Date: December 2, 2021

To: Federal Highway Administration Acting Administrator Stephanie Pollack

From: Joe Cortright, No More Freeways
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CC: Phillip Ditzler, Division Administrator for the FHWA Oregon Division
                  Oregon Transportation Commission
                  Metro Council

Subject: **NEPA Re-Appraisal of ODOT's Proposed I-205 Widening Project**

On December 12, 2018, FHWA granted a Categorical Exclusion from NEPA review for the Oregon Department of Transportation's (ODOT) I-205/Abernethy Bridge freeway widening project, known as I-205: Stafford Road to OR 213 -- Federal Aid #: S064(057).

ODOT has now substantially changed the character of this project by adding a proposal for tolling this segment of roadway. Within the CE Closeout Document, the statement is made that "...value pricing [tolling] is not considered a reasonable and foreseeable action."[1]

However, statements by ODOT officials and Oregon Legislators make it clear that tolling is now integral to the I-205 highway widening project. At the May 23, 2018 meeting of the Joint Committee on Transportation of the Oregon Legislature, legislators told ODOT that this project would not be paid for without tolling.[2] In the summer of 2018, ODOT's Value Pricing Policy Advisory Committee recommended to the Oregon Transportation Commission that tolling be used to pay for this project, and the Commission subsequently adopted this recommendation. In its 2021 legislative session, Oregon adopted HB 3055, Section 146, providing for toll financing for this project.[3]

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[1] The I-205 Close Out Document can be accessed here;
https://i205corridor.org/files/Contractor%20Meeting%20Documents/Technical%20Documents/nepa-categorial-exclusion-documentation.pdf
[2] The comments cited at May 2018 meeting of the Joint Committee on Transportation can be accessed at the link below at the 34:56 and 36:01 minute marks of the presentation
https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2018051027
[3] Information on HB 3055 is available here:
https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3055/Enrolled

ODOT is now proposing an environmental review of tolling I-205 in the project area. As ODOT's proposal makes clear, tolling this roadway raises environmental questions not addressed in the CE for this project.[4]

Tolling represents a substantial change to the nature and character of the I-205 project and necessitates a re-evaluation of the NEPA review of this project (see 23 CFR § 771.129). In the terms of your regulations, there have been:

> (1) changes to the proposed action,
> (2) new information and circumstances, and
> (3) a lapse of time between the preparation of the environmental document (in this case the CE), and the current action on the project.

Under FHWA Policy (NEPA Re-Evaluation Joint Guidance for Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), & Federal Transit Administration (FTA) (Issued on August 14, 2019), each of these factors should trigger a NEPA re-evaluation.[5]

The integration of tolling into this project is a major change to project scope that necessitates at least an inquiry into whether a NEPA re-evaluation is required for this project, and whether it is still eligible for a Categorical Exclusion under 23 CFR §771.117 (d)(13).

We anticipate that provision of mitigating transit service on the tolled highway is but one likely outcome of a future analysis that considers the project as a whole, rather than piecemeal.

No More Freeways requests clarification on whether a NEPA re-evaluation has been formally undertaken, as well as any documents or correspondence, including emails, which address the question of re-evaluation for the I-205: Stafford Road to OR 213 project.

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[4] More details of the I-205 tolling proposal is available here:
https://www.oregon.gov/odot/tolling/Pages/I-205-Tolling.aspx
[5] The NEPA language is available for review on the FHWA website at this link:
https://www.environment.fhwa.dot.gov/legislation/nepa/Reevaluation_guidance_08142019.aspx

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