

## **NOTICE**

On March 30, 2023, the Director of the Oregon Department of Transportation (“ODOT”) will issue a determination that its statewide tolling program is not a “program affecting land use” and therefore does not fall within the agency’s state agency coordination duties under ORS 197.180, OAR 660, division 030 and OAR 731, division 015. ODOT shall hold a public hearing before this determination on the February 28, 2023 from 1:00 pm to 3:00 pm the opportunity to provide oral comment shall be provided and may be attended remotely at:

<https://us02web.zoom.us/j/84415662265?pwd=TjVJTjVvUUZEWHFDNnIyU1R5SndrUT09>

Written comments shall also be permitted and may be submitted to Roseann O’Laughlin by March 15, 2023, at [OHPmanager@odot.oregon.gov](mailto:OHPmanager@odot.oregon.gov). This notice is given pursuant to OAR 660-030-0075(3)(a)(A)(B). The Director’s final determination shall be made not less than 45 days from the date this notice is submitted to DLCD for its review pursuant to OAR 660-030-0075(3)(a).

### **DESCRIPTION OF THE TOLLING PROGRAM**

#### **A. Legal framework and statewide policies for ODOT’s implementation of a tolling program to generate funding for transportation infrastructure.**

Roadway pricing mechanisms are used to pay for specific high-cost infrastructure, to achieve congestion reduction, or to accomplish a combination of these goals. Tolls refer to roadway pricing that focuses on creating revenue for the construction of infrastructure. Congestion pricing (variable rate tolling) is focused on outcome-based mechanisms targeting a desired performance on a roadway, segment, or area to achieve a reduction in congestion.

For Oregon, tolling is an important resource that must be considered to fund an efficient, safe, and well-maintained system of highways. ORS 383.001(1). In 2017, with the passage of House Bill 2017, the legislature made clear that ODOT needed to exercise its tolling authority. House Bill 2017 directed the Oregon Transportation Commission (“OTC”) to pursue and implement value pricing on I-5 and I-205 in the Portland metropolitan area. In 2021, the Oregon Legislature passed HB 3055 further supporting the implementation of a tolling program by extending the footprint of tolling on I-5 to

include the Boone Bridge and Seismic Improvement Project.<sup>1</sup> The legislature's intent that ODOT relies on tolling to fund needed transportation projects is made clear in ORS 383.150, which states that the OTC "shall establish a toll program" and such program shall be established to manage congestion and partially or wholly fund the construction, operation or maintenance of a highway. ORS 383.150(2)(a) and (b).

ODOT's authority to toll and its attempt to structure a program around tolling began well before the 2017 legislative mandates. As early as 1990, ODOT identified toll bridges as an operational program falling within the Highway Division, Operations Program in its State Agency Compliance Program.<sup>2</sup> Pursuant to ORS 383.015(2), OTC adopted rules setting out the procedures for evaluating toll projects and rates. These rules are found in OAR 731, Chapter 040, and entitled "Tollway Projects."

In addition to its administrative rules, the Oregon Transportation Plan ("OTP") provides policy direction regarding tolling. The Oregon Highway Plan ("OHP") was amended on January 12<sup>th</sup>, 2023 to update tolling and pricing policies. These amendments form the foundation for when and where tolling and/or congestion pricing should be considered and outlines the considerations for use of the revenue and the setting of rates. However, the OHP does not direct tolling to be implemented on any specific project or section of highway, nor does it establish any specific toll rate. These functions are accomplished by the OTC using a process described in the tolling administrative rules.

Federal law also plays a significant role in ODOT's authority to toll. Much of what Oregon can do with tolling is governed by federal law as the highways where tolling will occur are on the federal highway system. Generally, states are limited in their ability to implement tolling on existing highways that were built with federal funds, such as the interstate system (I-5, e.g.) and other federal aid highways (US-26, e.g.). Specific provisions of 23 United States Code ("USC") section 129 allow a state to implement tolling to generate revenue for certain kinds of rehabilitation or reconstruction projects, such as a bridge replacement/upgrade.

## **B. Program Details**

Pursuant to the legislature's mandate, ODOT has worked with local, regional, state, and federal partners to plan for tolling and congestion pricing on several proposed projects in the Portland Metro area. As such, ODOT is now ready to implement its Toll Program. ODOT's Toll Program will consist of the necessary processes and systems to set toll

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<sup>1</sup> The provisions of House Bills 2017 and HB 3055 are codified in the Oregon Revised Statutes under Chapter 383 – Tollways.

<sup>2</sup> See, State Agency Compliance Program submitted to the Land Conversation and Development Commission in 1990 and subsequently certified. The reference to toll bridges is on page 2-10. A more complete discussion regarding ODOT's state agency compliance program is set forth below.

rates, establish toll user accounts, collect toll revenue, manage toll equity programs (such as low income and other programs that may provide discounts or exemptions to certain users), enforcement, and other functions necessary to run a toll system – commonly referred to as the “back room” functions.

When implemented, a project under Oregon’s tolling program will consist of technology that collects toll data electronically, with payments occurring after the fact, so drivers would not experience any need to stop at a tollbooth. Rather, the data collection equipment that includes antennae, cameras, lights, and other sensors would be mounted on toll gantries spanning the roadway and would either (1) read a driver’s toll account transponder (a small sticker placed on the windshield), which results in a transaction on the corresponding account, or (2) capture a picture of a vehicle’s license plate, which results in an invoice being sent to the registered owner of the vehicle. As other technologies emerge, ODOT will adapt to incorporate those into its Toll Program. For example, connected vehicles may be capable of transmitting location information that shows when it is in a toll zone. As Oregon’s toll authority, OTC will set toll rates, policies (including discounts and exemptions), price escalation, and dispute resolution processes. If tolling is approved, OTC would ultimately set toll rates at levels sufficient to meet all financial commitments, fund project construction and maintenance, and manage congestion. The OTC may also determine if and when it would enter into a public-private partnership to do these functions.

The Toll Program does not include any of the physical infrastructure on a highway necessary to implement an electronic toll collection system, such as signs or other structures necessary to install transponder readers, cameras, or other features. Whatever physical infrastructure may be needed to implement toll collection will be implemented through ODOT’s construction program and any land use impact will be determined as any other construction project. The Toll Program is limited to the revenue collection systems (including establishing and amending rates) and the oversight of those collections. This program is about the creation of additional revenue necessary to pay for transportation infrastructure and is a tool to manage transportation system demand to achieve a congestion reduction. Currently, all ODOT programs that generate revenue (such as fuel taxes, weight-mile tax, OReGO, and DMV fees) are programs that do not affect land use. The Tolling Program is a revenue-generating program, the same as these other ODOT programs.

### **STATE AGENCY COORDINATION PROGRAM REQUIREMENTS**

ORS 197.180(4) requires all state agencies to submit to the Land Conservation and Development (“LCDC”) the agency’s rules and summaries of plans and programs that affect land use along with a program for coordination with local governments. Pursuant

to this requirement, ODOT submitted the “Oregon Department of Transportation State Agency Coordination Program” to LCDC on September 24, 1990 (“SAC Program”).<sup>3</sup> The SAC Program describes ODOT’s organizational structure, gives a brief explanation of the agency’s programs, and identifies the types of activities within each program that may significantly affect land use and the process the agency will follow for coordination for each activity.

The SAC Program identifies program activities that “either carry out or are used to make decisions to carry out one or more activities that are regulated by the statewide planning goals or acknowledged comprehensive plans.” These activities are presently listed in OAR 731-015-0035:

- (1) Enlarging an existing transportation facility to increase the level of transportation service provided, relocating an existing transportation facility, or constructing a new transportation facility.
- (2) Constructing a new accessory facility, enlarging an existing accessory facility, or significantly changing the use of an existing accessory facility.
- (3) Changing the size of land parcels through the sale of property.
- (4) Altering land or structures in a way that significantly affects resources or areas protected by the statewide planning goals or acknowledged comprehensive plans. Examples include:
  - (a) Placing or disposing of materials in wetlands, waterways, or floodplains;
  - (b) Structurally stabilizing shore lands by placing riprap or by other means;
  - (c) Draining wetlands by ditching or by other means;
  - (d) Demolishing or altering a historic bridge or other historic structure;
  - (e) Removing riparian vegetation.

The SAC Program further identifies different specific activities and sets forth a process that the agency must follow for each activity. For example, OAR 731-015-0045, 731-015-0055 and 731-015-0065 address the agency’s adoption of land use planning documents. OAR 731-015-0075 and 731-015-0085 address the agency’s implementation of specific transportation projects that will significantly affect land use.

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<sup>3</sup> ODOT’s SAC Program can be found at [odot.sac.pdf\(oregon.gov\)](http://odot.sac.pdf(oregon.gov)).

The concept of tolling as a funding mechanism for transportation improvements is a revenue and demand management tool (pricing) that does not fall within any of the identified land use categories or the more specific procedural rules. However, as tolling was not specifically addressed in ODOT's original SAC Program and the Tolling Program is now being developed as a new statewide program, ODOT has determined that it must specifically identify its Tolling Program and follow the process in OAR 731-0015-0135 for determining that the Tolling Program does not significantly affect land use.

Under OAR 731-015-0135, when amending a rule or adopting a new program:

- (1) The Commission and Department shall follow the procedures in OAR 660-030-0075 to assure that new or amended rules and programs comply with the requirements of ORS 197.180 and OAR chapter 660, division 30.
- (2) The Department shall determine whether new or amended rules and programs affect land use pursuant to OAR 660-030-0005(2) and 731-015-0035.
- (3) This section shall not apply to the adoption of temporary rules or programs.

As discussed in the following sections of this notice and pursuant to the procedural and substantive considerations required by OAR 731-015-0135, ODOT seeks to make a final determination that the Tolling Program is not a program that will significantly affect land use.

**DETERMINATION THAT THE TOLLING PROGRAM IS NOT  
A PROGRAM AFFECTING LAND USE UNDER OAR 731-015-0135(2)**

**A. The Tolling Program is not a rule or program affecting land use as defined by OAR 660-030-0005(2).**

As required by OAR 731-015-0135(2), ODOT intends to issue a final determination that the Tolling Program is not a program affecting land use as that term is defined by OAR 660-030-0005(2)(a) as demonstrated by the following responses.<sup>4</sup>

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<sup>4</sup> OAR 660-030- 0005(2) provides:

- (2) "Rules and Programs Affecting Land Use":
  - (a) Are state agency's rules and programs (hereafter referred to as "land use programs") which are:
    - (A) Specifically referenced in the statewide planning goals; or
    - (B) Reasonably expected to have significant effects on:
      - (i) Resources, objectives, or areas identified in the statewide planning goals; or
      - (ii) Present or future land uses identified in acknowledged comprehensive plans.

1. *Is ODOT's Tolling Program specifically referenced in the statewide planning goals?*

No. There is no mention of tolling or terms commonly used in its place, such as pricing, in any of the goals, including transportation planning (goal 12).

2. *Is ODOT's Tolling Program reasonably expected to have significant effects on resources, objectives, or areas identified in statewide planning goals?*

No. As discussed above, ODOT considers the tolling program as a revenue and demand management program. As a revenue stream, the tolling program is no different from fuels taxes, weight/mile taxes, and other transportation fees, which are not land use actions. Additionally, pricing the system to help reduce demand is a type of transportation demand management program, no different than reduced transit fare programs, carpools, etc. These points are further explored below.

Tolling is a tool that will help generate revenue to supplement other revenue sources for the construction, operation, and maintenance of the State's transportation system. State agency mechanisms for raising funds are routinely recognized as fiscal tools that do not significantly affect land use. For example, as early as 1899, the Oregon Supreme Court viewed the addition of a turnpike charging a toll to a state highway as nothing more than "a change of mode in sustaining the road and not a change of use" (*Huddleston v City of Eugene*, 34

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(b) Do not include state agency rules and programs, including any specific activities or functions which occur under the rules and programs listed in paragraph (2)(a)(A) of this rule, if:

(A) An applicable statute, constitutional provision, or appellate court decision expressly exempts the requirement of compliance with the statewide goals and compatibility with acknowledged comprehensive plans; or

(B) The rule, program, or activity is not reasonably expected to have a significant effect on:

(i) Resources, objectives, or areas identified in the statewide goals; or

(ii) Present or future land uses identified in acknowledged comprehensive plans; or

(C) A state agency transfers or acquires ownership or an interest in real property without making any change in the use or area of the property. Action concurrent with or subsequent to a change of ownership that will affect land use, or the area of the property is subject to either the statewide goals or applicable city or county land use regulations.

(c) A final determination of whether or not an agency rule or program affects land use will be made by the Commission pursuant to ORS 197.180 and OAR chapter 660, division 30.

Or 343, 356 (1899). Nearly a century later, the Court of Appeals addressed fiscal tools in the land use context, holding that taxes and other fiscal measures are not subject to view for compliance with the land use planning goals – even if those measures have clear potential effects on land use (*Springer v LCDC*, 111 Or App 262, 263 (1992) *rev denied* 313 Or 354 (1992)).

Implementing, congestion pricing will function as a demand management strategy, managing the demand for the system and operations of the system so that the infrastructure can perform closer to its intended efficiency. As a demand management tool, congestion pricing only changes travel behavior and reduces or delays the need for adding vehicular capacity, but it does not change the use of the highway or any of its appurtenances. OAR 660-012-0005(7) (defining demand management); see also Edward J. Sullivan, *The Connection Between Land Use and Transportation: The Oregon Experience*, 48 TRB Law 839, 867 (2016). Demand management is an operational strategy to manage an existing transportation facility and is not a land use strategy, nor is it considered a plan for a highway facility. Tolling and/or congestion pricing does not change, alter, or enlarge a highway facility. Tolling and/or congestion pricing does not affect a resource, objective, or area identified in any statewide land use planning goal.

3. *Is ODOT's Tolling Program reasonably expected to have a significant effect on present or future land uses identified in acknowledged comprehensive plans?*

No. As explained above, tolling is primarily a fiscal tool and secondarily a demand management strategy and will not have a significant effect on land use. As described in #2 above, the generation of revenue has already been shown and agreed to as not impacting land use. Similarly, as above, non-infrastructure Transportation Demand Management<sup>5</sup> strategies are also not considered to impact land use. Generating more or less revenue has does not affect existing or future planned land uses. Similarly, congestion pricing, as a demand management tool, helps manage the vehicular demand to the roadway network to help improve the efficiency and safety of highways and delay or potentially eliminate the need for adding vehicular capacity. The net effect of both tolling and/or congestion pricing is to help communities meet their land use plans by efficiently utilizing the roadway system, promoting more trips by walking/biking/transit, and creating more revenue for key planned infrastructure (consistent with local agencies comprehensive plans).

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<sup>5</sup> Transportation Demand Management is a long-standing program within ODOT and for more information about this program please refer to the Transportation Operations Policy Plan.

4. *Is ODOT's Tolling Program expressly exempted by statute, constitutional provision, or appellate court decision?*

No. The legislation enabling the tolling program (HB2017 and HB3055) did not address land use or agency coordination in any way. Tolling is not addressed by the Constitution or any appellate court decision.

5. *Is ODOT's Tolling Program reasonably expected not to have a significant effect on land use, converse of #3, above?*

Yes. As described above, it is reasonably expected that ODOT's tolling program will not have a significant effect on land use.

6. *Does ODOT's Tolling Program involve any transfers or acquisition of ownership or interest in real property or any change in the use or area of a property?*

No. As previously noted, ODOT's Toll Program does not include the physical construction of tolling equipment on a highway. Any physical construction is part of the ODOT construction program. The ODOT Toll Program is only the revenue collection and management functions for revenue and/or pricing to reduce congestion by managing system demand. Therefore the Toll Program is not expected to require any land or property acquisition.

7. *Has LCDC made a final determination that the Tolling Program is or is not a land use program under OAR 660-030-005(2)(c)?*

No, because this determination is not required. OAR 660-030 0005(2)(c) provides that "a final determination of whether or not an agency rule or program affects land use will be made by the Commission pursuant to ORS 197.180 and OAR Chapter 660, division 30." OAR 660-030-0075(5) also addresses a final determination and provides, in effect, that if DLCD determines ODOT has demonstrated the Tolling Program is not a land use program pursuant to OAR 660-030-0075(2)(a), (b) or (c), ODOT may conclude DLCD has found the Tolling Program satisfies ORS 197.180 and OAR Chapter 660, division 30. Furthermore, the new program "need not be submitted for certification review." If, as ODOT requests, DLCD issues comments that ODOT has sufficiently shown the Tolling Program is not a land use program, then under OAR 660-030-0075(5), ODOT is not required to seek further review by DLCD or LCDC.

**B. The Tolling Program is not an activity which significantly affects land use under OAR 731-015-0035**



OAR 731-015-0035, quoted above, sets out four general categories that ODOT identified in 1990 as those activities that “significantly affect land use.” The Tolling Program does not reasonably fit within any of these identified categories. The Tolling Program is a fiscal management tool intended to create revenue to help fund transportation projects as well as manage demand on the state Highways. The program is an administrative mechanism to collect toll revenue and manage congestion, concepts that, by themselves, do not include activities that will result in structural modifications in existing or new transportation facilities or changes to the footprint where the infrastructure is contained.

The construction of an infrastructure to collect tolls may trigger local land use requirements and ODOT intends to comply with land use requirements on a project level basis. However, the Tolling Program as a statewide program does not fall into any of the categories identified as those that will significantly affect land use in OAR 731-015-0035

**COMPLIANCE WITH THE PROCESS FOR DETERMINING THAT A DETERMINATION THAT THE TOLLING PROGRAM IS NOT A PROGRAM AFFECTING LAND USE PURSUANT TO OAR 731-015-0135(1)**

OAR 731-015-0135(1) requires OTC and ODOT to follow the procedural requirements for reviewing new programs set forth in OAR 660-030-0075 to ensure that such programs comply with an agency’s coordination requirements under ORS 197.180 and OAR chapter 660, division 30.<sup>6</sup> OTC and ODOT have satisfied the relevant requirements as follows:

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<sup>6</sup> OAR 660-030-0075 provides:

**[660-030-0075](#)**

**Review of Amendments to Agency Rules and Programs**

- (1) The purpose of this rule is to assure that new agency rules and programs or amendments to existing land use programs of certified state agencies comply with the requirements of ORS 197.180 and OAR chapter 660, division 30. This rule shall not apply to the adoption of temporary agency rules or programs.
- (2) A notice from a certified agency shall provide information sufficient to demonstrate that the proposed new or amended rule or program is one of the following:
  - (a) Is not an agency land use program; or
  - (b) Is an agency land use program and is covered under the agency’s procedures pursuant to OAR 660-030-0060(4)(d) for assuring goal compliance and comprehensive plan compatibility for new or amended agency land use program; or
  - (c) Is an agency land use program but is not covered under the agency’s procedures under OAR 660-030-0060(4)(d). An agency’s notice must explain how the agency shall assure goal compliance and comprehensive plan compatibility for the proposed new or amended land use program.

1. *OAR 660-030-0075(3)(a)(A) and (B): ODOT shall submit notice to DLCD as part of its adoption procedures written notice of ODOT's pending action at least 45 days before the action is to occur. The Notice shall identify the specific date, time, and location of the agency's anticipated action and describe the manner in which written and oral comment can be submitted.*

ODOT will make its final determination that the Tolling Program is not a program affecting land use on March 30, 2023. This final decision will take place at least 45 days after this notice is submitted to DLCD for a review pursuant to OAR 660-030-0075(3)(a).

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(3) Department review in response to a notice from a certified agency under section (2) of this rule shall be as follows:

(a) The agency shall submit to the Department, pursuant to agency rule-making under ORS 183 or other applicable adoption procedures, a written notice of the agency's pending action. Such notice shall be received by the department not less than 45 days before the agency's action is to occur and shall:

(A) Identify the specific date, time, and location of anticipated agency action;

(B) Describe the manner in which written and oral comment on the proposed action can be submitted to the agency;

(C) Provide a copy or a description of the proposed new or amended rule or program; and

(D) Describe how the proposed action addresses subsection (2)(a), (b), or (c) of this rule, as appropriate.

(b) Upon receipt of a notice from an agency as described under subsection (3)(a) of this rule, the Department shall review the proposed action. In accordance with paragraph (3)(a)(A) of this rule, the Department in writing may provide comments to the agency that the proposed action either:

(A) Satisfies subsection (2)(a), (b), or (c) of this rule; or

(B) Does not satisfy subsection (2)(a), (b), or (c) of this rule until more information is provided by the agency or until the proposed rule or program adequately incorporates the Department's suggested revision or modification.

(4) An agency proposing to adopt a new or amended rule or program under this rule shall provide written notice of the same type given to the Department under subsection (3)(a) of this rule to the following:

(a) Persons who in writing to the agency request notice about proposed rule or program actions pursuant to this rule; and

(b) Local governments who rely upon the certified agency's rule or program for compliance under OAR 660-030-0085 and are affected by the proposed action.

(5) Except as provided in section (6) of this rule, any agency which does not receive any comment from the Director under paragraph (3)(b)(B) of this rule prior to taking its action, may deem that the Department finds the new or amended rule or program to have satisfied ORS 197.180 and OAR chapter 660, division 30. Such adopted new or amended rules or programs need not be submitted for certification review.

(6) If an agency adopts a new or amended rule or program without supplying the information including any suggested modifications identified pursuant to paragraph (3)(b)(B) of this rule, the Department may require that the amended rule or program be submitted for certification review in the same manner as provided in OAR 660-030-0045 through 660-030-0055.

Prior to making the final decision, ODOT will host a public hearing on February 28, 2023, from 1:00 pm to 3:00 pm, at which time oral testimony may be given by any interested parties. Written comments may also be submitted to Roseann O’Laughlin at [OHPmanager@odot.oregon.gov](mailto:OHPmanager@odot.oregon.gov) by March 15, 2023. This notice satisfies the requirements of OAR 660-030-0075(3)(a)(A) and (B)

2. *OAR 660-030-0075(3)(a)(C): ODOT is required to provide a description of the proposed new program.*

This notice contains a description of the new proposed program and therefore satisfies OAR 660-030-0075(3)(a)(C).

3. *OAR 660-030-0075(3)(a)(D): ODOT is required to provide sufficient information to demonstrate that the new program is not a land use program.*

ODOT has established that the Tolling Program does not fall within the definition of a “program affecting land use” under OAR 660-030-0005(2). For that reason, ODOT has sufficiently demonstrated that its Tolling Program is not a land use program and has satisfied OAR 660-030-0075(3)(a)(D).

4. *OAR 660-030-0075(4)(a) and (b): ODOT is required to confirm that notice has been provided in writing to the appropriate persons and entities.*

OAR 660-030-0075(5) requires that written notice be given to the following persons:

- (a) Persons who in writing to the agency request notice about proposed rule or program actions pursuant to this rule; and
- (b) Local governments who rely upon the certified agency’s rule or program for compliance under OAR 660-030-0085 and are affected by the proposed action.

ODOT requested a list from DLCD of persons who have requested notice of any proposed rules or program actions that would be submitted to DLCD for review to determine if the new rule or program significantly affects land use. DLCD has confirmed that no persons have requested notice in writing. Furthermore, as the Tolling Program is new, there are no local governments that must receive notice under OAR 660-030-0075(4)(b) and OAR 660-030-0085. However, ODOT will provide written notice, concurrent with this memo, to the Association of Oregon Counties, League of Oregon Cities, and Oregon Metropolitan Planning Organization Coalition as well as issue a public press release that ODOT intends to take this action.

5. *OAR 660-030-0075(5): An agency that does not receive comment from DLCD requesting additional information or suggesting modifications may deem its program to have satisfied ORS 197.180 and OAR Chapter 660, division 30 without further need for certification by LCDC.*

ODOT requests that DLCD find that this notice is complete and that no further modifications are necessary to the Tolling Program.

**CONCLUSION AND REQUEST FOR AFFIRMATION FROM DLCD THAT THE TOLLING PROGRAM IS NOT A PROGRAM AFFECTING LAND USE.**

In summary, the Oregon Legislature directed the Oregon Department of Transportation to establish a tolling program. The work to establish this program has been underway since 2017. Implementation activities are imminent. In compliance with OAR 731-015-0135, ODOT is following OAR 660-030-0075 to determine whether this new program is a program affecting land use.

As this document has shown, tolling is not specifically referenced in the statewide planning goals; tolling is not reasonably expected to have a significant effect on resources, objectives, or areas identified in statewide planning goals; the tolling program is not reasonably expected to have a significant effect on present or future land uses identified in acknowledged comprehensive plans; and, the tolling program does not involve any transfers or acquisition of ownership or interest in real property or any change in the use or area of a property.

ODOT has fulfilled the requirements in OAR 660-030-0075 for communication and notification. This documentation has been submitted more than 45 days in advance of the anticipated agency action on March 30, 2023. ODOT has provided notice in writing to the appropriate persons and entities. On this basis and for all the reasons stated in this Notice, ODOT requests that pursuant to OAR 660.030.0075(3)(b)(A), DLCD issue a determination that the Tolling Program is not a program affecting land use pursuant to OAR 660-030-0005(2).