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# CONNECT OREGON RULES ADVISORY COMMITTEE

## Meeting 3 Summary

November 19<sup>th</sup>, 2018 – 1:00-4:00PM  
Chemeketa Center for Business and Industry  
626 High St NE, Salem, Oregon 97301

## ATTENDEES

Dave Anderson, *City of The Dalles*  
Jerri Bohard, *ODOT*  
Rob Eaton, *Amtrak*  
Jana Jarvis, *Oregon Freight Advisory Committee, Member*  
Senator Betsy Johnson, *District 16 – Scappoose*  
James LaBar, *State of Oregon*  
Mark Landauer, *Oregon Public Ports Association*  
Caddy McKeown, *District 9 – Coos Bay*  
Deena Platman, *International Trade Systems*  
Katie Thiel, *ODOT*  
Toby Van Altvorst, *Goose Lake Railway LLC*  
John Vial, *Jackson County*

## STAFF

John Boren, *ODOT*  
Erik Havig, *ODOT*  
Jeanne Lawson, *JLA Public Involvement*  
Ayano Healy, *JLA Public Involvement*

## OBSERVERS

5 observers, present in person

## WELCOME AND AGENDA

John Boren, ODOT, and Jeanne Lawson, facilitator with JLA Public Involvement, welcomed the committee and the meeting observers. RAC Committee members, Jana Jarvis and Deena Platman, participated in the meeting over the phone.

Committee members then introduced themselves before Jeanne and John briefly summarized the purpose of this meeting and reviewed the agenda. The agenda was as follows:

1. Review and refine rule language for Statewide Significance based on guidance from October meeting
2. Review and refine process for Review of Applications\*
3. Presentation of issues for Match Requirements
4. Break
5. Match Requirements Workshop
6. Project Readiness definition and requirement presentation and issues discussion\*\*
7. Public Comment
8. Wrap Up, Next Steps and Close

\* Due to limited time, committee members were asked to review the *Review of Applications* process outside of the meeting and report to John Boren with their feedback via email before the December 7<sup>th</sup> (Meeting 4) RAC meeting.

\*\* The Project Readiness definition discussion was tabled to be discussed at the December 7<sup>th</sup> (Meeting 4) RAC meeting.

The remaining RAC meetings are as follows, confirmation of meeting location TBD:

- **Meeting 4:** Friday, December 7<sup>th</sup>, 2018, 2:00p-5:00p
- **Meeting 5:** Monday, January 7<sup>th</sup>, 2019, 1:00p-4:00p

## REVIEW & REFINEMENT OF STATEWIDE SIGNIFICANCE LANGUAGE

John Boren reviewed the Statewide Significance language discussion from the October 22<sup>nd</sup> meeting. His review of the discussion and feedback are as follows:

### ***Draft Rule Language for Statewide Significance***

*What we heard in the previous meeting (slide 2)*

- *Desire for qualitative approach, rather than purely dollar amount thresholds to determine significance.*
- *Prefer a mix of:*
  - *Concept 2 (citing policies/project already being designated statewide significance)*
  - *With some elements of Concept 3 (quantifying the economic benefits)*
- *Want Part 2 projects to meet all the requirements for Part 1 and additional, unique requirements for Part 2*

*Approach based on feedback (slide 3)*

- *Requires Part 2 projects to also meet all Part 1 requirements*
- *Include both policy and economic analysis concepts*
- *Brought forward the option that it could be on a list of pre-vetted projects of statewide significance as adopted by modal committees, OR if it meets goals/objectives/policies/strategies.*
- *Economic analysis concept incorporates some features of dedicated project requirements given similarity in size of projects.*

*Draft Language – Also see handout (slide 4 + 5)*

*(9) For Part 2 projects, the Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Connect Oregon Fund:*

*(a) Are transportation projects of statewide significance as defined by:*

*(A) Consistency with policies and strategies of the Oregon Transportation Plan or other applicable model or topic plan elements of the Oregon Transportation Plan*

*(B) Being on a list of transportation projects of statewide significance that have been adopted by a statewide modal committee or applicable Area Commission on Transportation.*

*(C) Whether a proposed transportation project results in a measurable economic benefit outside the site's county or region as specified in OAR 731-035-0070(2) as demonstrated via the following analysis:*

*(i) Feasibility Analysis which includes at a minimum*

*(I) An assessment of commodities and products likely to be served and their typical market destinations;*

*(II) An assessment of the anticipated market area the facility would serve;*

*(III) An assessment of the market share in the area that would be impacted by the project;*

*(IV) An assessment of the anticipated transportation cost savings that use of the project improvements may generate.*

*(ii) A Return on Investment Analysis which includes at minimum:*

*(I) Number of permanent jobs as a result of the improvement;*

*(iii) Anticipated indirect job and economic growth in the area supported by the project improvement construction and operation.*

*Effect of rule language (slide 6)*

- *What the language would do:*
  - *Make it clear that the requirements for a Part 2 would be above and beyond those for a Part 1 project*
  - *Encourage a policy/plan basis for justification*
  - *Empower Modal Committees/ACTs to weight in ahead of time on what they see as the most strategic investments in their areas of expertise/geography*
  - *Encourage credible economic analysis on the front end to provide a more technically defensible estimate of the feasibility and return on investment.*
- *What the language would not do:*
  - *Set a ceiling or floor on project size/or dollar value for Part 1 or Part 2*
  - *Allow for applicants to easily change from Part 1 to Part 2, due to more substantial requirements/considerations*

## DISCUSSION AND QUESTIONS

RAC members responded and discussed the points made by the *Draft Rule Language for Statewide Significance* presentation; their comments/questions/concerns have been organized and grouped in the following bolded categories below:

- **Dedicated projects funding**
  - Dedicated projects have received funding
- **Modal sectors with no existing or current strategic plan**
  - Although upcoming legislation may prompt the creation of a marine plan, there is not one currently; the concern is that Marine is at a disadvantage for being a viable applicant.
    - There is a lack of marine-specific representation at ODOT, this could also put marine at a disadvantage for applicant accessibility and consideration.
  - *In response:* This committee is working toward creating language that considers this and will make sure that rule language reflects eligibility in terms of “or” rather than “and” as much as possible. Other alternatives to projects being affiliated with modal plans would be to achieve other Oregon Transportation Goals, such as “reducing greenhouse gas emissions” which marine can make a viable proposal for.
  - *In response:* Other plans, such as freight, are multimodal and can include marine; this can be another avenue through which marine projects can demonstrate relevance and statewide significance. Language for rules could be expanded to include: “tie it to other strategic investment strategies.”
  - *In response:* It should be acknowledged in final rule language that there is currently no Marine Plan. Final Part 2 rule language should emphasize the four points (intermodal; making connections; velocity/capacity/reliability; address congestion/conflicts)
- **Increasing eligibility requirements (*and vs or*)**
  - There was a suggestion and support for making A or B an “or” so that it would lend itself to increasing eligibility requirements
  - *In response:* A and B are more for making sure that its connected to the OTP and then we could incorporate the 4 bullets into the language (which would be hypothetical option D); rule language would state something along the lines of “A and then either B, or C, or D”
- **Connect Oregon Fund as capstone funding**
  - Suggestion made that CO funding would be like community benefit funding- where proposals would gather multiple funding sources and then CO would be the match when the project viably presented its value for funding
  - Considerations should be made about any language defining the timing or sequence of when CO funding could be matched; CO funding would be a capstone match vs. seed money or starter funding
  - Capstone misses sudden market opportunities and there should be more flexibility there; “emerging opportunity” should be added in
- **Spreading funding too thin vs. larger amounts to big projects**

- A point was made about spreading funding too thinly across many small projects instead of a couple of large-scale, major projects that have been ongoing and needing a larger funding match to for viable project completion
- **Prerequisites and applicant lead time as a potential barrier**
  - There are tradeoffs for requiring/expecting projects to start organizing their eligible funding for a CO match (getting their “financial checkmarks done”); the lead time and administrative capacity required of applicants could become a barrier to fulfilling CO match funding eligibility requirements.
  - In addition to
- **Gaming the system**
  - It is important to consider how applicants will be strategic about applying to part 1 or part 2 and how they see themselves being more successful; *how can the rule language do best to anticipate this?*

## REVIEW AND REFINE PROCESS FOR REVIEW OF APPLICATIONS

Due to time limitations, this agenda item was assigned to RAC members as “homework,” to be completed by Meeting 4, Friday, December 7, 2018.

ODOT staff will provide RAC members materials on the *Review of Applications* to review by Wednesday, November 28, 2018. RAC members will then have 7 working days to return it; RAC members should look at language for the proposed review process and submit their feedback to John Boren, ODOT, by Meeting 4, Friday, December 7, 2018.

## PRESENTATION OF ISSUES FOR MATCH REQUIREMENTS

John Boren reviewed the issues for match requirements which provided the context for the match requirements small group breakout activity, report back, and discussion. The Match Requirements presentation (*CO-RAC-Mtg3-Presentation-Match.pdf*) is as follows:

### **Match**

*Why require a grant match? (slide 2)*

- *Shows that applicant has something at stake, “skin in the game”*
- *Is a way of filtering out applicants by financial health*
  - *E.g. if match is too much of a hardship, potential for issues with operating funds later down the line*

*Considerations per the statute (unchanged in HB 2017) (slide 3)*

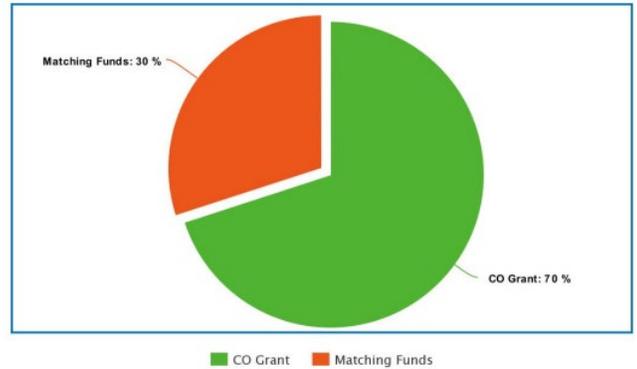
- *(d) How much of the cost of a proposed transportation project can be borne by the applicant for the grant from any source other than the Connect Oregon Fund;*
- *Statute does not specify:*
  - *Maximum match amounts*
  - *Form or evidence of the match (cash)*
  - *How to factor “overmatch” proposals*

- Restrict grant stacking

Current rule language (slide 4)

- (2) Applicants that meet all of the following criteria are eligible:

(c) The Applicant has 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 (Class 1 RR is 50 percent).



Challenges under current rules (slide 5 + 6)

- Should we reward “overmatch” – proposing to provide more than the match requirement with a more favorable score?
  - If so, should we hold them to this higher figure if their circumstances change?
- Evidence of match
- Land as a form of match
  - Currently valued on price paid to purchase
  - How recently was it purchased
  - How much of the parcel is being used for the project?
- Amount of match – is 30% the right number?
  - In earlier CO rounds, it had been 20%
  - Would need statute change to adjust
- Some modes/project types can stack other grants, e.g. FAA money that are not available to other modes
  - Should this practice be continued, or should we put some guardrails on it?

Potential changes based upon feedback (slide 7 + 8)

- Concerns about overmatch
  - Eliminate – everybody pays the same OR cap overmatch
- 30% match requirement being a potential burden for a worthy project
  - Could be changed globally, or could be reduced for projects above/below a certain size
  - E.g. larger projects require a higher percentage match
- Evidence of match
  - Establish required documentation up front in the rule/application
- Land as a form of match – complicates evaluation
  - Has been interpreted to be a match based upon cash outlay for the land, not assessed value
  - Limitation on how recently the land was purchased
  - Limitation on how much of the match this can count towards

## DISCUSSION AND QUESTIONS

RAC members responded and discussed the points made by the *Match* presentation; their comments/questions/concerns have been organized and grouped in the following bolded categories below:

- **Allowing for nimbleness from applicants/project proposals**
  - Consideration that all match funding might not be in place at time of application for CO funding
  - The tradeoff would be how to demonstrate evidence of appropriate funding that would qualify a CO match
  - One committee member shared their experience with awarding money where applicants have said they have money from other grants, but then those fall through so then the funding from a higher level is returned
    - Posed the question: *Do we want this to be nimble that applicants use state money to get federal money?*
    - *In response:* there need to be accountability measures in place to prevent/minimize this from happening
- **Competitiveness between modes**
  - A question was posed to group: *will this process create an issue with creating competitiveness between modes?*
- **Overmatching**
  - Point made that some modal sectors may have a greater advantage/opportunity to overmatch due to their ability to leverage other sources of funding
  - Question/clarification posed to group: *overmatch should be encouraged but not rewarded?*
    - *In response:* it might be looked at more favorably
- **Overarching goal of CO Fund**
  - Point made that it would be helpful to clarify what the goal of the CO Fund- *is the fund trying to stretch the state money, or award the best project(s), or award based on if there is local/regional investment and support? Or all of the above?*
    - *In response:* the Fund should not reward or punish the overmatch; the review committees should look at all of the projects as a whole and how, as a whole, the funding could be allocated (i.e. fund a collection of projects that might actually be complementary; be strategic)

## MATCH REQUIREMENT WORKSHOP - SMALL GROUP REPORT BACK

Small groups were provided 30 minutes to discuss the prompts, followed by a 10 minute break. All groups resumed after 40 minutes and shared the following small group summaries within the following four categories of match considerations: *evidence, land match, grant stacking, and prior investment.*

## 1. Evidence

- a. Group 1
  - i. Demonstrate some sort of match at least 20%; smaller match would help with inclusivity
  - ii. There needs to be further proof but not too onerous
  - iii. Highway can be used as an example, don't typically provide evidence but know that they must deliver
  - iv. Don't require proof at application but must deposit cash upon start with IGA
- b. Group 2
  - i. If you're going to use match, it should be in hand, if using in-kind then it should be defensible and verifiable *before* the project commences
  - ii. Question to the group: *Self-performance limited to rental value of work performed?*
- c. Group 3
  - i. Current letters of award, a financial statement from the entity, prior expenditure evidence, entity's official action (resolution/budget)
  - ii. Imminent deadline; you have to have some type of evidence at time of review

## 2. Land Match

- a. Group 1
  - i. Would like to see it continue
  - ii. It can represent a huge milestone and value
  - iii. Length of time of land ownership should be considered; land should only be used once for project
  - iv. Question to group: *Unsure on whether applicant should have to own it free and clear* → could run into issues but could also be restricting; free and clear access might be hard to achieve
  - v. An application question should be: "Has the land been used in a previously awarded grant?"
- b. Group 2
  - i. Land should be properly zoned in order to be used in match
  - ii. You can't use the same land as match for than one time
  - iii. Land value should be based on a certified market appraisal
- c. Group 3
  - i. Prior investments (like land) should be validated that they are specific to the project, it should not be restricted by time, but we would want to look at limiting the expenditure would apply to the match (% of 30/50%)

## 3. Grant Stacking

- a. Group 1
  - i. Eligibility should require that the grant is project-specific and not just a general grant; project-specific grants should be valued higher than general grants
- b. Group 2

- i. Other grants can be used as match, but the grant must be in-hand or is committed
  - ii. One Connect grant per project...but then wondered what you do for phased projects? Each phase needs to be stand alone and operational
- c. Group 3
  - i. Allow any source (blind to color of money)

#### 4. Prior Investment

- a. Group 1
  - i. If you're able to tie funding into the project specifically then it should count
  - ii. The work has to be recent enough so that it's still useful; it shouldn't be counted if you have to re-do the work
- b. Group 2
  - i. If you've made a prior investment, then it must be useful for the lifecycle of the project
  - ii. Note: Group 2 likes Group 1's list above
- c. Group 3
  - i. Specifically related to investment
  - ii. Don't restrict by time
  - iii. Limit how much prior expenditure applies to match (% of 30/50%)

## DISCUSSION AND QUESTIONS

After each group shared back their small group discussions with the larger group, all committee members convened for a large group discussion, responding to points presented by each group. Main discussion points are bolded and grouped by the same overarching categories as presented by small groups: *evidence*, *land match*, *grant stacking*, and *prior investment*.

### Large Group Discussion: Evidence

- **Submitting evidence:**
  - The current program requires evidence with the assumption that applicants must submit evidence at the submission of their application
  - There was a point made that the evidence requested must consider staff timelines and capacity to process

### Large Group Discussion: Land Match

- **Easements considered a land match:**
  - An easement should count as value as there was an expenditure to acquire it; the value of the easement should be included in the value of the land
  - ACTION: Connect Oregon Program Manager, Katie Thiel, will look back on what the language is about easements will still have value
- **Estimating land value:**

- If applicants choose to use market-value appraisals, then it should be no more than 5 years old; the applicant is responsible for conducting their own appraisal
- **The proportion that land value could be considered in the match:**
  - Background info on land value proportion the shift from 20% to 30% was with the intent to increase public-private partnerships; evaluators looked back at the past applications and found that 30% seemed to be what the historic proportion for projects awarded (especially for bike-ped projects)

Large Group Discussion: *Grant Stacking (and Prior Investment)*

- **Phasing:**
  - ODOT staff acknowledged that *phasing* (of grants) would need to be defined

Jeanne Lawson summarized the issues above and ended the discussion with the following points to be considered for the composition of investments that are eligible for the match:

- Land that must be acquired vs. already owned property should be weighed differently
- There should be a cap on the amount that land would play in contributing to project value
- There should be a requirement for cash a project must have

## PROJECT READINESS – DEFINITION & REQUIREMENTS

This agenda item was tabled and expected to be addressed at the CO RAC Meeting 4, Friday, December 7, 2018.

## PUBLIC COMMENT

No public comments occurred during this meeting.

## WRAP UP, NEXT STEPS, AND CLOSE

Jeanne thanked the committee members for their thoughtful discussion and contributions. It was reaffirmed that these RAC meetings were working toward drafting a set of rules for the Connect Oregon Part 2 funding in which all committee members could agree on; the last meeting (Meeting 5, January 7, 2019) would be when committee members would make a final decision.

Before closing the meeting, she and John Boren reviewed the assignment that committee members were to complete independently as well as the final RAC meeting date, Monday, January 7, 2019.