

Appendix E: Response to Comments Received

Comments from 5 individuals related to NEPA have been received on the project. An ad was placed in the Activist Alert section of the October 6, 2016 Eugene Weekly by an unknown individual that read:

*The city of Springfield is seeking National Environmental Protection Act (NEPA) approval to use federal funds on the **Franklin Boulevard Project in Glenwood**. It is seeking the approval using a process called Categorical Exclusion, which would not require an Environmental Assessment or Environmental Impact Statement to fully assess, and potentially mitigate, impacts resulting from the project. Categorical Exclusion requires that the project not involve significant environmental impacts or substantial controversy on environmental grounds. Under a Categorical Exclusion, Springfield is not required to provide notice or a period for public comment on this documentation. To express an opinion on a Categorical Exclusion for the Franklin Boulevard Project or request more information, contact Adam Roberts, ODOT Region 2 Environmental Coordinator, at 541-757-4165 or Adam.Roberts@odot.state.or.us.*

Comment #1: On October 6th, 2016 commenter left a voicemail stating she “vehemently opposed the project because there is so much water flowing through Glenwood. The Willamette River flows right through town and already has issues with pollution. In addition, the last two species of endangered salmonid live in the Willamette and the project needs an Environmental Impact Statement prepared to ensure these species are not impacted.”

Response to Comment #1: ESA protected salmonids were considered during the projects Federal Aid Highway Program (FAHP) programmatic consultation process. The project would be reducing impervious surface within the termini and providing treatment and infiltration for stormwater up to the 25 year storm, well above required standards for stormwater treatment. Currently, stormwater within the project termini receives no water quality treatment. Water quality in the Willamette River would not be degraded and should incrementally improve as a result of the project.

Comment #2: On October 7th, 2016 commenter left a voicemail stating he is a resident of Glenwood and he “approves the approach of using a categorical extension for the project. Anything to facilitate and speed up the project is a great idea.”

Response to comment #2: Comment noted, no response.

Comment #3: On October 7, 2016 Commenter emailed asking about the NEPA status of the project after seeing the ad in the Eugene Weekly.

Response to comment #3: ODOT responded to Commenter email explaining the projects NEPA status. Commenter responded that ODOT’s response matched his understanding of the project status.

Comment #4: October 11, 2016 a call was received from commenter after seeing the Eugene Weekly. Commenter stated various concerns about water quality, that Glenwood used to be a landfill and there are

examples all up and down the river (Corvallis, Portland, Harrisburg) where pollutants are reaching the river from past industrial activities. Commenter also mentioned that Glenwood was originally a location where black people were moved in the mid-1900's and the project should have an Environmental Impact Statement done to analyze effects. An attempt was made to discuss commenter's concerns. Commenter was given ODOT Environmental Coordinator Adam Roberts email address and asked to provide her concerns in writing. No email has been received to date.

Response to comment #4: Since no written response or contact information was provided no direct response occurred. The proposed project has been analyzed for potential effects to socioeconomics, environmental justice, water quality and hazardous materials. See relevant sections of the Categorical Exclusion document.

Comment #5: On October 5, 2016 Commenter provided a letter by email to ODOT's Office of Civil Rights communicating concerns with using a Categorical Exclusion to clear the project under NEPA. The ODOT Office of Civil Rights responded by email on October 10, 2016 stating the matter is being passed to the FHWA Civil Rights Program Manager. On October 26, 2016 the FHWA Civil Rights Program Manager responded by email that the EJ complaint within commenter's letter is best handled in the NEPA process.

Response to comment #5: A response letter from ODOT was mailed to commenter on November 18th, 2016 generically addressing the project's history of alternatives during planning, public outreach efforts, and similarity to other projects across the country. The FHWA sent an email to the commenter on November 28, 2016 clarifying statements made in ODOT's response letter. Please see below for concern letter and ODOT's response letter. Additional responses to concerns raised in the letter are as follows:

1. The categorization of the project as a CE.

- As noted by commenter, the proposed project is consistent with the adopted Glenwood Refinement Plan. Commenter asserts that the project will create pressure for redevelopment in areas outside of the Refinement Plan. Commenter is saying that the cumulative impacts of the project include the impacts from future development should be covered in NEPA.

ODOT response: The proposed Project is consistent with the Glenwood Refinement Plan that was adopted in 2012. Impacts to adjacent neighborhoods were identified and reviewed at the time the city adopted the refinement plan. The plan studied an area of impact of 267 acres which included review of the adjacent residential areas within the Phase 1 Glenwood Riverfront. One appeal to the Glenwood Refinement Plan was made in September 2012, which the Land Use Board of Appeals (LUBA) issued a final order and opinion. In 2014, the City issued re-adopting ordinances in response to the LUBA remand (City of Springfield, 2014b).

The Franklin Boulevard Project is a roadway widening and intersection improvement project and is consistent with the criteria establishing categorical exclusions. The criteria

for FHWA Categorical Exclusions that apply to the proposed project are contained in §771.117(a), §771.117(b), and §771.117(d), as follows:

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4¹, 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; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Based on the information presented within this document, none of these circumstances above are present.

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

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

Based on the information presented within this document, none of these circumstances above are present.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and

¹40 CFR 1508.4 states:

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in §1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

that significant environmental effects will not result. Examples of such actions include but are not limited to:

- *(1-12) omitted here for brevity, not applicable to this project;*
- *(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.*

(e) Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:

(1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of “adverse effect” to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in de minimis impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;

(5) Changes in access control;

(6) A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

Subsections (e)(1) and (e)(5) above apply to the proposed project, making it a (d) list action requiring FHWA approval.

- Commenter argues that the traffic configuration of five multi-lane roundabouts constitutes a significant impact because to his knowledge there are not similar examples of this road way configuration.

ODOT response: There are several examples of projects included multiple roundabouts within a relative short segment of arterial roadway, including projects in Modesto, California; Carmel, Indiana; and Bend, Oregon. The traffic analysis and the impacts of traffic analysis is a topic that is considered in developing any project. An analysis of

future volumes for Franklin Boulevard was conducted by a registered traffic engineer and can be found in the City's TSP (City of Springfield 2014a). Under the 20-year (2035) need analysis it was determined the currently configured Franklin/McVay intersection would have a Level of Service (LOS) F, which fails to meet traffic needs. City design staff used that data, along with their Engineering Design Standards and Procedures Manual to model intersection function under signalized control, single-lane and multi-lane roundabouts. That analysis concluded that the multi-lane roundabout was the only option reaching a LOS A for all traffic movements.

The proposed project would be constructed to meet AASHTO roadway standards. Three design exceptions for Phase 1 have been approved by the State Traffic Engineer. One of these is for rectangular rapid flash beacons (RRFB) at each of pedestrian crossings of the multilane approaches of the proposed roundabouts as discussed in the Project Elements section. The other design exceptions are for decorative luminaires within the clear zone and reducing shy distance between the inside lane line and median curb face.

While NEPA requires consideration of traffic analysis and the impacts of that traffic to the affected environment, it leaves the manner in which traffic is configured to the professional engineers.

- Commenter argues that because the proposed project will displace 19 businesses, it is a significant action requiring additional review.

ODOT response: The design team studied the right of way acquisitions. It found that the displaced business customer base is predominantly metropolitan area, state, or regionally based and do not require immediate proximity to the adjacent neighborhood and can be relocated elsewhere in the city. The locally important business (DariMart) was purposefully avoided to minimize the effect on the Glenwood community. The Eugene-Springfield area has an ample supply of appropriately zoned, available real estate to which displaced businesses can relocate. The Uniform Relocation Act will be applied to mitigate relocation costs to the businesses. Similarly, in reviewing the right of way acquisitions, it was found that none of the businesses are uniquely tied to the adjacent Glenwood neighborhood. One business would be subject to additional scrutiny under Environmental Justice requirements, as it is minority owned. However, that business was recently established at its location in conflict with current Glenwood Refinement Plan redevelopment requirements. The City Planning Supervisor met with the business owner and property owner to inform them of the conflict and that occupying the existing building was not an approved use. The property owner allowed the business owner to open his business anyway within the existing building. Regardless, this business would receive the same relocation benefits of the other displaced businesses and would not bear disproportionate impacts from the project. None of the affected businesses appealed the Glenwood Refinement Plan decision. Outreach to these businesses has continued throughout development and their comments and concerns have been considered.

- Commenter argues that the proposed project should be classified as an EIS because it will include Bus Rapid Transit Stations outside of the existing right of way. Commenter relies upon Section 771.115 (4) that provides as examples of projects that are typically classified as an EIS. Included in that example is “new construction or extension of a separate roadway for busses or high occupancy vehicles not located within an existing highway facility.”

ODOT response: Franklin Boulevard is an existing road upon which Bus Rapid Transit, and its associated stations and pull-out lanes, is run. The proposed project is not proposing a new alignment for the Bus Rapid Transit and would not construct a dedicated Bus Rapid Transit lane.

- Commenter argues that categorizing the proposed project as a CE is contrary to case law. Commenter relies upon a 2000 case that developed a fully direction interchange upon a Superfund Site and required 500,000 tons of fill.

ODOT response: Commenter argues that the acquisition and relocation of 19 businesses is equivalent to the construction of an interchange over a Superfund site. The project team reviewed and considered the impacts associated with the project. That review identified right of way impacts to the 19 businesses requiring relocation and the consideration/avoidance of locally important businesses. Because those impacts can be mitigated, and there are no other significant impacts, there is no equivalent reason to conduct an EIS.

2. Commenter asserts that the city is intentionally seeking a Category Exclusion to avoid the EA/EIS process.

- ODOT response: The City recognizes that the decision to categorize the proposed project is a decision for the federal officials (FHWA). The City worked diligently with the local community, including businesses, to minimize and avoid impacts while maintaining the design alternative developed through the rigorous Glenwood Refinement Plan process. The City coordinated with FHWA on a preliminary determination that past and planned efforts prevented the proposed project from rising to the level of significant under NEPA. There is no indication that the City tried to influence the decision making of the federal officials. A final NEPA decision by FHWA was not made during the coordination process. The City mistakenly presumed that coordination constituted an approval and put a statement to that effect on their project website. When that statement was discovered by FHWA, it was brought to the City’s attention and was corrected (August 2016).

3. Commenter argues that the proposed project purpose and goals are incorrect.

- Commenter argues that the City’s goal to maintain the hybrid multi-way boulevard/urban design concept is in error.

ODOT response: The city has an adopted refinement plan that includes this element in the plan. The city’s project goal matches its Transportation System Plan and its

Comprehensive Plan. This is consistent with the requirements of 40 CFR Section 1502.14.

- Commenter argues that reducing the impacts of the proposed project to limit the NEPA review is inappropriate.

ODOT response: A purpose of NEPA is to disclose adverse impacts and to reduce those impacts. Developing projects to intentionally reduce impacts is consistent with the goals and objectives of NEPA. The categorical exclusion classification is allowed for projects that do not have significant environmental impacts, as determined by the approving Federal officials.

- Commenter argues that because the proposed project creates significant additional mobility that may serve the corridor for at least 20 years it is overbuilt and less impactful alternatives are available.

ODOT response: NEPA requires that projects be able to accommodate traffic forecasts for the design year (2035). The design year is typically set to accommodate a minimum of a 20-year period from the expected date of completion of the facility (Title 23 United States Code, Highways Section 109 Standards). Projects can be and are designed to accommodate traffic for longer periods. See Purpose and Need for the proposed Project on pages 1 and 2 of the Categorical Exclusion document.

4. Commenter provides a series of arguments as to why he believes the proposed project should be classified as something other than a categorical exclusion.

- The decision to classify a project is a decision for FHWA. These comments will be forwarded to FHWA in advance of the decision making for consideration.

5. Commenter argues that the ODOT office of Civil Rights should be involved because the proposed project will have an adverse impact to the residents of Glenwood. He argues that the residents of Glenwood are primarily low income and should be protected from disproportionate impacts from the project.

ODOT response: The environmental justice analysis is required to be consistent with Presidential Executive Order 12898 (Clinton, 1994) USDOT Order 5610.2 and FHWA Order 6640.23 and the Oregon State legislature Senate Bill 420 enacted August 8, 2007. Environmental Justice requires an evaluation that a project will not likely result in disproportionately high and adverse effects to minority and/or low income populations. As discussed in the Categorical Exclusion, the right of way impacts will cause 19 businesses to relocate and no residents will be displaced or relocated. None of these businesses have been identified as being owned by low income owners. One of the 19 businesses was identified as minority owned. Despite that business being in conflict with current zoning requirements, and establishing residency against the City's disapproval, this business will still receive all relocation benefits afforded the other 18 businesses. The proposed project was modified to avoid the locally important convenience store. There are no right of way impacts to residences in the area that the Commenter is

concerned with. Instead, the concern seems to be the effect of the implementation of the Glenwood Refinement Plan to these same populations. Commenter argues that implementation of the plan will create pressure for redevelopment of the residential areas. The Glenwood Refinement Plan is a separate land use decision adopted by the City. Any concerns regarding implementation of that plan should have been raised at the time the plan was adopted. The planned improvements to this corridor are consistent with the vision of that plan.