.

urban development atop the “hills,” then that is a significant consideration that must be addressed, not just in an EA, but a full EIS.

VII. The agencies failed to take a hard look at visual resources

The agencies failed to take a hard look at visual resources because the agencies failed to analyze visual resources at all. The project will expand a portion of a I-5, but fails to account for the visual impacts – both short- and long-term – from construction and the permanency of a widened highway. There is no consensus that the public believes the project will only provide beneficial effects to visual resources. Not only is that not the case, but even if it were, NEPA requires that the agency disclose the beneficial effects of the project, as well as the adverse effects. Regardless, a widened highway in an area that has historically suffered from urban renewal projects affects the visual aesthetics and resources of the area in a meaningful manner that is simply being ignored. NEPA requires more.

VIII. The agencies failed to take a hard look at the transportation data relied on as the basis for impacts to air quality, noise impacts, carbon emissions, and traffic volumes

The transportation data provided to the public for comment on the project fails to provide the public with the information necessary to challenge the agency’s conclusions regarding transportation impacts, air quality impacts, impacts to climate, and so forth. This serves to undermine the accuracy of the baseline and the impacts analysis. For example, one of the most fundamental components to any traffic-related analysis is the “average daily traffic.” Without this data, the agencies have not provided the public with enough data to challenge the agency’s conclusions and determine the accuracy of the agency’s conclusions for traffic, noise, pollution and carbon emission levels, contrary to NEPA’s basic requirements.

The agencies also failed to adequately disclose the transportation networks, and, therefore, the set of road and intersections and estimates of their capacity that will form the basis for modeled computations remains a mystery. Obscuring this information is contrary to NEPA’s basic disclosure requirements, and the inflated data serves only to skew the actual environmental impacts.

As noted in other comments, the agencies have taken an anomalous approach to projections than for other similarly situated and contemporaneously prepared projects. Furthermore, static trip assignment modeling produces exaggerated “no-build” traffic. This serves to overstate congestion benefits and emission savings under the “build”

alternative. The agencies have also not revealed the methodology, assumptions, or inputs used to generate its forecasts. Again, this basic information is necessary to gain a reasonably clear understanding of the effects to the project. Other errors, as provided in other comments, indicate that the agencies engaged in improper extrapolation, the manual addition of trips, inconsistencies with modeling for noise and pollution.

These failures are not insignificant under NEPA, and the failure to include enough sufficient information, explain the agency methodology, and then follow that methodology is a necessary component of informed decision-making. *See 1000 Friends of Wisconsin, Inc. v. US DOT*, case no. 11-C-0545 (May 22, 2015) (“the defendants have not explained how they applied their methodology to Highway 23 in a way that is sufficient for either the court or the plaintiff to understand how they arrived at their specific projections of traffic volumes through the year 2035”); *1000 Friends of Wisconsin, Inc. v. US DOT*, case no. 11-C-0545 (April 29, 2016) (“the traffic projections used in the impact statement’s evaluation of reasonable alternatives were not produced through a reasoned application of WisDOT’s stated methodology”). The agencies have, accordingly, violated NEPA.

IX. The agencies failed to take a hard look at environmental justice issues surrounding the project

In the section regarding Environmental Justice, the EA claims that the project would restore connectivity between neighborhoods separated with I-5 was originally constructed. The agency also states that the project would provide economic opportunities for local, and minority-owned businesses, in the historically Black neighborhoods impacted in the past. The agencies state in the assessment that “[w]hile EJ populations in the API may experience some small adverse impacts during construction and operation of the Build Alternative, none of these impacts are expected to rise to the level of “disproportionately high and adverse effects” as defined in Executive Order 12898.”

Case law, however, notes that:

“All projects involving a federal action—funding, permit issuance, or land development—must comply with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Feb. 11, 1994), which directs federal agencies to take the appropriate and necessary steps to identify and address disproportionately high and adverse

effects of federal projects on the health or environment of minority and low-income populations.”

*Bitters v. Fed. Highway Admin.*¹² The EA, however, ignores the environmental health impacts on the communities impacted by the project. The population within the project area is predominantly white; however, a substantial number of Black residents live within the area. The percentage of Black residents within the project area is higher than the percentage of Black residents living in the City of Portland and the Portland metropolitan area. The Albina community was home to nearly half of Portland’s people of color and held “only 13 percent of the county’s population, yet receives 55 percent of its hazardous air emissions.”¹³ Hazardous air emissions could increase in the area if more cars were to use the freeway after the project is completed. Those emissions could disproportionately affect a community in Portland that is home to a large percentage of the city’s Black residents. Moreover, while the agencies allege that the impacts will be small, the agencies have not disclosed the degree or length of those impacts.

X. The agencies must prepare an Environmental Impact Statement

NEPA requires agencies to prepare an Environmental Impact Statement (EIS) when a major federal action is proposed that may significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C), 40 C.F.R. § 1501.4(a)(1). An EIS is a “detailed written statement” that “provide[s] full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. §§ 1508.11 and 1502.1. To determine whether an action will significantly affect the environment (and thus require the preparation of an EIS), the regulations direct agencies to prepare an EA. 40 C.F.R. §§ 1501.4(b), 1508.9.

An EIS must be prepared if an agency action may significantly affect the human environment.¹⁴ Significance is measured according to a project’s context and intensity, including ten (10) separate criteria, and any single criterion or combination of criteria can

¹² *Bitters v. Fed. Highway Admin.*, No. 114CV01646KJMSMS, 2016 WL 159216, at *8 (E.D. Cal. Jan. 13, 2016)

¹³ Oregon Environmental Council, *Drop by Drop: Voluntary Reductions in Diesel Emissions from Stationary Sources* (2007), page 2.

¹⁴ An Environmental Impact Statement (EIS) must be prepared if “substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor. *Ocean Advocates v. U.S. Army Corps of Egn’rs*, 402 F.3d 846, 864 (9th Cir. 2005).

render a project significant, under NEPA. Apart from the factors set forth below, the project's price tag is indicative of its significance, and it is simply not possible for the agencies to conclude this process with a Finding of No Significant Impact (FONSI).

A. The project is significant because it cause significant adverse environmental impacts

The project is significant under 40 C.F.R. § 1508.27(b)(1) because the project may result in significant adverse environmental impacts. As explained throughout this comment letter, the project will have a significant adverse effect on the human environment. Much of the necessary information has been withheld and therefore restricts the public's ability to challenge the agencies' decisions. However, there is no dispute that air pollution studies show that living close to high traffic areas and the associated emissions may lead to adverse health effects beyond those associated with regional air pollution in urban areas.¹⁵ Many of these epidemiological studies focus on children, and some studies identify an association between living or attending school near heavily traveled roadways and adverse non-cancer health effects. These studies have reported associations between residential proximity to high traffic roadways and a variety of respiratory symptoms, asthma exacerbations, and decreases in lung function in children.¹⁶

The agencies acknowledge that short-term release of small particulate emissions and exhaust emissions during construction would impact air quality. The demolition of existing concrete structures would also impact air quality, but the agency states that these impacts on air quality would be temporary. This could be months or even years, and the agency may not obscure the significance of the project with such vague terms.

The agencies claim that air quality in the Project Area is expected to improve over the next 25 years as a result of tighter emissions standards and regional efforts to control emissions. Other than generalities, the agencies are not candid about the certainty of tighter emissions, and, for that reason, the agency must also present an analysis of anticipated impacts in the event tighter emissions standards and regional efforts are not successful. The EA concludes that air quality would be slightly improved under the Build Alternative due to higher speeds, less stop-and-go traffic, and less idling on I-5. The agency does not, however, take into consideration the potential effect of more cars

¹⁵ California Air Resources Board, *Air Quality and Land Use Handbook: A Community Health Perspective* (2005), page 8.

¹⁶ *Id.*

using the freeway (which is historically the case) and that subsequent impact on the environment. The agency is simply assuming that the expansion project would improve air quality due to an assumed decrease in congestion, instead of analyzing the potential for congestion to continue or worsen. That analysis would have been relevant and significant because of the effects that air pollutants from freeway use have on the surrounding environment.

As mentioned by the agencies in their EA, the transportation sector is a leading contributor to greenhouse gas (GHG) emissions. Because GHG emissions have been identified as a primary cause of climate change effects, any potential decrease in these emissions would be expected to support emission–reduction efforts intended to reduce future climate–related impacts.

The agencies conclude that the indirect GHG emissions effects of the proposed project would be minor and reduce the amount of GHG emissions due to higher speeds, less stop-and-go traffic, and less idling on I-5. Again, the agencies make these assumptions based on their belief that the project would be successful at reducing congestion and speeding up traffic. Should the project achieve its goals of having cars go faster, there could still be high levels of GHG emissions. “When vehicles travel at much higher speeds, they demand very high engine loads, which require more fuel, and which therefore lead to high CO₂ emission rates.”¹⁷ Should the project not achieve its goals, more cars using and stalling on the freeway would add to the GHG emissions that are contributing to man-made climate change.

Large reductions in GHG emissions are required to mitigate global climate change. The agencies proposed no other mitigation efforts other than reiterating the state’s continued emphasis on stringent fuel economy standards, vehicle inspection and maintenance programs. It is timely that the agencies rely on emissions standards when the federal government has actually decided to rollback vehicle emissions standards. When time is of the essence, as it is now with climate change, it is arbitrary and irresponsible to allow a project that could further GHG emissions to move forward with no concrete mitigation efforts.

Finally, the agencies’ assumption that the project will decrease congestion, and thereby decrease pollutants stemming from the widened freeway, is unsupported by

¹⁷ Barth, M. & Boriboonsomsin, K. (2004). Traffic Congestion and Greenhouse Gases, *ACCESS Magazine*, 1(35), 6.

research and examples in Houston and Los Angeles. As capacity increases, congestion increases to fill the newly created capacity.

All other comments are incorporated herein as they relate to the significant adverse environmental impacts of the project.

B. The project is significant because it will increase environmental impacts associated with public health and safety

The project is significant under 40 C.F.R. § 1508.27(b)(2) because the project will increase the adverse environmental impacts associated with public health and safety. While the project proposes to increase safety, the project will jeopardize the safety of children and staff at the Harriet Tubman middle school by widening the highway immediately adjacent to the school and increasing the capacity of the highway to accommodate greater traffic loads. That traffic will, in turn, create more of the same air pollution complained of now. There is no dispute that proximity to highways will inform the degree of pollution¹⁸, and it is also undisputed that the highway will be expanded closer to the middle school and parks.

As stated above, epidemiological studies focusing on children have identified an association between living or attending school near heavily traveled roadways and adverse non-cancer health effects. The agencies do not discuss the project's effect on public health or safety as it relates to air quality in the EA. The agency acknowledges that Harriet Tubman Middle School is within the area that may be impacted by air quality changes, but concludes that "trends indicate that current concentrations of these pollutants, including in the vicinity of Harriet Tubman Middle School, will continue to decline over time as more restrictive tailpipe emission standards are implemented. Because direct impacts on air quality from the Build Alternative are expected to be low and to continue to decline in the future, long-term indirect air pollution effects from implementation of the Build Alternative are not anticipated." Here, the agency does not take into consideration the impact of more cars using the highway and their emissions on

¹⁸ "What people are exposed to is influenced by their proximity to the sources, the presence of other ambient or microenvironmental sources, and time-activity patterns. If, as the evidence suggests, groups of lower socioeconomic status experience higher exposures than groups of higher socioeconomic status, this merits consideration in the interpretation of of epidemiologic findings and in future regulatory." *Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects: A Special Report of the HEI Panel on the Health Effects of Traffic-Related Air Pollution.*

the health of the communities near the highway, instead relying on the promise that restrictive tailpipe emissions will be enough to impact air quality, during a time when the federal government has promised to rollback car emissions standards. Indeed, the agencies are relying on a tighter emissions standard in the future when such a determination is largely a political issue. As such, it is arbitrary to rely upon mitigation measures that are not certain to occur.

Moreover, as stated elsewhere, the percentage of Black residents within the project area is higher than the percentage of Black residents living in the City of Portland and the Portland metropolitan area. The concentration of Black Americans living along freeways is higher than low-income and any other minority with a concentration 2-3 times higher than the general population within the Urban Growth Boundary.¹⁹ The increased risk of exposure to toxic pollutants for communities of color in Albina is also supported by a 2011 report by the Oregon Department of Environmental Quality (ODEQ) that found elevated levels of air toxins in census groups with higher densities of black, Asian, and Hispanic families.²⁰ The project may exacerbate the amount of toxic pollutants in the air from freeway emissions, and further affect minority communities in the area.

The agencies acknowledge that in Oregon, climate change is expected to cause extreme heat and precipitation events to occur more frequently. Expected climate change effects identified for the Willamette Valley include declining snowpack, earlier snowmelt, and greater summer water demand. These effects are anticipated to create potential issues from water scarcity and wildfires. Oregonians must handle increased public health effects including smoke-associated asthma and the arrival of formerly tropical diseases along with their insect carriers. Local governments are anticipating more frequent flooding of country roads and city streets. All of these climate change impacts can affect public health and safety. Because the transportation sector is a leading contributor to GHG emissions, the agency should be taking serious efforts to mitigate the effect that their proposed project would have on climate change. However, the agency does not do so in their environmental assessment. Instead, the agency relies on the assumption that their project will achieve its goal of reducing congestion. This assumption could be detrimental to an environment already suffering from the impacts of climate change.

¹⁹ McCord, Lindsay E., "Parting the Green Curtain: Tracing Environmental Inequality in Portland, Oregon" (2016). *Pitzer Senior Theses*. Paper 72. Page 27.

²⁰ *Id.*

C. The project is significant because the project will significantly affect unique characteristics of the geographic area

The project is significant under 40 C.F.R. § 1508.27(b)(3) because the project will significantly affect unique characteristics of the geographic area. Not only is Harriet Tubman middle school located immediately adjacent to the Project but the project will increase the proximity of the highway to the middle school. The agencies concede – as they must – that the Harriet Tubman Middle School has “important historical significance to the Black community in Portland, and its current enrollment includes a substantial number of students with color.” The school lies in close proximity to I-5, only a little over 50 feet from the freeway. In an air quality monitoring report, scientists from Portland State University identified the school’s proximity to the heavily trafficked highway as an air pollution risk. The study conducted by the scientists at PSU states that “While EPA School Air Toxics Project measured numerous chemicals associated with vehicle exhaust and concluded that none of the measured vehicular air toxins were above the level of concern, this approach to assessing risk from freeway emissions is problematic.”²¹ ODOT takes a similar approach as the EPA by stating that “Emissions of NAAQS criteria pollutants under the Build Alternative would also be low and are not expected to exceed NAAQS ambient air quality standards.”²²

The study concludes that the school is heavily impacted by highway emissions. Even though the criteria pollutants are below National Ambient Air Quality Standards (NAAQS), the air pollutants are elevated compared to other areas in Portland. In the end, the study recommends that student outdoor activities be limited at the school, especially during high traffic periods. The study claims that methods for reducing local outdoor urban air pollution levels are unlikely to reduce levels of air pollutants to values below urban background levels or Ambient Benchmark Concentrations. As stated above, the agency acknowledges that Harriet Tubman Middle School is within the area that may be impacted by air quality changes, but fails to consider the impact that air pollution has on this cultural institution.

The proposed project area is also home to a number of notable Black-owned businesses and civic organizations. Billy Webb Elks Lodge, a property associated with Black history in NE Portland, is in the project area and is pending nomination for the National Register of Historic Places. The Urban League of Portland, one of the Portland

²¹ Gall, Elliott T., et al., Indoor and outdoor air quality at Harriet Tubman Middle School and the design of mitigation measures: Phase 1 report (2018), page 7.

²² I-5 Rose Quarter Improvement Project, Environmental Assessment (2019), page 27.

Black community's principal advocacy and service organizations, is located in the project area.

The agencies have acknowledged the presence of these properties in the project area, and has even conducted outreach to the community in those areas, but the agency does not consider how those populations frequenting these culturally significant places will be impacted by the environmental harms that could be caused by the increased emissions, noise, and so forth from the project.

Oregon is already seeing the effects of climate change – from wildfires to drought to rising ocean temperatures. As stated above, expected climate change effects identified for the Willamette Valley include declining snowpack, earlier snowmelt, and greater summer water demand. These effects are anticipated to create potential issues from water scarcity and wildfires. Oregon's Mt. Hood could see declining snowpack due to climate change and GHG emissions. Wildfires and water scarcity could impact some of Oregon's park lands, farmlands, and rivers. This project's investment in transportation, which has already been identified as a leading contributor to GHG emissions, shows that the agencies would rather risk the possibility worsening GHG emissions rather than making proven efforts to reduce emissions and lessen the impact of climate change on the Willamette Valley. Research has shown that congestion mitigation through ramp metering, incident management, and congestion pricing are more likely to reduce GHG emissions.²³ The agency does not consider any of these alternatives in their environmental assessment.

D. The project is significant because the effects to the project are highly controversial

The project is significant under 40 C.F.R. § 1508.27(b)(4) because the effects to the project are highly controversial. As shown in other comments, the agencies' analysis of air quality, transportation impacts, noise impacts, climate emissions, and so forth are contingent upon the transportation modeling, much of which has been kept from the public's scrutiny. The project implicates significant scientific controversies as it relates to the agencies' modeling. Because the impacts of the project are contingent upon an accurate baseline, the scientific controversy here requires more analysis and vetting in the form of an EIS.

²³ Barth, M. & Boriboonsomsin, K. (2004). Traffic Congestion and Greenhouse Gases, ACCESS Magazine, 1(35), 9.

The agencies base their assumption that air quality will improve in the area of the project on decreased congestion and reduction in automobile emissions. However, the agency has not shown that the project will definitively reduce congestion. In contrast, studies have shown that expansion projects across the country have failed to reduce congestion and could actually make it worse.²⁴ In other words, the agencies have not squarely addressed the scientific controversy over induced demand. Because much of the project is premised on an assumption that the congestion will be remedied, despite the many examples to the contrary, the controversial issue of induced demand must be analyzed and vetted in a full EIS. The agency failed to adequately consider alternatives other than not building the expansion that could reduce air pollution, such as congestion pricing.²⁵

E. The project is significant because the effects on the human environment are highly uncertain.

The project is significant under 40 C.F.R. § 1508.27(b)(5) because the effects on the human environment are highly uncertain. For the same reasons set forth in 40 C.F.R. § 1508.27(b)(4). The project's actual effects, as well as the baseline are shrouded in uncertainty because the agencies have either failed to provide pertinent data, information, assumptions, etc., or the agencies have simply misconstrued – whether intentionally or not – pertinent information that allows the public to understand the effects of the project.

It is highly uncertain whether the project will have disproportionate environmental impacts on the Black community because the agency did not consider those impacts in its analysis. The agency states on page 39 of the EA that “[w]hile EJ populations in the API may experience some small adverse impacts during construction and operation of the Build Alternative, none of these impacts are expected to rise to the level of ‘disproportionately high and adverse effects’ as defined in Executive Order 12898.” However, the agency does not disclose their reasoning for concluding that the impacts are not expected to rise to that level, stating only that “the Project would provide notable beneficial effects” for the community living and working in the proposed project area. Instead, the agency focused on connectivity in the community, not taking into

²⁴ Duranton, Gilles, and Matthew A. Turner. 2011. "The Fundamental Law of Road Congestion: Evidence from US Cities." *American Economic Review*, 101 (6): 2616-52.

²⁵ “As vehicle exhaust represents a huge share of urban pollution, congestion charging offers a method of reducing total travel miles, increasing travel speed and reducing pollution.” Green, Colin P. et al., “Did the London Congestion Charge Reduce Pollution?” *Lancaster University Management School, Economics Working Paper Series 2018/007*, page 19.

consideration the effects that the emissions from the vehicles on the freeway could have on members of the community. Moreover, the transportation data is obscured and incomplete, and fails to provide the public the opportunity to challenge, vet, and understand the agencies' conclusions. Without that data, the agencies' conclusions are unsupported, baseless conclusions.

The agencies assume that the expansion project will cause congestion to decrease. Their assumption led them to conclude that air quality would improve. However, the agencies have not definitively shown that the project will cause automobiles to go faster, that the emissions regulations will achieve their goals, or that there will be less stalling on the freeway. Indeed, there is a great deal of information that suggests the widened highway will operate at capacity in only a short amount of time after construction is complete.

Because of these assumptions, the environmental effects of the project are uncertain. The students of Harriet Tubman have already been instructed not to play outside during high traffic times. The increased use of the highway following an expansion could cause the students even more exposure to air pollutants. The project would also expand closer to the Lillis-Albina Park, where children use the playground, baseball, and soccer fields. That increased exposure to air pollutants could cause a variety of respiratory symptoms, asthma exacerbations, and decreases in lung function, given their close proximity to the freeway.

It is uncertain how climate change will continue to impact the Willamette Valley. It is also uncertain that the proposed project will reduce GHG emissions. What is certain is that transportation is a large source of GHG emissions and therefore a leading contributor to global climate change.²⁶

In the EA, the agencies acknowledge transportation's contribution to climate change, and assumes that the project would contribute to a reduction in emissions. However, it is uncertain that their method of tackling congestion will achieve its goals and therefore reduce emissions.

Reports have stated that the planet has until about 2030 to reduce GHG emissions before climate change wrecks irreversible havoc. The proposed project would start in 2023 and last about 4-5 years. By 2028, there would only be two years left to combat climate change. The numbers included in a chart by the agencies show only a slight

²⁶ Barth, M. & Boriboonsomsin, K. (2004). Traffic Congestion and Greenhouse Gases, ACCESS Magazine, 1(35), 2.

decrease in annual GHG emissions. That estimated slight decrease does not justify the cost of the project and its uncertain effects on the environment. Moreover, the alleged decrease is uncertain in and of itself given the effect of induced demand to fill the increased capacity created by the project.

- F. The project is significant because the project may establish a precedent for future actions with significant effects.

The project is significant under 40 C.F.R. § 1508.27(b)(6) because the project may establish a precedent for future actions with significant effects. As demonstrated in these comments, the agencies have inexplicably included the \$ 3 billion Columbia River Crossing Project²⁷, and, if this project is approved as an EA and assumes the existence of the Columbia River Cross Project, then the Columbia River Crossing, if it is ever actually re-initiated, may be considered as insignificant under NEPA. The effect of such a determination now would allow the relevant agencies to advocate for an EA, as opposed to an EIS. The problem here, however, is that the agencies have not accounted for the environmental impacts associated with the Columbia River Crossing in conjunction with the current project.

Moreover, if the agencies are allowed to expand a highway in an area that has already been negatively impacted by the construction of the freeway, the agencies might also propose to develop this same type of project in other communities suffering from the detrimental effects of past public infrastructure projects. The project could also allow the agencies to build or expand freeways close to more schools like Harriet Tubman Middle School. “Enrollment at Tubman has traditionally been more diverse than other schools in the District. The current enrollment of 491 students is 40.5 percent African American and 14.9 percent Latinx, and 73.5 percent of the students are considered historically underserved. The District-wide averages by comparison are 16.3 percent and 8.9 percent for Latinx and African American enrollment with 49 percent considered historically underserved.”²⁸ Children are particularly vulnerable to air pollutants given their size and development, and can develop a number of health issues resulting from exposure to air pollutants. To essentially treat the students of Harriet Tubman Middle School as guinea pigs in their quest to reduce traffic, the agencies would be setting an unfair and unjust precedent that could put hundreds of children at risk. By imposing these impacts upon

²⁷ ODOT Used Long Dead I-5 Bridge Replacement Plan Rose Quarter Upgrade, March 26, 2019, Oregon Public Broadcasting.

²⁸ Portland Public Schools, Comments Submitted by Portland Public Schools on the I-5 Rose Quarter Improvement Project Environmental Assessment (2019).

students of color at Harriet Tubman Middle School, the agencies would be setting an unfair and unjust precedent that could put hundreds of children at risk.

If the agencies are allowed to expand a freeway, knowing that transportation is already a leading contributor to greenhouse gas emissions, the agency might propose similar expansions in other areas of the state. Relying on the assumption that adding lanes to increase car and truck mobility will reduce GHG emissions may establish a precedent for future project proposals. To construct large transportation projects that could further increase GHG emissions would be setting an unfair and unjust precedent that could put the entire region and planet at risk.

G. The project is significant because the project will result in cumulatively significant impacts in relation to other actions

The project is significant under 40 C.F.R. § 1508.27(b)(7) because the agencies have irrevocably misconstrued the project’s cumulative impacts²⁹. As noted above, a significant problem with the project is that it assumes that a speculative project, the Columbia River Crossing, is a part of the baseline. Because the Columbia River Crossing has not yet been approved, the agencies are essentially alleging – without disclosing the impacts – that the Columbia River Crossing is a reasonably foreseeable action. The obvious shortcoming is that the agencies have not yet disclosed the effects of the Columbia River Crossing in conjunction with the project. For the Columbia River Crossing, an EIS was prepared and if the agencies are to assume that a significant project such as the Columbia River Crossing is a reasonably foreseeable action in conjunction with this project, then there can be no dispute that the cumulative effects of this project are also significant. In other words, when the Columbia River Crossing, in which it was conceded that the project had significant environmental impacts, is combined with the impacts of the present project, there can only be a significant environmental impact.

As discussed above, the proposed project could worsen environmental health hazards in the project area. North and Northeast Portland residents concerned with industrial odors and air quality account for nearly one-third of ODEQ’s complaints.³⁰ According to a community survey conducted by the Environmental Justice Action Group

²⁹ 40 C.F.R. § 1508.27(b)(7) also counsels that “[s]ignificance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.”

³⁰ McCord, Lindsay E., "Parting the Green Curtain: Tracing Environmental Inequality in Portland, Oregon" (2016). *Pitzer Senior Theses*. Paper 72. Page 27-28.

and the Oregon Environmental Council in Albina, the highest reported health concern in the community is asthma caused by diesel pollution.³¹ These concerns rise out of disproportionate air pollution affecting the Albina neighborhoods.³² Vehicle exhaust ranks highest in North Portland, followed by smoke from outdated wood stoves, industrial activity and construction. Motorized lawn and garden care is also a big contributor to air pollution in the area.³³ These combined factors contribute to the discrepancies faced by the community in the proposed project area. A 2011 report by the ODEQ found elevated levels of air toxins in census groups with higher densities of black, Asian, and Hispanic families.³⁴ The current project proposed by ODOT could exacerbate the amount of toxic pollutants in the air from freeway emissions, and further affect minority communities in the area.

The Project also has the potential to marginally accelerate the ongoing displacement of Black and low-income residents from the neighborhood north of Broadway and east of I-5 as a result of gentrification. The agency states this potential for gentrification acceleration in their technical report. The agency states that “this effect would be small compared to other factors that are driving gentrification in the area, including rapid growth in the City of Portland, the neighborhood’s central location, and its high level of transportation access,” but does not show how the project’s effects would be “small” compared to the other factors. The cumulative effect of this project along with other ongoing factors in the city could further displace the Environmental Justice community in the project area.

An important consideration for the cumulative impacts of the project combined with the Columbia River Crossing are the impacts to climate change. Given that the transportation sector’s significant contribution to GHG emissions, the combined effect of these two projects renders the project significant.

³¹ Oregon Environmental Council, *Drop by Drop: Voluntary Reductions in Diesel Emissions from Stationary Sources* (2007), page 2.

³² McCord, Lindsay E., "Parting the Green Curtain: Tracing Environmental Inequality in Portland, Oregon" (2016). *Pitzer Senior Theses*. Paper 72. Page 27-28.

³³ House, Kelly. (2015, February 24). How is Portland doing on air pollution? It depends where you look. *The Oregonian*.

³⁴ McCord, Lindsay E., "Parting the Green Curtain: Tracing Environmental Inequality in Portland, Oregon" (2016). *Pitzer Senior Theses*. Paper 72. Page 27.

H. The project is significant because it may adversely affect highways and culturally historic areas

The project is significant under 40 C.F.R. § 1508.27(b)(8) because the action may adversely affect highways and culturally historic areas. This criterion specifically invokes “highways,” and the effect of the project will be adverse by increasing capacity of the highway, which will be filled by induced demand. This will result in greater impacts, which have been discussed throughout this letter.

As discussed above, the project area is home a number of notable pillars of Portland’s Black community. Billy Webb Elks Lodge, a property associated with Black history in NE Portland, is in the project area and is pending nomination for the National Register of Historic Places. The Urban League of Portland, one of the Portland Black community’s principal advocacy and service organizations, is located in the project area. The Harriet Tubman Middle School is also in the proposed project area and has an important historical significance to the Black community in Portland, and its current enrollment includes a substantial number of students of color. The project’s stated acceleration of gentrification may cause the community loss of cultural and historic resources.

I. The project is significant because the project adversely affects endangered or threatened species and their critical habitat

The project is significant under 40 C.F.R. § 1508.27(b)(9) because the project may adversely affect an endangered or threatened species or its critical habitat. Here, the project will adversely affect chinook salmon, coho, steelhead, the California sea lion, and stellar sea lion. The agencies’ analysis of this provision leaves much to be desired. The actions are not insignificant given the number of threatened and endangered species, as well as the degree of the in-water work.

J. The project is significant because it threatens to violate other laws

The project is significant under 40 C.F.R. § 1508.27(b)(10). As noted above, the project threatens to violate the ESA, the Marine Mammal Protection Act, Section 4(f) of the National Transportation Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and Executive Order 12898.

The Environmental Protection Agency states that “Environmental justice is achieved when everyone enjoys the same degree of protection from environmental and

health hazards and equal access to the decision-making process to have a healthy environment in which to live, work, learn and play.” However, the Albina community is home to nearly half of Portland’s people of color and held “only 13 percent of the county’s population, yet receives 55 percent of its hazardous air emissions.”³⁵ This project would not give the community in the proposed project area the same degree of protection from environmental health hazards because of the risk that the project could increase air emissions due to the potential that more cars might use the expanded highway.

Executive Order 12898 states that “Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.”³⁶ However, ODOT does not discuss air pollution from vehicle exhaust, smoke from outdated wood stoves, industrial activity and construction, or motorized lawn and garden care in its environmental assessment for this project. These exposures already contribute to air quality issues in the area that affect the community and were not factored into the project’s environmental justice analysis.

The Department of Environmental Quality website states that Oregon is “[w]orking with local environmental justice groups and others to reduce diesel emissions and improve air quality to protect those most at risk from air pollution.” This project would go against that goal. As much as the agency has made efforts to involve community members in this project, the agency has done little to address the long-term issues of air quality and displacement through continued gentrification.

The State of Oregon, Multnomah County, the City of Portland, and Metro have developed policies and strategies to aggressively reduce GHG emissions from motor vehicles. Portland’s comprehensive plan states that “Although carbon dioxide and other greenhouse gas emissions are a project concern, these pollutants are important primarily because they contribute to global climate change...”³⁷ Portland has a binding city policy which aims to reduce idle time in order to support the city’s climate change goals.³⁸ The proposed project aims to reduce idle time by expanding the freeway, however, it is

³⁵ Oregon Environmental Council, *Drop by Drop: Voluntary Reductions in Diesel Emissions from Stationary Sources* (2007), page 2.

³⁶ Executive Order 12898 (1994, February 11), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, *Federal Register* Vol. 59, No. 32. Page 3

³⁷ Portland Comprehensive Plan, Chapter 7

³⁸ BCP-TRN-11.01

possible that the expansion achieves the opposite effect and rather than reducing idle time, adds more space for more cars to idle. The agencies fail to consider this possibility in their EA.

XI. The project violates Section 4(f) of the National Transportation Act.

Section 4(f) of the USDOT Act of 1996, 49 USC § 303(c), protects historic properties, park and recreational facilities, and wildlife and waterfowl refuges. There are 14 individual historic properties and 8 historic resources. The EA acknowledges that four parks (including the Vera Katz Eastbank Esplanade, Willamette River Greenway Trail, Lillis-Albina Park, and Portland Peace Memorial Park) are located within the area of potential impact. As shown above, as proximity to a highway increases, so do environmental impacts associated with air quality, noise, and so forth. Moreover, the capacity created by the project will be filled during the very peak hour congestion the agencies propose to reduce. This inevitably leads to a greater impact on those living in close proximity to the impacts, as well as visitors to the parks. Furthermore, the impacts do not account for the construction-related impacts (including the length of time that construction will occur) that will also disproportionately affect those in close proximity to the construction, including those using the above-referenced parks. The parks will no doubt suffer a greater impact under the build alternative.

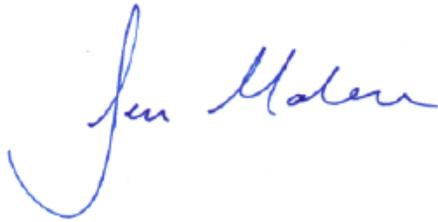
The EA refers to “temporary occupation of segments of Vera Katz Eastbank Esplanade” but the agencies have not been forthcoming about what is “temporary” as it relates to construction. It is reasonable to believe that a one-half billion dollar project will take months or even years, but there is little certainty given the lack of disclosures in the EA.

For all of the 4(f) resources addressed, the agencies do not address the impacts in terms of air quality, despite the well-understood notion that capacity created by widening freeways typically results in the capacity being filled within a short time after completion of the project. For example, in Houston, after a 2008-2011 project costing \$2.8 billion to make the widest freeway in North America, the travel times increased by 30 percent during the morning commute and 55 percent during the evening commute. The project here is simply doing more of the same. Despite the intention to reduce congestion (and thereby increase safety and reliability), the opposite is likely to occur, and yet the agencies have not even accounted for that possibility. In other words, what the agencies assume as a certainty rests on tenuous ground, and example after example demonstrates that the agencies have not accounted for expected impacts of increased congestion, noise, air pollution, and so forth.

XII. Conclusion

For the reasons provided above, the agencies have prepared a deeply flawed EA. Instead of engaging in business as usual, which does not resolve issues surrounding congestion (and therefore will not resolve issues surrounding safety and reliability), the agencies should promote an alternative that *will* reduce congestion (and thereby address safety and reliability). However, even that consideration would not resolve the fundamental error committed by including the Columbia River Crossing in the baseline, a project that has not occurred and has no current plans of occurring. By doing so, the agencies have presented a scenario that does not reflect the reality on-the-ground, and there is little expectation that the impacts analysis will ever reflect reality because the Columbia River Crossing will ever be constructed.

Sincerely,



Sean T. Malone
Attorney at Law

cc: clients

Ka'sha Bernard, Legal Fellow, Crag Law Center

Enclosures