



CITY OF  
**West Linn**

April 21, 2023

VIA EMAIL AND FIRST CLASS MAIL

E-Mail: I205TollEA@odot.oregon.gov

Mandy Putney  
Strategic Initiatives Director  
Oregon Department of Transportation  
ODOT Urban Mobility Office  
18277 SW Boones Ferry Road  
Tualatin, OR 97224

Re: ***Comments on I-205 Toll Project Environmental Assessment  
Submitted by the City of West Linn***

Dear Ms. Putney:

This letter and the enclosed attachments constitute the comments submitted by the City of West Linn, Oregon (the "City") on the I-205 Toll Project ("Project") draft Environmental Assessment dated February 2023 (the "draft EA") authored by the Federal Highway Administration ("FHWA") and the Oregon Department of Transportation ("ODOT") (collectively, the "Agencies") under the National Environmental Policy Act ("NEPA").<sup>1</sup> The City also joins in and concurs with the substantive comments on the draft EA submitted by governmental entities, including but not limited to Clackamas County, Washington County, the Cities of Oregon City, Lake Oswego, Tualatin, as well as the objections submitted by these parties in having insufficient time to adequately review and evaluate the draft EA, and ODOT's refusal to extend the public comment period to facilitate such review. Given the many shortfalls in the draft EA, it is clear that the Project cannot support a Finding of No Significant Impacts ("FONSI"), but rather should go through a full Environmental Impact Statement ("EIS") analysis.

Among the issues not addressed by the draft EA, but that are vitally important to the citizens of West Linn, include but are not necessarily limited to:

- The draft EA does not identify who ODOT considers eligible for credit programs due to income, and what relief will these households receive. Nor does the draft EA evaluate whether an opt-in credit program will create a new set of obstacles for those potentially eligible for another program (e.g., generating another level of bureaucracy for impacted individuals, or entities to navigate);

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<sup>1</sup> As noted in more detail below, the City of West Linn is submitting these comments notwithstanding its view that ODOT has provided insufficient time for a detailed and thorough analysis of the draft EA. The City of West Linn renews its request that ODOT extend the public comment period, and submits these comments while reserving its rights to seek additional time to evaluate and comment on the draft EA, whether through the administrative process or, if necessary, seeking judicial relief seeking the same.



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- The draft EA does not state or indicate whether the City will receive any improvements to transit to offset noted impacts; nor does it explain what transit alternatives will be evaluated and potentially implemented in advance of the tolling program being implemented;
- The draft EA does not consider the impact on local charitable organizations such as the Food Pantry, where the delivery drivers are volunteers and are often themselves seniors on fixed incomes;
- The draft EA provides that the only mitigation measure needed in the City is a small section of pedestrian improvements on one street. If traffic on Willamette Falls Drive is projected to increase by 100%, as stated in the draft EA, the conclusion is that there are no additional impacts which strain credibility; and
- The impacts on businesses in the West Linn community from the Project are poorly defined in the draft EA and some, such as the extent of opportunistic shopping and dining, are overly optimistic. Related assumptions in the EA regarding localized job creation and increased incomes for business owners from tolling diversion are similarly flawed and false because ODOT failed to both consult with local business owners and ground their data in actual economic reality.

The implementation of the proposed Tolling Program on such a compressed portion of I-205 makes little to no sense as there are so many opportunities for diversion off I-205 and onto local City streets, thereby placing virtually all of the impacts of the Project on several small communities, most notably West Linn and Oregon City, rather than spreading the impacts fairly on a more regional basis. Along with this comment letter, the City is providing reports by two expert consultants which focus on and address deficiencies in the modeling conducted by the Agencies to support the draft EA, and the inadequate and deficient analysis of the socioeconomic and environmental justice (“EJ”) aspects of the draft EA, which are summarized here. The full text of the reports attached hereto are incorporated by reference and should be considered as part of the City of West Linn’s comments to the draft EA.

### **1) The Agencies Have Not Provided Adequate Public Participation and Public Involvement Opportunities**

The public participation opportunities and time to comment on the draft EA have been woefully insufficient, particularly given that this is the State of Oregon’s first tolling project and the extensive and unprecedented impacts it will have on a broad swathe of the community. Under NEPA, the Agencies involved in the decision-making process have an obligation to make diligent efforts to involve the public and to ensure meaningful public participation. As the City detailed in its March 9, 2023 letter to ODOT, additional time for public comment should have been provided given the extremely voluminous documentation supporting the draft EA. In addition, the opportunities for public engagement have been insufficient. The only public hearing held was largely during business hours, and at least 30% of the speakers at that hearing indicated they had been notified about the hearing fewer than 24 hours before it started. Notwithstanding that both proposed toll gantries lie within the City of West Linn, there were zero in-person public participation events in the City. Given all of the circumstances, the Agencies have clearly failed to meet the public participation and public involvement requirements of NEPA.



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In addition, it took ODOT nine days to provide the City with requested modeling data, including ODOT initially misdirecting the City to request the data from Metro. On March 14, 2023, counsel for West Linn requested ODOT to provide “all final model datasets (inputs & outputs) for all years (2015, 2027, & 2045) for both the macro-level model (Regional Travel Demand Model) and the meso-level model (Dynameq DTA model) related to the I-205 Toll Project Environmental Assessment.” In response, ODOT represented to counsel for West Linn that ODOT did not have the models, and that they were under Metro’s custodianship. Upon contacting Metro, Metro advised that “while Metro ran the initial models, ODOT’s consultant team actually has the final datasets that were used in the EA.” Upon being so advised by Metro, counsel for West Linn immediately renewed its request for the modeling data from ODOT. ODOT finally provided the requested modeling data on March 29, 2023, almost two full weeks after the initial request, even though ODOT had been in possession of the information the entire time. This runaround in and of itself is reason enough to have provided a 90-day public comment period.

Like many other municipalities and county governments, the City of West Linn has repeatedly asked ODOT to extend the public comment period to allow it sufficient time to review and evaluate the draft EA and its 17 appendices and related modeling. In a letter dated April 5, 2023, ODOT denied the requests of the City and other municipalities for additional time to comment, whereby ODOT referred largely to outreach and engagement between “the summer of 2020” and the time period prior to the release of the draft EA. While those prior efforts to allegedly engage the public in the past are appreciated, any outreach and engagement prior to the release of the draft EA at the end of February 2023, is immaterial to the comment period. The public comment period for the draft EA began only after the draft EA was released, and what level of public comment is appropriate is based on the size and scope of the document alone. ODOT does not get to curtail otherwise appropriate public comment because of public outreach it may have done before. The draft EA is the decision document at issue, and the level of public comment that should be provided is based solely on that document.<sup>2</sup> Given the many inadequacies identified in the draft EA and with the limited comment period provided, it is appropriate for the Agencies to provide additional time for review to provide the impacted community with sufficient and meaningful opportunity to comment on this monumental change to the transportation system.

## **2. The Agencies Should Have Prepared an EIS and Not an EA**

The draft EA does not meet the requirements of the NEPA, 42 U.S.C. § 4321 et seq., because it was unreasonable for the Agencies to forego preparation of an EIS as the Project clearly will have a significant impact on the human environment. A stated goal of the draft EA “is for FHWA to determine a Finding of No Significant Impact.” As presented, it clearly appears that the Agencies predetermined the NEPA analysis in the draft EA by committing itself to an outcome, the issuance of a FONSI, and thereafter the Agencies failed to take the required “hard look” at the consequences of the Project due to its bias in favor of that outcome. In examining the adequacy of a draft EA, Courts examine whether the document has “adequately considered and elaborated [on] the possible consequences of the proposed agency action when concluding that it will have no significant impact on the environment, and whether its determination that no EIS is required is a reasonable conclusion.” *Ctr. for*

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<sup>2</sup> A more appropriate analysis for the duration of the public comment period should be based on the amount of time a member of the public that had not previously heard of the project would need to thoroughly and appropriately review and evaluate the document. Forty-five (45) days is clearly not sufficient.



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*Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1215 (9th Cir. 2008). “If there is a substantial question whether an action “may have a significant effect” on the environment, then the agency must prepare an . . .EIS[.]” *Id.* at 1185. It is unquestionable that the Project will have a significant effect on the environment and the surrounding communities, and therefore performance of an EA is insufficient as a matter of law, and an EIS must be conducted.

### 3. The Draft EA Fails to Provide Mitigation Measures, and Therefore Cannot Reach a FONSI

Concrete mitigation plans were not provided in the draft EA. Rather, some limited mitigation options are considered, though funding for these plans are not listed, nor are the impacts fully analyzed. Contrary to the requirements of NEPA, these mitigation plans are not commitments of any kind, nor is there any discussion how and by whom these asserted mitigation measures will be funded.

Specific to West Linn, the draft EA has failed to propose mitigation of impacts at many intersections within the City. Rather than identify impacted intersections and propose mitigation measures (which should be part of ODOT’s analysis), the City was asked by ODOT to provide a list of mitigation measures that would be necessary. Mitigation measures identified by the City of West Linn, all of which would need to be completely funded by ODOT, include, but are not necessarily limited to:

- Completion of Willamette Falls Drive from Fields Bridge Park to Highway 43, including filling the gaps in multimodal (pathways/sidewalks) elements;
- Completion of the planned roundabout improvements at the intersection of Highway 43 and Willamette Falls Drive;
- Improvement of Highway 43 to at least McKillican Street;
- Completion of planned improvements for I-205 and the 10<sup>th</sup> Street interchange in both northbound and southbound directions, including the planned roundabout for a northbound ramp;
- The provision of public transit service to the affected communities in order to effectively reduce congestion on I-205 and surrounding roadways, including an extension of the transit route to Tualatin from Oregon City through West Linn;
- Enhancement and reconfiguration of exit ramps at the intersection of I-205 and Highway 43 southbound; to handle additional traffic; and
- Improvements at all other possible bypass routes, including Johnson Road and Blakenship Road and at Southwest Pete’s Mountain Road/Tualatin Avenue, again to handle additional traffic.

Until the mitigation plans are fully defined and analyzed, the issuance of a FONSI is inappropriate, and the Agencies are required to proceed with an EIS.



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## **4. The Draft EA Fails to Clearly Define the Project Purpose and Alternatives**

The draft EA describes the Project as “variable rate tolls on the Interstate 205 (“I-205”) Abernathy Bridge and Tualatin River Bridges to raise revenue for construction of planned improvements to I-205, including seismic upgrades and widening, and to manage congestion.” (Draft EA at 1-1.) The stated purpose of the Project is to “use variable-rate tolls on the I-205 Abernathy Bridge and Tualatin River Bridges to raise revenue for construction of planned improvements on I-205 from Stafford Road to OR 213 and to manage congestion.” As such, that the purpose of the Project appears to be the Project itself, as there is no distinction between the description of the Project and its purpose. Moreover, the draft EA shows that the I-205 Toll Project will increase congestion on arterial roads near the tolls, and therefore, exacerbates the problem it purports to address. The lack of clarity surrounding the two alternatives, the purpose of the Project, the need for the Project, and the benefits of the build alternative, makes it impossible to distinguish the true impact the tolling itself would have on the human environment. As such, the next step in this process must be an EIS.

## **5. The Draft EA Fails to Adequately Analyze Impacts to EJ Communities**

The draft EA does not consider the disproportionate impact the Project will have on local residents or on EJ communities. Absent analyzing the impacts to specific EJ communities, it is not possible to interpret the intensity of the impacts. Without this analysis, the agency essentially ignores the requirement to analyze whether or not EJ communities will be disproportionately impacted by the Project in a significant way. However, the fact that these communities will be impacted by traffic and safety issues and higher costs, suggests that both the context and intensity of impact that will result from the Project will in fact be significant, and that an EIS should appropriately be performed.

## **6. The Modeling Conducted for the EA is Flawed and Should Not be Relied Upon**

Modeling was conducted and relied upon by the Agencies in developing the draft EA, including the Regional Travel Demand Model (“RTDM”) and the Dynamic Traffic Assignment (“DTA”) model. Upon review of the modeling assumptions, methodology and results for the I-205 Tolling Project draft EA, and an assessment of the traffic related impacts, several major issues going to the validity and validation of the models have been identified. These include, but are not necessarily limited to the following:

- To establish trust in the results of a travel demand model, it is important to follow a rigorous and transparent process that includes data calibration, sensitivity analysis, validation, and peer review. A typical peer review process would be iterative, and for a project of this size many months would be necessary to understand the calibration process, any sensitivity analyses, and validation process; no local agency was involved in such a process and none was documented in the report;
- The models were calibrated using pre-Covid travel patterns which raises questions as to the veracity of the data used to generate future travel patterns and tolling impacts;
- Traffic diversion is based entirely on the regional macroscopic model which has an entirely different assignment (volume/delay) algorithm than the mesoscopic DTA model that was used



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- to assess localized impacts. The DTA model is smaller in scope and does not include a connection with I-5 in the north, and therefore is incapable of allowing traffic to divert to I-205 or vice versa. In effect, the route choice model in the RTDM, (static assignment algorithm), determines the diversion potential for long trips that could use I-5 or I-205. Thus, traffic diversion could be severely underestimated on local streets near the tolling gantries;
- Both models use a generalized cost function for route choice, but the speeds and travel times are different between the two models. So while the RTDM was used for the diversion, the DTA model would have different diversion characteristics. As a result, the localized impacts could be very different;
  - The modeling report states: “[i]n some locations the DTA model constrained demand so that a notable amount of unserved demand resulted. In these cases, the post-processed volumes when input to the Synchro or Vissim models did not reflect the expected level of constrained congestion. In these cases, unserved demand as captured by the DTA model was included in the DTA model volumes prior to post-processing.” If there are upstream bottlenecks that are not fixed, then the unserved demand should not be included in the analysis. This calls into question the validity of the intersection analysis;
  - When assessing the origin-destination patterns from the model for both personal and commercial vehicles, a very low correlation between our provider of location based services and commercial vehicles was identified, which indicates that truck and freight impacts were severely underestimated;
  - The DTM model scope is limited to the immediate area surrounding the I-205 bridge, preventing evaluation of the impact of toll on long distance trips; and
  - Analysis of the Traffic Operations in Appendix C raised significant questions relating to the quality of data inputs; lack of specificity as to impacts that require mitigation; and several shortfalls related to the mitigations in Table 6-1.

Notwithstanding the limited time provided to review and evaluate the voluminous draft EA and its appendices, it is clear that the draft EA is woefully deficient, and fails to set forth the analysis and study that is required under NEPA. Failures to comply with NEPA include, but are not limited to, the Agencies providing insufficient public engagement and opportunity for comment, the failure to fully evaluate the impacts this Project will have on EJ communities, the failure to set forth specific mitigation measures, including how such measures will be funded and implemented, and the reliance upon deficient and improperly executed modeling. A project of this magnitude and unprecedented nature must be conducted in a deliberate and thoughtful manner, and consistent with the mandates and requirements of NEPA. For the reasons set forth herein and in the attached reports, the Agencies have failed to comply with NEPA through the proposed issuance of the draft EA and desired FONSI. This Project should be evaluated through an EIS, and the City of West Linn objects that the same is not currently being performed.



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The City of West Linn reserves all of its legal rights should the Agencies improperly elect to proceed with the issuance of the EA and a FONSI.

Rory Bialostosky, Interim Mayor

Mary Baumgardner, Council President

Scott Erwin, Councilor

Leo Groner

Leo Groner, Councilor