

Eunice Kim

From: LEDET Elizabeth <Elizabeth.L.LEDET@odot.state.or.us>
Sent: Friday, May 04, 2018 12:19 PM
To: Eunice Kim
Cc: ROCK Michael D
Subject: FW: Salem, Oregon - FHWA Grant \$289k - No Section 106 Review

From: Sarah Stokely <sstokely@achp.gov>
Sent: Friday, May 4, 2018 12:15 PM
To: BELL Christopher S *Historian <Christopher.S.BELL@odot.state.or.us>; LEDET Elizabeth <Elizabeth.L.LEDET@odot.state.or.us>
Subject: FW: Salem, Oregon - FHWA Grant \$289k - No Section 106 Review

Chris and Elizabeth,

Thank you for your assistance with this inquiry. Please see ACHP's response below.

Have a good weekend,

Sarah

From: Sarah Stokely
Sent: Friday, May 04, 2018 2:19 PM
To: 'jlpooles56@gmail.com'
Subject: RE: Salem, Oregon - FHWA Grant \$289k - No Section 106 Review

Mr. Poole,

I wanted to provide you with a summary of my inquiry regarding the applicability of a Section 106 review for the State Street Corridor Plan, which is a planning study funded partly by the Oregon Transportation and Growth Management (TGM) Program, and explain how we came to the conclusion that a Section 106 review is not required for this planning study.

The Federal Highway Administration (FHWA) and the Oregon Department of Transportation (ODOT) ultimately make the final decision about the applicability of a Section 106 review for their projects. However, the Advisory Council on Historic Preservation (ACHP) can provide our opinion on this matter.

As part of this inquiry, I spoke to Ian Johnson at the Oregon State Historic Preservation, Christopher Bell (Historic Resources Program Coordinator at ODOT), and Elizabeth Ledet (ODOT TGM Coordinator). Additionally, the ACHP Office of General Counsel spoke with the Oregon Department of Justice (OR DOJ).

The ACHP researched how FHWA funded the TGM Program and how the TGM Program operates. The only federal funding for the State Street Corridor Plan came from this program.

The TGM Program is a joint program managed by the OR DOT and the Oregon Department of Land Conservation and Development (OR DLCD). FHWA funds this TGM Program through an interagency agreement (IAA). When a new interagency agreement between the OR DOT and OR DLCD for the TGM Program is developed, FHWA approves the IAA and releases federal funds to the program. This would be the point at which a Section 106 review, if applicable considering the program or activities have the potential to affect historic properties, would occur. Once the funds are released to the state program, FHWA has no further role, responsibility, or control over the use of the funds. While OR DOT may consult with FHWA on the IAA/Statement of Work, FHWA has no approval or control over selection of individual projects. FHWA obligates the funding for the entire program on a fiscal year basis. The reporting in the IAA to FHWA is to inform FHWA what the funds were used for; the required reporting OR DOT and OR DLCL provides to FHWA shows that the IAA is being fulfilled per its terms.

The IAA includes a statement of work (SOW), which FHWA reviews as part of its approval for funding. The SOW identifies program goals and structure as well as “projects,” the objective of which is to provide funds and services to help local jurisdictions prepare transportation and land use plans. The state solicits grant applications for each planning project and selects the recipients. The result of the funded work is the development of a plan which may contain suggestions as to general projects and possible funding to solve a problem or advance the objectives of the local jurisdiction. The plan may also contain recommendations for specific construction projects. Once the plan is complete, it is delivered to the local government who then decides whether or not to implement any, part, or all of the plan. The completion of the plan under the TGM does not mean recommendations contained therein would be carried out; it is up to the local government to make any and all zoning and implementation decisions.

Based on this information provided to ACHP, we conclude that this planning program/action is not the type of activity with the potential to affect historic properties and a Section 106 review is not required.

If you have further questions about our review and recommendations, please feel free to contact me and we can schedule a call.

Thank you,

Sarah

Sarah C. Stokely
Program Analyst
Advisory Council on Historic Preservation
Telephone: 202-517-0224
Fax: 202-517-6381
Email: sstokely@achp.gov

From: John L. Poole [<mailto:jlpoole56@gmail.com>]
Sent: Monday, April 23, 2018 9:09 AM
To: Sarah Stokely
Subject: Re: Salem, Oregon - FHWA Grant \$289k - No Section 106 Review

Dear Ms. Stokely,

The City of Salem Planning Commission will be hearing the matter next Tuesday, May 1, 2018. They continued the hearing from April 3rd for two purposes - 1) to further understand my claim that a Section 106 Review is warranted and to confer with the appropriate agencies, and 2) to ready, for immediate implementation, one of transportation alternatives should the commission adopt a specific alternative (4 lanes).

I'm writing now to inquire if you think there will be any word on the matter from the Federal Highway Administration or the Oregon Department of Transportation? I'm new to this area and not sure what your Office can and would do in this situation other than make an inquiry. Is there anything you can share with me?

Cordially,

John L. Poole

On 4/9/2018 4:41 AM, Sarah Stokely wrote:

Dear Mr. Poole,

I received your voicemail message on Friday April 6th. And, I am acknowledging receipt of this email.

I am on work travel this week, but I will start contacting FHWA Oregon Division this week about this undertaking. I will have more time early next week when I am back in the office to address your questions and concerns.

If I need additional information, I will be sure to contact you.

Thank you,

Sarah Stokely

Get [Outlook for iOS](#)

From: John L. Poole <jlpoole56@gmail.com>

Sent: Friday, April 6, 2018 7:52:14 PM

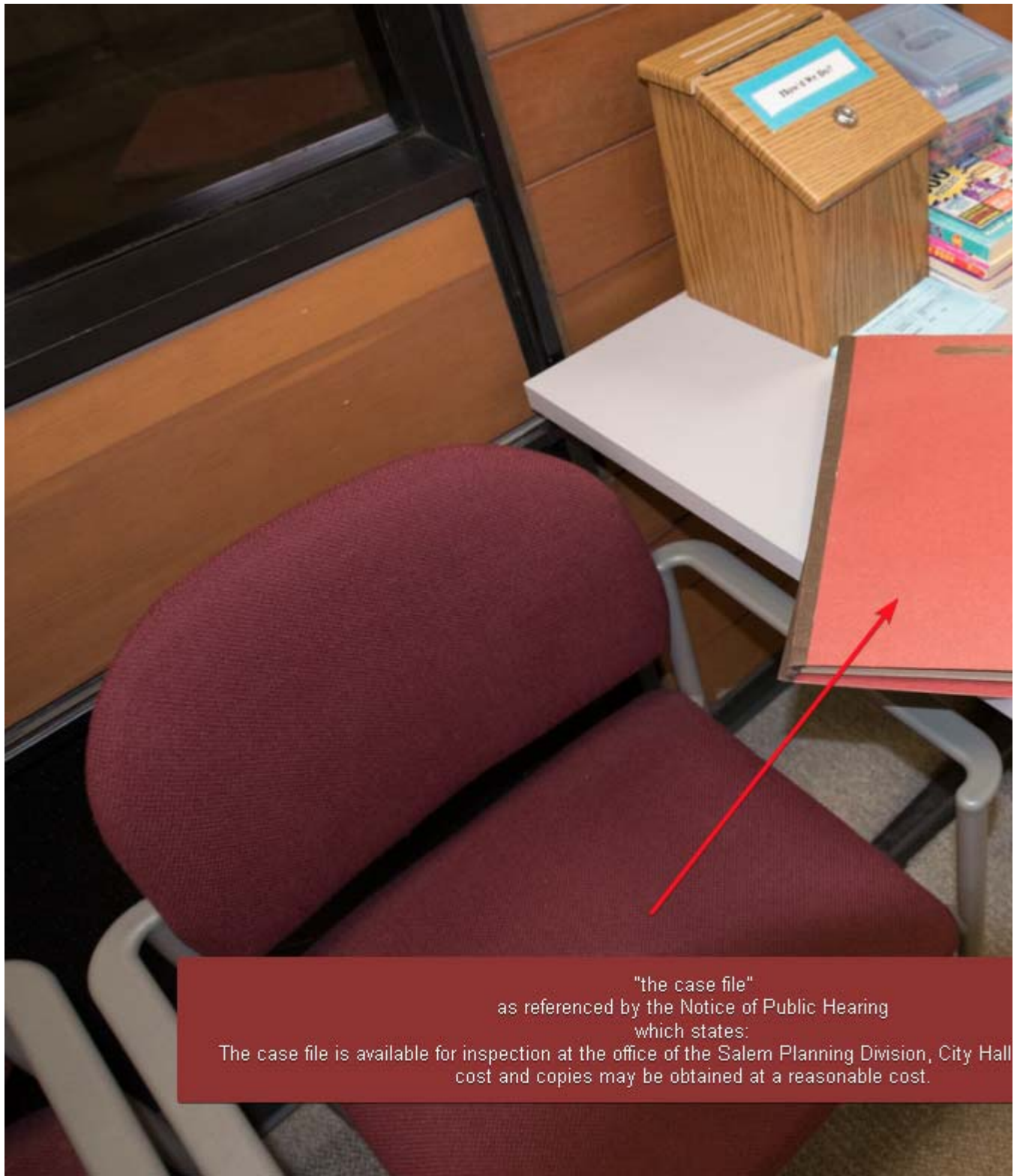
To: Sarah Stokely

Subject: Salem, Oregon - FHWA Grant \$289k - No Section 106 Review

(RRR)

Dear Ms. Stokely,

On Friday, April 6th, 2018 at 1:47 PM PDT, I left a 2 minute voice mail message on your extension about a \$289,950 Federal Highway Administration ("FHWA") grant to the Oregon State Department of Transportation ("ODOT") which, in turn, granted the monies to the City of Salem several years ago to fund a project **adjacent** to the Court-Chemeketa National Register District ("District"). Unfortunately, the records concerning this project are not readily available despite my attempt to visit the case file, and finally allowed to view "the case file", so I cannot say with certainty what percentage the federal funds represent, but I believe that this grant constitutes over 90% of the funding for this effort.



"the case file"
as referenced by the Notice of Public Hearing
which states:
The case file is available for inspection at the office of the Salem Planning Division, City Hall
cost and copies may be obtained at a reasonable cost.

I also believe the City of Salem plans to seek additional federal funding to build the infrastructure from this plan from at least two, possibly three federal agencies. See [Tier 2 Evaluation of the Street Design Alternatives State Street Corridor Plan](#) at pp. 56-57

In fact, City staff specifically carved out of the study boundary the District, allegedly at the behest of an un-named person (staff did not provide a name) and several residents within the

District at an undocumented meeting. My investigation has revealed there is no documented determination about the grant being an "undertaking" in any agency's files.

I wrote to the City of Salem, ODOT, and the Oregon State Historic Preservation Office ("SHPO") on March 28, 2018 at 2:39 PM asking:

So what happened to the Section 106 review?

I regret to say I have not received a satisfactory answer.

The project is named the [State Street Corridor Project](#). The effort is coming to a culmination now where the City's Planning Commission is about to pass a [resolution](#) that would accomplish the following:

- 1) Creating New Mixed-Use Zoning Districts;
- 2) Amending The Salem Area Comprehensive Plan Map,
- 3) Amending The Northeast Neighbors-South East Salem Neighborhood Plan Map,
- 4) Amending The Salem Zoning Map For Certain Properties Generally Located On State Street Between 12th Street And 25th Street;
- 5) Amending The Salem Area Comprehensive Plan To Adopt A New Street Design And Related Projects For State Street Between 12th Street And 25th Street;
- 6) Amending The Salem Revised Code

Here is a map showing the once rectangular study zone modified to exclude the District:



(Note that the State of Oregon's capitol building is about 3 blocks east of the District.)

Here is a [link](#) to the National Historic Preservation Act Section 106 Review Memorandum that I prepared for the City of Salem and goes to the details of why I believe a Section 106 Review is warranted.

On March 12, 2018, my wife and I requested the City of Salem City Council at its hearing on this matter to conduct a Section 106 review having its duly certified Historic Landmark Commission as a consulting party. Since March 12, 2018, and so far, there is no indication one will be forthcoming. Our request went unanswered by the Salem City Council who proceeded to promptly assign the matter to the Planning Commission for hearing on April 3rd without addressing our contention that a Section 106 Review or analysis is warranted.

The City cites an Agreement between SHPO and ODOT that the City believes "exempts" the City from performing a review. ODOT contends nobody has asked them, and SHPO contends it is ODOT's responsibility under an agreement where SHPO delegated its role to ODOT. All the while everyone is pointing to someone else or postulating interpretations unsupported by case law or regulation, the City of Salem is moving forward with the greatest haste to pass this ordinance. About 60 residents, mostly within the District, requested the Planning Commission to continue the hearing for another 90 days so that impacts could be assessed and mitigations considered, and the Planning Commission granted 30 days awaiting a decision from ODOT about a 106 Review and directing staff to ready one of the transportation alternatives so that the City of Salem is ready to jump into action when the legislation becomes law.

In the meantime, the Oregon State Historic Preservation Office has determined that a 106 review is not warranted citing their interpretation (again, not supported by any case authority or regulations):

Planning activities are exempt from Section 106 review because these desk-top exercises themselves do not result in an actual physical, auditory, or visual impact.

Nobody, except the Oregon State Historic Preservation Office, denies there will be impacts. For example, see the [Shadow Study](#) I prepared and/or the [3' video](#) demonstrating shadows cast. In fact, the president of the Salem Planning Commission admitted at the April 3rd hearing:

If we were to go with the road diet all the way out to 25th Street, do you think that that would direct a lot of or a portion of that traffic that is going away from State Street onto those side streets?

And I know right now they are blocked off, but, um, there may be a move in the future to open those.

Richard Fry, President of the Salem Planning Commission, April 3, 2018,
[Recording](#) of hearing 1'28'17"

The barriers Mr. Fry is referencing serve as **the physical western boundary** to the Court-Chemeketa National Register District ("District"). From the [Court-Chemeketa National Register District Nomination](#):

Public commitment to the stabilization of the district and the preservation of its residential nature has been considerable in recent years. The closures of Chemeketa streets were approved by the Salem City Council as part of a \$1 million funded street reversal project in downtown Salem. Federal funding was dependent, in part, on the money being used to reduce traffic impact on established residential neighborhoods, and traffic counts show that many fewer vehicles now pass Chemeketa than was the case before the closures were installed. Experimentation in 1987 to reduce the traffic impact along 17th street as well. Because 17th is connected to Mission street in the course of the Mission widening project the City Council has agreed to the experiment of re-striping 17th street north of Mission to three lanes in an effort to pull traffic flow away from the front lot on 17th. The re-striping occurred in July, 1986. Federal block grant rehabilitation projects have been

NPS Form 10-900-a
(8-86)

**United States Department of the Interior
National Park Service**

National Register of Historic Places Continuation Sheet

Section number 7 Page 2

invested in the neighborhood. Some 14 houses have been rehabilitated at an investment of \$192,035 since 1979. Additionally, Court Street received a major resurfacing in 1980 at a cost of \$23,000. Furthermore, the City has approved most of the District Residential Parking Permit area so that the streets are not overparked despite their location near the capitol and the State Street commercial area. Much of this local support is the result of the efforts of the strong neighborhood association representing the area. This is the Northeast Neighbors (NEN) Association, which was founded in 1974 and has actively supported the protection and preservation of the neighborhoods to the immediate northeast of downtown Salem.

Lastly, on March 30th at I submitted this request to the City Attorney's office for the City of Salem:

Message

May I speak today, Friday, March 30th, with a City attorney who either (1) would be assigned to advise the Planning Commission about an upcoming item on April 3rd, agenda item 6.1 "Code Amendment Case No. CA18-02 State Street Corridor Plan" and/or (2) have working knowledge of the National Historic Preservation Act 54 U.S.C. 306108 and 36 CFR 800?

Thank you.

Submitted 3/30/2018 @9:14 a.m.

John L. Poole
(not admitted to the Oregon Bar)

Attachment

There has been no response or acknowledgment.

I submit I have standing to come before your agency. 8 C.F.R. § 809(a) 2000. I am a homeowner of a contributing home to the District at the address below. I am requesting your office to intervene as soon as possible to initiate a Section 106 Review determination. 8 C.F.R. § 801 2000.

I believe that if the ordinances passes without a Section 106 Review, there will be significant impacts on historic structures, and possibly the entire District (if the western road barricades are removed). Property rights will accrue and any opportunity for mitigation of impacts will be extinguished and the issue of a 106 Review becomes moot. These federal funds *already have been consumed* to redevelop blighted properties without compliance of Section 106 and the rules promulgated thereunder. I submit these acts and recent conduct violates the spirit of the Nation Historic Preservation Act and the charge your office is entrusted with.

Thank you for your time and consideration,

John L. Poole

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John Laurence Poole
1566 Court ST NE
Salem OR 97301-4241
707-812-1323 office

--

John Laurence Poole
1566 Court ST NE

Salem OR 97301-4241
707-812-1323 office

Eunice Kim

From: JIM WIGINGTON <jwwig@msn.com>
Sent: Thursday, May 03, 2018 8:07 PM
To: Eunice Kim
Subject: State Street revisions

Just some quick ideas for the safety aspects of residents: adding some speed humps or bumps down the side streets would certainly curb some of the speeding vehicles around here. Also, increased police coverage on State Street would also be of great benefit. Kids race cars along there all the time and that is very dangerous. Additionally, preventing commercial trucks from using the side streets would cut down the noise and danger of these fast moving vehicles. We constantly see beer trucks, bread delivery trucks, etc. driving down our streets.

If u want to improve the area, I think doing smaller things that would benefit more people would have a far greater and positive effect on this area. Better lighting on the streets for example; it helps prevent crime and provides a greater degree of safety for people walking around. People want and need to feel safe in their neighborhood. There are many low income people in this area and while not trying to stereotype any certain group, most crime ridden areas are associated with that income group. We can't chase them off but we can have stricter law enforcement and engineer preventative measures into the area. No dark areas, no loitering, brighter lights, more police presence, all contribute to enhancement. Thank you for your consideration, Jim Wigington

Sent from my iPhone

Eunice Kim

From: John L. Poole <jlpoole56@gmail.com>
Sent: Wednesday, May 02, 2018 1:53 PM
To: Eunice Kim
Subject: Re: Recording of May 1st Hearing

Super. I'll come over tomorrow morning shortly after 8:00 a.m.

On 5/2/2018 1:52 PM, Eunice Kim wrote:

Hi John,

It is available now. Sorry for the confusion.

Eunice | 503-540-2308

From: John L. Poole [<mailto:jlpoole56@gmail.com>]
Sent: Wednesday, May 02, 2018 1:51 PM
To: Eunice Kim <EKim@cityofsalem.net>; Lisa Anderson-Ogilvie <LMAnderson@cityofsalem.net>
Cc: juliana.inman <juliana.inman@gmail.com>
Subject: Re: Recording of May 1st Hearing

Hi Eunice,

You wrote in the future tense, so please let me know when that has been accomplished and I'll plan to come by within 24 hours.

Thank you,

John

On 5/2/2018 1:41 PM, Eunice Kim wrote:

Hi John,

I will leave a CD with the audio from last night's meeting at the Planning Desk in Room 320.

Eunice | 503-540-2308

From: John Laurence Poole [<mailto:jlpoole56@gmail.com>]
Sent: Wednesday, May 02, 2018 8:35 AM
To: Eunice Kim <EKim@cityofsalem.net>; Lisa Anderson-Ogilvie <LMAnderson@cityofsalem.net>
Cc: juliana.inman <juliana.inman@gmail.com>
Subject: Recording of May 1st Hearing

Hi Lisa and Eunice,

May I have access to the recording of the hearing last night at your earliest convenience?

Thank you,

John

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John L. Poole

707-812-1323

jlpoole56@gmail.com

--

John Laurence Poole
1566 Court ST NE
Salem OR 97301-4241
707-812-1323 office

--

John Laurence Poole
1566 Court ST NE
Salem OR 97301-4241
707-812-1323 office

Eunice Kim

From: John Laurence Poole <jlpoole56@gmail.com>
Sent: Thursday, May 03, 2018 12:23 PM
To: Eunice Kim
Subject: Re: Request of ODOT Letter

Thank you for the clarification.

On Thu, May 3, 2018 at 12:11 PM, Eunice Kim <EKim@cityofsalem.net> wrote:

Hi John,

On March 29, I spoke with Naomi Zwerdling, the ODOT project manager for the State Street Corridor Plan project, and asked if ODOT would provide a determination as to whether a Section 106 review was required for the State Street project. I did not submit a formal letter with this request.

Best,

Eunice

Eunice | 503-540-2308

From: John L. Poole [mailto:jlpoole56@gmail.com]
Sent: Thursday, May 03, 2018 7:07 AM
To: Lisa Anderson-Ogilvie <LMAnderson@cityofsalem.net>; Eunice Kim <EKim@cityofsalem.net>
Subject: Request of ODOT Letter

Hi Eunice and Lisa,

Michael Rock's letter of April 30th provides:

On March 29, 2018, the City of Salem asked for a determination from the State as to whether a review under Section 106 of the National Historic Preservation Act is required as part of the State TGM grant to the City of Salem for the State Street Refinement Plan (SSRP).

May I have a copy of the March 29th communication referenced by Mr. Rock?

Thank you,

John

--

John Laurence Poole
[1566 Court ST NE](#)
Salem OR 97301-4241
707-812-1323 office

--

John L. Poole

707-812-1323
jlpoole56@gmail.com

Eunice Kim

From: John L. Poole <jlpoole56@gmail.com>
Sent: Friday, May 11, 2018 12:55 PM
To: LEDET Elizabeth
Cc: Eunice Kim; ROCK Michael D; KUNZE Lauri G; OFFICE OF CIVIL RIGHTS INFO REQUEST
Subject: Re: Public Records Request for contract #27454 WOC 09 PSR's

Thank you.

On 5/11/2018 12:22 PM, LEDET Elizabeth wrote:

I've grouped my responses

Grant Amount

- The amount in the contract with Parsons Brinkerhoff (PB) was \$259,530; the entire amount was disbursed.
- The City's amount was \$30,420; the entire amount was disbursed.
- The City's required match was \$32,695; the City reported \$39,739.31 in match.

Payment to PB

- I assume that PB received the remainder of the contract amount after the subconsultants were paid.

USASpending.GOV

- I'm not familiar with that website.

From: John L. Poole <jlpoole56@gmail.com>
Sent: Friday, May 11, 2018 9:21 AM
To: LEDET Elizabeth <Elizabeth.L.LEDET@odot.state.or.us>
Cc: KUNZE Lauri G <Lauri.G.KUNZE@odot.state.or.us>; Eunice Kim <ekim@cityofsalem.net>; OFFICE OF CIVIL RIGHTS INFO REQUEST <OCRINFOREQUEST@odot.state.or.us>
Subject: Re: Public Records Request for contract #27454 WOC 09 PSR's

(RRR)

Dear Ms. Ledet,

Your previous response identified \$75,342.25 of the \$289,950 grant. I would like to know how the remaining monies of \$239,607.75 were spent. Was \$239,607.75 paid to Parsons? Were monies paid to the City of Salem? Also, I tried looking up the grant at <https://www.usaspending.gov> and could not find it. Are there some Product/Service Codes, Award IDs, or NAICS codes attributed to the project that might help me locate the State Street Corridor Project?

Cordially,

John

On 4/19/2018 8:58 AM, LEDET Elizabeth wrote:

Mr. Poole,

Your public records request asked for how much the subconsultants were paid on this contract, which Susan provided. That PRR is now closed.

You mentioned a summary sheet at the end of your re-mail. Can you please detail what you want to see?

Elizabeth Ledet
TGM @ TDD
503-986-3205

From: John L. Poole <jlpoole56@gmail.com>
Sent: Monday, April 16, 2018 3:47 PM
To: OFFICE OF CIVIL RIGHTS INFO REQUEST <OCRINFOREQUEST@odot.state.or.us>
Cc: KUNZE Lauri G <Lauri.G.KUNZE@odot.state.or.us>; LEDET Elizabeth <Elizabeth.L.LEDET@odot.state.or.us>; Eunice Kim <ekim@cityofsalem.net>
Subject: Re: Public Records Request for contract #27454 WOC 09 PSR's

Hi Susan,

I digested all of the PDF files you sent to me as follows:

File	Column 18 "Amounts Paid This Period"				Notes	
	Urbsworks Bainbridge	Leland Consulting	Barney & Worth	Kittelerson		
27454 09 B33181 PSR Parsons Brinkerhoff 2016 03	\$3,000.00	\$1,040.00	\$8,930.00	\$3,312.00	\$6,948.00	
27454 09 B33181 PSR Parsons Brinkerhoff 2016 04		\$1,300.00				
27454 09 B33181 PSR Parsons Brinkerhoff 2016 05					\$3,922.00	
27454 09 B33181 PSR Parsons Brinkerhoff 2016 06						Cover letter only
27454 09 B33181 PSR Parsons Brinkerhoff 2016 07						Cover letter only
27454 09 B33181 PSR Parsons Brinkerhoff 2016 08						Cover letter only
27454 09 B33181 PSR Parsons Brinkerhoff 2016 12	\$600.00					
27454 W09 ODOT Summary Report of Subcontractors Paid 0217_Final	\$600.00				\$434.00	

27454 W09 ODOT Summary Report of Subcontractors Paid 0317_Final										All zero
27454 W09 ODOT Summary Report of Subcontractors Paid 0417_Final										All zero
27454 W09 ODOT Summary Report of Subcontractors Paid 0517_Final			\$3,070.00						\$29,225.82	
27454 W09 ODOT Summary Report of Subcontractors Paid 0617_Final									1710.43	
27454 W09 ODOT Summary Report of Subcontractors Paid 0717_Final	\$11,250.00									
27454 W09 ODOT Summary Report of Subcontractors Paid 0817_Final										All zero
	\$15,450.00	\$2,340.00	\$12,000.00	\$3,312.00	\$42,240.25	\$75,342.25				

This project received \$289,950 of funds from the Federal Highway Administration. I believe an additional \$25,000 came from another source bringing the total cost of this project to \$314,950 at a minimum. The above table represents a compilation of the files you kindly sent me earlier today and identifies \$75,342.25.

That leaves \$239,607.75 unaccounted for.

I want to know how the \$314,950 was spent. Is there a summary sheet that shows the total costs of this project? If a Commissioner or Councilmember were to ask "Where did the \$314,950 go?" -- what would you and/or the City of Salem show to answer that question?

Cordially,

John L. Poole

On 4/16/2018 2:06 PM, OFFICE OF CIVIL RIGHTS INFO REQUEST wrote:

Good Afternoon,

The requested public records and acknowledgement form are attached.

Thank you,

Susan Kindsvogel
 Programs Support Specialist
 ODOT Office of Civil Rights - MS 23
 3930 Fairview Industrial Dr NW

Salem, OR 97302
(503) 986-3299 phone
(503) 986-6382 fax

--

John Laurence Poole
1566 Court ST NE
Salem OR 97301-4241
707-812-1323 office

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John Laurence Poole
1566 Court ST NE
Salem OR 97301-4241
707-812-1323 office

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John Laurence Poole
1566 Court ST NE
Salem OR 97301-4241
707-812-1323 office

Eunice Kim

From: Eunice Kim
Sent: Monday, June 04, 2018 8:49 AM
To: 'John Laurence Poole'; Lisa Anderson-Ogilvie
Cc: juliana.inman
Subject: RE: State Street Corridor

Hi John,

We are still working to schedule the project to go before the Council. I think the earliest would be mid-July. I will send out an email to our interested parties list when a public hearing date is scheduled. You are on that list.

As for the process, there would be a second reading of an ordinance before it became effective.

Best,

Eunice | 503-540-2308

From: John Laurence Poole [mailto:jlpoole56@gmail.com]
Sent: Friday, June 01, 2018 12:13 AM
To: Eunice Kim <EKim@cityofsalem.net>; Lisa Anderson-Ogilvie <LMAnderson@cityofsalem.net>
Cc: juliana.inman <juliana.inman@gmail.com>
Subject: State Street Corridor

Dear Eunice and Lisa,

When will the State Street Corridor Plan be heard by the Salem City Council? What would be the earliest date it might be heard?

Also, if the Council were to adopt the proposed legislation, would there be a second reading reading and vote by the Council before it becomes law?

Thank you,

John

--

John L. Poole

707-812-1323
jlpoole56@gmail.com

1566 Court Street NE
Salem, Oregon 97301-4241

Tuesday,
June 5, 2018

Matthew Garrett, Director
Oregon Department of Transportation
matthew.l.garrett@odot.state.or.us

Mayor Chuck Bennett and Members of the Salem City Council
citycouncil@cityofsalem.net

BY EMAIL ONLY - Return Receipt Requested

Re: State Street Corridor Project - potential litigation

Dear Director Garrett, Mayor Bennett and Members of the Salem City Council,

On March 13, 2018, I lodged with the Salem City Council my concern that a review process under the National Historic Preservation Act ("NHPA") or the National Environmental Policy Act needed to be conducted. A review would identify the impacts to historic resources such as the National Register Court Chemeketa Residential Historic District ("District") and provide alternative mitigation measures giving the City, residents, and owners of historic homes a comprehensive report. My concern was ignored and the project was forwarded to the Planning Commission for action. My investigation revealed that City Staff made a change to the State Street Corridor Project boundaries to carve out the District. Moreover, staff's application for the federal grant failed to identify the District as a National Register district which would have alerted officials at the Oregon Department of Transportation, the agency administering funds from the Federal Highway Administration, that a qualified National Register historic district would be impacted.

Following the Council's lead, the City's Planning Commission ignored my further request for a Section 106 review under the NHPA and the matter now will be coming back to the City Council for consideration and enactment of the ordinances and plan amendments.

Unless there is a commitment to observe the NHPA, I am prepared to file a complaint in the United States District Court for the District

Director Garrett *et alia*
June 5, 2018
Page 2

of Oregon (Eugene Division) seeking among other remedies a preliminary injunction to maintain the status quo and a determination that the Oregon Department of Transportation ("ODOT") and the City of Salem conduct a Section 106 Review under NHPA. I have reviewed the confidential now-waived (after my request for disclosure) Attorney General's opinion and an analysis from the Advisory Council on Historic Preservation ("ACHP") and believe these divergent analyses, as well as the City of Salem's, are incorrect as a matter of law, especially within the 9th Circuit.

The National Historic Preservation Act is a narrow statute. Its main thrust is to encourage preservation of historic sites and buildings rather than to mandate it. It leaves not only Congress free but also the states, opting for the carrot, in the form of grants, rather than the stick. *Lee v. Thornburgh*, 877 F.2d 1053 (District of Columbia Circuit 1989).

This is a very simple case: the City of Salem took the federal carrot of \$289,950; now they must comply with federal law.

I request that the City Council provide assurance that ODOT and the City of Salem will institute a Section 106 Review. If I do not receive a response by 5:00 p.m., Tuesday, June 15th, I will proceed to file an action in the aforementioned court to ensure a proper review so everyone understands the full impact of what they may be supporting and that there are no unintended consequences.

Yours very truly,

John L. Poole

jlpoole56@gmail.com
707-812-1323

Eunice Kim

From: Dan Atchison
Sent: Friday, June 08, 2018 2:22 PM
To: jlpoole56@gmail.com
Cc: Norman Wright; Steve Powers; Eunice Kim; Lisa Anderson-Ogilvie
Subject: RE: State Street Corridor Project - Potential Litigation
Attachments: Eunice Kim Salem Section 106 Letter 043018.pdf; NHPA Section 106 Advice Memo.pdf

Dear Mr. Poole:

Thank you for your June 5th letter regarding the State Street project. Your letter has been received, and included in the record for the project. In response to your belief that section 106 review is required, please consider the letter from the State of Oregon Transportation and Growth Management Program, dated April 30th, and the Oregon Department of Justice opinion letter which you received directly from the State, both of which state that Section 106 review was not required for this project (both are attached hereto). The City concurs with the opinion of the State in this matter, and we believe litigation to attempt to mandate that review would be unsuccessful, and cost a considerable amount of time and resources for everyone involved. We encourage you to continue to stay involved in the planning process. My understanding is that the project is set for a public hearing before the Salem City Council for July 16 at 6:00 p.m.

Dan Atchison
Salem City Attorney
503-588-6003

From: John L. Poole [mailto:jlpoole56@gmail.com]
Sent: Tuesday, June 05, 2018 8:24 AM
To: citycouncil <citycouncil@cityofsalem.net>
Subject: State Street Corridor Project - Potential Litigation

(RRR)

To whom it may concern,

Attached please find in PDF format my letter of June 5, 2018 re: State Street Corridor Project - potential litigation. The file is named Section_106_Request_pre_litigation_signed.pdf. If you, or whoever is monitoring your email, have not already acknowledged receipt of this email, please do so now.

Thank you,

John L. Poole

--

John Laurence Poole
1566 Court ST NE
Salem OR 97301-4241
707-812-1323 office

Letter to the Salem Planning Commission, May 1, 2018.

Re: State Street Corridor Plan.

From: Tom O'Connor (Stakeholder Advisory Member), Aislinn Adams & Sorcha O'Connor,
1420 Court St. NE., occonnortom@aol.com

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Dear Salem City Planning Commission

I live in the Court Chemeketa Residential Historic District in Salem adjacent to State and 14th Streets. I am also a Stakeholder Advisory Member for the State Street Corridor Plan. I write to share the following comments with you from my wife, daughter and I about the plan as it currently stands.

We Say YES to the State Street Plan in Our Back Yard

We would like to commend the time, expertise and informed forward thinking that the city planners, consultants, stakeholders, neighborhood associations and citizens have put into this plan. We believe the plan can help revitalize the currently ugly, disjointed and unsafe State Street Corridor in a way that will also protect the historic district and benefit the surrounding neighborhoods and the city. We love its vision of a more vibrant neighborhood with walking access to businesses, shops, dining, housing and other amenities along a State street that is more beautiful, attractive to all comers, safer, and pedestrian/bike/car friendly. We are fully in support of making this vision come alive and committed to doing everything we can to help make it a reality. In particular we praise and support:

- the change to a more flexible and practicable mixed-use zoning, that can be extended, if successful, to other parts of the city and replace overlays and patchwork zoning;
- the full road diet plan in concept with a phased in road diet between 12th and 17th, allowing for further testing and study to consider ways to expand the road diet to 25th street in the future;
- the use of the MU I and MU II zoning to make it easier and more practicable for developers to build more attractive (e.g. parking in the rear) and human-scale retail, commercial and housing possibilities (e.g. bike lane and sidewalk buffers between traffic);
- the encouragement of business, walking, biking, traffic safety, and beautification (e.g. increasing traffic flow with the road diet, and encouraging higher per square foot retail yields for developers); and
- the wider-context thinking that also seeks to improve the surrounding neighborhoods and the city; (e.g. moving us closer toward a comprehensive traffic plan for the city, and connecting with downtown development plans);
- the city's willingness to ensure the State Street Plan is fully compatible with the NEN/SESNA Joint Neighbor Plan (e.g. mixed use, pedestrian friendly, and adequate buffers to protect existing neighborhoods).

We are well aware that the enhancement of State Street in these ways will most likely mean some additional traffic, parking, pedestrians and biking through our neighborhood, and we am willing to embrace that as part of the cost of the change, growth and development. With regard to any potential negative traffic and parking impacts on our neighborhoods we are also encouraged by the city's willingness and commitment to undertake studies to discover and ameliorate any problem pockets that arise, as it did in the Broadway area development.

CITY OF SALEM	
HEARINGS OFFICER _____	
PLANNING COMMISSION <input checked="" type="checkbox"/>	
OTHER: _____	1
EXHIBIT: <u>1</u>	
CASE NO: <u>CA18-02</u>	
DATE: <u>5-1-2018</u>	

Letter to the Salem Planning Commission, May 1, 2018.

Re: State Street Corridor Plan.

From: Tom O'Connor (Stakeholder Advisory Member), Aislinn Adams & Sorcha O'Connor,
1420 Court St. NE., connortom@aol.com

We Also Say YES to Making the State Street Plan Even Better

After extensive study on our part we advance the following recommendations to you for improving the plan. We believe these improvements will render it more likely that the plan will achieve its stated goals that we have outlined and supported above.

- Further reduce the retail and perhaps even the residential parking requirements in the MU I zone. The current parking requirements, especially for retail, in the MU I zones are too restrictive to encourage retail and will tend to favor student housing over retail. I would not like to see the State Street area develop primarily into a just a student housing area as happened in parts of Eugene. The planning commission may even consider further reductions for housing parking requirements to make it more practicable for developers to build. In particular, I would like to see more incentives for retail and commercial in the MU I zoning. I realize this would have the potential impact of bringing even more car traffic and parking into our neighborhood, but again this is a cost we am willing to share to see this development take place.
- Consider requiring some retail or commercial use in the MU I zone. Currently the MU I zone requires form zoning for retail/commercial on the ground floor, but there is no requirement to use the first floor or even part of it (25%?) for retail or commercial. A requirement would incentivize retail even more and retail prices per square foot bring much higher yields for developers than residential.
- Reduce the height allowance from 55 feet to 45 feet. Currently commercial property can build to 70 feet, but everyone knows this is not economically viable for developers under the current zoning restrictions. The MU I and II zones are a boon to developers, because they only mean gains and no losses for property owners on State Street. Currently, housing must be built to 50 feet in the commercial zone, and we feel a further reduction of 5 feet would protect the Historic District without having a negative impact on developers. A height limit of 45 feet along with the other incentives for development in this plan would still be a boon to developers. The shadow study, submitted to the Planning Commission at its first hearing revealed that the current plan, even with the setback requirements, would have a detrimental effect on the Historic District and is therefore not in line with the NEN/SESNA joint neighborhood plan. A height of 55 feet, that now allows for additional mechanical construction on top of that, would allow five story buildings to be erected right along the Court Chemeketa Residential Historic Neighborhood boundary alongside State Street. Five story buildings would totally overshadow the historic buildings and neighborhood and be out of character with the surrounding neighborhoods. Under the current zoning, developers, are only allowed to build on 60% of the property, but the MU I zoning will allow them to build on 100%. This benefit, along with all the other benefits of mixed use zoning and reductions in parking requirements, along with a 45 foot height limit would allow for much more development than is currently feasible and ensure the development meets all the city goals. If thought appropriate the city might see fit to allow the 55 foot height just on the southside of State Street because SESNA does not have the same concerns about height for obvious reasons.
- Protect the Historic Boundary between Court and State Street by not allowing street traffic on the alley and or use of the alley as a street into the State Street properties. The width of the alley is 16 feet, and city standards require a width of 22 feet for streets. The State Street plan must therefore prevent the alley from being used in an unlawful manner, and prevent its overuse by car traffic, utility vehicles, trash-pick up etc.

Eunice Kim

From: Nancy McDaniel <nanmcdann@yahoo.com>
Sent: Friday, June 08, 2018 2:44 PM
To: Eunice Kim
Subject: Re: Council hearing on State Street

I did - thanks!

Have a great weekend!

Nancy

On Friday, June 8, 2018, 2:03:42 PM PDT, Eunice Kim <EKim@cityofsalem.net> wrote:

Yes, I sent an email out to the interested parties list, so hopefully you received it.

Eunice Kim, AICP
Planner III
City of Salem
555 Liberty St SE, RM 305
ekim@cityofsalem.net | 503-540-2308

From: Nancy McDaniel <nanmcdann@yahoo.com>
Sent: Thursday, June 7, 2018 7:23:24 PM
To: Eunice Kim
Subject: Council hearing on State Street

Is July 16th still the likely date for the hearing?

Thanks,
Nancy

Eunice Kim

From: Justin Emerson Kidd <kiddjustin@gmail.com>
Sent: Sunday, June 10, 2018 5:11 PM
To: Eunice Kim
Subject: Testimony for State Street Corridor Meeting

Dear Ms. Kim,

Please ask the Council to put State Street on a road diet. I live in the Court-Chemeketa district, and I work at 12th and State. I walk to work with my preschooler, whom I drop off at St Johns on my way to work. State street is currently a missed opportunity for the city. It lacks a pedestrian culture and it lacks sufficient sidewalk space for cafes and other vibrant businesses. The road diet would allow Salem to establish a vibrant mixed use corridor.

The road diet would also make State Street safer. I see many pedestrians play "frogger" on a daily basis going from the office buildings to the subway restaurant on 13th. It's just a matter of time before someone gets hurt and the city gets a lawsuit. (I happen to be an AAG, and just defended the state against a 7 million dollar lawsuit in which a pedestrian alleged that improper road design was the true cause of the injuries she received in an auto-pedestrian accident.) I am writing in my personal capacity, of course.

I know the Court-Chemeketa neighborhood association disfavored some parts of the zoning changes proposed in the recent plan. But my sense is that the community is squarely in favor of the road diet. Let's make the streets serve people -- not cars.

Sincerely,

Justin Kidd
1725 Court St Ne

Eunice Kim

From: Gary Obery <garyobery1@gmail.com>
Sent: Monday, June 11, 2018 12:27 PM
To: Eunice Kim
Subject: Re: City Council Hearing on State Street Corridor Plan
Attachments: image001.jpg

Thx Eunice. What were the top concerns cited by the planning commission against either the road diet or the hybrid option? Were they concerned about cut-thru traffic on neighborhood streets?

On Mon, Jun 11, 2018, 7:51 AM Eunice Kim <EKim@cityofsalem.net> wrote:

Hi Gary,

Here is a link to the Improved Four Lane alternative: <https://www.cityofsalem.net/citydocuments/state-street-corridor-plan-improved-four-lane-street-design-2017-10-09.pdf> The other two alternatives in the document include the Hybrid alternative (proposed street design) and the Road Diet alternative. The Improved Four Lane alternative was studied during the State Street project but was not recommended by staff.

Here are the minutes from the May 1 Planning Commission meeting where the vote on the State Street project occurred: <https://www.cityofsalem.net/meetingdocs/salem-planning-commission-minutes-2018-05-01.pdf> The meeting was not recorded by CCTV.

Best,

Eunice | 503-540-2308

From: Gary Obery [mailto:garyobery1@gmail.com]
Sent: Saturday, June 09, 2018 2:06 PM
To: Eunice Kim <EKim@cityofsalem.net>
Subject: FW: City Council Hearing on State Street Corridor Plan

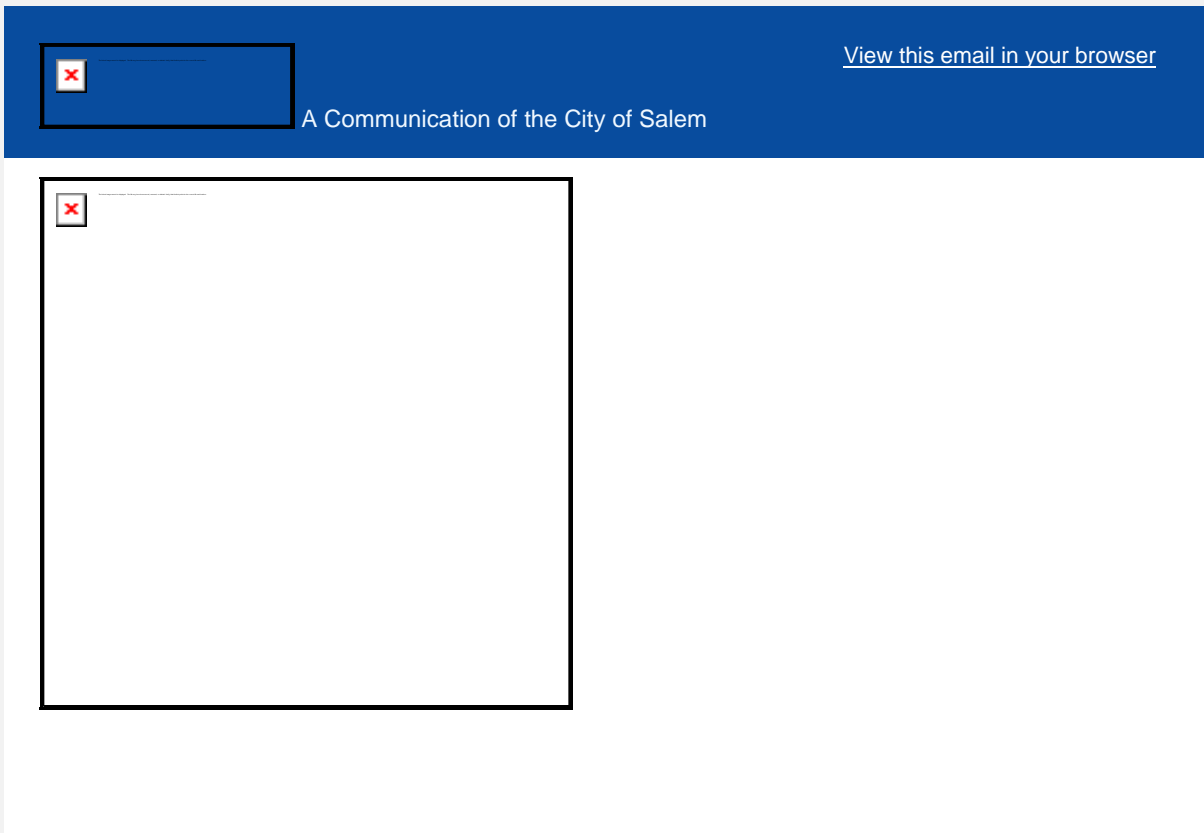
Eunice,

Can you point me to the street design concept that the Planning Commission recommended for adoption by the City Council? I saw in the [May 3rd announcement](#) that the Planning Commission recommended “A new street design called the Improved Four Lane alternative. This recommendation differs from that which was recommended by staff.”

I read that [staff recommended a hybrid option](#) consisting of 3 lanes between 14th and 17th and 4 lanes between 17th and 25th to the Planning Commission. Might you share some of the reasons that the Planning Commission cited for their support of a different option? Might you have minutes of that meeting or a link to the CCTV video?

Gary

From: Salem Planning [mailto:DoNotReply=cityofsalem.net@mail92.sea31.mcsv.net] **On Behalf Of** Salem Planning
Sent: Friday, June 8, 2018 2:00 PM
To: Gary <garyobery1@gmail.com>
Subject: City Council Hearing on State Street Corridor Plan



City Council Public Hearing July 16

The City Council is scheduled to hold a public hearing on the [State Street Corridor Plan project](#) on July 16. The Special City Council meeting will start at 6 p.m. in City Council Chambers, 555 Liberty Street SE, Salem. You are invited to attend.

At the public hearing, staff will present the recommendation on proposed amendments to adopt new mixed-use zoning and a new street design for the State Street corridor. You can read a summary of the State Street Corridor Plan project in a [booklet](#) on the [project website](#).

Testimony

You can submit testimony prior to the July 16 public hearing by emailing or mailing it to Eunice Kim at ekim@cityofsalem.net or 555 Liberty Street SE, Room 305, Salem, OR 97301. You can also testify or submit information at the public hearing.

Background

The State Street Corridor Plan project builds off of the work done by Northeast Neighbors (NEN) and Southeast Salem Neighborhood Association (SESNA) in the adopted [NEN-SESNA Neighborhood Plan](#). It also advances City Council's economic development goal and strategies. The project seeks to revitalize State Street between 12th and 25th Street into a vibrant, walkable, mixed-use corridor.

If you have questions or comments, please contact Eunice Kim at ekim@cityofsalem.net.

MEETING DETAILS

Date: July 16, 2018

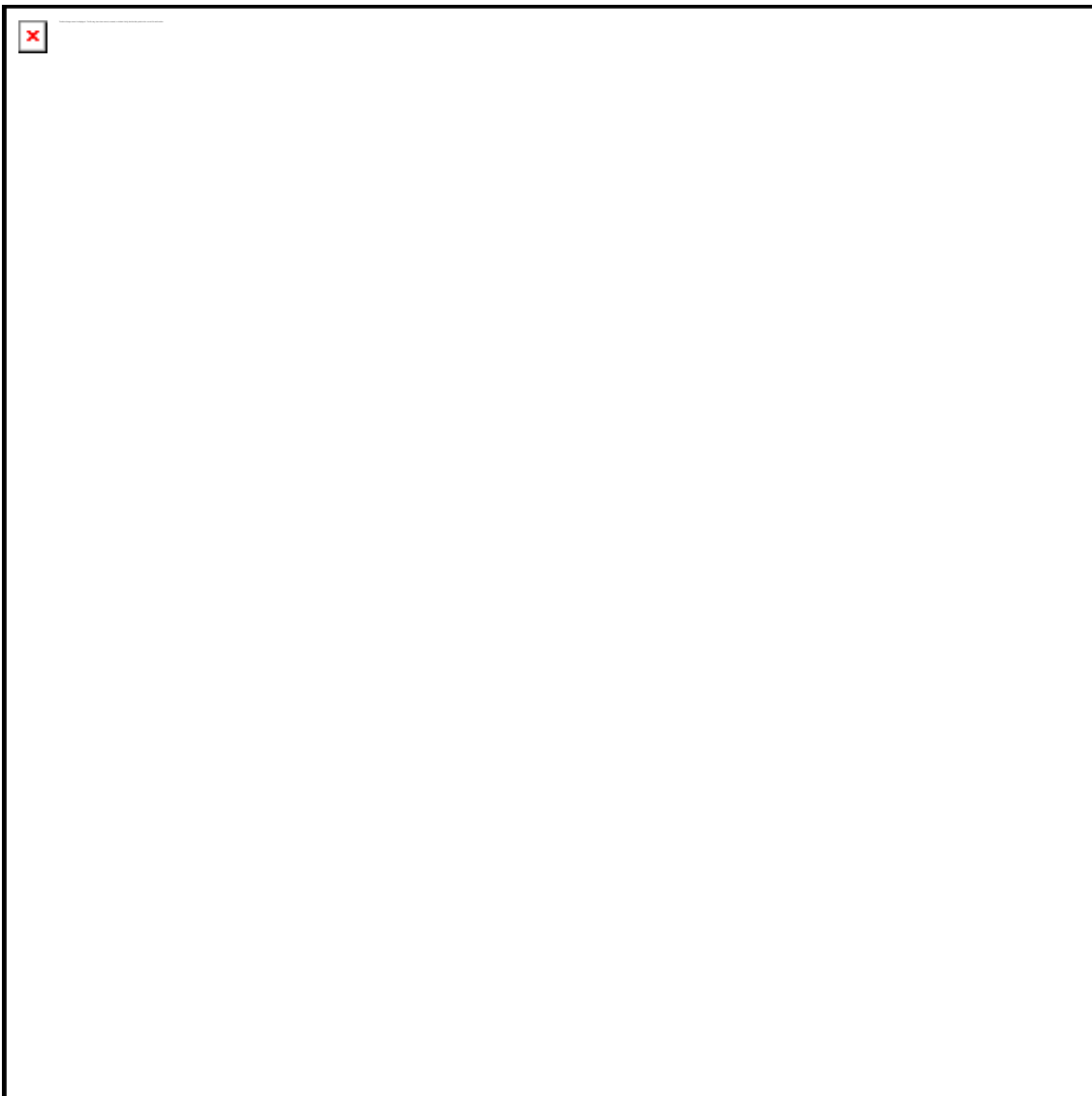
Time: 6 p.m.

Place: Salem City Hall, Council Chambers
555 Liberty Street SE, Salem, OR 97301

LEARN MORE

www.cityofsalem.net/Pages/state-street-corridor-plan-to-revitalize-the-street.aspx

STUDY AREA



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CONTACT US

Eunice Kim, Project Manager

ekim@cityofsalem.net

503-540-2308

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