

**OREGON TRANSPORTATION COMMISSION**

**Minutes of the Regular Monthly Meeting  
August 21-22, 2014  
Ontario, Oregon**

On Thursday, August 21, 2014, at 4:00 p.m., the Oregon Transportation Commission (OTC) and Oregon Department of Transportation (ODOT) staff met with the Southeast Area Commission on Transportation and the Eastern Oregon Regional Solutions Team in the Malheur Room at the Four Rivers Cultural Center, 676 SW 5<sup>th</sup> Avenue, Ontario, Oregon. That evening at 6:00 p.m., the OTC and ODOT staff held a no-host dinner with members of the Southeast Area Commission on Transportation and the Eastern Oregon Regional Solutions Team in the Medical Arts Room of the Four Rivers Cultural Center.

On Friday, August 22, 2014, at 8:00 a.m., The OTC and ODOT staff held a premeeting briefing session and agenda review in the Medical Arts Room of the Four Rivers Cultural Center. The regular monthly meeting began at 9:30 a.m. in the Malheur Room.

Notice of these meetings was made by press release of local and statewide media circulation throughout the state. Those attending part or all of the meetings included:

Chair Catherine Mater	Trans. Development Div. Admin. Jerri Bohard
Commissioner Dave Lohman	Int. Comm. Div. Admin. Dave Thompson
Commissioner Tammy Baney	Highway Division Administrator Paul Mather
Commissioner Susan Morgan	Region 5 Manager Monte Grove
Commissioner Alando Simpson	Commission Assistant Jacque Carlisle
Director Matthew Garrett	
Asst. Director for Public Affairs Travis Brouwer	

**Thursday, August 21**

Chair Mater called the meeting to order at 4:12 p.m.

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**Workshop Item #1**  
**Welcome**

Interim Ontario Mayor LeRoy Cammack welcomed the Oregon Transportation Commission, and said the region appreciates the Commission taking the time to come to Eastern Oregon. The region has a good working relationship with ODOT, and with a spirit of cooperation, we have accomplished a lot together. He expressed his gratitude for ODOT's support and said he appreciates the accomplishments made.

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**Workshop Item #2**  
**Panel Discussion with Southeast Area Commission on Transportation**

The Commission participated in a panel discussion with members of the Southeast Area Commission on Transportation. **Background materials in Director/Commission/History Center File, Salem.)**

**Background:**

*In preparation for this meeting, the Commission posed the following questions for the Area Commission on Transportation members to consider as part of the discussion.*

- 1. As the OTC, we struggle with the balance between maintaining the transportation assets we have and expanding the transportation system. What does this balance look like in Southeast Oregon?*
- 2. As we look to find new revenue for transportation, what are the key opportunities for transportation investments to help the economic situation here? What investments covered meet the statewide needs?*
- 3. How do the roles of the ACTs and advisory committees change in view of Governor Kitzhaber's direction to the Commission? What do you see as some of the opportunities and some of the difficulties in changing the model?*

*Governor Kitzhaber's six principles to OTC (from Governor Kitzhaber's address to the OTC in August 2011)*

- Do we have the right group of individuals at the table at the beginning of the process to define the problem and solution together?*
- Should ODOT manage or own the facility or would it be better managed for a diverse set of outcomes, by another agency or jurisdiction?*
- Are we creating programs that do not simply invest in the future of the transportation system but meet a multitude of community objectives?*
- Does each decision move us closer to a sustainable, safe, low carbon, multimodal system?*
- Does the decision maximize benefit for the least cost under the limited resources?*
- Finally, does this decision or policy move us closer to finding a more rational transportation funding mechanism for the future?*

**Discussion:**

Region 5 Manager Monte Grove started the discussion by introducing the panel members:

- ~ Boyd Britton, Grant County Commissioner and SEACT Co-Chair
- ~ Ken Freese, Business Owner and SEACT member
- ~ Linda Simmons, SEACT Private Sector Representative
- ~ Peggy Gray, John Day City Manager and SEACT Member
- ~ Mike Cosgrove, SEACT bike/ped
- ~ Alan Daniels, Ontario Public Works Director and SEACT alternate
- ~ Craig Cutsforth, Burns City Manager
- ~ Lynn Findley, Vale City Manager and SEACT member
- ~ Dan Joyce, Malheur County Judge and SEACT member
- ~ Kenton Dick, Burns Paiute Tribe and SEACT member

Lynn Findley said the *ConnectOregon IV* process worked very well. He was extremely impressed with the process and felt that as a member of SEACT, their voice counted. He can't say enough about how well that worked. This year's *ConnectOregon V* process did not work at all. SEACT members reviewed the 600 page projects document, met to receive presentations on all the projects, formed subgroups, met with NEACT members and after many, many hours of work, developed a list of projects totaling \$4.2 million, based on the regional allocation of \$4.4 million. Then, the Final Review Committee met and changed their list completely, saying that since the full \$4.4 million was not spent, it was up for discussion. That is wrong on every level. Countless hours were spent driving to joint meetings to review the projects and develop a sound list that *both* ACTs felt strongly about. Findley said that to be totally disregarded like that made him feel very violated and wondering why. He doesn't want to do that again.

Boyd Britton said one thing that needs to be recognized is that SEACT and NEACT get along and they share, taking turns with allocations to the big projects. Grant County got its airport in *ConnectOregon III*, and then it was Harney County's time this year. This is Harney County's only opportunity to ever get this project funded, and it's the only opportunity many of these projects ever have to get funded. In this *ConnectOregon* process, a lot of people were using bike/ped to manipulate things because they knew that bike/ped projects bring out the warm fuzzies and would work on the modal side. Those projects went forward. Britton said bike/ped does not have anything to do with the *ConnectOregon* process.

Commissioner Lohman said the process for *ConnectOregon* is very different than the process used for the STIP, and that might have caused some of the confusion. The regional allocations of \$4.2 million may have also caused some misunderstanding. Projects of statewide significance are desired, but at the same time we don't want to forget about projects of regional significance, which is why legislation designated 10 percent to each region. This is a very delicate balance because while a project might have a huge impact on the region, it might not so much statewide.

Chair Mater clarified with Britton that the process ODOT staff presented was a process where it was understood that the regional level would make their recommendations, and then those

recommendations would go to a different state level where a different lens would be applied and there was flexibility to change priorities on those projects. Britton said that is correct, but they were still unprepared for what happened.

Commissioner Morgan said the Commission would appreciate any comments or suggestions that would help with the problems encountered in this *ConnectOregon* process. She said the process is a work in progress, with some changes occurring with every round as the Commission receives feedback and the legislature gets involved. The thing that has remained the same is the ranking of the projects by the ACTs, and then by the modal committees, and then all of those ranking coming together at the over-arching committee. The piece that's important to keep in mind is as Commissioner Lohman brought forward, that this is not the STIP program. It is a very different program that is structured differently and the outcome will be different.

Alan Daniels has been thorough all five of the *ConnectOregon* processes and he has been involved in several of the STIP processes. The ACTs felt the large cold storage transfer station project was of such statewide significance it would probably be funded out of the larger statewide funding source. If that project was put as a regional priority, it took away all funding for other critical projects in the region. The region is having a hard time just keeping the roads maintained, and looks at *ConnectOregon* funding as a way to make an investment in their community. *ConnectOregon* funding for the airport has been a fantastic economic boom to the community.

Chair Mater asked if projects put forward in *ConnectOregon* I through IV were funded. Daniels replied that for the most part, he believed the projects were funded. Mater said for the purpose of this discussion it's important to clarify not just the results, but also was the protocol in place, and communicated well at the beginning, so that people understood this particular process.

Director Garrett said the base process used in *ConnectOregon* I through IV has not changed, and the protocols used were the same in terms of the vetting of projects by the various committees. It comes down to a handful to projects that consensus moves forward. There were some policy issues that may have exacerbated the frustration some felt. Those were political conversations, and if there is a *ConnectOregon* VI, there will probably be policy conversations about the geographic equity, the 10 percent that goes to the regions. But if you look at the numbers, of the fifteen projects Region 5 brought forward, nine were funded. Garrett said he understands the ACTs' frustrations. But as a Commission and as an agency, we have to ensure the best projects were brought forward. The best eyes and transportation minds were brought to the table to vet these projects.

Ken Freese said the one project that moved forward was a stretch to get to "transportation." It felt more like subsidizing private enterprise than it was transportation. ACT members met multiple times, and drove many miles to do so. They came to agreement every time. But yet, one committee (the Final Review Committee) can overrule all that work and their decisions at one time, in one meeting. Freese said he is not happy about it, and his time was not well invested.

Linda Simmons said match was a huge issue, and certainly private industry has much more ability to bring in match than cities and counties do. That brings the question of if this is truly a transportation issue, and who should be covering the cost. The region has a lot to offer. It just wants the opportunity to compete.

Boyd Britton said the process was the same. What has changed is the addition of transit the year before, and bike/ped this year. Dollars are very scarce, and those additions just took dollars away across the regions.

In response to the first two questions in the discussion topics about the balance between maintaining transportation assets and expanding the transportation system, Alan Daniels said Ontario has done some industrial lands expansion trying to attract some business. As part of that, they are also doing some truck routes so they are ready when they do get the business. They're looking several years out and it's hard to guess what the priorities are going to need to be. The main focus right now is on economic development and being able to support the business coming in. Within that balance, they need the flexibility and the speed to be able to move when an opportunity arises.

Ken Freese said he was a 20-year ODOT employee as a maintenance person, so maintaining the infrastructure is very important to him. Everything is transportation in the region, with the major industry being agriculture. They need to have a way to get their commodities from where they are grown, to either where they are processed or shipped, or both. With a system that does not allow for that, they will be in worse shape economically than they currently are. Malheur County was not able to take advantage of the Secure-Route-to-School program, so is not able to build reserves. The demographics have changed from most people working the farms living on the farms, to where farming is only part of a person's income and they are back and forth on the roads to town for the second job or school. This puts a lot more demand on the system. Give the situation, ODOT has done a great job balancing what it's been able to do. But he noted that if you get too far behind, you can never get out.

Chair Mater asked if the Regional Solutions Team has been any help in getting the flexibility and ability to move quickly or does there need to be something in addition to that? Alan Daniel said the team has been very helpful as a way to pull all the assets together. But if funds were available when there was a viable project, then we're wasting less money putting roads to some place that isn't going to develop. That is the flexibility needed.

Boyd Britton said Grant County is in decent condition because of the Secure-Routes-to-School funding it has effectively used, as well as money saved from the "timber" dollars it used to receive. It's the cities in Grant County that are really hurting. When it comes to doing a project, if it's not a county project they can do, it has to go out for contract which instantly raises the cost 30-40 percent. We need to be creative in how we get those monies so cities can use it more effectively than having to go through prevailing wage.

Linda Simmons said a portion of road in Harney and Malheur Counties is so bad the trucking outfits hauling from there say that their trucks are getting worn out and breaking because of

the condition of the road. If something is not done, those outfits will move their operations, and that will be a major employment loss for both counties. Without the flexibility to do something, and do something now, that will be a large economic loss for both counties.

Lynn Findley added to that saying an earth mining outfit is considering doubling its operations capability in Oregon, but they won't with the road in the shape it is. If the mining company can't get some relief on the road, they will double their capacity in Nevada instead. Director Garrett said this sounds like a candidate for an Immediate Opportunity Fund project.

Monte Grove asked for the ACT's advice to the Commission on how it could best use the ACTs as a body, and any suggestions for changes there. Peggy Gray responded that her frustration is that it's hard for the small cities to compete with the larger cities for funds. The **Enhance** program has been beneficial for the City of John Day, but without county help, the city would not have been able to meet the required match. Gas money from the State is John Day's only source of revenue for its street fund, and that \$85,000 is used for maintenance. John Day uses the money it gets from the county for Secure-Routes-to-School as a match for these projects. The legislature did up the small cities allotment from \$50,000 to \$100,000 which will be a huge help. If the pot for small cities could be raised, it would be extremely helpful.

Alan Daniels said the Area Commission on Transportation is one of the most important committees in the area. Transportation is everything in that area.



**Workshop Item #3**  
**Report on Eastern Oregon Regional Solutions Team**

The Commission received an informational update about the work of the Eastern Oregon Regional Solutions Team. **Background materials in Director/Commission/History Center File, Salem.)**

**Background:**

*Regional Solutions Centers (RSCs) are places for state agencies to collaborate with each other, local governments, and other public, private, and civic interests to solve problems and seize opportunities. Regional Advisory Committees – made up of Oregonians appointed by the governor from business, civic organizations, government, foundations, and higher education – identify priorities to guide the work in each of the ten regions. The committees also help connect resources from the community to expand the state's collective capacity to solve problems and seize opportunities.*

*Governor Kitzhaber believes that to rebuild Oregon's economy, all of us—public, private, and civic partners—must work together. The state can no longer afford single objective investing. The RSCs allow regional leaders and citizens to leverage all available funding to complete the highest priority projects.*

*Regional Solutions Centers are located at the universities in Bend, Medford, Eugene, Portland, Tillamook, and La Grande. Satellite offices are located in Salem, The Dalles, Klamath Falls, and Coos Bay.*

*Regional Solutions Centers are staffed by Regional Solutions Teams composed of a representative from each of five state agencies: the Department of Environmental Quality (DEQ), the Department of Land Conservation and Development (DLCD), the Oregon Department of Transportation (ODOT), the Department of Housing and Community Services (OHCS), and the Business Development Department (OBDD). Other state agencies are added to the teams as needed for regional priorities. The teams are led by a Regional Coordinator who represents the governor as a catalyst for action in each region. State agency directors meet regularly with the governor to review and evaluate the RSCs' work based on the number of projects completed.*

*RSCs complete projects addressing the priorities identified by the Regional Solutions Advisory Committees (RSACs). Team members collaborate with each other, local officials, private citizens, and with other organizations to effectively complete projects. RSCs are also part of the Oregon Solutions Network which links them with the State's dispute resolution program, Oregon Consensus, and the State's collaborative implementation program, Oregon Solutions. For each regional priority, the coordinator develops a work plan including objectives, expected outcomes, agency involvement, targets, and milestones. Through collaboration, efficient communication, and strategic action, the RSCs work to achieve Oregon's most important economic and community objectives.*

**Presentation:**

Regional Solution Coordinator Scott Fairley gave a brief overview of the RSC, its members, and the role of the advisory committees. Currently, RSC is defining area projects for inclusion in the Governor's proposed 2015-2017 budget. The top priorities for the eastern region include increased production for federal forest lands, increased water development and storage projects, workforce availability, and marketable industrial lands. Final selection of projects will be made in September.

Fairley spoke on behalf of Department of Land Conservation and Development's Grant Young, who has been working to help the communities of Vale and Nyssa meet their industrial lands needs. Collectively they have been able to bring over a thousand acres of new industrial land to the area, which is proposed to be a regionally significant industrial area. If the project is selected, it will allow these communities a marketing advantage for the new industrial land and help them access funding for infrastructure, primarily roads, sewer, and water.

Melisa Drugge from Oregon Business Development said this region has a good deal of industrial land which is being assessed in terms of shovel-ready certification, the decision ready process, infrastructure deficiencies, transportation deficiencies, and industrial lands occupation percentages. There are currently over eight thousand acres of lands that are industrially zoned. Drugge is also working on the Juntura Cut-off Road Project to identify what resources the counties have to bring to the table to address this critically important road. The mining companies are currently maintaining the roads, and will do so through the winter, with

the understanding that long term planning was being done. An Immediate Opportunity Fund loan in the spring would address the most pressing drainage issue and maintain the existing mining jobs and set the foundation for the additional fifty jobs created when production expands.

Commissioner Lohman said this is a good example of what adequate transportation funding can do for the economy.

Commissioner Morgan said the number of jobs we are talking about is not significant by a large populated county or city's measure, but in a rural county, where there is high unemployment and very few family-wage jobs, this number of jobs is incredibly significant to the economic wellbeing of the community.

Oregon Department of Transportation's Craig Sipp talked about a project reflective of the good coordination between ODOT, the Regional Solutions Team (RST), the ACTs, local business, and other partners: the U.S. 395 Freight Improvement project, which addressed the length-restricted route between Pendleton and John Day. Chair Mater gave the project kudos for its creativity and practical design.

Department of Environmental Quality RST representative Randy Jones talked about the partnership with Eastern Oregon University (EOU), working to strengthen the relationship between government and higher education through a regional community-based internship program. The program consists of 10-week authentic experiences for students based on real-world scopes of work. It has evolved regionally significant projects that can be staffed by MBA program students as project managers, supported by other undergraduate students doing component work, and all of those students supported by a cadre of local community adjunct affiliate faculty as designated by EOU. Students are also partnering with ODOT in many areas such as transit planning, ridership survey work, mapping the data analysis and evaluation, establishing baseline conditions, and long-term evaluation of the level of service.

Randy Jones talked about the regionally significant Calico Goldmine project at Grassy Mountain. It is a large multi-claim gold/chemical mining project subject to some very complicated state laws. This is another example of a multi-national company looking at Oregon and asking the question "is Oregon open for business?" This is an \$80 million investment the company would make and represents 150 - 200 family wage jobs. The trickle-down economics are inescapable. A multiagency effort has shown that a mining company can be environmentally safe in Oregon.

Scott Fairly said there is a real perception that you just can't do projects in Oregon like the Calico project. This project is so exciting because through the efforts of Randy Jones and the folks he's worked with at other state agencies, they've demonstrated the fact that you can permit environmentally sound projects in Oregon that are going to create a lot of jobs.

Commissioner Morgan said part of the frustration is that a great many of the job creating opportunities that develop in rural areas of the state run into the regulatory and the political process, which makes bringing them forward very, very difficult.

Chair Mater thanked all the participants for being here because this is a discussion well worth having.

Melisa Drugge thanked Director Garrett for the half-staff flag tomorrow for Don Kendall, and the ODOT staff for the way they have handled the situation in the most professional manner in a difficult situation.



Chair Mater adjourned the meeting at 6:18 p.m.

**Friday, August 22, 2014**

On Friday, August 22, 2014, at 8:00 a.m., the OTC and ODOT staff held a premeeting briefing session and agenda review in the Medical Arts Room of the Four Rivers Cultural Center, 676 SW 5<sup>th</sup> Avenue, Ontario, Oregon. The formal monthly meeting began at 9:30 a.m., in the Malheur Room. Highlights of the briefing session were:

A review of the agenda – Matt Garrett.

Pioneer Mountain/Eddyville Project Update – Paul Mather

Hazardous Materials Rulemaking and Rail Inspection – Matt Garrett



Chair Mater called the formal meeting to order at 9:35 a.m.

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**Director's Report**

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**Remembrance of Don Kendall**

On July 22, we lost long-time District 12 transportation maintenance specialist, Don Kendall, in a tragic incident. Don was working on a chip seal project with his fellow crew members near Echo when he was struck and killed by one of our 10-yard dump trucks. Garrett asked the ODOT family to keep the Kendall family in their thoughts and prayers. Garrett said those involved in the tragedy have demonstrated courage, compassion, and absolutely no complacency specific to the issue of the safety of ODOT personnel. That disposition and attitude is how we can truly honor Don Kendall's legacy to the Department of Transportation. Today, ODOT will lower its flags to half-staff to honor Don. Garrett asked for a moment of silence to show our respect for our fallen coworkers.

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**Federal Funding**

Last week, President Obama signed legislation that transfers \$10.8 billion into the Federal Highway Trust Fund and extends the current Surface Transportation Authorization Act, MAP-21, through May 31, 2015. This legislation averts a cash shortfall in the Highway Trust Fund and ensures that the U.S. Department of Transportation will be able to continue reimbursing states and transit agencies on time and in full for the work contractors have done on federally-funded projects. However, the legislation provides only a short-term patch on the long-term financial problems facing the Highway Trust Fund. As a result, the Trust Fund is expected to run short of cash in spring 2015, and absent another infusion into the Trust Fund next spring, Congress will have to cut funding for the remainder of 2015 significantly and USDOT will not be able to fully reimburse states and transit agencies for highway and transit projects. With the extension of MAP-21 going only through the end of May, states will receive only two-thirds of the annual funding for 2015—leaving significant uncertainty about the total amount of federal funding available next year. ODOT will closely watch congressional action on extending MAP-21 and providing additional resources for the Highway Trust Fund; in the event Congress does not take action in May, ODOT will have to cancel or delay projects.

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**Oregon Health Impact Assessment**

Last fall, ODOT formalized its partnership with the Oregon Health Authority (OHA) with a Memorandum of Understanding. We have been and continue to work with them for ongoing communication and planning, encouraging safe and active transportation, sharing our data sources and ongoing research, and leveraging opportunities. Earlier this year, we provided a letter supporting OHA's efforts in pursuing a three-year grant from the CDC's Healthy Community Design Initiative, which they were recently awarded. The grant will allow OHA to continue its work on the connections between community design and public health. This is a great example of the partnership ODOT has built with OHA, and we are excited to work with them on the efforts of this grant.

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## *Public Comments*

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Oregon District 60 Representative Cliff Bentz thanked Director Garrett and his staff for being hugely patient with him as he has learned more about the transportation system and the legislature. He also thanked Oregon State Senator Betsy Johnson for being instrumental for moving forward the Jobs and Transportation Act (JTA) which resulted in some dramatically needed and valuable improvements for District 60. Representative Bentz said the *ConnectOregon* process works, and the reason that is so important is that there are a lot of roads in Eastern Oregon and he wants them to be going *to* activities in Eastern Oregon, and not merely through Eastern Oregon. Without the types of investments *ConnectOregon* results in, we won't have much here. He closed by saying how important it is that they work with us in making sure they have roads for all the space to cover in Eastern Oregon.

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Oregon State Senator Betsy Johnson represents Senate District 16 and has been involved with *ConnectOregon* since the onset. The *ConnectOregon* process has always operated with a specified set of rules and the projects have been unusually beneficial to Oregon. The rules were set, starting with input from the bottom up through modal committees, the Area Commissions on Transportation (ACTs), and numerous review committees. The discussion today suggests the OTC may be deviating from the process, and are changing the rules at the end of the game. The discussion also suggests that the Commission has given increased scrutiny to certain projects, an unusual departure from how the Commission has treated the *ConnectOregon* recommendations. Oregon State Senator Johnson believes this is inequitable: if a high degree of scrutiny is given to some projects, all should be subject to that. This has been an arduous task for the Commission, and in her experience, testimony of the volume and ferocity has not been presented in previous iterations. Oregon State Senator Johnson is hopeful for a *ConnectOregon* VI and we can take away from this the opportunity to make changes for the next iteration, but she would plead with the Commission to stay with the past practice that has worked so well and to accept the list the way that it has come to you through your advisors. In closing, she said that, having attended so many of these meetings at the local and regional levels, Team ODOT has performed extraordinarily well as they present new data as the lists were rearranged, as financial calculations were recalibrated, and to a person, they have performed with extraordinary professionalism and competence, particularly Chris Cummings who was at the tip of the arrow through the whole process.

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Nyssa owner of Fiesta Farms Inc., Garry Bybee, spoke in opposition to the proposed new route to Commercial Avenue in Nyssa, estimated to cost about \$2 million. He said unequivocally that they do not need that route. That route serves no purpose. The producers in that area use Commercial Avenue as a staging area for their products and starting another route on Commercial Avenue will create a dangerous situation. Nyssa fights to maintain what it has, losing more businesses each year than new ones come in. A lot of money has been spent beautifying Main Street which looks great but it hasn't created any more business. When you're a business man, you spend money to create more economic opportunity to pay that

back. None of this has been payback, it's all cosmetic. To unnecessarily spend \$2 million of tax money on this route is a fallacy and should not be done. Let's look at this more logically and think things through.

Jody Wiser of Tax Fairness Oregon said there are some things wrong with this program and she hopes the Commission provides some leadership to the Legislature about things that should be changed. A number of the projects that are being approved today for grants would logically be loans, but since the applicant asked for a grant, they get a grant. That is not appropriate use of public funds when clearly the project is going to create revenue that could repay a loan.

Nehalem Mayor and Northwest Area Commission on Transportation Chair Shirley Kalkhoven said the *ConnectOregon V* process has been a difficult one because of the bicycle issue and there has been some question about the criteria used. Through all of the review processes she has participated in as a member of the Freight Advisory Committee, as a member of the Region 2 Review Committee, and as a member of the Final Review Committee, they were given directions that there were five considerations, the last one being whether a proposed project is ready for construction. Also, nowhere in the ORS's does it say that it is a requirement. These are considerations and through all of the work and review, that is the instruction people followed. Kalkhoven said she hopes the Commission would agree with that, and if not, have all of the projects received the same amount of scrutiny as to whether or not they were construction ready. Chair Mater asked if there were other criteria, outside of the original five considerations, that the group used in the selection process and project evaluation. Kalkhoven said everything she was involved in looked at the five criteria and were given points accordingly. Chair Mater asked if there was a difference in the distinguishing terminology between the words consideration and requirement. Kalkhoven said she would be happy to give Mater her papers, which show the word to be consideration, not requirement.

For the record in the public comment portion of the meeting, Commissioner Baney said she had a question as to whether representatives from the Sisters Airport should come and testify. She wanted to draw it to the Commission's attention that this is in our hat.

### *ConnectOregon V Final Recommendations*

The Commission considered approval of the Oregon Department of Transportation (ODOT) staff recommendations to take the following actions on *ConnectOregon V*: ***(Background materials in Director/Commission/History Center File, Salem.)***

***\*The verbatim transcript for this item can be found at the end of these minutes or go to [http://www.oregon.gov/ODOT/COMM/pages/otc\\_main.aspx#Meetings\\_-\\_Agendas\\_and\\_Minutes](http://www.oregon.gov/ODOT/COMM/pages/otc_main.aspx#Meetings_-_Agendas_and_Minutes)***

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## ***ODOT Transportation Safety Action Plan Update***

The Commission received an informational update regarding the ODOT Transportation Safety Action Plan from ODOT Transportation Development Division Administrator Jerri Bohard and ODOT Transportation Safety Division Administrator Troy Costales. ***(Background materials in Director/Commission/History Center File, Salem.)***

### ***Background:***

*ODOT Transportation Safety and the Planning Section in the Transportation Development Divisions are working together to initiate an update of the Oregon Transportation Safety Action Plan. The plan is one of several statewide transportation mode and topic plans that further define and implement the Oregon Transportation Plan's goals, policies, strategies and key initiatives.*

*The existing plan was adopted in 2011. It lacks some elements currently expected of a topic plan and focuses primarily on implementing actions. In addition to meeting the State of Oregon's needs, the plan serves as Oregon's Strategic Highway Safety Plan as required by federal law. This federal legislation, now known as the Moving Ahead for Progress in the 21st Century Act (MAP-21), continues a requirement that Strategic Highway Safety Plans be updated every five years, and adds additional requirements for inclusion of Highway Safety Improvement Program planning elements.*

*Oregon's transportation safety programs rely on relationships among ODOT's Transportation Safety Division and numerous other ODOT, state, tribal, regional and local government interests. To ensure compliance with federal legislation and assure a comprehensive approach to transportation safety planning, the following interests will be represented on a policy advisory committee, with one representative from each. As individual members are identified, staff will work to assure that there is geographic representation for the entire state as is practical:*

- *Metropolitan Planning Organization*
- *City (League of Oregon Cities) representative*
- *County (Association of Oregon Counties) representative*
- *Oregon Health Authority*
- *Area Commission on Transportation*
- *Enforcement (Oregon State Police)*
- *Engineering (City, County or Consultant)*
- *Impaired Drivers – Governor's Advisory Committee on Driving Under the Influence of Intoxicants representative*
- *Motorcyclists – Governor's Advisory Committee on Motorcycle Safety representative*
- *Trucking – Oregon Trucking Association representative*
- *Bicyclists and Pedestrians – Oregon Walks representative*
- *Judiciary*
- *ODOT Transportation Safety Division*

*This proposed membership is in addition to the five-member Oregon Transportation Safety Committee which includes representation from Emergency Response, Trucking, Engineering, Law and the Judiciary.*

*Staff is in the process of developing the scope of work and schedule for this project. The project is anticipated to start in September, 2014. Staff is currently working through the process to obtain consultant assistance to help assess the effectiveness of the current plan as well as gather insights from key stakeholders for improving the next version of the plan. Staff will also seek consultant assistance to prepare the next update to the plan. There will be key check points with the Oregon Transportation Commission prior to the anticipated May 2016 completion date.*

**Presentation:**

Transportation Development Division Administrator Jerri Bohard said the kick-off of the Safety Action Plan has started. The Oregon Transportation Plan is the umbrella document, with a number of modal and topic plans within that plan. As typically done with modal plans, they are brought to the Commission with milestones and kick-offs. She gave a brief rundown of all the plans under way right now and some of the changes that have come out of MAP-21. The partnership between Transportation Development's Planning Section and the Transportation Safety Division recognizes that Planning has a responsibility, not only for process, but also thinking about the other modes that balance policies in the Oregon Transportation Plan.

Transportation Safety Division Administrator Troy Costales talked about some of the specifics of the Safety Action Plan. Adopted in 2011, this plan was identified in MAP-21 with an expiration date of five years, and will be brought back to the OTC in 2016. The document covers the four "E"s of safety: emergency medical services, education and outreach, enforcement, and engineering. The engineering piece has significantly changed due to MAP-21, with very specific roadway safety and engineering programs that were not in the 2011 plan because under Paul Mather's leadership, the Highway Division does a great job of leading the effort for infrastructure safety.

**Discussion:**

Commissioner Baney said she would be remiss for not mentioning the potential of the legalization of marijuana, and asked what planning and discussions are occurring in preparation for that potential. Costales responded that Oregon law already has a section for driving under the influence of intoxicants, which includes marijuana. If the approval comes forward allowing recreational use of marijuana, and this places a burden on law enforcement on the highway safety and chemical testing sides, the Oregon State Police have already started looking at more comprehensive and efficient chemical testing processes and follow-up programs for monitoring and treatment.

Commissioner Lohman asked if it was fair to assume the plan will address bicycle safety as well, and is it fair in that context to assume the issue of rumble strips and how to take advantage of rumble strips to make roads safer for drivers without causing problems for bicyclists with the rough patches on the road. Costales responded that yes, bicycle safety is being addressed. Jerri Bohard added that the Bicycle Safety Plan also addresses these issues.

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## *National Teen Driver Safety Week*

The Commission considered approval of a proposed proclamation that designates Oregon Teen Driver Safety Week, October 19-25, 2014, in support of National Teen Driver Safety Week, as proclaimed by Congress, for Governor Kitzhaber's signature. ODOT Transportation Safety Division Administrator Troy Costales presented the proposed proclamation. ***(Background materials in Director/Commission/History Center File, Salem.)***

### ***Background:***

*Oregon emphasizes the importance of Oregon Teen Driver Safety to its citizens during the week of October 19-25, 2014. One of the ways we do this is by declaring this week as Oregon Teen Driver Safety Week. Oregon's Driver Education is consistently recognized as a national leader. Popular activities typically held during the week include:*

- *The "Why Drive with Ed" campaign*
- *Work Zone Safety Emphasis*
- *Bicycle Safety Awareness activities*
- *Statewide summer safety fairs*
- *Driver Education courses*

### ***Presentation:***

Troy Costales gave a presentation on implementation of House Bill 2264, which passed in May 2013 and allowed for the Transportation Safety Division to provide additional support to Teen Driver Safety Week through increased exposure of driver education to underserved areas of the state. Highlights of the presentation were:

- OAR amendments in March, 2014, allowed two basic modalities for expansion of the program around driver education in the State of Oregon. The first was to enhance our ability to subsidize financing the training for lower or no-income families. Seventy families throughout the state have been aided so far this year. The second allowed ODOT the role of being a broker between public or private entities to provide training in communities that do not have driver education services. Three pilot programs supporting this have been successfully undertaken: Glendale (completed), Brookings (May - instructor training), and Culver (pending - adaptive technology).
- Additional incentives: TSD/DMV Waiver Program, which allows waiver of DMV testing for students who have completed qualified driver education programs. There has been a 30 percent increase in driver education programs completed, from 1,707 in 2013 from January through June, to 2,436 in 2014 for the same time frame.

### ***Discussion:***

Commissioner Morgan asked if there were capacity issues with the program. Costales responded that there are some areas of the state with capacity issues where a lottery is being considered because more students are signing up than classes available. However, legislation now allows private vendors to provide the service once it is DMV certified as to curriculum and instructor knowledge.

**Action:**

Commissioner Baney moved to approve the proclamation designating October 19-25 as Oregon Teen Driver Safety Week. Commission members unanimously approved the motion.



**Transportation Funding**

The Commission received an informational overview about transportation funding in Oregon, including sources and uses of funds, and trends impacting transportation funding from ODOT Assistant Director of Public Affairs Travis Brouwer. **Background materials in Director/Commission/History Center File, Salem.)**

**Background:**

*Funding for Oregon's transportation system comes from both federal and state revenue sources.*

*Federal Funds - The federal government collects fuels taxes on gasoline (18.4 cents per gallon) and diesel (24.4 cents per gallon) as well as taxes on heavy trucks. These revenues are deposited in the Federal Highway Trust Fund, which distributes funds from the Highway Account to states and local governments and from the Mass Transit Account to transit agencies. Virtually all of this money is allocated through formulas set in the Surface Transportation Authorization Act.*

*Oregon receives approximately half a billion dollars in funding from the Federal Highway Administration each year. All of the state's federal highway funds flow through Oregon Department of Transportation, though ODOT passes through about 30 percent of the state's federal highway funding to local governments. Federal highway funds are used for capital construction projects on the state's highways (including the Interstate, National Highway System, and other elements of the federal-aid highway system) as well as planning. Some can also be used for transit and bicycle/pedestrian capital projects. Most federal transit funds go directly to transit districts in urbanized areas. ODOT's Public Transit Division manages transit funds for small towns and rural areas.*

*State Highway Fund - The State Highway Fund collects resources from three main sources:*

- *Taxes on motor fuels (primarily the 30 cent per gallon gas tax)*
- *Weight-mile tax on heavy trucks*
- *Driver and motor vehicle fees, including vehicle registration and title, and driver licenses*

*Under the Oregon Constitution, State Highway Fund fees and taxes are dedicated to roads, including bikeways and walkways within the highway right of way. State funds can be used for both capital construction projects and the day-to-day maintenance and operation of the state's roads, as well as for agency operating costs. Under formulas set in state statute, ODOT distributes State Highway Fund revenues to local governments. About 40 percent of State*

*Highway Fund revenues (after deducting the costs of collecting the revenue) are distributed to cities and counties.*

*Other State Funding - ODOT also receives revenue from a number of other state sources, including:*

- *Lottery funds, including lottery bond proceeds directed to the ConnectOregon program.*
- *Cigarette tax revenues dedicated to transit services for seniors and the disabled.*
- *General fund resources for transit services for seniors and the disabled.*
- *Custom license plate fees dedicated to operating passenger rail.*
- *A variety of transportation-related permits and fees.*

*Because these resources are not dedicated by the Oregon Constitution to roads, ODOT uses these resources primarily for non-highway projects and programs.*

**Presentation:**

Travis Brouwer started the presentation on transportation funding in Oregon with an overview of ODOT's budget the OTC approved last month. Highlights of the presentation were:

- ODOT's budget includes debt service and personal service
- Federal Surface Transportation funding is distributed to the states through various programs and certain requirements and strings attached. These requirements sometimes make it hard to put the funds to use, and the funds are only for capital projects and planning, and not for basic maintenance of the system. In addition, it is not purely highway funding; it can be used for transit and bicycle/pedestrian facilities.
- Federal funds are split between ODOT, cities and counties and require a 10.27 percent match of the total project cost.
- The State Highway Fund comes from 44 percent fuel taxes, 28 percent weight-mile tax, and 28 percent DVM fees: it is required by constitutional restriction that all spending from the fund goes to highway projects within the right of way. The funds distribution formula allows 60 percent to ODOT, 24 percent for counties, and 16 percent to cities. New monies will be distributed 50, 30, and 20 percent respectively.
- *ConnectOregon* is paid from lottery-backed bonds and specifically covers projects not eligible for State Highway Funds.
- Transit operations, rail projects and rail operations, and port projects are difficult to fund.
- New trends include: ODOT construction projects on the decline; a larger and larger share of funds going to debt service; increasing fuel efficiency of new vehicles; people are driving less; transportation energy use is dropping so state revenue forecasts have dropped; the federal Highway Trust Fund is running a big deficit; and construction materials cost a lot more than they used to

**Discussion:**

Chair Mater asked the prognosis of getting a gas tax increase tied to inflation and what will happen at the federal level. Brouwer responded there has not been a lot of interest at the federal level in increasing the gas tax, and there is not strong consensus on the purpose of the government in investing in transportation. At one point, there was strong consensus on

construction of the interstate system and it was easy to generate support for raising the federal gas tax. Now, we would not be well served to look to the federal government for salvation at this point.

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### ***Statewide Transportation Improvement Program (STIP) Process***

The Commission received an overview of the Statewide Transportation Improvement Program (STIP) process and project selection process changes that occurred as part of the 2015-2018 STIP. The discussion included the timeline for completion and adoption of the 2015-2018 STIP and reflects on the 2018-2021 STIP process. ***(Background materials in Director/Commission/History Center File, Salem.)***

#### ***Background:***

*The Oregon Statewide Transportation Improvement Program (STIP) lays out the state's four-year transportation improvement work schedule for state and regional transportation systems, including federal lands, interstate, state and regional highways, bridges, and public transportation. It covers all state and federally-funded system improvements for which funding is approved, and that are expected to be undertaken during the upcoming four-year period. The STIP is updated every two years. Ultimately, the STIP is adopted by the Oregon Transportation Commission and is approved by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) as required by federal law.*

*The STIP includes public-funded projects of statewide or regional significance. The STIP is a project scheduling and funding document, not a plan. The STIP only includes projects for which there is committed funding available and therefore is fiscally constrained.*

*The presentation highlighted the process for development of this document, including the history and significance of the document, the policy framework for this work, and the involvement of various stakeholders including Area Commissions on Transportation. There was also discussion of the STIP process prior to the changes associated with the 2015-2018 STIP, to better help Commissioners understand the challenges associated with development of the 2018-2021 STIP.*

#### ***Presentation:***

ODOT Transportation Development Division Administrator Jerri Bohard and ODOT Highway Division Administrator Paul Mather led the presentation on the STIP process. Highlights of the presentation were:

- the STIP document
  - list of projects approved for funding
  - identifies funding and scheduling
  - lists approved projects for next four years
  - updated every two years
  - it's the law!
- STIP is NOT a planning document, where a project begins, or different than the budget
- projects come from transportation plans or data/management systems
- the key message - citizens can effectively participate, get them involved early
- how a project gets into the STIP

- history of STIP development
- Area Commission on Transportation (ACT) is an advisory body chartered by OTC - members volunteer, and from local government, businesses, non-profits, transportation industry, community at-large. ACTs expand opportunities for local citizen involvement in ODOT decision-making, and play key advisory role in STIP development

Paul Mather continued the presentation with a discussion of the major shift in the last STIP update, and the Governor and OTC's direction.

- The shift in the last STIP puts the OTC in a better policy-making position and lets the best projects rise up and not be limited by funding silos.
- Governor and OTC direction is to maintain existing transportation system assets, develop a more sustainable and multimodal system, weigh a wide range of values to meet a wider range of community objectives, consider who should best manage and own transportation assets, use process to better leverage transportation investments, incorporate least cost planning and practical design in project selection/development
- **Fix-It/Enhance** project selection process
- final STIP will hold back 20 percent of **Enhance** for statewide needs, with any additional funds going to **Fix-It** shelf programs



### ***Sustainability Program and Progress Report***

The Commission received an informational presentation on the Oregon Department of Transportation's Sustainability Program and Progress Report from ODOT Transportation Development Division Administrator Jerri Bohard. ***(Background materials in Director/Commission/History Center File, Salem.)***

#### ***Background:***

*The Oregon Department of Transportation (ODOT) has long-term goals, short-term goals and performance measures based on focus areas identified in [Volume I of ODOT's Sustainability Plan](#). To implement that plan, [ODOT's Sustainability Program](#) publishes an annual progress report to highlight sustainability-related accomplishments for the year and report on progress made towards performance measures and goals outlined in [Volume II of ODOT's Sustainability Plan](#). Volume II, Sustainability Management Framework for ODOT's Internal Operations, sets goals, strategies, and performance measures for ODOT's internal operations, including facilities and fleet.*

*The presentation provided a history and framework of the sustainability program and highlights from the 2013 ODOT Sustainability Progress Report. ODOT continues to lower its energy use while expanding its use of alternative fuels. For example, ODOT is exceeding its biodiesel use goals. The agency used 45 percent B-20 biodiesel equivalent in its fleet in 2013. ODOT is also partnering with the Energy Trust of Oregon on the Strategic Energy Management Program. The agency will pilot three facilities through a two-year program aimed at cost savings through*

*continuous improvement in energy management practices. These are just a few of the initiatives covered in the 2013 progress report.*

**Presentation:**

Transportation Development Division Administrator Jerri Bohard led the presentation on ODOT's Sustainability Program. Highlights of the presentation were:

- Sustainability as part of ODOT's core values and mission: Mission: To provide a safe, efficient transportation system that supports economic opportunity and livable communities for Oregonians  
Sustainability: We balance economic, environmental and community well-being in a manner that protects the needs of current and future generations.
- Oregon Transportation Plan's fourth goal – "To provide a transportation system that meets present needs without compromising the ability of future generations to meet their needs from the joint perspective of environmental, economic and community objectives... This system is efficient and offers choices among transportation modes. It distributes benefits and burdens fairly and is operated, maintained and improved to be sensitive to both the natural and built environments."
- ODOT's strategic plan for sustainability:
  - Volume I: Sets the stage. Provides a Vision and defines Focus Areas- (OTC approved in 2008)
  - Volume II: Sustainable Management for ODOT's Internal Operations- (OTC approved in 2010)
  - Volume III: Operating and maintaining a sustainable transportation system- (In progress)
  - Focuses on the broader system, such as sustainability in project delivery, climate change mitigation and adaptation
- annual progress report
- sustainability focus area include health and safety, social responsibility, environmental stewardship, land use and infrastructure, energy and climate change, material resource flows, and the economy
- ODOT facilities energy use – working to meet a minimum 5-percent energy reduction target over two years and LEED design in Transportation Building
- fuel use – conserving energy through biodiesel equivalents, electric vehicles, charging stations, electronic bids, increased recycling, and decreasing waste
- areas for improvement: paper and water
- measuring performance: successful outcomes, new baseline, challenges remaining, strategic opportunities
- Oregon Sustainability Board asked agencies to revisit Sustainability Plans in 2013
- project sustainability



**Consent Calendar**

The Commission considered approval of the Consent Calendar. ***(Background materials in Director/Commission/History Center File, Salem.)***

1. Approve the minutes of the July 7, 2014, Commission meeting in Salem.
2. Confirm the next two Commission meeting dates:
  - Thursday, September 18, 2014, meeting in Salem.
  - Thursday and Friday, October 23-24, 2014, meeting in Corvallis.
3. Request approval to adopt a resolution for authority to acquire real property by purchase, condemnation, agreement or donation.
4. Request approval of the following rules:
  - a. Amendment of 735-010-0020 relating to record inquiry account holders.
  - b. ~~Adoption of 735-061-0210 through 735-061-0390 relating to a DMV pilot program for third-party Class C testing and drive tests. (This section was pulled from the agenda.)~~
  - c. Amendment of 735-118-0000, 735-118-0010, 735-118-0020, 735-118-0030, 735-118-0040 and the adoption of 735-118-0050 relating to ignition interlock devices.
5. Request approval to amend the 2012-2015 Statewide Transportation Improvement Program (STIP) to cancel Oregon 82: Lostine – Enterprise Passing Lanes project Wallowa County in Region 5. The saving of \$1,500,000 will be used for 2015-2018 ***Enhance*** project, Oregon 82: Minam Curve Correction also in Wallowa, County Region 5. The total estimated cost of this project is \$4, 611,000.
6. Request approval to amend the 2012-2015 Statewide Transportation Improvement Program (STIP) to add the Preliminary Engineering phase for five projects:
  - Oregon 34: McKinney Slough Bridge Replacement;
  - Oregon 241: Isthmus Slough Bridge Rehabilitation;
  - Oregon 140: Buck Creek Bridge Replacement;
  - Oregon 380: Ochoco Creek Bridge Replacement; and
  - U.S. 20: Sheep Creek Bridge Repair.

The funding for these five projects will come from cost savings realized in the State Bridge Financial Plan. The total estimated cost for the preliminary engineering for these projects is \$2,235,800.

7. Request approval to amend the 2012-2015 Statewide Transportation Improvement Program to cancel the U.S. 26: Ruben Lane project on the Mt. Hood Highway at milepost 23.42 in the City of Sandy, Region 1, and add unspent funds of \$109,033 to the U.S 26: Orient Drive project on the Mt. Hood Highway approximately one mile west of the City of Sandy in Clackamas County, Region 1. The total estimated cost of the Orient Drive project is \$587,033.
8. Request approval to amend the 2012-2015 Statewide Transportation Improvement Program (STIP) to cancel Oregon 213 (82nd Ave): Causey Ave, Oregon 213 (82nd Ave); Sunnyside Rd, Oregon 213 (82nd Ave): King Road, and add the funds to Oregon 213 (82nd Ave): SE Duke St and Oregon 224 (Clackamas Hwy): SE 232nd Dr. in Clackamas County. A total of \$687,690 in unspent funds are available to be redistributed. \$230,000 will be added to the Oregon 213 (82nd Ave): SE Duke Street project for additions that included a bus pullout increasing the costs of design and right-of-way and \$457,690 will be added to The

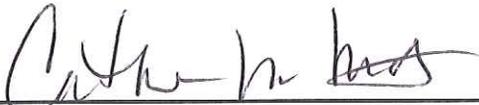
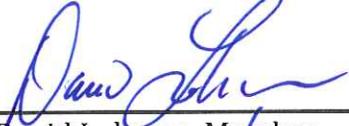
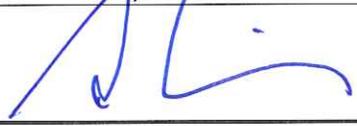
Oregon 224 (Clackamas Hwy): SE 232nd Ave. project for the realignment of driveways, improvements to visibility, drainage and the presence of archaeological remains in the area requiring additional studies.

**Action:**

Commissioner Lohman moved to approve the Consent Calendar. Commissioners unanimously approved the motion.



Chair Mater adjourned the meeting at 2:26 p.m.

 Catherine Mater, Chair	 Tammy Baney, Member
 David Lohman, Member	 Susan Morgan, Member
 Alando Simpson, Member	 Roxanne Van Hess, Commission Support

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MEETING  
OF OREGON TRANSPORTATION COMMISSION  
August 21, 2014  
Ontario, Oregon

1 TRANSCRIPT OF MEETING

2 **CHAIR MATER:** -- decision-making on ConnectOregon V  
3 projects. I think the way that I'm going to suggest that we  
4 handle this is to turn it over to Director Garrett to lead the  
5 staff recommendations up on this, and then I'm going to open it  
6 up to commission members to give us a -- kind of an overview of  
7 where your thinking is at. And then from there, making  
8 determinations on how we want the vote or votes to go.

9 Before we do this, I would personally like to just  
10 express my gratitude and thanks for all of the Department of  
11 Transportation staff and Chris; your work on ConnectOregon V  
12 has been remarkable. These are -- these are well-known  
13 processes outside of the State of Oregon and respected  
14 processes, and I just want to congratulate all of you for the  
15 tremendous work that you've done on this.

16 Director?

17 **DIRECTOR GARRETT:** Thank you, Madam Chair. So we do  
18 indeed bring to the commission the final review committee's  
19 recommended ConnectOregon V projects, projects numbers 1  
20 through 37, and the request is that we now animate these  
21 projects with funding from the program here and as articulated  
22 in the memo that I drafted to the OTC as well as the background  
23 materials encompassed in the document and for those that will  
24 be presented. This agency, this director recommends approval  
25 of the ConnectOregon V projects, projects 1 through 37.

1           This recommendation is based on the following  
2 foundation or principles. I am confident in saying that the 37  
3 ConnectOregon projects comport with the well-established and  
4 clearly-written statutory considerations, administrative rules,  
5 and program protocols and disciplines. ODOT, along with the  
6 ConnectOregon interagency team and 12 advisory committees  
7 charged with vetting these projects, have acted within the  
8 limits of these authorities. So, simply put, it is the  
9 recommendation of this agency to select as approved projects  
10 the ConnectOregon V final review committee recommended priority  
11 projects 1 through 37 to receive funding because that decision  
12 was made in accordance with established law, rules, and  
13 procedures.

14           I think with that as preamble or foundation, Madam  
15 Chair, what I'd like to do now is turn to Chris Cummings to  
16 continue to build upon that to inform the discussion, and then  
17 we look forward to the deliberation.

18           **MR. CUMMINGS:** Chair Mater --

19           **CHAIR MATER:** Absolutely.

20           **MR. CUMMINGS:** Oh, it's working. Commissioners,  
21 thank you for having me today. Director Garrett presented our  
22 basic request is that you accept the recommendation of  
23 37 projects from our final review committee for approval. The  
24 total amount of funds for that is 47 million 369 million [sic]  
25 dollars, approximately. Of that, \$369,000 is remaining funds

1 from savings realized from past -- past projects. The  
2 legislature authorized \$42 million for this round of funding.  
3 Also of that is \$500,000 for administrative cost, for selection  
4 process and project monitoring, contracts, and so on.

5 I'd like to give you a basic outline of what we've  
6 received from the public. This certainly has by far been the  
7 most public comment we've received in ConnectOregon, at least  
8 as far as I've been involved. To date we've received around  
9 9,400 comments, public comments, individual non-duplicative  
10 public comments. 97 percent approximately of those comments  
11 were in the form of petitions that we received either regarding  
12 two projects at Saint Helens for Saint Helens and one project  
13 at City Rainier and/or commodity transportation in general.

14 We received public comment in three separate packets.  
15 One was during open public comment period, which you've had the  
16 luxury to see online the comments we received. We received --  
17 we classified those comments, so you're aware, into categories  
18 of comment and then chronological order, so that way everybody  
19 received the same input or at least that's how we feel it  
20 happened.

21 With the OTC meeting you received 77 public comments  
22 and 114 -- as you well remember, 114 verbal comments. We also  
23 packaged those in a fashion that, as we developed them and  
24 looked at summaries, we saw policy comments, we saw legislative  
25 comments, and we saw comments about specific projects, whether

1 it be any of the projects that we'll discuss today or projects  
2 that aren't in the top 37 list.

3 We also received numerous comments after the  
4 July 25th deadline that we had placed on the public comment  
5 period. We posted those online and we put those in  
6 chronological order. We did have a pack, I gave you each a  
7 copy of a letter this morning. This came to us late in that we  
8 couldn't enter the data online, which it will be entered  
9 online. It's a petition of approximately a thousand comments  
10 that came from the Governor's Office. They were sent directly  
11 to the Governor's Office. I don't know who generated this  
12 petition. In cases where we knew who generated petitions, we  
13 put that comment online in front of that petition, and in some  
14 cases we didn't know who generated them.

15 I decided based on our discussion this morning just  
16 to cut down my testimony because I'm sure you're happy about  
17 that based on last meeting; it's lengthy testimony.

18 What I'd like to ask you is, would you like a high-  
19 level overview of the process that we went through? If not,  
20 then we can move right into questions and --

21 **CHAIR MATER:** What's your pleasure, Commissioner?

22 **COMMISSIONER MORGAN:** At this point, because there  
23 are individuals here that --

24 **UNIDENTIFIED FEMALE VOICE:** (unintelligible)

25 **COMMISSIONER MORGAN:** -- haven't been ordered -- oh,

1 excuse me, I'm sorry. At this point because there's -- there  
2 are individuals in the audience that haven't been through, I  
3 would be in favor of a very short high-level overview of the  
4 process so far.

5 **MR. CUMMINGS:** Okay. Remind me if I go longer than  
6 short, please. In October of 2013 we posted the applications  
7 for ConnectOregon. Along with that posting we posted the  
8 application instructions, we posted a sample grant agreement so  
9 that applicants would know what they would be responsible for  
10 in the end. We posted instructions to reviewers so that all  
11 reviewers and, most importantly, the applicant could see what  
12 the reviewers were looking at and how things would be scored.

13 In November of last year we received the  
14 applications. Once applications come in, staff take a quick  
15 look at them for eligibility and completeness.

16 From there they go on to -- that's can -- Chair  
17 Mater --

18 **CHAIR MATER:** Just what -- what time in November?  
19 Was there -- I'm sure there was a submittal date in November.  
20 Do --

21 **MR. CUMMINGS:** There was a submittal --

22 **CHAIR MATER:** -- you remember when it was?

23 **MR. CUMMINGS:** -- date, and I believe it was  
24 November 25th, it was the week before Thanksgiving.

25 **CHAIR MATER:** Okay, thank you.

1           **MR. CUMMINGS:** We take a look at eligibility,  
2 completeness, and that's ConnectOregon staff, which would be my  
3 office, the freight planning unit.

4           Then we take the applications and we send them out,  
5 we -- we assign them a mode, we ask the applicant what mode  
6 they prefer, but it's not always accurate, so we assign them a  
7 mode. Whereas a predominant portion of them may serve rail as  
8 opposed to marine, it gets assigned to rail.

9           From there it goes out to modal staff and they look  
10 at the applications based on criteria that we have that were in  
11 the instructions to reviewers and score them based on the five  
12 considerations that are proposed in the legislature.

13           From there they develop a tier. Each consideration  
14 is given ten points. A Tier 1 would be -- would meet all five  
15 considerations in staff size, Tier 2 four, and so on.

16           Tier 4 considerations, generally they meet one or  
17 none of the considerations. So you know for our scoring, the  
18 staff scoring, if an applicant does not answer a question, for  
19 instance the amount of jobs they may create or retain, they get  
20 a zero to keep it fair across all applicants.

21           From there we send the applications out to modal  
22 committees, we give them the staff tiering, we ask the modal  
23 committees to review them based on the considerations and what  
24 other -- other modal knowledge they may have, whether it fits  
25 into their system plan, et cetera. We do tell them that if

1 they're going to take a Tier, say for instance, four project  
2 and move it above a Tier 2 project, that they provide us with  
3 information why they did that. Perhaps they saw in some cases  
4 that the economic value of the project was different from what  
5 staff scored or they have that -- that belief that that's the  
6 case.

7 We take those -- all the staff scoring, the modal  
8 committee rankings, send them along to regional committees, and  
9 we instruct them with the same format for that.

10 **CHAIR MATER:** Mr. Lohman?

11 **COMMISSIONER LOHMAN:** Among the -- I'm not quite  
12 clear on how it works where you've got a -- kind of a mixed  
13 project that may be a rail project and a port -- a marine  
14 project. Does that go to both the rail mode committee and  
15 the -- the -- I don't know if we've got a ports committee --

16 **MR. CUMMINGS:** Sure.

17 **COMMISSIONER LOHMAN:** -- I don't know remember what  
18 we call it, but --

19 **MR. CUMMINGS:** It doesn't. And that is one thing  
20 that we will look at in the future, it's been brought up to us.

21 **COMMISSIONER LOHMAN:** Uh-huh.

22 **MR. CUMMINGS:** Generally, what happens with those  
23 projects is that the rail committee looks at it, they do  
24 understand there may be a marine context to it, but also the  
25 Oregon Freight Advisory Committee looks at it, so they -- they

1 look at in the context of more of a holistic freight element.  
2 We don't have a committee like that in place, say, for bike/ped  
3 and transit right now. So what we did internally is we brought  
4 those crossovers to the attention of staff and instructed those  
5 staff to, you know, mention it to their committees. Did they  
6 score it based on that? No.

7           The regional committees, we allow each region to  
8 handle it as they see fit, but we give them the basic  
9 instructions of "Here are the considerations, here's all the  
10 information from the modes, here's the staff information and  
11 the application information," any questions that were asked of  
12 applicants as well.

13           Some of the -- the regions, such as Region 5, will  
14 meet together and develop a list. Some of the regions, such as  
15 Region 2, they'll -- their ACTs will meet individually and then  
16 they'll bubble up into what they call a Super ACT, with  
17 representatives from each of their ACT, and they'll make a  
18 recommendation.

19           Once all those recommendations are in, we ask again  
20 for the comment, "Why did you move something up or down?" and  
21 we bring those -- all that material to a final review  
22 committee, which is appointed by the director. The final  
23 review committee is actually comprised of members from each  
24 modal committee, the chair and vice-chair, and then the chair  
25 and/or designated person from each ACT.

1           And we meet in Salem for one -- we schedule two days.  
2 This year it happened to happen -- happened to occur in one  
3 day. And they're given the same instructions as well as a  
4 starting point, which they receive the starting point is based  
5 on some staff work.

6           And previously I mentioned to you that it's a  
7 normalization process, and I think I'd like to step back from  
8 that and say what we do is we weight all the committee scores  
9 and then we average them. We weight them so that if a  
10 committee only has eight projects and another committee has  
11 28 projects, that one or that two, they're worth similar to a  
12 degree. Then we average them.

13           We give the final review committee a starting point  
14 based on those averages of all the committees that looked at  
15 them. Some projects have two committees, some have three  
16 because OFAC is pulled into it. The committee then decides, do  
17 they like that process or not? They can take those starting  
18 points and move them how they like. What's happened in this  
19 round and other rounds is they generally take that starting  
20 point and move from there. And we can see from those starting  
21 points; for instance, projects such as Redmond Airport will be  
22 scored by one for each of the committees. It's pretty obvious  
23 that that would finish up in number one and that, frankly, in  
24 this case was the only one that scored one in all the  
25 committees that reviewed it.

1           So then the final review committee goes through that  
2 process, they look at the five considerations, they look at  
3 other considerations, they all represent different modes and  
4 different regions, so they take the list and build a list,  
5 frankly, and give us a recommendation.

6           From there you've been involved in the process. Are  
7 there any clarifying points you'd like on that process?

8           **COMMISSIONER MORGAN:** The -- so there is a point in  
9 the process where there's a discussion about money that's  
10 allocated to the region and money that's allocated to projects  
11 of statewide significance. Could you give us a little bit of  
12 information --

13           **MR. CUMMINGS:** Yes --

14           **COMMISSIONER MORGAN:** -- on that?

15           **MR. CUMMINGS:** -- thank you for that question,  
16 Commissioner. We -- there's been some discussion that I've  
17 heard here and elsewhere, and we try to explain it as best we  
18 can that there's not a regional pot and a state pot; there's  
19 one pot of money. Within that one pot of money we're required  
20 to reach an allocation of ten percent for each region, assuming  
21 they have qualified eligible projects.

22           That works in different ways. We get the regional  
23 recommendations, just like modal recommendations. And what the  
24 committee does is they try to go down the list and they're at  
25 will to look at it different ways how they feel fit. They try

1 to go down the list for the best projects, they may say these  
2 are -- "Did we meet all the regional allocations? We didn't.  
3 Let's go back and look at it from that perspective." But  
4 they're starting from what they feel is the best projects down.

5           Some cases they go, "Okay, let's give -- Chris, give  
6 us a list of all the regional allocations," and then we go  
7 back. And really what we try to do is get the best projects  
8 for Oregon for this system and ensure that those regional  
9 allocations are in there.

10           Sometimes because of the regional allocations, we see  
11 projects bubble up that were much further down the list because  
12 we have to meet that ten percent. And the committee is just  
13 aware that that's the case, that those projects bubble up. Did  
14 that answer --

15           **COMMISSIONER MORGAN:** Yep, that did. Thank you.

16           **CHAIR MATER:** Any other questions from commission  
17 members for --

18           **COMMISSIONER MORGAN:** I have --

19           **CHAIR MATER:** -- Chris?

20           **COMMISSIONER MORGAN:** -- another question, if I --

21           **CHAIR MATER:** Of course.

22           **COMMISSIONER MORGAN:** The -- I heard you talk a lot  
23 about considerations, that the -- the considerations that were  
24 to be applied to the rankings within all the stages of the  
25 process. I didn't hear you say anything about requirements.

1 So are -- can you give us -- I'm curious about the difference  
2 between considerations and requirements and why you're using  
3 the word considerations rather than using the word  
4 requirements.

5           **MR. CUMMINGS:** Commissioner, the considerations, as  
6 we see it, were given to us in the legislation. A requirement  
7 would, to us, mean that you have to take all five of those  
8 considerations and rank them on that. A consideration leaves  
9 the door open that a project that doesn't meet, for instance,  
10 the highest amount of match would be a good project.  
11 Consideration also leaves the door open for projects -- well,  
12 exactly that, that if we were to look at it as a criteria and  
13 match, for instance, certain elements or certain modes, for  
14 instance aviation, would always win. So the consideration is  
15 somewhat of a balancing factor so that there -- there isn't --  
16 it's not weighted in one way or the other.

17           **COMMISSIONER MORGAN:** May I have a follow-up  
18 question, Madam Chair?

19           **CHAIR MATER:** Of course.

20           **COMMISSIONER MORGAN:** The -- so the language around  
21 the considerations and the instructions that had been given  
22 through the iterations of ConnectOregon with relevance to these  
23 considerations, have those evolved over time?

24           **MR. CUMMINGS:** Commissioner, they have evolved over  
25 time. At least in my involvement with ConnectOregon, which is

1 since ConnectOregon II, they've involved -- they've evolved  
2 where they've been weighted in some instances, the first three  
3 considerations minus project readiness and match were priority  
4 considerations, so in our scoring, our staff scoring, we  
5 weighted them. And for instance, as opposed to each  
6 consideration getting ten points, those three might get twenty  
7 and the other two would get ten --

8 **COMMISSIONER MORGAN:** So why --

9 **MR. CUMMINGS:** -- so they've evolved.

10 **COMMISSIONER MORGAN:** And why was that changed?

11 **MR. CUMMINGS:** I can't answer for the legislature,  
12 unfortunately, Commissioner. I do know that at my -- there was  
13 some discussion about projects with aviation where they do  
14 receive a higher match, maybe there was potential for that, but  
15 I can't speak exactly --

16 **COMMISSIONER MORGAN:** So this was a discussion that  
17 took place in the legislative venue.

18 **MR. CUMMINGS:** Correct.

19 **COMMISSIONER MORGAN:** Thank you --

20 **CHAIR MATE:** So I need further clarification on this  
21 so -- because I don't see this in ORS statute, this  
22 conversation that we're having right now. What I see is a very  
23 clear delineation of five elements, you can call them  
24 considerations or requirements, and they're very clear in -- in  
25 the law itself. Yeah, this is what you have to -- this is what

1 you base your decision on for funding of a project.

2 I also see in instructions that we put out, the  
3 department puts out, for every applicant that is filling out a  
4 project that these same five exactly as stated in ORS are  
5 further reiterated in the instructions that ODOT sends out and  
6 the -- yes, you used the term consideration, but, you know --  
7 but then ODOT has its own tier mechanism procedure that  
8 separates this out into five tiers, and the first tier  
9 stipulates, quote-unquote, "The application demonstrates the  
10 projects meet all five considerations thoroughly," unquote.  
11 Anything that doesn't meet those five stipulations clearly and  
12 thoroughly drops down to the second tier. Okay --

13 **MR. CUMMINGS:** That's correct, Commissioner.

14 **CHAIR MATER:** So I think any -- I'm -- I'm asking you  
15 this because you've sat through so many, but isn't it  
16 reasonable to assume that any -- any group working on a  
17 project, regardless of what level, would understand that these  
18 five elements need to be met and they need to be met thoroughly  
19 to make a Tier 1 status. Is that a fair statement?

20 **MR. CUMMINGS:** I -- yes, it is, Commissioner, a fair  
21 statement. The -- the one element that we do add, though, is  
22 that the tiering is informative to the committees and not an  
23 absolute, and we do ask them -- we do allow them space to move  
24 tiers up and down. They can't change the tier, but they can  
25 put a Tier 3 project over a Tier 1 --

1           **CHAIR MATER:** Well, that -- that's true, but  
2 that's --

3           **MR. CUMMINGS:** Correct.

4           **CHAIR MATER:** -- because they are defining the  
5 performance differently. The tier status doesn't change, as I  
6 see it here. I may be wrong, but that's how I -- if I were a  
7 reasonable person reading this, this is how -- this is what my  
8 understanding would be of how -- how I am to write projects, I  
9 think in this process, so --

10           Questions for Chris?

11           **COMMISSIONER MORGAN:** I have just one follow-up. So  
12 the -- my understanding is that the projects that are ranked  
13 here I don't call -- comprise the complete body of projects  
14 that end up being fundable by the amount of money that comes  
15 in, that there are projects that are ranked lower than Tier 1  
16 projects that make it into the final funding discussion in all  
17 of the iterations of this program.

18           **MR. CUMMINGS:** That's correct, Commissioner. Usually  
19 what we see with tiering of projects, and keep in mind that  
20 each mode of project is scored by different staff, that we get  
21 a bell curve.

22           **CHAIR MATER:** So I need -- I need again clarification  
23 on this because every project that I looked at on the list all  
24 had Tier 1 status. They never fell below 4 -- any below a  
25 41-point. If they did, they dropped down to a Tier 2 status.

1 Is that not correct?

2 **MR. CUMMINGS:** Correct, Commissioner --

3 **CHAIR MATER:** All right.

4 **MR. CUMMINGS:** Yes.

5 **CHAIR MATER:** Okay. And so the projects -- you know,  
6 I look at the list again here, but I think I'm right. All  
7 projects that have recommend -- have been recommended for  
8 funding received a Tier 1 status. Is that correct?

9 **MR. CUMMINGS:** I'm not sure if I understand the  
10 question, Commissioner. Not all projects are Tier 1s that are  
11 recommended for funding. There are Tier 1 projects in the  
12 top 37, but all those projects are not Tier 1 projects. And --  
13 and if you would allow me a moment, I can pull up my  
14 spreadsheet here --

15 **CHAIR MATER:** Would you do that? Let's just --

16 **MR. CUMMINGS:** Yes.

17 **CHAIR MATER:** -- take a look at that because I -- I  
18 certainly need some clarification on this.

19 **MR. CUMMINGS:** Commissioner -- Chair Mater,  
20 Commissioners, I have a list here. The top 12 projects, all  
21 but one of them are Tier 1 projects, but we also have Tier 2  
22 projects in the list. We have a Tier 3 project, which is in  
23 Region 5, Morrow County, Morrow Lexington Airport.

24 **CHAIR MATER:** So, thank you. Yes, I see that you do.  
25 They're very rare. But how -- how does that happen then? You

1 know, with instructions that give, you know -- because if I was  
2 confused, I'm sure that others are, too, as part of the  
3 process. So how do we -- how do you reconcile that when  
4 they're not in the status of where all the projects have met  
5 the five criteria? How does that work?

6 **MR. CUMMINGS:** Commissioner, some of it happens  
7 because the tiering is based on what the applicant puts into  
8 the application, and the committees look at those applications  
9 and they are permitted, as we discuss in our instructions to  
10 reviewers, to use their local knowledge or their knowledge of  
11 the system or of that project in particular.

12 Some of those projects rise above the tiering because  
13 they see it differently than staff. Some of the projects, for  
14 instance, are bubbled up because they are in a region that  
15 needs to meet their ten-percent allocation, so sometimes you'll  
16 see Tier 3 projects come up with that. What I can tell you  
17 that our final review committee did do was they excluded all  
18 Tier 4 projects, and that was one of their first steps to take  
19 a look at that and exclude all Tier 4 projects.

20 **CHAIR MATER:** Okay, okay. Thank you. Appreciate  
21 that.

22 Any -- any further questions? Any further comments  
23 or input for the commission as we move forward? Jerri? Chris?

24 **MR. CUMMINGS:** I -- I -- I would like to say on  
25 project readiness that we -- our scoring is based on how far

1 out from approval date or agreement date, October -- September,  
2 actually, of 2014 we see a project starting. I know there's  
3 some discussion about that.

4           Projects, some of these projects are not construction  
5 projects. Some are planning projects. Some -- many are  
6 construction projects but include a planning and engineering  
7 element, and that is when we instruct staff to look at  
8 construction readiness and start dates of those projects.  
9 Particularly if you have an airport project that -- that  
10 includes planning and engineering, we know they'll get their  
11 FAA grant at X time, they'll get so many points for how far out  
12 they are from that September 2014 date, and we provided that  
13 date to the applicants in our scoring instructions to reviewers  
14 and elsewhere so that they would know when that timeline would  
15 occur.

16           **COMMISSIONER MORGAN:** So may I ask a question --

17           **CHAIR MATER:** Of course.

18           **COMMISSIONER MORGAN:** -- Madam Chair?

19           So is the intention of that then to --

20           **UNIDENTIFIED FEMALE VOICE:** (unintelligible)

21           **COMMISSIONER MORGAN:** -- keep -- oh, I'm sorry. So  
22 is the intention of that piece of the discussion to keep the  
23 door open to a broad range of projects, knowing that there are  
24 certain criteria; for example, anything that involves wetlands  
25 or in-water work or things like that where the -- where the

1 permitting is complex and it's often a bifurcated state/federal  
2 process, to make sure that those projects aren't just  
3 automatically excluded from the program?

4 **MR. CUMMINGS:** That's part of the intent. We know  
5 that projects -- planning and engineering projects will start.  
6 Will they have the funding to match it immediately? Oops,  
7 excuse me, sorry. So, yes --

8 **COMMISSIONER MORGAN:** We call this --

9 **MR. CUMMINGS:** -- it's partly the intent --

10 **COMMISSIONER MORGAN:** -- "at the end of August wave"  
11 down where --

12 **MR. CUMMINGS:** Yeah --

13 **CHAIR MATE:** Yeah, that's true. Yeah.

14 **MR. CUMMINGS:** Partly the intent, yes. Many of our  
15 projects that had -- if they had to have permits and funding in  
16 place within, say, 180 days of signing the agreement, wouldn't  
17 occur. Many of them, particularly the airport projects, would  
18 not occur because their grant funding won't occur until next  
19 year, next summer. They're building their projects and  
20 submitting projects for a year ago for when they see they may  
21 get the funding and occur. So they wouldn't necessarily --  
22 some of them do. I can't put everything in one pot, but  
23 airport projects, particularly they're looking out to next year  
24 to see when their FAA grants will come, and they're planning in  
25 that fashion.

1           **CHAIR MATER:** But those are -- correct me if I'm  
2 wrong. Those are grants that they have already secured and --  
3 and it's the process of getting everything on board for  
4 funding, typically, because you're dealing within the timeframe  
5 that we talk about of 180 days. I mean, that's -- these  
6 projects, these grant funds are typically on yearly rotation,  
7 so that tells me that's a timing issue of when, you know,  
8 funding is going to be coming on board. Is --

9           **MR. CUMMINGS:** Chair Mater --

10          **CHAIR MATER:** -- that -- am I saying that right?

11          **MR. CUMMINGS:** -- it -- it is correct in -- in most  
12 cases.

13          **CHAIR MATER:** Uh-huh.

14          **MR. CUMMINGS:** In some cases some of the airports  
15 need -- they have -- airports have what's known as entitlement  
16 funds that come --

17          **CHAIR MATER:** Right.

18          **MR. CUMMINGS:** -- every year and they can save them  
19 up. In some cases they get discretionary funds, so they won't  
20 know if they're getting those until later, say next year, for a  
21 project. So it's -- it's not an absolute, but in many cases.

22          **CHAIR MATER:** Okay. Commissioner Lohman.

23          **COMMISSIONER LOHMAN:** I guess I just want to share my  
24 perspective on the project-readiness issue. There are a number  
25 of issues that have been raised this time around, and I -- I

1 want to talk about a number of them as we get into  
2 deliberation.

3           But on project readiness, it's -- I think it's pretty  
4 hard to have a firm, hard definition of what project-ready  
5 means just because the projects are so different from each  
6 other and in some cases do involve, you know, multiple  
7 regulatory agencies and -- and other things where you -- you  
8 could not -- if you had to say it has to be ready by such-and-  
9 such a date and meet that date, you would probably never be  
10 able to get the project funding because you can't be sure of  
11 that.

12           I do think project readiness is very important,  
13 though, from the standpoint that I discussed this morning of  
14 fairness to all the other projects. And I'm -- what I hope is  
15 that the review committees took a look at that question, I  
16 think they did, and asked themselves, is this project one that  
17 is -- should be in this round of ConnectOregon or should it be  
18 in a future round so that it's not in this round competing with  
19 other projects that actually are ready to be funded in this  
20 round? And that to me is the essential question.

21           I'm -- I -- I appreciate the Chair's pointing out  
22 that, you know, there are some fairly strong words saying, you  
23 know, it's -- it's really important, but I'm not sure there's a  
24 legal sort of prohibition for a project that can be sort of  
25 taken off the table just because it doesn't meet some

1 particular definition of project readiness. But that fairness  
2 issue, I think, is very big because you got a lot of other  
3 applicants who are project-ready who might lose out in this  
4 competition to somebody who's not going to be able to get  
5 funded in this round.

6 **CHAIR MATER:** It strikes me that we're at a point  
7 where I think we need to -- unless you have anything else to  
8 share, we really appreciate the overview, but I think we're at  
9 a point where maybe we need to pull this back and begin our  
10 discussion here. So Chris, Jerri --

11 **MR. CUMMINGS:** Thank you.

12 **CHAIR MATER:** -- thank you.

13 **MR. CUMMINGS:** And I'll --

14 **CHAIR MATER:** Very apprec --

15 **MR. CUMMINGS:** -- be available, of course.

16 **CHAIR MATER:** I'm sor -- yeah. Thank you.

17 So I will pull it back to the commission level. And  
18 I know I would appreciate hearing from each of you the general  
19 thoughts on what you're thinking and where we ought to go with  
20 this. And Commissioner Morgan, we'll start with you.

21 **COMMISSIONER MORGAN:** Thank you, Madam Chair. And  
22 I -- I want to focus on the -- the history of the ConnectOregon  
23 process in the beginning of this.

24 This is the fifth iteration of a program that has  
25 been going on now for ten years. The process has remained

1 substantially the same over the course of all the iterations of  
2 the program. Who is eligible is the same -- the framework has  
3 changed very slightly, but the process around determining who  
4 is eligible has stayed within ODOT and the -- the -- the  
5 applications that have shaken out off on the other side of that  
6 program have been in conformance with the regulations that were  
7 put in place before the applications that were put out each  
8 time.

9           The -- the review process for the -- the applications  
10 after the eligibility has been determined to score them within  
11 the ODOT structure has continued over the life of this program  
12 and has served to be a good starting point for discussion in  
13 the modal community -- or in the mogul -- the modal part of the  
14 process.

15           The ranking process in the different committees that  
16 rank these projects has been well attended by people that have  
17 put a lot of time in their regions and their modes across the  
18 public and the private sector to understand the issues around  
19 the focus of this program, which is on -- focused on the  
20 efficiency of the transportation system, making it work better,  
21 and on creating jobs and fostering economic development in the  
22 State of Oregon.

23           So I think that if you took the time to combine the  
24 number of years that are -- of expertise and participation in  
25 different areas of transportation of the people that are

1 involved in all the review committees throughout all this, you  
2 would be in very substantial numbers, and there are -- there's,  
3 I think, 22 committees that review this, and all of the  
4 individuals on those committees, whether they're from the  
5 public sector or the private sector, bring a lot of experience  
6 to the process.

7           And from the -- the exposure that I've had to this  
8 during the iterations, it has been a thorough vetting process.  
9 These people take their jobs seriously, they follow the rules,  
10 and they do a very credible job of bringing projects forward  
11 that do fulfill the -- the basic premises, the reasons that  
12 this program exists.

13           I think that the success of this to this point have  
14 been manifold. I think the fact that this has made it through  
15 the legislative process, each and every times it's been renewed  
16 and funded. Even through the vagaries of the economic times  
17 that the state has seen, the legislature in its wisdom has seen  
18 fit to change the program in ways, adding modes, doing little  
19 bits of tweaks to it, as we've already discussed this morning.  
20 But the program itself endures. And I think it endures because  
21 it's a good program.

22           The -- I think to change the expectations for  
23 qualifications to this crop of applications at this point is  
24 very damaging to the whole ConnectOregon process. And I think  
25 that as we go forward here we need to consider what the

1 reaction is going to be amongst the stakeholders who have put  
2 in great part many years into this program at the local level  
3 and then through the modal committees to the final review  
4 committee, to the trust that they have that their work means  
5 something and that the way -- the priorities that they're using  
6 to weight these programs are beneficial to the overall  
7 transportation system and beneficial to economic development  
8 and job creation in the state.

9 I think also that we need to bear in mind that the  
10 legislature is going to be taking a look at what we do here and  
11 that the trust of the legislature in this process is also an  
12 item here.

13 So we are right now at a juncture where the trust in  
14 the table that has been built over ten years for people to come  
15 to to have a discussion around the transportation system and  
16 around the founding principles of the ConnectOregon process is  
17 in jeopardy, and I also think that the trust that the  
18 legislature has in our ability and this agency's ability to run  
19 a process that is aboveboard and in conformance with the  
20 regulations and the instructions that have been given is also  
21 in jeopardy.

22 And so given that, Madam Chair, it's my feeling that  
23 the -- where I would be -- what I would be willing to support  
24 is the proposed motion that has been put forward by the  
25 department.

1           **CHAIR MATER:** Thank you, Commissioner.

2           Commissioner Baney.

3           **COMMISSIONER BANEY:** Thank you. I would have to  
4 agree with my colleague Commission -- Commissioner Morgan.  
5 This isn't my first ConnectOregon process as an OTC member and  
6 I am struggling with seeing differences in how we have applied  
7 the process in past iterations and then how we are applying  
8 that process this iteration.

9           I see opportunity, though, for a robust conversation  
10 around adjustments that we could possibly have a discussion  
11 with the legislature about. I think many of those have been  
12 highlighted, I appreciate very much the comments from Tax  
13 Fairness folks and grants versus loans and, you know, what  
14 really are the appropriate adjustments that we should be  
15 looking at. I think bike/ped has come up, I think the equity  
16 for regions has come up. There's just a number of things that  
17 I think we have as an opportunity versus a challenge in front  
18 of us to have as a conversation.

19           I, too, agree that we have a very prescribed process  
20 that has been rigorously followed, and I would be very  
21 uncomfortable in changing the rules midcourse on the projects.  
22 I think that we have a responsibility to look at what has been  
23 presented to us, but also look at that in light of what other  
24 sister state agencies have as their components into this  
25 process. And so I see it as maybe very problematic of -- I see

1 where our role is in the funding aspects, I see where our role  
2 is in the feasibility aspects, but I think as we look at  
3 regulations and regularly concerns or any of those types of  
4 perm -- permitting processes and et cetera, that readiness  
5 piece, I believe, in this process needs to be the exact same  
6 application as has been applied in the previous processes and I  
7 would be very uncomfortable if we were to adjust. So I, too,  
8 as my colleague Commissioner Morgan, would suggest the  
9 recommendation that has been presented by the staff.

10 **CHAIR MATER:** Thank you --

11 **COMMISSIONER BANEY:** Thank you.

12 **CHAIR MATER:** -- Commissioner.

13 Commissioner Lohman.

14 **COMMISSIONER LOHMAN:** Well, I share a lot of the  
15 points made by previous two commissioners, but not all. And I  
16 guess I want to talk a little bit about where I'm coming from  
17 and reserve a statement on how I would vote until I hear what  
18 the other commissioners have to say because I'm struggling with  
19 this, frankly. This is a very tough decision for me.

20 First of all, it does seem to me that the -- the  
21 purpose of the ConnectOregon program is to improve the state's  
22 economy by making our transportation system more efficient with  
23 respect to non-highway modes. It -- I don't see economic  
24 development, though, as the exclusive purpose of this. I think  
25 a very important additional purpose that's kind of embedded in

1 the first point I made is providing funding for non-highway  
2 modes that we just don't have sufficient funding for. And  
3 we've got to figure out a way as a state and I think as a  
4 nation to get much more efficient about our -- our  
5 transportation investments, and that has to include investments  
6 in moving people in large numbers, not just individual vehicles  
7 on highways. So from that standpoint, ConnectOregon is a very  
8 important program as well.

9           One of the issues that has come up that kind of  
10 relates to that is a question about statewide significance.  
11 And I guess from my perspective, keeping regions viable  
12 economically is of statewide significance. So small projects  
13 in some rural areas can be very, very important to the -- to  
14 the state as a whole, and I am not too hung up on this -- on  
15 the definition of statewide significance. If it's significant  
16 to a region, that's important enough for me.

17           An issue that has come up is this partnering with  
18 private entities. I certainly don't want to be in the position  
19 of providing a benefit to a private -- a private entity with  
20 public funds where the own -- the main beneficiary or -- is --  
21 is the private entity. On the other hand, I think it would be  
22 a mistake not to use state resources to influence private  
23 decisions that do benefit the state and its citizens. So I  
24 don't draw a hard and fast line on projects that are in effect  
25 partnering with private entities.

1           **CHAIR MATER:** Commissioner, can I ask you a question  
2 on this, because this has perplexed me a little bit as well. I  
3 don't see anything in the statute that even talks about  
4 encouragement of public/private dollar combinations. There --  
5 I -- unless I missed it, it's not there. And I'm not sure I  
6 see it even in ODOT's application process in terms of what  
7 people have to look at. Am I -- where am I missing this?  
8 You -- but --

9           **COMMISSIONER LOHMAN:** I don't think you're missing  
10 anything in terms of what's written down.

11           **CHAIR MATER:** Okay.

12           **COMMISSIONER LOHMAN:** But in terms of practice, I  
13 think --

14           **CHAIR MATER:** Okay.

15           **COMMISSIONER LOHMAN:** -- the very fact that we  
16 require a match, and most of the -- most often that match has  
17 to come from a private entity because public resources are very  
18 limited, I think inherent in the program is partnering with --  
19 with private entities.

20           **CHAIR MATER:** But many of these projects, I think, as  
21 I saw were, for example, matched from FAA and other --

22           **COMMISSIONER LOHMAN:** It's true --

23           **CHAIR MATER:** -- you know, federal entities on this,  
24 so --

25           **COMMISSIONER LOHMAN:** It's certainly true in the area

1 of aviation.

2           **CHAIR MATER:** Yeah. All right.

3           **DIRECTOR GARRETT:** Madam Chair, if I may, and I  
4 apologize for butting in, but I think this is an important  
5 point. This is --

6           **CHAIR MATER:** Yeah.

7           **DIRECTOR GARRETT:** -- one of the cascading benefits  
8 of the program, the issue of leverage. And do the math here.  
9 As we look -- at least to date the \$342 million of Connect I  
10 through IV has leveraged over nearly a half billion dollars in  
11 additional money, whether it's the match or the overmatch that  
12 comes in to move the infrastructure forward. So while it's not  
13 explicit, it has been in the past, leverage has been explicit,  
14 it certainly is a benefit and, I think, one of the lead stories  
15 in terms of the narrative associated with ConnectOregon.

16           **CHAIR MATER:** Yeah, thank you. I -- if I gave the  
17 impression I was questioning the leverage component, I  
18 certainly wasn't. What I was asking was this focus on you have  
19 to -- the preference is it has to be from a private entity  
20 that's the match. So that -- I just needed a little  
21 clarification on that.

22           I'm sorry, Commissioner. Go ahead.

23           **COMMISSIONER LOHMAN:** I do think there are questions  
24 to ask on the aviation side. I'm not sure how -- how I would  
25 answer them. I know that a lot of the aviation matches

1 provided by an aviation fuel tax that in some sense is paid for  
2 by the -- the -- the private parties using the -- the airports,  
3 but there are -- I think there are legitimate questions to ask  
4 about that.

5           And I think there are legitimate questions to ask  
6 about kind of all the modes. I think it would behoove us not  
7 as part of this decision-making present, but later, to look at  
8 ConnectOregon and the modes, and -- and this came up  
9 particularly in connection with a -- with the bike question,  
10 but I think it -- it's a legitimate question about all the  
11 modes. If we step back and say, among all the non-highway  
12 modes, are the most important projects for -- for improving the  
13 efficiency of our transportation system getting funded through  
14 ConnectOregon? I have, frankly, personal reservations about  
15 whether transit's getting enough funding overall in this state  
16 compared to what it -- the benefits it can and should be  
17 providing. So -- but those -- that's really a discussion for  
18 another day, I think.

19           As to the -- the process this time that has been  
20 used, yeah, there have been some hiccups, but by and large I  
21 think this is a process for us to be -- as a state, to be proud  
22 of and to be supportive of. We've got a process where -- the  
23 selection process where the projects are vetted in a  
24 transparent manner in about as objective a manner as you can  
25 get. It's -- it's not formulaic, it's not just a benefit/cost

1 ratio; it's thoughtful. And everybody at every stage is  
2 exercising well-considered judgement.

3           There's not partisan pressure. There is -- is  
4 inevitable parochial pressure, but that's sublimated and  
5 minimized to a pretty darn large degree. And there really  
6 isn't politics in this, except a little bit of that kind of  
7 local parochial politics. And I think the outcomes are much,  
8 much better with respect to our elected representatives than  
9 they would be if the legislature were earmarking these  
10 projects.

11           As to the commission role, which I think is a lot of  
12 what we're discussing here today, I ask myself, is -- is it our  
13 role solely to approve the process and then ratify the  
14 outcomes? If an outcome is contrary to my best judgement about  
15 what is best for the long-term interests of the state, is it my  
16 obligation to honor the process nevertheless or is it to  
17 exercise my best judgement?

18           Goal four of the Oregon Transportation Plan says,  
19 "Provide transportation system that meets present needs without  
20 compromising the ability of future generations to meet their  
21 needs." And I do think we have an obligation to ask ourselves  
22 if we are approving projects that in any way limit the ability  
23 of future generations to meet their needs.

24           We heard yesterday with respect to the projects in  
25 the -- in this region that the final review committee exercised

1 its judgement to make some changes. And I believe that was  
2 part of their role and that part of their reason for being to  
3 exercise their judgement after everything had come up through  
4 the process to them.

5 I cannot convince myself that our role is simply to  
6 approve, ratify what's come up through the process. I do think  
7 we have an obligation to exercise our own judgement.

8 **CHAIR MATER:** Thank you, Commissioner.  
9 Commissioner Simpson.

10 **COMMISSIONER SIMPSON:** Thank you, Chair. As the most  
11 seasoned person here in regards to ConnectOregon, I just wanted  
12 to share my thoughts thus far. All -- all -- all jokes aside,  
13 I'm a big supporter and advocate for economic development at  
14 its core root. I -- I -- I work in the industry and I know how  
15 important jobs are to regions, especially regions that don't  
16 get a lot of economic impact such as some of the much larger  
17 metropolitan areas.

18 However, this -- this trying to catch up and -- and  
19 come up to speed with everything that has just kind of  
20 unraveled over these past couple of months since I've been  
21 engaged with the -- with the commission, I've been enlightened  
22 on a lot of things and I feel at this point there are a little  
23 bit of concerns that I have in regards to transparency and --  
24 and, most importantly, fairness, such as Commissioner Lohman  
25 addressed earlier. And based on the conversations that we had

1 yesterday with sea AC, I personally feel like there's just a  
2 lot of other ways we could have been more innovative in our  
3 approach towards grading and scoring those who were going to be  
4 awarded these -- these ConnectOregon funds.

5           And as a commissioner, I feel like it -- it is our  
6 responsibility to address the -- the transparency and -- and --  
7 and our approach in which funds are allocated and the best use  
8 of those funds towards Oregonians.

9           I think probably it's pretty obvious the most  
10 controversial topic here is what's -- what's been proposed  
11 in -- in Saint Helens as well as Rainier and just through all  
12 the testimony from last month as well as leading up to today.  
13 Based on everything that I've encountered, everything I've  
14 heard, I personally feel like it's our responsibility to -- to  
15 make our best judgements based on everything that's been put in  
16 front of us.

17           And according to, you know, the things that -- that  
18 the -- that the governor himself is advocating for, these are  
19 things that -- that are a little unsettling to me as well as  
20 historically. At least with Berth 2 as far as I know, you  
21 know, a majority of if not all of everything that was traveling  
22 through that particular berth are the commodities that are --  
23 that are not obviously the most -- the most attractive.

24           And so -- excuse me. And so with that, the next  
25 thing that I wanted to allude to was that, based on the

1 conversations that we had yesterday with sea AC and their  
2 desperate need of funds in other areas just around the state,  
3 and obviously the -- the Port of Saint Helens being open about,  
4 if things didn't work, what they would do on their end and they  
5 have the funds and resources to uphold that project and keep it  
6 going through, I think that there's got to be better usage of  
7 funds around the state and how we allocate those for regions  
8 that desperately need them. And that's my biggest concern  
9 moving -- moving forward.

10 I just want to make sure that there is transparency  
11 and that we are providing an open and honest playing field and  
12 that there is fairness and we are making the best decision for  
13 Oregonians as a whole.

14 **CHAIR MATER:** Thank you, Commissioner.

15 Well, I think -- I think my thoughts in -- in -- in  
16 part have been shared by the other commission members at the  
17 table. I'd like to maybe just deviate a little bit. I don't  
18 think the process -- I don't think we are recommending a change  
19 in process; that's not where I'm coming from here.

20 Yeah, and again, I'll iterate, I -- this -- this  
21 ConnectOregon project has massive credibility outside of the  
22 State of Oregon. It's been such a good project and it is  
23 touted back in Washington, DC when I go there, so -- so the --  
24 the program and the procedure really has established  
25 significant credibility, in my opinion.

1           And that process and procedure basically says, "I get  
2 a project that's submitted in, and then from me as the local  
3 review on up, this is the only thing that I gauge my decision  
4 on. It's the first application that comes in."

5           And that's exactly what happened. Every single  
6 approval level at every level, every person who participated in  
7 that decision-making, they based that decision only on what  
8 they saw in this application. Okay?

9           So what happened here is something unusual, I think,  
10 in terms of projects, and we -- we heard a little bit of that  
11 yesterday. But let me walk you through my thinking and  
12 rationale, and I'm going to use -- I'm going to use the Port of  
13 Saint Helens and Rainier projects as example because these are,  
14 I think, a pretty good split of what we're talking about here.

15           So from my standpoint, I look at those five  
16 considerations, and frankly our language is pretty -- it's  
17 pretty direct in terms of ODOT direction on how you write those  
18 projects out. Nonetheless, I -- I agree with Commissioner  
19 Lohman, and I -- and I expect with the Department of  
20 Transportation staff, we have to have some flexibility within  
21 that. You're right. If we expected every project to  
22 absolutely be ready to go at the time the projects get  
23 submitted, many of these projects would just never get up and  
24 off the ground. All right? So there's an expectation on those  
25 who are rendering decisions on this, you make -- you make --

1 you do your homework on the projects first. Nothing ever stays  
2 stagnant. So from the time these applications got submitted,  
3 which was --

4 Chris, I think you told me November 23rd?

5 **MR. CUMMINGS:** Yes.

6 **CHAIR MATER:** Okay. So those projects got submitted  
7 and got ferreted through. And if I take a look at -- and I'm  
8 going to just use the Rainier project as an example. I'll tell  
9 you right upfront I think the Rainier project is a done deal  
10 and it should have been a done deal a long time ago.

11 But given the application here -- not "but," but in  
12 terms of looking at what the application said, I'm looking at  
13 several of these critical issues, and under the -- under the  
14 question of "Is the project construction-ready?" and the  
15 response in the application said, "The project is construction-  
16 ready." Match funds will be available upon ConnectOregon fund  
17 receipt. That's a slam dunk, I don't have any question about  
18 it, it's real clear in my mind. Okay.

19 Then I move to the Global Partner project. This is  
20 the bulk commodity project coming through. Now, here, here I  
21 have an existing Oregon business, they're doing something a  
22 little different in terms of expansion, and they tell me right  
23 upfront, when you ask the project, "Is the project  
24 construction-ready?" they say, "Yes, the project is expected to  
25 be ready to move to construction," and then they tell about the

1 joint application between -- they tell me upfront between the  
2 US Army Corp of Engineers and the Oregon State Lands  
3 Department, okay? And that they anticipate that these are  
4 going to be, you know, finalized and everything will be ready  
5 to go. They tell me the project is essentially the upgrade of  
6 an existing permitted dock with new mooring and breasting  
7 dolphins and pipeline run. All right.

8           So now I have a project that I say this is -- I -- I  
9 like this project, right? I mean, it's an oil project, yes,  
10 and -- and I know there's a lot of question about that, but  
11 it's -- you know, it's a project where the company's moving in  
12 the right direction, it's -- it's embraced ethanol as a  
13 component on this, they have a cap limitation on how much  
14 volume they're going to be bringing through, and -- and, and I  
15 went back and checked, right? I checked to see if they had DSL  
16 approval. It may not be in hand yet, but, yes indeed, they  
17 secured that notification that they don't have any additional  
18 permits, they get their wharf certification by DSL, and that  
19 came in on June 6th, okay?

20           So project applicants as they worked through this  
21 wouldn't have known that, but it goes back then to our  
22 responsibility; the decision stops here. And that doesn't mean  
23 that I don't go back and say, okay, I'm looking at this; let's  
24 find out where these permits are at, okay?

25           So as far as Global Partner's concerned, Berth 1

1 project, I'm good with that project and I'm good with that  
2 project because I see that they -- they got the check-off from  
3 DSL in writing and today we learn that they're very close to  
4 getting the check-off with the EPA. That's good. Again, we  
5 haven't changed any part of the process and thinking; we've  
6 simply done our job of saying we know things change as projects  
7 move up in these tiers. All right.

8           Now I come to the -- the Pacific Transloading  
9 Project. And this is where -- this is where I start to get  
10 some heartburn. So here's what I see, here's what I understand  
11 were the facts. I believe when the port submitted the project  
12 they did it in good-faith effort. I think that they knew that  
13 they -- and they tell you they had to go through -- they still  
14 had DSL, an Army Corp of Engineers permitting process to go  
15 through that, just as Global Partners informed us that that was  
16 the case. They submitted that application in hand and they  
17 said that "You know what? We don't -- we're not doing any  
18 infill work or water work where normal additional permitting  
19 from DSL's required, so we anticipate that this project will  
20 move forward as well." Again, similar situation as Global  
21 Partner. Okay?

22           Things changed, and they changed as of -- it started  
23 in March from the Department of State Lands back to the port,  
24 saying, "You know, we think you've got a problem here. You're  
25 assuming that you can get wharf certification on this, you're

1 assuming that there's not a problem with the Transloader  
2 permitting process on this, and we kind of think there is."  
3 So -- and I think the port -- I -- I think as I understand it,  
4 the port's decision was "No, we think DSL has made a wrong  
5 interpretation. We're going to move forward on this and -- and  
6 we'll go back and forth again." And that was in March of '14.

7           By June 6th the port clearly understood that they had  
8 a problem. This wasn't going to go away. It was going to take  
9 some real effort to ferret out two significant problems that  
10 were clearly delineated upfront. This was the same June 6 memo  
11 that said, "By the way, Global Partner, you're good," okay? So  
12 I got one confirmation from one project on one site and I got a  
13 big difference that happens on the Pacific Transloading side.

14           So now I'm -- I'm thinking, okay, well, we got a  
15 problem here. We have our July 17th meeting, which none of us  
16 were really informed that there was a problem on this project.  
17 I would have like -- I would have liked to have been informed  
18 of that. I want to have that information at hand as I have  
19 this public hearing. We didn't have it, and I don't believe  
20 that Oregon Department of Transportation staff had it either.  
21 I don't think that that was communicated across the board, and  
22 certainly we didn't reach out, you know, until after the fact.

23           So -- so again, with reach-out to the Department of  
24 State Lands, it was by June 6 we know we have a pretty serious  
25 problem here. The application states -- again, I'm trying to

1 make a decision here, I'm going by what's in this application.  
2 This application tells me there's an urgency to this problem  
3 and the urgency is to meet the requirements of -- of Pacific  
4 Transloading Morrow Pacific Project. It says it right here,  
5 okay? And all I have to go on is to say I -- I -- that's what  
6 they say and that must be so.

7           Well, so at the same time, Pacific Transloading  
8 Project and Morrow gets turned down by the Department of State  
9 Lands. That happened last week. This week the Department of  
10 State Lands puts out a memo explaining their decision-making  
11 process and their denial to Pacific Transloading, and in part  
12 this is what they say, and I'll quote this. They say, "On  
13 August -- the application, which is the Pacific Transloading  
14 Project, in appendix three, page 20, referenced a letter dated  
15 November 8, 2013 summarizing the findings of Norwest  
16 Engineering study." This is an -- now, just to qualify, this  
17 is an application from Pacific Transloading that went to the  
18 Department of State Lands. And this is what State Lands is  
19 saying they rendered their decision on. Okay.

20           So they saw that there was this memo dated  
21 November 8, 2013 summarizing the findings from Norwest  
22 Engineering study. On August 12th the department requested and  
23 received a copy of that letter. It concludes -- this is --  
24 this is Pacific Transloading, who had this outside engineering  
25 expert do this evaluation. That recommendation from the

1 engineering staff or the engineering company said, "By  
2 following the operational measures contained herein, the Beaver  
3 Dock, which is Berth 2, is currently capable of handling  
4 60,000 dwt Panamax-class vessels and the Transloading operation  
5 as proposed by -- by Pacific Transloading." Okay?

6           So what do we have happening here? We have a project  
7 where I think there was serious and honorable intent of that  
8 application going through. I think the vetting people did  
9 exactly what they were supposed to do. They looked at this and  
10 said, "Well, according to this, this is correct." So when it  
11 comes up to this level, I -- I -- I have a responsibility to  
12 check these facts out, particularly if I've heard in the public  
13 hearings there's something funny about this. I'm not going to  
14 sit back and say, "Well, gee, I'm just not going to check it  
15 out"; I'm going to check it out. And I did.

16           So we've come full circle back where now the  
17 project -- and this was reliant on serving the needs of -- of  
18 Pacific Transloading, who no longer -- never did secure a DSL  
19 permit from the Port of Morrow, so that chink has fallen away.  
20 And Pacific Transloading is the only matching component that  
21 you have for funding of this project. I got to turn this  
22 project down. I mean, I'm flexible on Global Partner, I see  
23 that they've moved through the process. They don't have all of  
24 their committing; I'm okay with that. But this project on  
25 Berth 2 -- and I've grappled with this. I even asked if we had

1 flexibility to kind of change the parameters of the project,  
2 you know, to see if the port would assume the full  
3 responsibility for the project. And basically, the counsel  
4 that we have is you can't do that; you have to -- you have to  
5 base your decision on the application at hand.

6           So my decision on Berth 2 is going to be no. And  
7 it's going to be no because it doesn't meet the requirements of  
8 having what I would classify as construction-ready, even with  
9 flexibility attached to it.

10           **COMMISSIONER MORGAN:** You going to have --

11           **CHAIR MATER:** Follow-up.

12           **COMMISSIONER MORGAN:** -- follow-up?

13           **CHAIR MATER:** Uh-huh.

14           **COMMISSIONER MORGAN:** Do -- so again, I would ask for  
15 clarification from the director, but I heard you say the  
16 requirement for shovel-ready, so I would ask --

17           Mr. Director, my understanding is that the next phase  
18 of this process beyond our action today, if there is an action  
19 to move ahead with this whole package, is that the department  
20 would have -- go into conference with each of the applicants  
21 and develop a contract with each of them that's germane to the  
22 project. So could you help us understand, given the  
23 information that the Chair has laid on the table, how you would  
24 deal with that during the -- if there is an application  
25 process, how that would go ahead.

1           **DIRECTOR GARRETT:** You bet. I think the -- the first  
2 thing, my interpretation is a little more conservative because  
3 I think even with the decision from a sister agency, DSL, it  
4 now moves into an appellate environment, so we are in a legal  
5 construct where I think the applicants have an opportunity to  
6 engage. So from that perspective, that's an ongoing  
7 conversation; that's not done, at least in my mind.

8           With that said, we do have a protocol in place, a  
9 protocol that allows us over a six-month period of time to  
10 engage in just that type of a negotiation, looking at all the  
11 elements, the conditions, the requirements that are needed to  
12 ensure that all things fall in place at an appropriate time.  
13 That six-month period of time will allow us to understand  
14 whether a project evolved, if things changed, and if they  
15 changed to a point that we have to say, "Listen, we have a  
16 different project here."

17           And let's just play a scenario out here. Let's play  
18 a scenario out that the -- the situation with the permit at DSL  
19 up in Boardman. We exhaust all avenues, there's just no there  
20 there, it's not there. I think there are other scenarios that  
21 will come into play.

22           And Madam Chair, you -- you mentioned one. The  
23 ability of the port to bring its resources forward and cover  
24 the appropriate match costs because of the importance of that  
25 piece of infrastructure. And I think they have been very clear

1 that that is a scenario, but other pieces have to continue to  
2 play themselves out until that's exhausted.

3           If it ev -- if -- if a project evolves in a certain  
4 way, it comes back to the commission. There -- to Commissioner  
5 Simpson's point, the issue of transparency. None of these  
6 decisions will be made in the Director's Office or in a back  
7 room. It will be made under the bright lights of a commission  
8 meeting.

9           Now, that said, there's an evolution pathway.  
10 There's also the true opportunity that something may dissolve  
11 and go away, but allow us to use what is again established  
12 protocol and policy that we have used in the prior four  
13 Connects to let that to play itself out. That is exhausting  
14 all options. I think that's ensuring fairness to all people,  
15 and that's the way I think it would play itself out and I think  
16 we do have that backstop in our negotiations.

17           **CHAIR MATER:** So if I might respond to that because  
18 I've heard -- Director Garrett, I know that you've underscored  
19 this many times and I do see in, again, the context of what  
20 goes out to applicants. The wording that is used, and I'll  
21 just quote it, is "Failure to sign a grant agreement within  
22 180 days of award of a grant by the Oregon Transportation  
23 Commission will result in forfeiture of the grant." To me  
24 that's a very different statement to make as you look at making  
25 decisions on projects where those decision makers look at,

1 again, the application, make decisions on how really well these  
2 projects are ready to move forth, there's no question that the  
3 match is there. I mean, I even have questions about whether  
4 the match is there, obviously, on the -- on the Berth 2  
5 project.

6           But I think that ev -- that what I've seen so far,  
7 and granted I'm new to this, but even looking at prior  
8 projects, those projects were honestly vetted through with not  
9 serious questions and serious concerns that have plagued this  
10 project. And so I think at every step of the way each of  
11 decision makers say, "Based on what we see here, we think these  
12 projects are just about ready to go. We have a little bit  
13 more, but they are just about ready to go, and the department  
14 tells me my failure to make -- sign everything on the dotted  
15 line within 180 degrees [sic], that's my drop-dead date."  
16 That's very different than saying, "We acknowledge that there  
17 are all kinds of problems associated here and we'll give you  
18 another 180 days to see if you can figure it out." That's not  
19 fair to the other projects that really did follow that format  
20 and protocol.

21           So to me -- and this is a tough decision on my part  
22 because I -- I would just about die to give dollars to the  
23 Saint Helens area and to Columbia County. I mean, I would, and  
24 these people know it. But I just can't go there in -- in  
25 fairness to the other projects that did put their material

1 together, that did meet a much closer performance requirement.  
2 I -- I just -- I -- I've tried and I just can't do it.

3           **DIRECTOR GARRETT:** Madam Chair, and I respect that  
4 and I'm not going to -- I'm not going to try to challenge that.  
5 What I'm going to speak are to the mechanics of it.

6           In the day-to-day business of this organization,  
7 whether it is ConnectOregon or any project we have, we have  
8 contract change orders. Situations on the ground change and we  
9 are nimble enough to negotiate change orders here. So it's not  
10 a unique way of doing business; it actually is a garment that  
11 clothes the -- clothes the way we do business here.

12           With that said, if you look at the history of  
13 projects that have fallen or dissolved away, they are self-  
14 inflicted wounds. They do come to that point where it becomes  
15 inevitable that they cannot sign the document, whether it's at  
16 180 days or if -- let's just say we extend another six months  
17 because there may be a non-environmental issue or a regulatory  
18 agency that's just taking more time than needed, so we extend.  
19 But each and every time, it has been a self-inflicted wound  
20 when the applicant comes back to us and saying, "We cannot meet  
21 it," and you stand down, and then we engage the next protocol  
22 where the commission comes back and looks at the universe of  
23 projects and identifies the next project to fill the void taken  
24 here.

25           The bottom line, if this or any project cannot meet

1 the requirements, the conditions as articulated in the  
2 agreement, it will not move forward, it will not be reimbursed  
3 with -- with ConnectOregon funds here. I believe we have the  
4 failsafes in place to ensure that we will be good stewards of  
5 that \$42 million.

6           **CHAIR MATER:** And I don't question that one bit. I  
7 think that the failsafe mechan -- mechanisms are certainly in  
8 place. It's on the flip side in terms of fairness to the other  
9 projects. And frankly, it comes down to, boy, this last little  
10 bit with DSL and the decision-making, and that wouldn't have  
11 bothered me so much had I not seen the referencing in the DSL  
12 denial letter quoting the very company that supposedly needs  
13 these improvements to the port saying they don't need them to  
14 do the project. I -- that was just a -- that was a deal  
15 breaker for me, in all honesty. So this project is a unique  
16 project and it did fall into -- it's not that the process  
17 didn't work like it was supposed to. The process did work.  
18 It's just that we had a project here where we were -- I believe  
19 I was doing my good due diligence to see how close these  
20 projects are. That's how I render my decisions on these  
21 projects. All right.

22           Well, I've -- I've given my presentation enough.  
23 I'll open it back up to comment. And at some point I think we  
24 should be close to trying to get a sense of -- of what kind of  
25 motion or motions that we'd like to place on the docket, so --

1           **COMMISSIONER BANEY:** Madam Chair, one concern that I  
2 am struggling with is I feel as though we're utilizing the  
3 180 days as a finite number of days in which a project has to  
4 complete certain things. And I don't know that that's the  
5 exact way that we have utilized that language.

6           And so again I go back to the equity and fairness  
7 that it isn't my assumption that every one of the projects --  
8 and as I look at them as local government, I have had -- I have  
9 approved project and then been denying projects that then those  
10 decisions have been reversed. And so I think that there's --  
11 this is a fluid discussion as to whether or not they can meet  
12 that criteria. And if they can, are we now as a body stating  
13 that they have to do that in 180 days and, if so, I don't know  
14 that that's been the protocol in the past. And so I am a  
15 little uncomfortable if that's what we're essentially stating,  
16 because I don't know that I want to call this done until we  
17 have -- until that's true. I think there are other processes  
18 in which are available to this particular applicant in which  
19 have not played out quite yet. So again, I -- I'm worried that  
20 we may be premature in suggesting that this is done.

21           **CHAIR MATER:** I'll just read the statement again that  
22 is in ODOT's perform -- or -- or protocol. "Failure to sign a  
23 grant agreement within 180 days of award of grant by OTC will  
24 result in the forfeiture of the grant," period.

25           **COMMISSIONER BANEY:** Then as a follow-up, possibly

1 what we could do is -- because that is a grant agreement with  
2 this agency. This isn't a grant agreement that is boilerplate  
3 "If you don't meet this." We can draft criteria and  
4 contingencies that if -- that would make the opportunity for  
5 this to possibly go forward more palatable. I would certainly  
6 welcome that type of conversation versus using the 180 days as  
7 an end-all-must-be-completed, period, done.

8           **DIRECTOR GARRETT:** Well, Mad -- Madam Chair, if I  
9 may, be -- this is a mechanical piece and I want to turn to my  
10 mechanics here. So I turn to Chris and Jerri to say, listen,  
11 this is not our first rodeo. We have run four of these, right?  
12 Tell me how the 180-day conversation plays itself out. Let's  
13 just be explicit how we define it. We have the words, but in  
14 reality when we're sitting across from an applicant where  
15 there's an opportunity on the ground to make the infrastructure  
16 stronger or strengthen the economy or put paychecks in people's  
17 hands, how do we negotiate with tho -- with those things?

18           **MR. CUMMINGS:** Director, Commissioners, what we do  
19 with the agreement is it -- it -- it states what obligations  
20 they'll have to meet. As -- in other words, they'll have to  
21 have their match, they will have -- our take on how we work  
22 this with the agreement. They will have to obtain all  
23 necessary permits to work on that project. Doesn't say the  
24 timeline for permits.

25           What we do work on with timelines is we build in a

1 schedule to the agreement, we go back and we look at the  
2 initial application schedule, and then we work with the  
3 applicant on defining a realistic or -- excuse my words here,  
4 an updated schedule. That -- that was a loaded word, wasn't  
5 it? An updated schedule. If an applicant comes back to us and  
6 says, "Initially we thought we would get permits in March of  
7 2014 and now we want it in September of 2016," we don't allow  
8 that. That really takes the project to a different level than  
9 what it would have had. If we know a project is coming, say,  
10 in -- in April as opposed to March, that's okay. As we look at  
11 it, we'll build in that timeline.

12           Once those agreements are signed, if they don't meet  
13 those timelines, they have to tell us a month ahead of time  
14 that they're not going to meet that timeline, and then we have  
15 a process internally where we look at change orders if  
16 necessary or in some cases, depending on the type of change  
17 order, it comes back up to the commission.

18           **CHAIR MATER:** Thank you. Any other comments or  
19 questions from the commissioners? Commissioner Baney?

20           **COMMISSIONER BANEY:** And would it be a fair  
21 statement, Director Garrett, that if we chose on a particular  
22 project that we wanted to see all change orders that that could  
23 be something that we could request? I mean, we may not want to  
24 see minutia, but if it were extensions or a variety of other  
25 things, given the -- the nature of this particular project, or

1 maybe there are others within the 37? Comments on that?

2           **DIRECTOR GARRETT:** Consider it done. It's just that  
3 easy.

4           **CHAIR MATER:** Commissioner Lohman.

5           **COMMISSIONER LOHMAN:** Before I was ever on this  
6 commission, I spent 15 years working on port issues and  
7 economic development. I was very supportive, actively  
8 supporting and working for the -- the approval and funding for  
9 the channel deepening project, and I think it's very important  
10 for this state to make use of that project. I know a little  
11 bit about Port Westward and I think there is great need for  
12 development of that facility and great potential there.

13           I've been involved in rail issues and -- and freight  
14 issues for quite awhile and think those are awfully important  
15 to this state.

16           As to the details of compliance with our mechanics,  
17 those are not determinative for me in this matter. But I  
18 cannot convince myself that the commodities don't matter. If  
19 we were talking about moving hazardous waste through Oregon,  
20 facilitating the movement of hazardous waste through -- through  
21 Oregon ports or assembly and shipping of chemical weapons, I  
22 know that's not the case here, but if -- if we were talking  
23 about those things, those are commodity decisions that I would  
24 be disappointed in this commission if we ignored those  
25 commodity questions. In this case it's not that kind of

1 immediate threat, but I still think it is a significant threat.

2           Again, long before I was involved on this commission,  
3 I actively opposed, and frankly still do, the LNG facility in  
4 Coos Bay and a 2 -- its 230-mile pipeline. That's no secret.  
5 And my reasons for that were largely the greenhouse gas effects  
6 and -- and which I'm not going to pontificate on, but I think  
7 are very important for this state and for the -- for the long-  
8 term future, and we've got to start addressing those issues  
9 instead of just plonking along day by day making good  
10 economic -- short-term economic decisions.

11           My second issue with that project was allowing  
12 private entities for their own gain to deplete strategic  
13 domestic resources and to expose Oregon communities and natural  
14 resources to additional safety risks and environmental impacts.  
15 There are other reasons as well, and I think that's a problem  
16 project, but just those reasons alone, I think, are strong  
17 public policy arguments against government approval or support  
18 for LNG facilities in this -- export facilities in this state.  
19 And I'm unable to say with a straight face that pretty much the  
20 same arguments do not apply to government support for coal and  
21 oil export facilities in this state. I have a different view  
22 on the Rainier project, but that's how I feel about the -- the  
23 two berths at Port Westward.

24           I am hoping -- what I am sensing is that the Rainier  
25 project is not a matter of controversy among the commissioners.

1 I'm hoping that -- I don't know what process we're going to  
2 follow, but I'm hoping it can be an approval of 35 projects and  
3 individual voting on Berth 1 and Berth 2.

4 **CHAIR MATER:** I'd like to entertain a motion to that  
5 effect. Do I have --

6 **COMMISSIONER LOHMAN:** I would so move.

7 **CHAIR MATER:** We have a motion on the floor. Any  
8 further discussion? Do we all understand Commissioner Lohman's  
9 position and his motion?

10 So to restate, it is approval of 35 projects, holding  
11 out the two port --

12 **COMMISSIONER LOHMAN:** Well, what I guess my motion is  
13 to -- to bifurcate the vote, and we would vote up or down on  
14 whether to bifurcate the vote. There would be one vote on the  
15 35 projects --

16 **CHAIR MATER:** Okay.

17 **COMMISSIONER LOHMAN:** -- and individual votes on  
18 Berth 1 and Berth 2.

19 **CHAIR MATER:** Excellent.

20 **COMMISSIONER MORGAN:** Clarification, Madam --

21 **CHAIR MATER:** Of course.

22 **COMMISSIONER MORGAN:** -- Chair. So the proposal then  
23 is to take some criteria that are outside the jurisdiction of  
24 ConnectOregon and apply those to two of the projects? Is that  
25 your position, Commissioner Lohman?

1           **COMMISSIONER LOHMAN:** No, my position is that we  
2 should apply our own good judgement about what's best for this  
3 state to all 37 projects. And if that means doing something  
4 that is a little out of what we have done in the past, I think  
5 it's so important that we need to do that.

6           **CHAIR MATER:** There -- there's a motion on the floor,  
7 and the motion is to approve to set aside the -- the two berth  
8 projects in Saint Helens and to approve all of the rest of the  
9 projects, all 35 of them, for ConnectOregon V funding. Okay?  
10 We'll do a roll-call vote on this.

11           Commissioner Simpson.

12           **COMMISSIONER SIMPSON:** I can second that.

13           **CHAIR MATER:** Okay. We have a second. So I think  
14 we're going to vote now. So I need to know what your -- what  
15 your vote is on --

16           **COMMISSIONER SIMPSON:** Oh, I didn't hear the second,  
17 sorry.

18           **CHAIR MATER:** It happens. Okay.

19           **COMMISSIONER SIMPSON:** Yeah, I vote to approve that.

20           **CHAIR MATER:** Okay. Commissioner Lohman?

21           **COMMISSIONER LOHMAN:** Yes.

22           **CHAIR MATER:** Commissioner Baney.

23           **COMMISSIONER BANEY:** Yes.

24           **CHAIR MATER:** Commissioner Morgan.

25           **COMMISSIONER MORGAN:** No.

1           **CHAIR MATER:** Chair votes yes. Okay. So we have  
2 35 projects off the docket. Now I'd like to -- to --

3           **COMMISSIONER SIMPSON:** Do we need to be specific?

4           **CHAIR MATER:** Excuse me --

5           **COMMISSIONER SIMPSON:** Do we need to be specific on  
6 which projects of the 35 they were --

7           **CHAIR MATER:** Oh, of course.

8           **UNIDENTIFIED FEMALE VOICE:** It was clear.

9           **COMMISSIONER SIMPSON:** Was it?

10          **UNIDENTIFIED FEMALE VOICE:** Yeah.

11          **CHAIR MATER:** Yeah.

12          **COMMISSIONER SIMPSON:** It -- it's my understanding  
13 that the -- the 35 approved are all of -- thirty-fi -- of  
14 the -- or --

15          **CHAIR MATER:** Of the 37.

16          **COMMISSIONER SIMPSON:** -- 35 of the 37 listed --

17          **CHAIR MATER:** That's correct.

18          **COMMISSIONER SIMPSON:** -- except for two projects at  
19 the Port of Saint Helens.

20          **CHAIR MATER:** Yeah, we've separated those two out.  
21 We're now going to vote on --

22          **COMMISSIONER SIMPSON:** Correct.

23          **CHAIR MATER:** -- these two, okay?

24          **COMMISSIONER MORGAN:** Madam Chair, for the record,

25 I --

1           **CHAIR MATER:** Yes.

2           **COMMISSIONER MORGAN:** -- would just like to state  
3 that my opposition to this is not opposition to any of the  
4 projects that are on the list. My opposition is in breaking  
5 this for reasons that are not germane to the ConnectOregon  
6 program.

7           **CHAIR MATER:** All right. I understand that that's --  
8 that's your position and where you're coming from --

9           **COMMISSIONER MORGAN:** Thank you.

10          **CHAIR MATER:** -- Commissioner. I think that was very  
11 clear.

12          I'd like to entertain a motion on Berth 1 project.

13          **COMMISSIONER BANEY:** I will move approval.

14          **CHAIR MATER:** Approval --

15          **COMMISSIONER MORGAN:** Second the motion.

16          **CHAIR MATER:** Second the motion. We'll do a roll-  
17 call vote. Commissioner Simpson.

18          **COMMISSIONER SIMPSON:** Aye.

19          **CHAIR MATER:** Commissioner Lohman.

20          **COMMISSIONER LOHMAN:** No.

21          **CHAIR MATER:** Commissioner Baney.

22          **COMMISSIONER BANEY:** Yes.

23          **CHAIR MATER:** Commissioner Morgan.

24          **COMMISSIONER MORGAN:** Yes.

25          **CHAIR MATER:** Chair votes yes. I'd now like to

1 entertain a motion on the Berth 2 project.

2           **COMMISSIONER BANEY:** So moved, but I have discussion.

3           **CHAIR MATER:** So what's the motion?

4           **COMMISSIONER BANEY:** Well, I -- I would like to move  
5 approval, but I want to see if there is an opportunity for us  
6 to discuss contingencies or timelines that may make this more  
7 palatable. So maybe it's a process question.

8           **CHAIR MATER:** Okay.

9           **COMMISSIONER MORGAN:** So we have a motion to approve  
10 with discussion.

11           **COMMISSIONER BANEY:** With --

12           **CHAIR MATER:** Well --

13           **COMMISSIONER BANEY:** Or we can just back --

14           **CHAIR MATER:** -- let's -- let's just think about this  
15 for a --

16           **COMMISSIONER BANEY:** Okay.

17           **CHAIR MATER:** -- minute. So maybe it's wise to --

18           **COMMISSIONER BANEY:** I'll withdraw it and we can  
19 discuss.

20           **CHAIR MATER:** Okay. So maybe --

21           **COMMISSIONER BANEY:** (unintelligible) --

22           **CHAIR MATER:** -- that's wise that we can just --

23           **COMMISSIONER BANEY:** Yes.

24           **CHAIR MATER:** Okay. So now -- now take your  
25 discussion forward on what you are recommending at that

1 point --

2           **COMMISSIONER BANEY:** So what I -- what I hear is a  
3 concern on whether or not the project is necessary, whether or  
4 not the project can meet the timeline in which -- I don't want  
5 to speak for some, but I think we have a -- maybe on the  
6 commission a discrepancy on what the 180-day timeframe actually  
7 means. And so if we maybe allow for language of approval by a  
8 certain date, maybe we could look at -- they need March 1st or  
9 some -- some date that -- and again, I'm -- I'm struggling with  
10 what that might be because I feel comfortable with the  
11 secondary process of the ConnectOregon funding protocols, but I  
12 would entertain a date that would need to have permits secured  
13 or an opportunity, again, to review whether or not this will --  
14 this project would move forward, because I'm kind of -- I'm  
15 looking at the director a little bit, this is -- I'm over my  
16 skis on what that looks like --

17           **DIRECTOR GARRETT:** Well, Madam Chair, Commissioner  
18 Baney, I'm a little concerned with the motion --

19           **COMMISSIONER BANEY:** Okay.

20           **DIRECTOR GARRETT:** -- and -- and I'll tell you why.  
21 I mean, we spoke about fairness. Fairness cuts both ways. We  
22 have now singled out one application to be treated differently,  
23 when I do believe that we have a process in place that would  
24 adjudicate that, that would allow it to play every scenario out  
25 and the -- it will -- the -- the ability to meet whatever

1 conditions we embed in that agreement, we negotiate and embed  
2 in the agreement. They will either be able to meet those  
3 conditions, and if they do, great, we're doing good stuff  
4 there. If they don't, they will not receive money. I think,  
5 again, we have the protocols in place to do that, and I -- I  
6 really become concerned that we start to isolate down. And  
7 actually, again, I'm -- to be blunt here, we are changing the  
8 rules of the game, and we talked about not doing that, so we  
9 have to be intellectually honest in our approach here.

10           **CHAIR MATER:** Yeah, I -- thank you, Director. But  
11 I -- I'm going to disagree with you, and you know I will on  
12 this. Here's how it plays out. We've never -- I've never  
13 heard a project before, and I've been on a lot of approval  
14 processes, where you have an original application that comes  
15 in, a public entity in partnership with a private entity where  
16 the private entity is not just the match, but they are the  
17 preponderant funding component to the project, who goes through  
18 the project, gives an application saying that -- that this  
19 project is likely going to meet requirements, knows there's  
20 a -- there's -- there's not just strong indicators, but  
21 indications that they're going to have problems meeting it.  
22 They've put another component into this project in the Port of  
23 Morrow that says, "All of this has to be connected to work, I'm  
24 the major financier here, and this project over here has to  
25 work in order for this project to work," and then at the end of

1 the day I turn around and I see that the same entity has made a  
2 statement to the Department of State Lands, saying, "We really  
3 don't need that -- the improvements at the port for us to do  
4 the project." I -- I don't know how else -- there's no way  
5 that I would accept that from anybody else and there's no  
6 project in the history of ConnectOregon that has had to make  
7 this kind of decision or had this kind of project. This is a  
8 unique situation. I mean, this is unique. I -- Director  
9 Garrett is going to go again.

10           **DIRECTOR GARRETT:** Again, I'm a broken record here.  
11 I think we establish rules of the game. There are protocols in  
12 place. Is this a unique conversation? Sure. But the  
13 failsafes are in place to ensure that everything is met here.  
14 And I think if we move in a new direction, we're imposing  
15 something different, and I have concerns with that. I think  
16 the project has complied. It's in accordance with the way  
17 we -- we -- we do business, and I think we are very close --  
18 versus that discipline of making a decision in accordance with  
19 statute, with rules, with process and protocols that have been  
20 well vetted and clearly articulated, we are close to moving now  
21 into an area where we are making decisions in accordance with  
22 personal belief, be they political or philosophical. That's  
23 not our responsibility. We're stepping outside it and I think  
24 we step into a very dangerous area if we do that.

25           **CHAIR MATER:** I'll entertain a motion for Berth 2.

1           **COMMISSIONER BANEY:** Madam Chair, I move approval.

2           **CHAIR MATER:** Motion's on hand to approve Berth --  
3 Berth 2 project. Commissioner Simpson?

4           **COMMISSIONER SIMPSON:** I oppose.

5           **CHAIR MATER:** Commissioner Lohman.

6           **COMMISSIONER LOHMAN:** No.

7           **CHAIR MATER:** Commissioner Baney.

8           **COMMISSIONER BANEY:** Yes.

9           **CHAIR MATER:** Commissioner Morgan.

10          **COMMISSIONER MORGAN:** Yes.

11          **CHAIR MATER:** Chair votes no.

12          **COMMISSIONER BANEY:** Madam Chair, may I move approval  
13 with timelines? I know that is not the will of the agency, but  
14 if that is what will get us to comfort of deadlines for this  
15 body, which does not typically see those, I would move approval  
16 that we add timelines in order for this project to move  
17 forward.

18          **CHAIR MATER:** So we have a second motion on the floor  
19 that seeks approval of the Berth 2 project with timelines  
20 attached, but we don't exactly know what -- what those  
21 timelines are, but -- but with timelines attached. Is that --  
22 is that an accurate --

23          **COMMISSIONER BANEY:** Correct.

24          **CHAIR MATER:** Okay. Any discussion on the motion?

25          **COMMISSIONER SIMPSON:** I have a question, and this is

1 particularly for Chris. I just thought I had mentioned  
2 earlier, in the event of this Berth 2 project not going  
3 through, does the Port of Saint Helens have the sufficient  
4 funds in order to account for those dollars in order to make  
5 the project happen?

6 **MR. CUMMINGS:** Commissioner, I think it's best that  
7 we ask the port representative who's here, if -- if we may,  
8 that question. My discussions with him is "Are they able to  
9 meet -- is the port able to meet the match to the ConnectOregon  
10 funds?" not the reverse.

11 **COMMISSIONER SIMPSON:** Uh-huh.

12 **MR. CUMMINGS:** So if -- if we may, I would like to  
13 ask them.

14 **CHAIR MATER:** And before we do, I need to ask --  
15 Bonnie, counsel, is she here? So -- so this is kind of an  
16 important question here because I think, as I was looking at  
17 this and asking this question before, you know, can we change  
18 the components of the application process?

19 And if -- if I am representing your statement  
20 correctly, I think your answer to me, unless I misunderstood,  
21 was that you advise not changing, you -- you base your decision  
22 based on what the application says. Am I -- am I not correct?

23 **MS. HEITSCH:** The advice that I've provided to you  
24 was on the scope of the project itself was to not change the  
25 scope of the project that was applied for in the application.

1 So for instance, unrelated project but perhaps a -- there was a  
2 bike/ped project and it went from point A to point B, and then  
3 you altered it to go from point A to point E. I would  
4 recommend that you would not do something to that effect.

5 **CHAIR MATER:** Okay. So that's helpful, that's --  
6 that's an interesting clarification.

7 Now, from where I sit on this question, and I -- I  
8 haven't expressed these statements before because I think my  
9 first opposition was to the fact that this -- that the  
10 application was just so far off the mark in terms of fairness.  
11 If there's an ability to change the framework so that project  
12 design stays the same, funding applicant instead of having  
13 Pacific Transloading as the partner, the port is -- is going to  
14 be the full financing agent on this -- okay. So you're smiling  
15 again, so you better stop me and tell me what you're thinking  
16 at that point.

17 **MS. HEITSCH:** Changing the parties of the application  
18 would be problematic because the applicant came in with certain  
19 commitments that were promised by certain entities.

20 **CHAIR MATER:** Correct. All right. Well --

21 **DIRECTOR GARRETT:** Chair, may I just play a scenario  
22 off that --

23 **CHAIR MATER:** Okay.

24 **DIRECTOR GARRETT:** -- because I understand your line  
25 of questioning.

1           Bonnie, because we have an applicant that's been  
2 denied a permit and that's rippling through this conversation  
3 and it raises these questions, if indeed when all is said and  
4 done and all avenues available to them are exhausted,  
5 because -- because of the importance of this piece of  
6 infrastructure at the Port of Westward, let's just say another  
7 player, the port or maybe another player comes in saying, "We  
8 will cover that cost to ensure that the financial  
9 responsibilities are -- are arrived at," is -- so that would be  
10 a change, but a change that could we consider as we bring back  
11 to the commission, saying again all permitting processes have  
12 played themselves out, can't secure that, but in the meantime  
13 some of the same players complemented by others have come in  
14 and will fulfill that obligation. The project stays the same,  
15 the investment stays the same; you just have new financial  
16 players. Is that a -- is that a change that we could bring  
17 back to the commission for their approval?

18           **MS. HEITSCH:** I believe you could if everyone -- you  
19 would want to have a written statement from --

20           **DIRECTOR GARRETT:** Sure.

21           **MS. HEITSCH:** -- the players, of course, indicating  
22 that they're agreeable to that change. And if it doesn't  
23 change the overall context of the project and doesn't change  
24 the overall -- well, this has multiple players in it, and --  
25 and there -- there's probably no reason why you couldn't

1 substitute one player for another if everybody was in  
2 agreement --

3           **DR. GARRETT:** And Madam Chair, I apologize if I've  
4 taken this in the wrong direction, but I'm trying to understand  
5 both sides of the discussion in terms of if the project itself,  
6 the infrastructure work doesn't change --

7           **CHAIR MATER:** No, I --

8           **DIRECTOR GARRETT:** -- but who writes the check is --

9           **CHAIR MATER:** I understood that, but I thought that's  
10 what I asked you just a few minutes ago, and you advised that  
11 since the partners were clearly identified in the project, if  
12 one partner goes away, if Pacific Transloading goes away and --  
13 and the Port of Saint Helens is the total financing component  
14 to this, I thought I heard you advise not to do that.

15           **MS. HEITSCH:** It depends on the process that's used  
16 to -- to reach that conclusion, so I'm not sure that I would  
17 advise that -- that the commission unilaterally make that  
18 decision. However, if the application during the negotiation  
19 process or the parties during the negotiation process decided  
20 to amend the -- the responsible parties, that is something that  
21 could likely occur, and depending upon the size of the  
22 amendment or the -- or the -- the type of change, it may be  
23 something that should go back before this body to determine  
24 whether or not it is the same project that was originally  
25 approved.

1           **CHAIR MATER:** But that's the -- that is just the  
2 point. The project first has to be approved. My question  
3 is -- because the project right now has been turned down, okay?  
4 So the question is, if we revisit that issue as -- as changing  
5 the framework of the proj -- the scope stays the same. As  
6 Director Garrett said, scope stays -- stays the same, but now  
7 the direction is we want to approve this project, but we don't  
8 believe that Pacific Transloading is going to be the partner  
9 nor, as -- as Commissioner Lohman perhaps indicated, should be,  
10 and I'm -- by the way, I'm -- I'm in that camp. So if I can --  
11 if I can take away that element of it as the originating  
12 confirmation of the project, do we have the authority to do  
13 that? Can we do that?

14           **MS. HEITSCH:** You probably have the authority to do  
15 that. I wouldn't recommend it unless you were in a negotiated  
16 process where you had all the parties on board and in agreement  
17 that that indeed is the same project.

18           **CHAIR MATER:** Okay. Commissioner Lohman.

19           **COMMISSIONER LOHMAN:** Not from --

20           **MS. HEITSCH:** If you put that --

21           **COMMISSIONER LOHMAN:** -- a legal standpoint --

22           **MS. HEITSCH:** -- in as a condition.

23           **COMMISSIONER LOHMAN:** Excuse me?

24           **MS. HEITSCH:** I'm sorry.

25           **COMMISSIONER LOHMAN:** Not from a legal standpoint,

1 but again from a fairness standpoint, I wouldn't recommend it  
2 either. To me that is -- if we're going to do that, we ought  
3 to be able to say to everybody who applied, "You have a chance  
4 to come back to us with a different funding picture that may --  
5 may make it so that your project is project-ready when we  
6 thought it wasn't -- wouldn't be." I just -- I don't see that  
7 that's -- that really is changing the process. And I think  
8 adding the schedules that is suggested by this motion really  
9 does change the process for this particular project very much  
10 in the way Matt has described. It is singling out this project  
11 for special treatment.

12 **COMMISSIONER BANEY:** Can I -- may I?

13 **CHAIR MATER:** Of course, yeah.

14 **COMMISSIONER BANEY:** But I -- I actually -- I -- I  
15 slightly disagree, Commissioner Lohman, for the reason that we  
16 are -- we are struggling with some of those timeline pieces,  
17 which we are not necessarily privy to on the second phase of  
18 ConnectOregon process. So what I'm trying to do is bring that  
19 to this body to be able to have comfort in saying that that  
20 discussion will be one that -- in which we do together. And I,  
21 again, don't have what those timelines are, but there are  
22 backstop timelines. This project would not be able to go to  
23 2017 and still not be able to have permits and et cetera.  
24 So -- but I'm hearing us say -- and we're not comfortable not  
25 knowing what those dates are, so it's -- it's almost adding

1 further -- yes, it's different than any other project, but  
2 every project is given a timeline and a schedule. We're just  
3 asking that we put a backstop to that schedule, which is maybe  
4 bringing it to an uncomfortable elevation, but it's the same  
5 process they would go through regardless, if that -- if I'm  
6 stating that well.

7           **CHAIR MATER:** Okay. So do we have a motion on the  
8 floor?

9           **COMMISSIONER BANEY:** I believe we do. I would like  
10 to approve this project, highlighting what that project's  
11 scheduled timeline would look like, or maybe it's with approval  
12 by this body of that project's scheduled timeline. And maybe  
13 it's not -- I guess my worry is that we won't be able to  
14 determine what that project's scheduled timeline is today  
15 because that's a negotiated timeline, but I don't want to let  
16 go of the support of this because I -- I don't know that we as  
17 a commission body are the ones who determine whether they can  
18 or cannot meet that timeline that is yet to be negotiated. I  
19 can't say today that they cannot meet that timeline.

20           **CHAIR MATER:** So we -- we have a motion on the floor,  
21 and I think we're all clear about what that motion is. Is --

22           **COMMISSIONER LOHMAN:** I'm -- I'm --

23           **CHAIR MATER:** Or perhaps not.

24           **COMMISSIONER LOHMAN:** I'm actually not, I would  
25 hope --

1           **CHAIR MATER:** Okay, great.

2           **COMMISSIONER LOHMAN:** -- hope you could clarify it,  
3 Commissioner Baney, because there was a couple of "or maybes"  
4 in -- in --

5           **COMMISSIONER BANEY:** Well, I -- I'm going to look to  
6 Bonnie to assist with --

7           **MS. HEITSCH:** Okay.

8           **COMMISSIONER BANEY:** -- a motion. What I would like  
9 to do, my -- my goal is that we allow the support of this to  
10 allow the process to play out, meaning we move forward with a  
11 "yes," with a condition on support of the timeline.

12           **CHAIR MATER:** So point of clarification on this.  
13 We've already voted on the motion of whether the project as it  
14 stands should be funded. That was the first decision made.  
15 Okay? So the -- so the second motion is to revisit that  
16 question and decide whether you're going to approve the project  
17 with the understanding that negotiated timelines would happen  
18 after we approve the project?

19           **COMMISSIONER BANEY:** Madam Chair, part of the reason  
20 that I heard on the record just a moment ago for not supporting  
21 was that they would not be able to secure their permits within  
22 the timeframe necessary to approve the project. And I'm saying  
23 that I don't know that we can determine that because that is  
24 not my understanding of how we have used the 180-day language  
25 in the past, and I am suggesting that if we -- if that is a

1 reason, that we then highlight and elevate the conversation of  
2 timeline so that we can allow the process in which all other  
3 projects have been subjected to to play out.

4 **CHAIR MATER:** So just for clarification here, I -- I  
5 thought we were discussing funding partners in the project.  
6 One is the timeline, yes, I understand, but the second  
7 question, which is -- which is a pretty direct question, if we  
8 change the partners in the project, one goes away, the other  
9 assumes an occupancy role of matching funds, I thought I heard  
10 you say that you would not advise us to do that.

11 **MS. HEITSCH:** That's correct. The -- the -- the  
12 application was signed by all of the parties and the parties  
13 had agreed at that point to assume certain roles.

14 **CHAIR MATER:** Right.

15 **MS. HEITSCH:** I would not advise this -- this  
16 commission to rearrange those roles that the parties originally  
17 agreed to.

18 **COMMISSIONER BANEY:** Madam Chair, if I may, I have a  
19 recommendation on a motion from my colleague Commissioner  
20 Morgan. May I --

21 **CHAIR MATER:** Can you hold for just a --

22 **COMMISSIONER BANEY:** Yeah.

23 **CHAIR MATER:** -- second? I -- I -- and maybe I was  
24 misreading wave signals over here, but did anybody -- did  
25 either of you commissioners want to provide comment? I -- I

1 don't know if that's the case.

2           **COMMISSIONER SIMPSON:** I -- I just had one other  
3 question for Chris or maybe for --

4           **COMMISSIONER BANEY:** Bonnie.

5           **COMMISSIONER SIMPSON:** Yeah, Bonnie. Sorry. Was  
6 there a contingency plan at all in place prior to documents  
7 going forward in terms of how to secure financing to move this  
8 project forward?

9           **MR. CUMMINGS:** As far as contingency, should Ambre  
10 not --

11           **COMMISSIONER SIMPSON:** Yeah.

12           **MR. CUMMINGS:** -- fund it?

13           **COMMISSIONER SIMPSON:** Yeah. Well -- yeah, exactly.

14           **MR. CUMMINGS:** Okay. Our -- our -- from our  
15 standpoint, the applicant -- application, and Bonnie and I just  
16 discussed this, is from the Port of Saint Helens. The Port of  
17 Saint Helens guarantees that they'll provide the match. I  
18 understand that the match is coming from Ambre and we do ask  
19 where they'll get the match from, but ultimately it's the Port  
20 of Saint Helens' responsibility, so we've discussed with them  
21 since the application came in what would happen if Ambre,  
22 Pacific Transloading, went away, and they have the ability to  
23 meet the ConnectOregon match or they informed us that they will  
24 meet the ConnectOregon match.

25           As far as your question earlier, "Can they fund the

1 whole thing?" that's an -- an answer I don't have and we can  
2 ask, if you'd like.

3           **CHAIR MATER:** But the important point here, unless  
4 I'm missing it, is, Bonnie, your counsel is that we shouldn't  
5 approve a motion that would change the dynam -- would change  
6 the de -- the -- the precise detail that's in the document that  
7 everybody signed on to.

8           **MS. HEITSCH:** Chair Mater, I -- you are correct.  
9 However, it was just brought to my attention that the applicant  
10 in this matter was the Port of --

11           **MR. CUMMINGS:** Saint Helens.

12           **MS. HEITSCH:** -- Saint Helens --

13           **CHAIR MATER:** That's true.

14           **MS. HEITSCH:** -- and that the other parties were not  
15 signatories to that application.

16           **CHAIR MATER:** That's true, too.

17           **MS. HEITSCH:** And so --

18           **CHAIR MATER:** Does that change your answer?

19           **MS. HEITSCH:** Yes, it does.

20           **CHAIR MATER:** Well, now we've got something to talk  
21 about potentially here. Okay. So now that we've got -- thank  
22 you.

23           **COMMISSIONER MORGAN:** Madam Chair, may I ask for just  
24 further clarification on how that changes the action; what now  
25 does that put on the table?

1           **MS. HEITSCH:** It was my understanding when I first  
2 entertained this question that there were a number of  
3 signatories on the application and -- and that each had  
4 committed to do a certain -- commit either funds or actions to  
5 ensure that the project can move forward. I've just been  
6 informed that it was an application only from the port and that  
7 the port at that point is the -- the primary responsible party.  
8 And under those circumstances, if your question is -- your --  
9 your question, I believe, is whether or not you can tinker with  
10 the internal workings of that application?

11           **CHAIR MATER:** Whether I can tinker with the matching  
12 component. Can I change that framework of the matching fund  
13 component? Since the match -- the entity who provides the  
14 match was not a signatore on the application, it was just the  
15 port, if I change the element of who is providing the matching  
16 grants, are we okay?

17           **MS. HEITSCH:** Ultimately, the port is responsible  
18 for --

19           **CHAIR MATER:** That's right.

20           **MS. HEITSCH:** -- ensuring that that match --

21           **CHAIR MATER:** That's right.

22           **MS. HEITSCH:** -- is there.

23           **CHAIR MATER:** So you don't have a problem if we --  
24 I'm sorry, I know these are difficult. And I haven't even gone  
25 to the port, which is the next step, and asked them whether

1 this is even a logical thing to look at, but --

2           **DIRECTOR GARRETT:** Madam Chair, if I may, I think  
3 that's legitimate and I want to make sure we have all the  
4 understanding and the facts related to permits, whether they're  
5 in Boardman, whether they're at the Port of Westward, and I  
6 think there is an authoritative entity, and that's the port,  
7 that probably can help inform that --

8           **CHAIR MATER:** Yeah.

9           **DIRECTOR GARRETT:** -- conversation, so at the --

10          **CHAIR MATER:** But let -- but let's --

11          **DIRECTOR GARRETT:** -- appropriate time --

12          **CHAIR MATER:** I want to make sure that I'm clear from  
13 my counsel serving on this that I've got the framework to even  
14 turn around and look at the port and say, "Okay, now I've got  
15 some questions for you." So --

16          **MS. HEITSCH:** I -- Chair Mater, I believe you have --  
17 you have the authority to ask those sorts of questions as  
18 you're moving into the negotiations and -- and to require  
19 certain things to occur as you're moving into the negotiation  
20 within the four corners of that application.

21          **CHAIR MATER:** But to move into the negotiations means  
22 that I have to approve the project first, right? Am I making  
23 this more difficult than is needed? Commissioner Lohman.

24          **MS. HEITSCH:** Oh -- oh, absolute -- oh, absolutely,  
25 you can bring people to the table right now to --

1           **CHAIR MATER:** No, that -- that actually wasn't my  
2 question, but --

3           **DIRECTOR GARRETT:** I think the question is --

4           **CHAIR MATER:** Do -- what comes first?

5           **DIRECTOR GARRETT:** -- to be blunt, we've got a project  
6 that's flat-lining on the table right now. In order for us to  
7 actually engage this conversation, we've got to resuscitate it.  
8 So they're going to have to bring it back, get a pulse again --

9           **CHAIR MATER:** Exactly.

10           **DIRECTOR GARRETT:** And then come in saying, listen,  
11 here's a triage to the situation. Can we now have a  
12 conversation, saying we've got some concerns and I have some  
13 concerns that, again, not all options have played themselves  
14 out, so Transload and then those folks are still in the game to  
15 some extent. But that said, can we now -- if we bring the  
16 project back to life, can we reengage the conversation in terms  
17 of the financial aspects of that with the fact that the port  
18 owns this thing, they are the applicant, and who signs the  
19 checks for the match is a conversation we can play themselves  
20 out.

21           What I'm hearing you say is "Don't do that  
22 unilaterally, Commission. Allow the conversation with the  
23 applicant to come in, and the negotiation between the agency  
24 and the applicant can dictate that, then come back to the  
25 commission with that information or with specific timelines, to

1 Commissioner Baney's point, that you'll either say, 'Yeah,' or  
2 'You know what? No, we're done.' "

3 **CHAIR MATER:** No, that's -- that is --

4 **DIRECTOR GARRETT:** (unintelligible) fair. Yeah?

5 **CHAIR MATER:** Yeah, I -- okay. So I understand what  
6 you're saying. Commissioner Lohman.

7 **COMMISSIONER LOHMAN:** Well, I guess the -- my -- I'm  
8 repeating myself, but I can -- I cannot see it being fair to  
9 all the other applicants for us to start a new negotiation now  
10 as to whether or not we'll get to the point of approving this  
11 or not. Nobody else had the opportunity to come forward and  
12 say, "I want to -- I want to change things in my project in a  
13 significant way." So to me, if -- if that's what the motion  
14 is -- and I'm frankly still not terribly clear on what the  
15 motion is and I think for all our benefits we need to get very  
16 clear about what it is, but to me we are providing a unique  
17 process or proposing to provide a unique process for this  
18 particular project that we've never provided for anybody else.  
19 And shouldn't.

20 **CHAIR MATER:** And -- and Counsel, just again because  
21 I -- I look to you at this point to kind of keep us on the  
22 straight and narrow from a legal standpoint, so here -- here's  
23 the question again. I heard what you said; approve the  
24 project, go into negotiation, and come back and see if we've  
25 got something worked out. I -- I can't go there for exactly

1 the same reason that Commissioner can't go there, Commissioner  
2 Lohman can't go there. What I could do, potentially, if you --  
3 if you told me it was okay, is to -- is -- is to right now  
4 change the dynamic of what's in this application so that  
5 Pacific Transloading is no longer a part of the picture.

6           **MR. CUMMINGS:** If I may, Chair Mater, is -- I don't  
7 know if this will help, but what we've done in previous  
8 committees, except the final review committee, is asked  
9 applicants to come and present their project and asked them  
10 questions about what may or may not work. The modal and  
11 regional committees do that and before they recommend the  
12 project yes or no, and I -- I think that may be where you're  
13 going (unintelligible) --

14           **CHAIR MATER:** Well, and I want to be also sensitive  
15 to Commissioner Lohman here because the point is nobody else  
16 has had the opportunity to do that, you know, where they run  
17 into problems; we've -- we've either said yes or no. So I  
18 think what we have to do first is -- I don't know what we have  
19 to do first.

20           **COMMISSIONER BANEY:** Madam Chair, if I may, I -- I  
21 disagree that we are treating them dif -- that we are treating  
22 them differently in this aspect. I think we are treating them  
23 differently in that we are predetermining that they cannot  
24 secure their permits when we have not allowed the process, the  
25 secondary portion of the process to play out. So I think

1 unless we're going to go back and revisit all other -- the  
2 other 36 projects and look at whether or not they have secured  
3 within 180 days and apply that same language in a finite  
4 fashion, then I think we are actually applying this differently  
5 to this particular project and doing them a disservice.

6           **CHAIR MATER:** But you missed the whole second point  
7 of the discussion, which I think is the more significant. That  
8 is, you have a funding partner who -- who proposed to bring the  
9 significant portion of finance project to the plate who now has  
10 a component of their project that is off the table that made  
11 this project successful and who further went back and presented  
12 to the Department of State Lands that they didn't need the  
13 project in the first place to make a go.

14           **COMMISSIONER BANEY:** But as a follow-up, I think  
15 what's important, though, is that the port is actually the  
16 applicant and the applicant is stating that this is the  
17 necessity. And so if we were to maybe have a conditional  
18 approval that allows for that discussion to occur, that might  
19 get us to the end result of being able to meet both of those  
20 concerns.

21           **CHAIR MATER:** Okay. So Commissioner Baney, what's  
22 your motion?

23           **COMMISSIONER BANEY:** My motion is that we allow --  
24 that we vote yes on this project with the conditional approval  
25 of alternative funding through the applicant and allow for the

1 timeline to play out as set forth by ODOT. And I -- and I  
2 don't -- I don't know -- because I haven't -- I don't know what  
3 your -- it certainly isn't going to be by -- I mean, we could  
4 put an arbitrary number, like 2016, but I -- I look to you for  
5 what a -- what a feasible number is.

6 **MR. CUMMINGS:** Chair Mater, Commissioners, one  
7 concern I have is that if you make a motion like that, the  
8 applicant may not be able to or willing to meet that  
9 discussion. It may be something that you make a motion, for  
10 instance, that we staff discuss further with the applicants --

11 **CHAIR MATER:** But --

12 **MR. CUMMINGS:** No -- okay. No (unintelligible) --

13 **CHAIR MATER:** Can't do that either, no.

14 **MR. CUMMINGS:** But it -- it -- it may be an issue  
15 that the applicant is not willing to meet. And certainly you  
16 can make that motion and approve it, but we can't guarantee the  
17 course of the applicant.

18 **CHAIR MATER:** Am I okay in turning to the port at  
19 this point to ask a question? Can I do that?

20 **MS. HEITSCH:** I believe so. Yes --

21 **CHAIR MATER:** All right. All right. So at least we  
22 got to row two here. So here are my questions to you. And --  
23 and I wouldn't misconstrue this because I think the originating  
24 concern is still a top concern with me, whether there's  
25 fairness in all of that process or not. But let's assume that

1 we have some flexibility on this. My two questions to you are  
2 this. If that \$3 million obligation shifts out of a Pacific  
3 Transloading line item and goes to the port, does the port have  
4 right now sufficient financing on hand to assume that  
5 obligation? That's question number one. Question number two  
6 is, if we have authority to make this change in terms of who  
7 finances the project, would the port also agree that no  
8 financing of the project can come from a coal company? Those  
9 are my two questions.

10 **MR. TRAPP:** Am I -- am I on?

11 **UNIDENTIFIED FEMALE VOICE:** Can you state your name  
12 for the --

13 **MR. TRAPP:** Patrick Trapp, Columbia City,  
14 representing the Port of Saint Helens.

15 Yes, the port is the sole applicant. We had always  
16 worked with that particular company to secure the financing,  
17 but they're not the signatory; it's still the port's  
18 responsible for the whole thing. Yes, they agreed they  
19 would -- they would work with that private venture, so  
20 contractually it's always been the port. It's a matter of  
21 going there -- during the modal committee -- I'll get to your  
22 answer. During the modal committee we did bring Northwest  
23 Innovation Works to the modal committee, they came and appeared  
24 in person and they provided correspondence, again, as the pr --  
25 another prospective tenant that was ready to step in also to

1 help finance, and that was done well in the process as this  
2 process started.

3 Now, to get to your original question, does the port  
4 have the available resources to finance now? Yes. Per our  
5 budget that's been published along the line, we have over  
6 \$3.3 million in our contingency as it stands now, plus another  
7 quarter million dollars associated with our capital project  
8 contingency, plus we have a recurring \$300,000 in taxes that  
9 come in on every annual basis.

10 As for your second question, again I -- I have some  
11 reluctance establishing policy -- policy regarding who the port  
12 will deal with, since I am not empowered to do so; we have a  
13 governing body of port commissioners to do that. I would be  
14 concerned that we would be establishing what type of commerce  
15 flows through this body versus all those other regulatory  
16 bodies that are in place to evaluate all those lines. But --  
17 but again, I -- I can't make that, that's a policy decision for  
18 the port and would have to go back to the commission.

19 **CHAIR MATER:** Other questions to Pat Trapp?  
20 Commissioner Morgan.

21 **COMMISSIONER MORGAN:** Just a comment. I think that  
22 we're on very untenable ground here if we're going to put  
23 requirements on this that define who can't fund projects and  
24 that there are probably legal ramifications to doing things  
25 like that. The -- I think that the -- at issue here is that

1 there -- there is a way to make this happen, and the -- the  
2 question is how to establish the framework around making that  
3 happen to take care of the funding issues and the -- the  
4 timeline issues.

5           And I -- I sincerely believe that that already  
6 exists, that moving this ahead with the conditions that it go  
7 into the contract negotiation phase and come out of that phase  
8 with the funding intact and the permit timelines intact will  
9 meet the needs of addressing both the funding and the  
10 permitting. If the timelines elapse and the permitting hasn't  
11 happened, then the project goes away.

12           **MR. TRAPP:** The -- a point of clarification. There  
13 is no removal fill permit required from DSL for our project at  
14 Berth 2.

15           **CHAIR MATER:** I -- I understand that --

16           **MR. TRAPP:** Okay. So --

17           **CHAIR MATER:** -- that's the case --

18           **MR. TRAPP:** -- it -- it's a license --

19           **CHAIR MATER:** -- but you understand that you have a  
20 lease agreement that you still have to negotiate with DSL.  
21 Correct?

22           **MR. TRAPP:** Yes, but depending on what -- what  
23 partner, what commodity, what -- it may go there --

24           **CHAIR MATER:** Right.

25           **MR. TRAPP:** -- but that's will happen in due time,

1 that's not part of the actual construction fulfillment of the  
2 building of that project.

3           **CHAIR MATER:** It is as far as we're concerned because  
4 that permit has to be secured before we --

5           **MR. TRAPP:** It -- it's --

6           **CHAIR MATER:** -- grant approval on it --

7           **MR. TRAPP:** But it's a -- it's a lease, not a permit.  
8 I keep saying it --

9           **CHAIR MATER:** I understand -- I understand that  
10 you've made a distinction here --

11           **MR. TRAPP:** Well --

12           **CHAIR MATER:** -- but -- that's fine. All right. So  
13 any -- so we have a motion --

14           **MR. TRAPP:** If that's a --

15           **CHAIR MATER:** -- basically on the floor -- let me  
16 just get this right. We have a motion on the floor basically  
17 to revisit the original question again, essentially. I think  
18 that's what I'm hearing you say is to again -- your motion is,  
19 even though we voted that down, to vote on the motion again  
20 with the understanding that after the motion was approved, then  
21 this negotiation on timeframe and phase would happen. Is that  
22 correct?

23           **COMMISSIONER BANEY:** It actually is very customary  
24 that if there are components within a motion that did not make  
25 solid approval that you would offer conditions that could

1 possibly move that forward. That was the reason for my motion.  
2 So my motion is to allow for the alternative funding  
3 opportunity for this particular project in which we have called  
4 out the 180-day permit, lease, all other options and added a  
5 highlight to that. My motion is that we allow this to go  
6 forward with that condition.

7 **CHAIR MATER:** And so I'm back to you, Counsel, with  
8 the same question. You know, do you understand what  
9 Commissioner Baney has placed on the table here?

10 **MS. HEITSCH:** Chair Mater, my understanding is that  
11 Commissioner Baney has a motion adding an additional condition  
12 that the -- the funding source will be isolated and identified  
13 within a 180-days period.

14 **COMMISSIONER BANEY:** I believe we are adjusting --  
15 the port is suggesting that they can be the match.

16 **MS. HEITSCH:** And -- and thank you. We reviewed the  
17 application, and the application indicated that the port or the  
18 private entity would be providing the match. So by requiring  
19 the port or -- or the entity -- either entity, A or B, can  
20 provide the match and still adhere to the original application.

21 So it's my understanding, though, that your motion,  
22 Commissioner Baney, is that to approve this project with the  
23 additional condition that -- that the timing for the  
24 negotiation for -- for this to occur would occur within  
25 180 days.

1           **COMMISSIONER BANEY:** I --

2           **MS. HEITSCH:** That's not your pil --

3           **COMMISSIONER BANEY:** Do --

4           **MS. HEITSCH:** What's your new condition?

5           **COMMISSIONER MORGAN:** The -- so it appears that  
6 there -- that the port can be the funder of this, and that does  
7 not require any additional action, that, by the language of the  
8 application, that can take place.

9           **MS. HEITSCH:** That is correct.

10          **COMMISSIONER MORGAN:** Okay.

11          **COMMISSIONER BANEY:** And what -- what I -- if I may,  
12 the original motion, this information was not brought to us to  
13 be able to have that clarification. And I am wondering if  
14 there's even a need for that call-out, but I will, that the  
15 motion is that we approve this project, given that condition,  
16 that the port be the matching funds and that we allow the  
17 remainder of the process to play out.

18          **MS. HEITSCH:** Commissioner Baney, typically that  
19 would be a motion for reconsideration.

20          **COMMISSIONER BANEY:** Okay, thank you. Then I would  
21 like a motion for reconsideration, given the clarification of  
22 the new information.

23          **COMMISSIONER LOHMAN:** Madam Chair, may -- may I ask  
24 that we have a ten-minute recess?

25          **CHAIR MATER:** Yes, I think that's a good idea. Thank

1 you.

2 (Off the record.)

3 **COMMISSIONER MORGAN:** Could I request Karmen Fore,  
4 the governor's transportation advisor, to come forward?

5 **MS. FORE:** I'm sorry. Of course. Where was I? I  
6 was trying to figure out what I had in my sandwich carton, I'm  
7 sorry.

8 **COMMISSIONER MORGAN:** Thank you, Karmen.

9 **MS. FORE:** Madam --

10 **COMMISSIONER MORGAN:** We're -- we're kind of stuck in  
11 a place right here, and I was hoping that you would be able to  
12 help us understand the governor's orientation to the role of  
13 the transportation commission in the ConnectOregon process  
14 relative to where we're sitting right now.

15 **MS. FORE:** Thank you, Madam Chair, Commissioner  
16 Morgan, members of the commission. For the record, my name is  
17 Karmen Fore and I'm the transportation policy advisor for  
18 Governor John Kitzhaber.

19 As it relates to ConnectOregon and the process for  
20 ConnectOregon, the governor would, you know, come down on the  
21 side of saying it's important that the commission follow and  
22 use -- use the tools and the process that it's been provided up  
23 to this point for the applicants coming forward in the process.  
24 He would also say as it kind of relates to the notion of the  
25 commodities and the regulatory piece that we have agencies and

1 commissions for whom that is their role to do that work, and  
2 then it is this body's role to do its work as it relates to the  
3 investments for our transportation infrastructure, for its  
4 efficiency, and its safety for Oregonians.

5 **COMMISSIONER MORGAN:** Thank you.

6 **CHAIR MATER:** Any other -- any questions for  
7 Ms. Fore?

8 **COMMISSIONER LOHMAN:** Yes. Well, I -- then are --  
9 are you saying that the governor is asking us to approve of the  
10 position of the final review committee and the department's  
11 recommendation regardless of our own judgements about the  
12 wisdom of the -- that recommendation?

13 **MS. FORE:** Commissioner Mater, Commissioner Lohman,  
14 I've not had a conversation with the governor about how  
15 individual commissioners should vote based on their own  
16 judgements, but we have discussed sort of the role of this  
17 commission and other state agencies and bodies as it relates to  
18 the host of issues before the state at this time.

19 **COMMISSIONER LOHMAN:** Thank you.

20 **MS. FORE:** You're welcome.

21 **CHAIR MATER:** Excuse me, again. Any other questions  
22 for Ms. Fore?

23 **UNIDENTIFIED FEMALE VOICE:** Unh-unh.

24 **CHAIR MATER:** Okay.

25 **MS. FORE:** Thank you.

1           **CHAIR MATER:** Commissioner Baney.

2           **COMMISSIONER BANEY:** Boy, I'm almost hesitant to.

3 However, I would like to offer a motion for reconsideration of  
4 the Berth 2 project in Saint Helens and offer the condition  
5 that the project agreement is fully executed with the -- within  
6 the 180-day period.

7           **CHAIR MATER:** We have a motion on the floor. Any  
8 further discussion?

9           **COMMISSIONER LOHMAN:** I don't want to be lawyeristic  
10 about this, but I just -- I want to note, I guess. I will not  
11 raise an objection, but normally a motion for reconsideration  
12 can only be made by a person --

13           **CHAIR MATER:** Somebody who didn't make the motion.

14           **COMMISSIONER BANEY:** Oh.

15           **COMMISSIONER LOHMAN:** That's right, who did not  
16 vote --

17           **COMMISSIONER MORGAN:** In that case, Madam Chair, I  
18 would offer to second the motion.

19           **CHAIR MATER:** All right. So now we have a motion  
20 made by Commissioner Morgan.

21           **COMMISSIONER MORGAN:** Oh, okay.

22           **CHAIR MATER:** Is that's right --

23           **COMMISSIONER MORGAN:** I will -- so, yes. I'll  
24 withdraw my second, and if you'll re -- withdraw your firsting,  
25 I'll take over that --

1           **COMMISSIONER BANEY:** I would be happy to.

2           **COMMISSIONER MORGAN:** I will propose the motion.

3           **CHAIR MATER:** Ho -- not oppose; propose the motion.

4 Is that --

5           **COMMISSIONER MORGAN:** I will make the motion. Is  
6 that clear enough?

7           **CHAIR MATER:** Okay. Any discussion?

8           **UNIDENTIFIED FEMALE VOICE:** Sorry. Oh, sorry.

9           **CHAIR MATER:** I -- I think -- I think I would just  
10 like to provide a clarification here. My analysis never goes  
11 into that regulatory side. I'm just real clear that we don't  
12 have the authority to engage in that. We don't have the  
13 authority to tell anybody "You can't take this commodity on  
14 rail or road," or whatever it is. We do not have that  
15 authority. What we do have is the responsibility to ask the  
16 question, should that project be allowed to secure public  
17 funds? They can go ahead and do it with their own money, but  
18 should public funds be used for that purpose? And I -- and I  
19 think that's a difference of a question. So I just wanted to  
20 make that clear that, from where I stand, it's not a  
21 regulatory. And actually from where I stand on this project,  
22 the overriding offense to me is that -- that everything was so  
23 outside the margin of what the other projects had to deal with,  
24 and then you have a partner in the project who turns around and  
25 says, "We really don't need funding for this project." I mean,

1 that -- that was kind of the deal for me. So this really is a  
2 protocol question for me. Okay.

3 We have a motion on the floor. Any other comments?

4 **COMMISSIONER LOHMAN:** I -- I have a comment. I'm  
5 not -- I guess a couple comments. One, I -- I -- back to my  
6 previous point. I think under parliamentary rules, only a  
7 person who voted --

8 **CHAIR MATER:** Oh, against the project can --

9 **COMMISSIONER LOHMAN:** Against the project could move  
10 for reconsideration. I don't -- I guess -- I guess I raise  
11 that not as a point of order, because I really think we need to  
12 get to the substance and not let procedure get in the way here,  
13 but I just would note that that's a little unusual.

14 For me, if -- my position is still going to be no,  
15 that we should not approve this project. And I -- I don't know  
16 exactly what would go on in this 180-day period; now I'm a  
17 little confused. But if we're talking about a -- the funding  
18 coming purely from the port, that really seems to me different  
19 from what all the committees reviewed when they reviewed this  
20 project. That was not their understanding that the money would  
21 be coming principally from the port. The application did say  
22 "port or," but the understanding from everybody was that this  
23 was not going to have to be port funding, and -- and if that's  
24 the direction we're going, I think it is a change that  
25 everybody else ought to be allowed to -- to -- who applied

1 ought to be able to make as well. And that's just not  
2 workable.

3           It does sound to me like, frankly, this -- this  
4 project is premature, that it may be something that is  
5 considered in the future, but it's just not ready for primetime  
6 yet. That's my position.

7           **COMMISSIONER MORGAN:** May I ask a question, Madam --

8           **CHAIR MATER:** Of course.

9           **COMMISSIONER MORGAN:** -- Chair?

10           Director Garrett, in the history of the ConnectOregon  
11 projects, have there been examples of the funding scenarios  
12 changing in -- as the projects went through the contracting and  
13 review process?

14           **DIRECTOR GARRETT:** Commissioner Morgan, I'm going to  
15 have to ask one of the mechanics that have worked on those.  
16 Jerri, Chris?

17           **MR. CUMMINGS:** Chair Mater, Commissioners, as far as  
18 the funding source being a different funding source? Is that  
19 what you're asking --

20           **COMMISSIONER MORGAN:** Well, just at some -- in the  
21 situation that we're in right now, it appears that the  
22 application came through, say, under the port's signature and  
23 that in the descriptive part of the application it described a  
24 funding source where there was another party than the port  
25 providing the funding. And so in this situation we're asking

1 for consideration to allow the port to step up and see if they  
2 can fulfill the funding obligation in a different way than they  
3 put together in the application. And so my question is, are  
4 there examples of that or some similar type of scenario  
5 unfolding previously in ConnectOregon?

6 **MR. CUMMINGS:** The one that comes to my mind, and  
7 perhaps Jerri can help me along, too, is that in the past Union  
8 Pacific had applied for a grant. I believe it was \$8 million.  
9 And there were negotiations throughout the process where they  
10 moved it down to 4 million. Or I'm sorry, they applied for  
11 4 million and moved it up, so they supplied more match than  
12 they originally applied for. That was in ConnectOregon IV, I  
13 think it was.

14 **CHAIR MATER:** But they provided more match.

15 **MR. CUMMINGS:** Correct.

16 **CHAIR MATER:** Uh-huh.

17 **MR. CUMMINGS:** Yeah. So there were changes, and off  
18 the top of my head I can't think of any where match may have  
19 come from somebody else at the request of the commission or any  
20 other committees. I -- I do recall discussions where the match  
21 may come from X or Y and then it ends up coming from Y, whereas  
22 applicants may apply for a grant program hoping that they get  
23 TIGER funding, federal TIGER funding, and that does come but  
24 not in the amount they need, so they have to put in more match,  
25 issues like that --

1           **COMMISSIONER MORGAN:** So that would be a somewhat  
2 similar situation to this one.

3           **MR. CUMMINGS:** Similar, not exact, but similar --

4           **COMMISSIONER MORGAN:** Yeah, but similar. Uh-huh.

5           **CHAIR MATER:** Okay. We have a motion on the floor.

6 Any other -- any other discussion? Discussion? Okay. Roll-  
7 call vote. Commissioner Morgan.

8           **COMMISSIONER MORGAN:** Yes.

9           **CHAIR MATER:** Commissioner Baney.

10          **COMMISSIONER BANEY:** Yes.

11          **CHAIR MATER:** Commissioner Lohman.

12          **COMMISSIONER LOHMAN:** No.

13          **CHAIR MATER:** Commissioner Simpson.

14          **COMMISSIONER SIMPSON:** No, I stand in opposition.

15          **CHAIR MATER:** Chair votes no. Okay.

16                 So we have through this process to date approved 36  
17 of the 37 projects that then are recommended on the docket.  
18 And I believe -- Chair -- Commissioner Lohman.

19           **COMMISSIONER LOHMAN:** Just a question. I'm not sure  
20 we're ready to answer it today, but how do we proceed now with  
21 the -- we're under the \$42 million. I just -- I hope that the  
22 department will come back to us at the next meeting with a  
23 recommendation on how to proceed hereafter.

24           **MS. HEITSCH:** Yes, we can come forward with a  
25 recommendation on how to proceed and that's -- within the

1 administrative rules that you have, you have a lot of  
2 flexibility in the types of projects that you pick.

3           **CHAIR MATER:** And I think that -- that is something  
4 that -- that -- that was at least preliminarily on the docket  
5 just in case this issue had, so I know that this request isn't  
6 new to you, and so I think the next commission meeting will  
7 probably have some options provided by staff on what our next  
8 step is going to be on that. Okay?

9           Are we ready to move on to the next issue at hand in  
10 our docket? Okay.

11           (Whereupon the meeting was concluded.)

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CERTIFICATE

I, Stephen V. Wright, hereby certify that I am an electronic transcriptionist for Business Support Services of Salem, Inc., that as such electronic transcriptionist I prepared to the best of my ability from an electronic recording provided by the Oregon Department of Transportation the foregoing typewritten transcript of the meeting had, and that the foregoing pages, which are numbered 1 through 96, both inclusive, are the true, accurate and complete transcript of the meeting, and all other oral proceedings had upon the said meeting.

WITNESS my hand as electronic transcriptionist this 3rd day of October 2014.

Stephen V. Wright, Transcriptionist

svw/svw