

# Draft Rule for Multimodal Active Transportation Bike/Ped RAC Mtg #4

## Department of Transportation

### Chapter 731

#### Division XX

#### **STANDARDS TO DETERMINE PROJECT ELIGIBILITY AND APPLICATION PROCEDURES FOR GRANTS UNDER THE MULTIMODAL ACTIVE TRANSPORTATION FUND PROGRAM**

#### **731-035-0010**

##### **Purpose of the Rules**

ORS 367.081 establishes the Multimodal Active Transportation Fund for the purpose of providing grants for bicycle and pedestrian transportation projects. The purpose of the rules in **Division 35** is to establish the criteria used in awarding grants from the Multimodal Active Transportation Fund.

#### **731-035-0020**

##### **Definitions and Acronyms**

For the purposes of **Division 35** rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

- (1) "Agreement" means a legally binding contract between the Department and Recipient that contains the terms and conditions under which the Department is providing funds from the Multimodal Active Transportation Fund for an Approved Project.
- (2) "Applicant" means a Public Body or Private Entity that applies for funds from the Multimodal Active Transportation Fund.
- (3) "Approved Project" means a project that the Commission has selected to receive funding through a grant from the Multimodal Active Transportation Fund.
- (4) "Bicycle" has the meaning given a bicycle as defined in ORS 801.150 or an electric assisted bicycle as defined in ORS 801.258.
- (5) "Bicycle trail" or "Bicycle path" has the meaning given the term bicycle path in ORS 801.160
- (6) "Critical link" means a multiuse path, bicycle trail, or footpath, in an area that meets one or more of the following criteria:

(a) improves walking and bicycling access to high need locations (i.e. transportation disadvantaged areas, schools, shopping or employment centers, medical services, connections to transit and regional paths, and downtowns); or

(b) improves walking and bicycling access in areas where no connections exist, transportation options are limited, or significant safety concerns are addressed by the improvement.

(7) "Commission" means the Oregon Transportation Commission.

(8) "Department" means the Oregon Department of Transportation.

(9) "Director" means the Director of the Oregon Department of Transportation.

(10) "Final Project Acceptance" means the department's written acceptance of a transportation project as complete following an on-site review of the completed project.

(11) "Footpath" means a public way that is designated for use by persons walking, except as otherwise specifically provided by law.

(12) "Multiuse path" or "Multiuse trail" means an accessible public way that is designated for use by persons walking, bicycling, and using other forms of non-motorized transportation, except as otherwise specifically provided by law or a governing body.

(13) "Oregon Bicycle and Pedestrian Advisory Committee" means the committee created in ORS 366.112.

(14) "Pedestrian" has the meaning given in ORS 801.385

(15) "Private Entity" has the meaning given in ORS 367.802

(16) "Program" means the Multimodal Active Transportation Fund Program established by Division 35 rules to administer the Multimodal Active Transportation Fund.

(17) "Program Funds" means the money appropriated by the Legislature to the Multimodal Active Transportation Fund. These funds may be used as grants to eligible projects.

(18) "Project Sponsor" means a public body or private entity seeking funds to develop and implement a dedicated project.

(19) "Public Body" has the meaning given in ORS 174.109.

(20) "Recipient" means a public body or private entity that enters into Agreement with the Department to receive funds from the Multimodal Active Transportation Fund.

(21) "Recipient's Total Project Costs" means the funds received from the Multimodal Active Transportation Fund program plus the matching funds required under Oregon Administrative Rule 731-035-0070(3)(a)(B) and any additional funds, if applicable.

(22) "Regional path" means a multiuse path or trail, including bicycle trails and footpaths, that meets the following criteria for Regional Path designation:

(a) is a continuous path made up of one or more connected segments that is primarily physically separated from the roadway;

(b) connects two or more communities, with each community no more than 15 miles apart, or traverses through a single large community with a path that is 10 miles or longer;

(c) will serve as a connection point for people commuting between communities, or is a part of an officially designated walking and bicycling route; and

(d) is endorsed by elected bodies along path alignment.

(23) "Transportation Project" is defined in ORS 367.080(1)(e).

(24) "Walking" means use of human-powered forms of transportation, including, but not limited to travel to a destination by foot or wheelchair.

### **731-035-0030**

#### **Multimodal Active Transportation Fund Purpose**

The Multimodal Active Transportation Fund was established by ORS 367.081 to provide grants for pedestrian and bicycle transportation projects. Pedestrian and bicycle transportation projects include the development, construction, reconstruction, resurfacing, or ,capital improvement of multiuse paths, bicycle paths, and footpaths that improve access and safety for people walking and bicycling.

Funding for transportation projects that comes from the money directed into the Multimodal Active Transportation Fund under ORS 367.081 must be used in accordance with the Oregon Constitution, Section 4, Article XV, , for transportation projects intended for public purpose with a useful life expectancy of 20 years or greater.

### **731-035-0040**

#### **Grant Application Procedure & Application Submission Periods**

(1) The Department will announce periods for submitting applications for funding from the Multimodal Active Transportation Fund by July 1<sup>st</sup> of each year.

(2) Project applications will be reviewed for compliance with the requirements in OAR 731-035-0050, 731-035-0060, and 731-035-0070.

(3) Applications not funded may be resubmitted during subsequent application submission periods announced by the Department.

### **731-035-0050**

#### **Who May Apply for Multimodal Active Transportation Fund Grants**

(1) Eligible applicants for the Multimodal Active Transportation Fund include:

- a. A city, county, state, regional government body, tribe, transit district, school district, special government body, or other unit of local government. If the project is located on public property or right-of-way, the Applicant must submit a letter of support from the appropriate public agency or road authority stating its participation and endorsement as applicable to the project;
- b. A non-profit organization or other private entity with documented support from one of the governmental bodies identified in section (1) of this rule. The application must include appropriate letters of support from the affected governing bodies. If the project

is located on public property or right-of-way, the Applicant must submit a letter of support from the appropriate public agency or road authority stating its participation and endorsement as applicable to the project. If the project is located on private property, the Applicant must provide a public easement for the project or submit equivalent documentation that the project will serve a public purpose.

(2) Eligible applicants must also meet the following criteria:

- a. The Applicant, if applicable, is current on all state and local taxes, fees and assessments.
- b. The Applicant must commit to provide sufficient management and financial capacity to complete the Project including, without limitation, the ability to contribute 30 percent of the Recipient's Total Project Cost.

### **731-035-0060**

#### **Eligible Projects and Activities for Multimodal Active Transportation Fund Grants**

Projects that meet all of the following criteria are eligible:

- (1) The project is a Transportation Project.
- (2) The Project will assist in developing a multimodal transportation system that will improve safety and access for people walking or bicycling. Eligible projects, include, but are not limited to: development, construction, reconstruction, resurfacing and repair, or improvement of multiuse paths, bicycle paths, and footpaths
- (3) The Project will improve a critical link; regional path; or path crossing to reduce barriers and hazards for people walking and biking.
- (4) The Project is eligible for funding with lottery bond proceeds under the Oregon Constitution and laws of the State of Oregon. Project must be intended for public purpose.
- (5) The Project will not require or rely upon subsidies from the Department for ongoing operations.
- (6) If the project is located on public property or within a public road right-of-way, the project must be approved by the appropriate public agency or roadway authority (governing body)
- (7) Provide a match of at least 30 percent of the total project's costs
- (8)
- (9) The Applicant must commit to deliver the project within up to 5 years from Agreement execution.

### **731-035-0070**

#### **Grant Application Requirements**

Applicants interested in receiving funds from the Multimodal Active Transportation Fund must submit an application to the Department. The application must be in a format prescribed by the Department

and contain or be accompanied by such information as the Department may require, including the expected results from the proposed Project for each of the considerations as prescribed in 731-035-0080, documented desire for and support of the Project from the entities to be served by the Project, and documentation to validate the Project schedule and costs. Incomplete applications may be deemed ineligible by the Department as prescribed in 731-035-0090.

### **731-035-0080**

#### **Project Selection Criteria**

The following criteria will be used to select projects for receipt of funds from the Multimodal Active Transportation Fund:

- (1) Technical merit
  - a. Conformance with adopted plans, state land use laws, and applicable federal, state, and local planning and programming requirements;
  - b. Adherence to appropriate design standards
  - c. Proposed solution addresses identified need
  - d. Ability to provide at least the minimum required match
- (2) Project readiness - A project will be considered ready for construction if the applicant can demonstrate evidence of the following:
  - a. Evidence of community engagement/outreach prior to application submission and plan for continued community engagement related to project. This may include consistency with adopted plans, demonstration of community support, documentation of known or potential opposition, and/or letters of support from impacted property owners and other stakeholders.
  - b. Support of the appropriate public agency or road authority (if project is located on public property or right-of-way) and governing body for the project as demonstrated by a letter of support and endorsement
  - c. Project development timeline that includes a proposed start date, the duration of each development stage and dates of major milestones to reflect project completion within up to 5 years of Agreement execution. Applicant shall provide:
    - i. a letter of commitment to provide matching funds in concordance with the project timeline.
    - ii. Evidence of site ownership or control, evidence of a land sales agreement, governing body resolution of condemnation action, or schedule to obtain site ownership or control within the project development timeline.
    - iii. a schedule to complete environmental and land use review and to obtain any land use decisions within the project development timeline.

- iv. A schedule to secure all permits needed for construction within the project development timeline, if not obtainable within nine months of execution of grant agreement.

(3) Benefit

- a. Potential to improve transportation system connectivity and the ability of people to walk and bicycle to work, school, and other destinations
- b. Potential to improve public health and safety
- c. Potential to improve community outcomes such as livability
- d. Potential to improve equity outcomes
- e. Potential to maximize community benefits relative to project costs

(4) Project Characteristics

- a. Facility type and design
- b. Improves a critical link or regional path
- c. Proximity to high need locations as defined in Oregon Bicycle and Pedestrian Plan
- d. Relationship to other ongoing or planned infrastructure or non-infrastructure work

**731-035-0090**

**Application Review**

- a. The Department will review applications received to determine whether the application is complete and the Applicant and the Project are eligible for Program Funds.
- b. If an Applicant or Project is not eligible for Program Funds, the Department will, within 15 business days of determination:
  - a. Specify the additional information the Applicant must provide to establish eligibility; or
  - b. Notify the Applicant that the application request is ineligible.
- c. The Department may deem an application ineligible if the Applicant fails to meet eligibility requirements of subsections (2) and (3) of this rule, or fails to provide requested information in writing by the date required by the Department, or if the application contains false or misleading information.
- d. The Director will consider protests of the eligibility determination for the Project. Only the Applicant may protest. Protests must be submitted in writing to the Director within 15 days of the event or action that is being protested. The Director's decision is final.
- e. The Department will make all eligible applications available for review, as applicable under OAR 731-035-0100, to the Oregon Bicycle and Pedestrian Advisory Committee

## **731-035-0100**

### **Project Selection & Award**

- (1) The Commission will select Projects to be funded through a grant with moneys in the Multimodal Active Transportation Fund.
- (2) Prior to selecting Projects to be funded with moneys in the Multimodal Active Transportation Fund, the Commission shall solicit a Final Recommendation Report from the Oregon Bicycle and Pedestrian Advisory Committee. OBPAC will evaluate the eligible applications and submit a Final Recommendation Report, including:
  - a. the evaluation results,
  - b. recommendations from the committee,
  - c. a list of projects to be funded with moneys in the Multimodal Active Transportation Fund in priority order, and
  - d. a reasonable number of alternate Projects in priority order.
- f. The Department shall determine the organizational guidance for the committees' processes and protocols.

## **731-035-0110**

### **Program Validation**

- (1) After OBPAC makes its recommendation to the Oregon Transportation Commission, the department shall validate that the applicants and projects meet all program eligibility requirements
- (2) Validation shall include:
  - a. Confirmation of applicant eligibility
  - b. Confirmation of project eligibility
  - c. Evidence of matching funds available for the project
  - b. Confirmed project delivery schedule that meets program requirements
  - d. Other information identified by the department to complete a grant funding agreement
- (3) Project applicants shall be required to provide any information requested by the department within ten business days of the request.
- (4) The department shall identify those projects that do not meet program criteria and, therefore are not eligible for funding, prior to the commission's final action to select

projects. Applicants may protest eligibility determination for the program, per 731-035-0090 (d).

### **731-035-0120**

#### **Grant Awards and Match**

- (1) Once a project is selected by the Commission under 731-035-0100 the amount of monies identified by the Commission is considered allocated from Program Funds to a Recipient for an Awarded Project.
- (2) Grants will be awarded only when there are sufficient funds available in the Multimodal Active Transportation Fund to cover the costs of the grants.
  - a. Grant awards may not exceed 70 percent of the total eligible Project costs
  - b. Applicant matching funds must be provided by the Applicant in the form of cash on hand, or through monetary outlay for eligible capital project costs that are reasonable, necessary and directly related to the project. Eligible costs may include costs to acquire property, conduct outreach, design, engineer, permit, and construct improvements described in the Awarded Project. Donated property, materials, and labor may not be counted towards match.

- i. Monetary outlays for (b) above must have been made within ten years of the application deadline for Multimodal Active Transportation grant fund submittals in order to qualify as eligible matching funds.
  - ii. The cash acquisition cost of land may be counted as match toward 30% of the eligible project costs.
- (3) If an Agreement with a Recipient has not been executed within 180 days from the commission's selection of the project, allocation is withdrawn, and the funds may be reassigned by the Commission as prescribed in 731-035-0100.
- (4) Project Awardees are responsible for any cost overages that occur during project delivery

### **731-035-0130**

#### **Project Administration**

- (1) The Department will administer all projects.
- (2) The Department and an Applicant of an Approved Project will execute an Agreement prior to the disbursement of Program Funds for an Approved Project. The Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Agreement.
- (3) The Agreement will contain provisions and requirements, including but not limited to:
  - (a) Documentation of the projected costs for an Approved Project must be submitted to the Department prior to the disbursement of Program Funds.
  - (b) Only Project costs incurred on or after the effective date of the Agreement are eligible for grant funds.
  - (c) Disbursement of Program Funds for grants will be paid on a reimbursement basis and will not exceed one disbursement per month.

- (d) Five percent (5%) of funds received from the Multimodal Active Transportation Fund will be withheld from each reimbursement request and shall be released to grant Recipient as the following conditions are met:
    - (A) Eighty percent (80%) of funds withheld shall be released to Recipient upon final project acceptance by the Department.
    - (B) Twenty percent (20%) of funds withheld shall be released upon receipt and approval by the Department of a report that, at a minimum, describes project performance measures and jobs retained or created as a result of the project within 18 months of project acceptance by the Department.
  - (e) Upon request, a Recipient must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.
  - (f) Recipients must separately account for all moneys received from the Multimodal Active Transportation Fund in Project accounts in accordance with Generally Accepted Accounting Principles.
  - (g) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.
  - (h) Amendments to Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.
  - (i) Recipients must covenant, represent and agree to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued under the Program.
  - (j) Recipients, if applicable, must covenant, represent and agree to remain current on all state and local taxes, fees and assessments for the useful life of the Project as prescribed in the Agreement.
- (4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program as specified in this rule, statute or program guidelines. The Department will not impose sanctions until the Recipient has been notified in writing of such failure to comply and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:
- (a) Work on the Approved Project has not been substantially initiated within six months of the effective date of the Agreement;
  - (b) State statutory requirements have not been met;
  - (c) There is a significant deviation from the terms and conditions of the Agreement; or
  - (d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project and those corrective actions are not, or will not be, made within a reasonable time.
  - (e) Applicant fails to submit a project report as described in OAR 731-035-0080(3)(ed)(B).

- (f) The Department finds that a Recipient is not current on all applicable state and local taxes, fees and assessments during the term of the Agreement.
- (5) The Department may impose one or more of the following sanctions:
    - (a) Revoke an existing award.
    - (b) Withhold unexpended Program Funds.
    - (c) Require return or repayment of expended Program Funds
    - (d) Bar the Applicant from applying for future Multimodal Active Transportation funds.
    - (e) Other remedies that may be incorporated into grant Agreements.
  - (6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.
  - (7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Recipient may protest. Protests must be submitted in writing to the Director within 15 days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.
  - (8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.