

Date: January 20, 2022

DELIVERED VIA EMAIL

To: Molly Cary, Transportation Project Manager
Angela Beers Seydel, Public Information Officer
Frannie Brindle, Area 5 Manager
Oregon Department of Transportation (ODOT)

From: Alexis Biddle, Great Communities Program Director and Staff Attorney, 1000
Friends of Oregon
Patty Hine, President, 350 Eugene

Re: FHWA regulations justifying classifying the OR 126: Veneta to Eugene NEPA Study as a categorical exclusion?

Dear Ms. Cary, Ms. Seydel, and Ms. Brindle,

Watching the LaneACT meeting on January 12, we appreciated the opportunity to learn about the [OR 126: Veneta to Eugene NEPA Study](#).

We were disappointed and shocked to learn that there are no plans to accept public comments on the study after it is completed but before it is submitted to the Federal Highway Administration (FHWA) for approval.

Like others, we feel that seeking a categorical exclusion for this study violates the *spirit* of the National Environmental Policy Act (NEPA):

The purposes of [the National Environmental Policy Act] are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

[42 U.S. Code § 4321](#).

The presentation made clear that:

- The project is large and can reasonably be expected to have significant impacts.
- It allows for expanding the footprint of the highway from 2 to as many as 8 lanes: 4 travel lanes, 1 center turn lane, 2 shoulders, and 1 separated multi-use path, possibly with large roundabouts at some intersections.
- Doing so would require filling wetlands, in the vicinity of where threatened and endangered species have been identified.
- In addition to addressing safety concerns, the project is explicitly intended to relieve congestion by increasing capacity, supporting growth in and beyond Veneta with more travel.
- As such, the project can reasonably be expected to increase greenhouse gas emissions from motor vehicles, in conflict with Oregon's greenhouse gas reduction

goals. [ORS 468A.205](#). It would also appear to go against the intent of ODOT's [Statewide Transportation Strategy](#).

- Finally, with an estimated cost of \$250–350 million, the project obviously imposes large direct economic costs on taxpayers, as well as large opportunity costs for other projects that might not be funded if this project moves forward.

More to the point, members of the project management team asserted that FHWA NEPA regulations actually require the project to pursue a categorical exclusion without first seeking public review of a draft environmental document.

But FHWA guidance on public involvement in [NEPA Transportation Decision Making](#) suggests otherwise:

FHWA Policy

Public involvement and a systematic interdisciplinary approach are essential parts of the development process for proposed actions.

[23 CFR § 771.105\(d\)](#).

FHWA's Public Involvement Requirements

Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508.

State public involvement/public hearing procedures must provide for:

- *Coordination of public involvement activities and public hearings with the entire NEPA process.*
- *Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.*
- *One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.*
- *Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice shall also provide information required to comply with public involvement requirements of other laws, Executive Orders, and regulations.*

[23 CFR § 771.111\(h\)](#).

Moreover, we do not see how such a large project meets FHWA requirements for a categorical exclusion. FHWA explains NEPA Classes of Action:

Three basic “classes of action” are allowed and determine how compliance with NEPA is carried out and documented.

Environmental Impact Statement (EIS)

...

Environmental Assessment (EA)

...

Categorical Exclusion (CE)

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment ... and ... for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

40 CFR § 1508.4.

CEs are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts.

23 CFR § 771.117(a).

Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impact on properties protected by Section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or
- Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

23 CFR § 771.117(b).

A specific list of CEs that normally do not require any NEPA documentation or FHWA approval is set forth in 23 CFR § 771.117(c).

23 CFR § 771.117(c).

Other projects, pursuant to 23 CFR § 771.117(d), may also qualify as CEs if appropriately analyzed, documented, and approved by FHWA at the Division level.

23 CFR § 771.117(d).

Memorandum: INFORMATION: Additional Flexibilities in Categorical Exclusions: FHWA compiled a list of activities that may be undergoing more detailed National Environmental Policy Act (NEPA) processing that is required by law. This memorandum includes a list of activities that can normally be processed as CEs under 23 C.F.R. 771.117(c).

We request that ODOT do the following:

- 1. Add this memo to the public record for the NEPA study.**
- 2. Please add us to the interested parties list to be notified once the environmental document is completed—even if ODOT is not inviting public comments prior to submitting to FHWA for approval.**
- 3. Finally, we would appreciate a detailed response citing FHWA regulations that are asserted to justify classifying this NEPA study as a categorical exclusion.**

We look forward to your reply.

Sincerely,



Alexis Biddle
Great Communities Program Director and Staff Attorney
10000 Friends of Oregon



Patrice Hine
350 Eugene