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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

NO MORE FREEWAYS, CHRISTOPHER SMITH, ELIOT NEIGHBORHOOD ASSOCIATION, NEIGHBORS FOR CLEAN AIR, FAMILIES FOR SAFE STREETS, and BIKELOUD

Petitioners

v.

THE OREGON DEPARTMENT OF TRANSPORTATION, OREGON TRANSPORTATION COMMISSION, and KRIS STRICKLER, in his official capacity as the director of OREGON DEPARTMENT OF TRANSPORTATION,

Respondents.

Case No.: \_\_\_\_\_

**PETITION FOR JUDICIAL REVIEW**

(Administrative Procedures Act, ORS 183.310-183.550)

**NOT SUBJECT TO MANDATORY ARBITRATION**

Fee Authority – ORS 21.135

**PARTIES**

1.

Petitioner NO MORE FREEWAYS (NMF) is an unincorporated association of individuals and organizations in the State of Oregon dedicated to reducing the impact of

1 urban freeways on climate change, air quality, and quality of life. NMF's members make  
2 the community aware of adverse impacts of urban freeway expansions and advocate for  
3 responsible alternatives. The organization's membership includes many individuals who  
4 work, live, breathe, go to school, commute, and recreate in the impact area of this  
5 proposed project, the Interstate 5 (I-5) corridor generally, and the Portland metropolitan  
6 regional freeway network.

7 2.

8 Petitioner CHRISTOPHER SMITH is a member of NMF, a resident of Portland,  
9 Oregon, and is interested in seeking a better climate future, and preserving and  
10 enhancing what's left of the neighborhoods near the I-5 corridor.

11 3.

12 Petitioner ELIOT NEIGHBORHOOD ASSOCIATION ("Eliot") is a neighborhood  
13 association and nonprofit in the State of Oregon, dedicated to achieving a better  
14 environment, better physical accommodations, and an improved quality of urban life for  
15 their residents. Eliot's members participate by meeting to discuss private and public  
16 projects affecting the neighborhood. The organization's membership includes all people  
17 who live or work within their boundaries who consent to being members. Eliot's  
18 members and board members pursue, and have concrete plans to continue pursuing,  
19 reducing diesel pollution in the neighborhood, reducing vehicle miles traveled through  
20 the neighborhood, encouraging the welfare of their community, encouraging immediate  
21 development of underused properties in the area, encouraging transit use through the  
22 area, encouraging bicycle transportation and other non-car uses, improving public trust  
23 in government spending through fiscal responsibility, improving urban design and

1 striving to accomplish the goals in Portland’s Comprehensive Plan and other goals.

2 4.

3 Petitioner NEIGHBORS FOR CLEAN AIR (“Neighbors”) is an Oregon  
4 environmental nonprofit advocating for better air quality in Oregon with an emphasis on  
5 public health, and empowering Oregonians with information and tools to ensure  
6 everyone breathes clean air. Neighbors has more than three thousand members, many  
7 of whom participate in advocacy for the improvement of local air quality. Some of its  
8 members live, work, and play in the area affected by the expansion of the I-5 freeway,  
9 or teach or have children who attend Harriet Tubman Middle School, which is directly  
10 adjacent to the freeway. Conducting extended construction and increasing traffic affects  
11 their ability to protect community health and provide information about risk to their  
12 members.

13 5.

14 Petitioner FAMILIES FOR SAFE STREETS OF OREGON AND SOUTHWEST  
15 WASHINGTON (“Families”) supports individuals who have lost loved ones or been  
16 injured in traffic crashes and advocates for life-saving changes to our transportation  
17 system. The investment choices for the Rose Quarter project will impact street safety in  
18 the project area as well as in other areas NOT funded because of the choice to invest in  
19 Rose Quarter.

20 6.

21 Petitioner BIKELOUD PDX (“BikeLoud”) is a membership organization dedicated  
22 to the mission of ensuring Portland follows its own goal to make the city a place where  
23 one quarter of all trips are done on bicycles. BikeLoud members daily bicycle through

1 the Rose Quarter project area and will be impacted by any investment made in the  
2 project.

3 7.

4 Respondent OREGON DEPARTMENT OF TRANSPORTATION (“ODOT”) is an  
5 agency of the State of Oregon. Respondent KRIS STRICKLER (“Strickler”) is the  
6 current director of ODOT, and has ultimate responsibility for the agency’s actions.

7 Respondent OREGON TRANSPORTATION COMMISSION (“OTC”) is an agency of the  
8 State of Oregon.

9 8.

10 Respondents are collectively responsible under state law, regional planning  
11 rules, and local comprehensive plans, for operating in compliance with, and adopting  
12 findings of compatibility, or exceptions to compatibility with, any local land use  
13 Comprehensive Plans for various transportation projects, including but not limited to the  
14 I-5 Rose Quarter project.

### 15 JURISDICTION

16 9.

17 This Court has jurisdiction to address this petition pursuant to ORS 183.484. The  
18 appealed Order is a Final Order in an other than contested case matter.

19 10.

20 ODOT adopted the I-5 Rose Quarter Improvement Project’s Findings of  
21 Compatibility on February 12, 2024. ODOT’s adoption of those findings is a Final Order.  
22 ODOT announced this decision to the public for the first time on March 12, 2024.  
23 Petitioner filed this petition within 60 days of ODOT’s publishing of the Final Order.

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1 **VENUE**

2 11.

3 Petitioner CHRISTOPHER SMITH resides in Multnomah County. NMF is  
4 similarly based in Multnomah County, and many of its other members reside there. The  
5 same is true for Eliot Neighborhood Association, Neighbors for Clean Air, Families for  
6 Safe Streets, and BikeLoud. Venue is proper in Multnomah County pursuant to ORS  
7 183.484(1)

8 **THE COMPATIBILITY FINDINGS**

9 12.

10 Previously, on March 11, 2021, the Oregon Transportation Commission  
11 delegated adoption of Findings of Compatibility with acknowledged Comprehensive  
12 Plans of affected cities and counties to the ODOT director. On April 5, 2021,  
13 Respondents issued a Final Order with findings on a prior version of this same project.  
14 Later that year, NMF filed suit challenging that Final Order for reasons nearly identical  
15 to this current petition. Shortly thereafter, the 2021 challenged Order was rescinded by  
16 ODOT. As a result, there was a judgment of dismissal without prejudice entered for that  
17 challenge.

18 13.

19 On February 12, 2024, Respondent’s issued another Final Order, which was  
20 published on March 12, 2024, entitled “I-5 Rose Quarter Improvement Project: Findings  
21 of Compatibility with Acknowledged Comprehensive Plans per Oregon Administrative  
22 Rule 731-015-0075.” According to ODOT, its findings “address compliance with the  
23 applicable provisions of [its] State Agency Coordination Program, which is Division 15 of

1 Chapter 731” and the purpose of the findings is to ensure compliance with statewide  
2 planning goals, and compatibility with acknowledged Comprehensive Plans. This came  
3 alongside the release of a Revised Supplemental Environmental Assessment.

4 14.

5 These findings are an essential piece of ODOT’s proposed I-5 Freeway  
6 Expansion Project. To proceed with this project, ODOT must ensure that its proposed  
7 project is in compliance with implicated Comprehensive Plans. OAR 731-015-0075  
8 requires ODOT to “coordinate with affected cities, metropolitan planning organizations,  
9 state and federal agencies, special districts, and other interested parties in the  
10 development of project plans.”

11 **THE COMPREHENSIVE PLANS AT ISSUE**

12 *Portland Central City Plan*

13 15.

14 On October 25, 2012, Portland City Council adopted the N/NE Quadrant Plan  
15 and the I-5 Broadway-Weidler Facility Plan as Resolution 36972. The I-5 Rose Quarter  
16 Facility Plan was included as Exhibit C to that Plan. This action was an initial phase of  
17 developing the new Central City Plan, but represented the conclusion of a several-year  
18 joint City-ODOT stakeholder committee process around the Rose Quarter  
19 “improvement” plans.

20 16.

21 On June 6, 2018 Portland City Council adopted the Central City 2035 Plan by  
22 Ordinance 189000 as the first amendment to the new Comprehensive Plan. The N/NE  
23 Quadrant Plan and accompanying I-5 facility plan were included as Exhibit J2. The plan

1 included requirements that Transportation Demand Management (TDM) measures,  
2 including congestion pricing, be implemented *before* the City would support any freeway  
3 expansions.

4 17.

5 On June 30, 2020, the Portland City Council voted unanimously to reaffirm the  
6 Central City 2035 Plan, along with new, unrelated amendments to the plan. The TDM  
7 requirements were still a part of the Central City 2035 Plan.

8 18.

9 The Central City Plan amendment specifically calls for congestion pricing to be  
10 implemented in conjunction with any Rose Quarter I-5 project; “ODOT, in partnership  
11 with the City of Portland Bureau of Transportation (PBOT) is to implement congestion  
12 pricing and transportation demand management (TDM) options to mitigate for climate  
13 impacts as soon as feasible and prior to the opening of the project.”<sup>1</sup>

14 19.

15 No such plans or analyses of congestion pricing or TDM options were included in  
16 ODOT’s final Rose Quarter I-5 project as adopted, nor were such analyses included in  
17 the project’s published Environmental Assessment, nor were such inconsistencies  
18 discussed in ODOT’s findings on supposed compatibility.

19 20.

20 Within Portland’s Comprehensive Plan are policies requiring both that street  
21 policy classifications are maintained and implemented,<sup>2</sup> as well as the classification of  
22

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23 <sup>1</sup> Portland Central City Plan Volume 5A, *Implementation: Performance Targets and Actions Plans* pp.  
139-140.

24 <sup>2</sup> Portland Comprehensive Plan, Chapter 9, p. 7

1 individual streets through the adoption of necessary street plan maps within the  
2 Transportation System Plan.<sup>3</sup> Any changes to street classification therefore require  
3 changes to Portland’s Comprehensive Plan.

4 21.

5 The project as currently proposed appears to require one or more street  
6 classification changes. No plans, changes, or analyses concerning street classification  
7 changes were included in ODOT’s final project as adopted. Nor were these  
8 inconsistencies discussed in ODOT’s findings on supposed compatibility.

9 22.

10 *Metro’s Regional Transportation Plan*

11 On October 25, 2023, the Metro Council adopted the Regional Transportation  
12 Plan (“RTP”) as Ordinance 23-1496. The I-5 Rose Quarter Improvement Project was  
13 included in Exhibit A to that Plan as a “major project” in development.<sup>4</sup> For all major  
14 projects that are included in the RTP, further refinement even after inclusion still needs  
15 to take place, including ensuring “consistency with applicable comprehensive plans, the  
16 Oregon Transportation Plan and the RTP.”<sup>5</sup> This means that there is an expectation that  
17 the I-5 Expansion Project will be further refined even after its listing in the RTP to  
18 ensure compatibility with the entire RTP.<sup>6</sup> The need, mode function, and general  
19 location of the project do not need to be addressed after inclusion in the RTP<sup>7</sup> but other  
20 matters, including congestion pricing, do need to be further addressed.

21  
22 <sup>3</sup> Portland Comprehensive Plan, Chapter 9, pp. 2, 8

23 <sup>4</sup> Metro 2023 Regional Transportation Plan, Section 8.3.1.4, p. 8-65.

24 <sup>5</sup> *Id.* p. 8-56.

25 <sup>6</sup> *Id.*

<sup>7</sup> *Id.*



23.

Metro’s RTP includes a number of policies based on managing the “regional motor vehicle network.”<sup>8</sup> Key amongst them is a set of requirements related to necessary analyses when adding throughway or auxiliary lanes. Specifically;

“prior to adding new throughway capacity beyond the planned system of motor vehicle through lanes, or adding or extending an auxiliary lane of more than one half mile in length, or re-striping an auxiliary lane to serve as a general purpose through lane, *transportation agencies must demonstrate* that system and demand management strategies, including access management, transit and freight priority, pricing, transit service, and multimodal connectivity improvements *cannot adequately address identified needs* consistent with the Congestion Management Process and Regional Mobility Policy.”<sup>9</sup>

ODOT has not demonstrated, in any document, whether any of the listed alternative improvements would be incapable of addressing any identified congestion issues.

ODOT *has instead* produced evidence that congestion pricing *will* address, at least to some degree, the identified congestion problems.<sup>10</sup>

24.

Metro’s RTP further calls for the application of congestion pricing on “all lanes of Interstate-5 (I-5) and Interstate-205 (I-205) to manage travel demand and traffic congestion on these facilities in the Portland, Oregon metropolitan area in a manner that will generate revenue for transportation system investments.”<sup>11</sup>

25.

ODOT’s traffic projections, which serve as a basis for the analyses for the entire

<sup>8</sup> Metro RTP, Section 3.3.3.2., p. 3-89.

<sup>9</sup> *Id.* p. 3-93 (emphasis added).

<sup>10</sup> ODOT, Traffic Analysis Supplemental Technical Report, pp. 133-39 (2022), [http://www.i5rosequarter.org/pdfs/sea/tech\\_report\\_traffic.pdf](http://www.i5rosequarter.org/pdfs/sea/tech_report_traffic.pdf)

<sup>11</sup> Metro RTP. Section 8.3.1.7., p. 8-70

1 project, are based on the 2014 Metro RTP and the included assumption that Vehicle  
2 Miles Traveled will increase by 1.1% year-on-year. However, Metro's 2023 RTP, the  
3 most up-to-date plan and the one in place at the time ODOT issued the revised EA and  
4 the challenged compatibility findings, instead projects a *decrease* in Vehicle Miles  
5 Traveled by .1%, in order to satisfy Metro planning goals.

6 26.

7 No plans, changes, or analyses concerning placing congestion pricing on all  
8 lanes of I-5, the differing Vehicle Miles Traveled expectations in the RTP versus the  
9 traffic modeling for the project, or any indication that RTP-listed alternatives could solve  
10 the congestion issues were included in ODOT's final project as adopted. Nor were these  
11 inconsistencies discussed in ODOT's findings on supposed compatibility.

12 **ADVERSE EFFECTS ON PETITIONERS**

13 27.

14 Petitioners and their members live in and around inner Portland, and regularly  
15 breathe air, commute on city streets, exist within a currently inhabitable climate, and  
16 conduct their daily lives around the Interstate 5 corridor area. Those uses could or will  
17 be adversely affected by ODOT's adoption of this Finding of Compatibility, as it  
18 advances a plan that will adversely affect the climate, air quality, traffic congestion, and  
19 the daily lives of Portland residents.

20 28.

21 Petitioner NO MORE FREEWAYS' mission is to oppose unnecessary freeway  
22 expansion projects, particularly the Rose Quarter I-5 Project, but also others in the  
23 Portland, Oregon metropolitan area. NO MORE FREEWAYS, along with its members,

1 envision and seek to enact policy that will create livable, vibrant human-scale  
2 community infrastructure. ODOT's proposed project is directly contrary to NO MORE  
3 FREEWAYS' mission.

4 29.

5 Urban freeways have significant impacts on the cities in which they exist, and this  
6 Project will have a significant impact on the City of Portland and its residents at the  
7 tremendous cost, currently estimated by ODOT to be as much as \$1.9 billion. All of this  
8 in spite of the existence of fiscally conservative alternatives, such as congestion pricing,  
9 that can satisfy the Project's purposes and needs of managing congestion and traffic  
10 problems.

11 30.

12 The proposed project will widen the I-5 right-of-way, making it capable of  
13 accommodating additional lanes of traffic beyond what was initially proposed for the  
14 project. ODOT obfuscates the actual width of the road, but estimates and agency  
15 documents indicate a roadway generally approximately 160 feet wide, but sometimes as  
16 wide as 250 feet. This would more than double the width of the freeway, all supposedly  
17 for two additional lanes of traffic. However, this level of extra paving would also allow for  
18 at least six additional lanes of traffic, and possibly more, which is far beyond what has  
19 been proposed, and far more than has been accounted for in any environmental or  
20 compliance analysis.

21 31.

22 ODOT, acting unilaterally, has deprived petitioners of their rights to participate in  
23 this process by failing to explain its refusal to include congestion pricing and other

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1 alternatives to widening the freeway as required by Portland's Central City Plan.

2 **FAILURE TO COMPLY WITH STATUTE AND REGULATION**

3 32.

4 In reaching its decision, Respondents acted in a manner inconsistent with the  
5 law, and/or in a manner unsupported by substantial evidence. Respondents' conduct  
6 was contrary to law, erroneous, and otherwise unlawful in one or more of the following  
7 ways:

8 (a) In failing to comply with the requirements of the law, including but not limited  
9 to OAR 731-015-0075(2), by failing to "identify and address relevant land use  
10 requirements in sufficient detail to support subsequent land use decision  
11 necessary to authorize the project" by entirely neglecting to identify and  
12 address *any* specific relevant land use requirements with which the Project is  
13 in compliance, in either the City of Portland's Comprehensive Plan or Metro's  
14 Regional Transportation Plan in "sufficient detail to support subsequent land  
15 use decisions;"

16 (b) In failing to comply with the requirements of the law, including but not limited  
17 to OAR 731-015-0075(2), by failing to identify or address how the project  
18 complies with current street classifications in the City of Portland's  
19 Comprehensive Plan;

20 (c) In failing to comply with the requirements of the law, including but not limited  
21 to OAR 731-015-0075(2), by failing to identify and address how the project in  
22 any way complies with the congestion pricing analysis requirements in the  
23 City of Portland's Comprehensive Plan

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1 (d) In failing to comply with the requirements of the law, including but not limited  
2 to OAR 731-015-0075(2), by failing to identify and address how the project in  
3 any way complies with the congestion pricing analysis requirements in  
4 Metro's Regional Transportation Plan

5 (e) In failing to comply with the requirements of the law, including but not limited  
6 to OAR 731-015-0075(3) and (4) by proceeding with the proposed project and  
7 publishing a Revised Supplemental Environmental Assessment before the  
8 affected cities and counties made necessary plan amendments and zone  
9 changes even though the Revised Supplemental Environmental Assessment  
10 does not identify that the project will be constructed in phases;

11 (f) In failing to comply with the requirements of the law, including but not limited  
12 to OAR 731-015-0075(3) and (4) by proceeding with the proposed project and  
13 publishing a Revised Supplemental Environmental Assessment before the  
14 affected cities and counties made necessary plan amendments and zone  
15 changes even though Respondents have not made the necessary findings  
16 that "there is an immediate need to construct one or more phases of project;"

17 (g) In failing to comply with the requirements of the law, including but not limited  
18 to OAR 731-015-0075(3) and (4) by proceeding with the proposed project and  
19 publishing a Revised Supplemental Environmental Assessment before the  
20 affected cities and counties made necessary plan amendments and zone  
21 changes even though Respondents have not made the necessary findings  
22 that "the projected phase to be constructed meets a transportation need  
23 independent of the overall project . . . and will benefit the surrounding

1 transportation system even if no further phases of the project are granted land  
2 use approval; and

3 (h) In failing to comply with the requirements of the law, including but not limited  
4 to ORS 183.484, by making a finding that the proposed I-5 Rose Quarter  
5 Project is in compliance with the City of Portland's Comprehensive Plan  
6 because the City had made all necessary plan and zoning code amendments  
7 without substantial evidence to support such claims.

8 33.

9 Pursuant to ORS 183.497(1), or other equitable principles, Petitioners request an  
10 award of attorney fees and costs incurred in this matter.

11 WHEREFORE petitioners request that this court, exercising its authority under  
12 ORS 183.484, ORS 183.486, and ORS 183.497:

- 13 1. Declare that Respondents violated OAR chapter 731 by making a Compatibility  
14 Finding that did not identify and address relevant land use requirements in  
15 sufficient detail and/or by proceeding with a proposed project without necessary  
16 underlying land use changes and without finding an immediate need;
- 17 2. Set aside and remand Respondents' Finding of Compatibility;
- 18 3. Require that Respondents actually ensure compatibility with all affected local  
19 Comprehensive Plans, before any construction is begun on the Rose Quarter  
20 Project;
- 21 4. Require that Respondent's not start construction on the Rose Quarter project  
22 until they are in compliance with OAR 731-015-0075(4) or all necessary local  
23 Plan and Zoning amendments are approved;

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- 5. Award Petitioners' reasonable attorneys' fee and costs, and;
- 6. Award Petitioners such other relief as the court deems equitable and just under the circumstances

DATED May 10, 2024

LAW OFFICE OF KARL G. ANUTA, P.C.

*/s/ Karl G. Anuta*

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Attorney for Petitioners and Trial Attorney