CONNECT OREGON RULES ADVISORY COMMITTEE

Meeting 5 Summary
January 7th, 2019 – 12:00-4:00PM
Chemeketa Center for Business and Industry
626 High St NE, Salem, Oregon 97301

ATTENDEES
Jerri Bohard, ODOT
Rob Eaton, Amtrak (via phone)
Jana Jarvis, Oregon Freight Advisory Committee, Member
Senator Betsy Johnson, District 16 – Scappoose
James LaBar, State of Oregon
Mark Landauer, Oregon Public Ports Association
Paul Langner, Teevin Bros. Land and Timber Company
Martha Meeker, State Aviation Board, Chair (via phone)
Deena Platman, International Trade Systems (via phone)
Toby Van Altvorst, Goose Lake Railway LLC
John Vial, Jackson County

STAFF
John Boren, ODOT
Erik Havig, ODOT
Katie Thiel, ODOT
Jeanne Lawson, JLA Public Involvement
Ayano Healy, JLA Public Involvement

OBSERVERS
4 observers, present in person

WELCOME AND AGENDA
Erik Havig, ODOT, welcomed the Committee, and briefly reviewed the agenda. The agenda was as follows:

1. Review Connect Oregon Rule change recommendations
   a. Intermodal definition
   b. Match – confirm consensus
   c. Readiness – confirm consensus
2. Public Comment
3. Other Connect Oregon issues
4. Next Steps and Close

Erik reiterated that the focus of this meeting was to confirm consensus on the draft rules at this point; final adoption of the rules would happen after the upcoming legislative session and period for public comment are completed.

In addition, Erik shared an update that ODOT is currently reviewing the project plans for the Connect Oregon dedicated projects related to the Mid-Willamette Valley Intermodal Facility and Treasure Valley Intermodal Facility (as specified in HB 2017 in December 2017). The Final Review Committee meeting will take place on Friday, January 11, 2019. The Oregon Transportation Commission will receive recommendations at its February 2019 meeting, with a final decision likely in March 2019.

Jeanne Lawson, JLA Public Involvement, facilitated introductions. Three RAC members joined the meeting by phone and eight members were present in person. There were some technical difficulties with the phone and virtual meeting software that caused some periodic interruption and possible challenges for engagement by RAC members participating on the phone as well as members of the public to listen in.

Before beginning the review of the draft rule, Jeanne reiterated that the focus of the meeting was to collect the committee’s recommendations on the rules within the statutory framework that exists.

**REVIEW CONNECT OREGON RULE CHANGE RECOMMENDATIONS**

John Boren, ODOT, reviewed the draft of the Connect Oregon rule. RAC members were able to follow the presentation using their own hardcopy of the draft rule showing the most recent track-changes made.

John reviewed each section and the respective changes made within that section, describing the intent or rationale for each change. Committee members were able to respond to these changes. A summary of these changes is detailed below, paired with the respective comments/questions/concerns brought up by committee members. In some cases, ODOT responses were incorporated into the following notes to reflect updates from the actions that ODOT staff had been delegated during the meeting.

**SECTION 1**

Section 1 includes a description of the program purpose, definitions, application submission periods, application requirements, how applications will be reviewed for eligibility.

Changes to existing rule were primarily clean-up changes. Additional, notable changes are below:

<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>RATIONALE</th>
<th>DISCUSSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within the <strong>Purpose subsection (pg 1)</strong>, public transit was removed</td>
<td>As of the HB2017 update, public transit is no longer part of the Connect Oregon program</td>
<td>N/A</td>
</tr>
</tbody>
</table>
### Change to Rule

- **Definitions subsection (pg 1):** Loan was removed

  **Rationale:** As of the HB2017 update, Connect Oregon does not distribute loans

  **Discussion:** N/A

  **Action:** No action required.

- **Definitions subsection (pg 2):** "Collateral" and its definition were removed

  **Rationale:** This is the only mention of collateral in the rule and was extraneous to the rule

  **Discussion:** N/A

  **Action:** No action required.

- **Definitions subsection (pg 2):** "Critical Link" added and defined

  **Rationale:** The term “Critical Link” necessitated a definition

  **Discussion:**
  1. Suggestion: Commercial should be added as a type of linkage
  2. Concern: Employment connection is ambiguous and should be more explicitly articulated
  3. Concern: Limiting the definition to “between” modes limits critical links made between the same mode. Suggestion: add “within or”
  4. Suggestion: Remove “that provide industrial or employment connections” to avoid issues brought up by the two previous points

  **Action:** RAC members expressed consensus to remove “that provide industrial or employment connections” from the Critical Link definition

- **Definitions subsection (pg 2):** "Final Project Acceptance" added and defined

  **Rationale:** The term “Final Project Acceptance” necessitated a definition for program administration to clarify when the project is done

  **Discussion:** N/A

  **Action:** No action required.

- **Definitions subsection (pg 2):** "Limited land use decision" added and defined

  **Rationale:** "Limited land use decision" is mentioned in Readiness section and required a
<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>Within the <strong>Definitions subsection (pg 3)</strong>, “Part 1 programs” and “Part 2 program” added and defined</th>
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</thead>
<tbody>
<tr>
<td>RATIONALE</td>
<td>These were copied directly from the statute</td>
</tr>
<tr>
<td>DISCUSSION</td>
<td>N/A</td>
</tr>
<tr>
<td>ACTION</td>
<td>No action required.</td>
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</table>

<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>Within the <strong>Definitions subsection (pg3)</strong>, “Private Entity” removed</th>
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</thead>
<tbody>
<tr>
<td>RATIONALE</td>
<td>The reference to “private entity” is not needed as a private entity is covered under the “person” definition.</td>
</tr>
<tr>
<td>DISCUSSION</td>
<td>N/A</td>
</tr>
<tr>
<td>ACTION</td>
<td>No action required.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>Within the <strong>Definitions subsection (pg3)</strong>, “Public transit Advisory Committee” removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>RATIONALE</td>
<td>Public transit is not longer a part of the Connect Oregon Program, so it is no longer needed</td>
</tr>
<tr>
<td>DISCUSSION</td>
<td>N/A</td>
</tr>
<tr>
<td>ACTION</td>
<td>No action required.</td>
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<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>Within the <strong>Definitions subsection (pg3)</strong>, the definition for “Recipient” was modified</th>
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<tbody>
<tr>
<td>RATIONALE</td>
<td>To acknowledge that the “Recipient” may be a public body or person</td>
</tr>
<tr>
<td>DISCUSSION</td>
<td>1) Suggestion: we should add condition that the public body or private entity is qualified, to avoid rewarding funds to bad actors or entities not in “good standing” financially, legally, etc.</td>
</tr>
<tr>
<td>ACTION</td>
<td>Revise rule to read: “Recipient” means a <em>qualified</em> public body or private entity...”</td>
</tr>
<tr>
<td></td>
<td>ODOT response: To stay consistent with existing language in the rule, the rule has been changed to read: “Recipient” means an eligible public body or private entity...”</td>
</tr>
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<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>Within the <strong>Definitions subsection (pg4)</strong>, replaced the fully written out statute</th>
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definition for “Transportation Project” with the statute definition reference

**RATIONALE**  
Since “Transportation Project” is already defined in the statute, this allows the rule to be less cumbersome as well provides latitude if the statute definition changes in the future

**DISCUSSION**  
1) Concern: this makes the rule more difficult because it requires you to cross-check with the statute; this diminishes the ease of readability  
2) Concern: this is a seminal definition, so it should be fully written in the rule

**ACTIONS**  
- ODOT staff will check with DOJ to confirm that the rule is written correctly with references.  
- ODOT response: In reading guidance on rule development, if we cite a statute and the statute changes, we must update the rule. We cannot make the rule language update automatically with statute changes.

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**CHANGE TO RULE**  
Within the Definitions subsection (pg4), striking the word “written” from the application requirements

**RATIONALE**  
For the next round of Connect Oregon, the applications will be submitted electronically, web-based

**DISCUSSION**  
N/A

**ACTIONS**  
No action required.

**CHANGE TO RULE**  
Within the Definitions subsection (pg5), subsection (d) of Application Review removed

**RATIONALE**  
A lawsuit nullified this restriction; its removal maintains consistency with the statute

**DISCUSSION**  
N/A

**ACTIONS**  
No action required.

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**SECTION 2**  
Section 2 includes Project Selection process and criteria for Part 1 and Part 2 programs.

Changes in this section include new language to implement changes made by the 2017 Legislature in HB 2017 (to address the criteria and selection of projects of statewide significance). Additionally, revised language to reflect changes from the RAC related to construction readiness and match.

Additional, notable changes are below:

**CHANGE TO RULE**  
Within the Review Process subsection (pg7), the list that the Commission shall solicit recommendations from was revised
### RATIONALE
The previous rule language did not have a clear list; committees were removed and added, based on their relevancy to the Connect Oregon Program

### DISCUSSION
1) Concern: the use of the word *recommendations* rather than *insights*; Insights might be a more appropriate word for what the Regional Solutions Team (RST) would be able to provide; the RST has a good bearing on how the project observes the comprehensive economic development strategies
   a. Suggestion: Change “recommendations” to “feedback” so that it can be reasonably applied to all the entities currently listed
   b. Clarification from ODOT: the word “recommendations” is already written into the statute for everything except for the Regional Solutions Team; in this draft of the rule, the Regional Solutions Team has been added because of their role with understanding economic strategies and the statutory requirement for agencies to work with the RSTs prior to awarding grants.
   c. Suggestion: To clarify/distinguish the *Regional Solutions Team* from the other committees, separate RST from the list, define their role and include a different term rather than providing *recommendations*; in addition, this could be an opportunity to cite ORS 284.753 to explain how RST is supposed to be looking at grants, and clearly articulate their role in the review process
2) Concern: Regardless of what changes are made to the list of review process entities, the review process must still be responsible but flexible
3) Clarification: (in reference to the review process chart that depicts simultaneous review by multiple committees)- what are we asking these committees to do? Ranking, endorsing, or insights? We know that committees cannot cancel projects.
4) Clarification from ODOT: “Recommendations” does not mean that committees have veto power
5) Clarification from ODOT: when applications come in, ODOT does an initial eligibility with their modal experts to make sure that the project is eligible within those modal realms, then the application goes to committees for prioritization. The recommendations should be paired with documentation about the rationale of the prioritization. Important to note that there is an appeal process if applicants are deemed ineligible
6) Clarification from ODOT: Each committee submits their prioritization and documentation of their prioritization, then all of those rankings are submitted to the Final Review Committee to consider before preparing to submit the final applicant prioritization to the Oregon Transportation Commission
7) Clarification from ODOT: Once a project has been deemed eligible, it will stay in that process unless it withdraws; The project’s ranking may go up or down during the review process, but it will never drop off unless they withdraw

### ACTION
ODOT staff will confer with DOJ on options to clarify the distinction of the Regional Solutions Team role in the review process, through citation of ORS 284.753 and/or through creating a separate line in the rule to describe RST involvement.
ODOT response: The language has been modified so that it refers to the statute. The rule now says, “Regional Solutions Teams as required in ORS 284.753.”

<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>Within the Part 1/2 Considerations subsection (pg9), more detail was added to subsection (8)(e) describing project readiness</th>
</tr>
</thead>
<tbody>
<tr>
<td>RATIONALE</td>
<td>Project readiness was identified as a high priority issue during the first meeting for RAC to discuss. These additional items describing project readiness were an outcome of those discussions with the intent to make the description more robust and explicit</td>
</tr>
</tbody>
</table>
| DISCUSSION     | 1) Concern: What demonstrates community engagement (as referred to in (8)(e)(A))?  
|                 | a. Suggestion: “Completion” of community engagement is self-defining. This could be changed to “meaningful” or “significant”  
|                 | b. Clarification from ODOT: clarification of what community engagement entails would be explained in the application guidance  
|                 | c. Clarification from ODOT: the application guidance would prompt applicants to describe the scale of their project and then cite the industry standard for that scale of project  
|                 | 2) Concern: Does the project completion within 3 years of award sync up with the life of the bond?  
|                 | a. Clarification from ODOT: Yes, this 3-year timeframe was chosen for the sole purpose to sync up with the bond  
|                 | 3) Concern: Regarding (8)(e)(D), the 60-day timeframe for site ownership is very short when considering that sometimes permits/acquisition requires public engagement which could take longer than 60 days  
|                 | 4) Clarification from ODOT: The purpose of this language is to set clear expectations of the applicant with the goal that they will be poised for potential Connect Oregon funding; we want to avoid tying up funds for a project that might not be ready  
|                 | 5) Clarification from ODOT: In anticipation that some projects will run into unforeseen setbacks, there is an established change management process within the Connect Oregon Program administration that can address project/applicant-specific issues (that might be outside of the applicant’s control) |
| ACTION         | - Explicit detail and guidance on community engagement will be addressed in the application materials.  
|                 | - ODOT staff will check with land use permitting to see if 60 days is a reasonable timeframe. |

<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>Within the Part 2 Specific Considerations subsection (pg11), (9)(b) – (9)(g) language is added</th>
</tr>
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<tbody>
<tr>
<td>RATIONALE</td>
<td>This language is taken directly from the statute</td>
</tr>
<tr>
<td>DISCUSSION</td>
<td>N/A</td>
</tr>
<tr>
<td>ACTION</td>
<td>No action required.</td>
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### CHANGE TO RULE

Within the **Part 2 Specific Considerations subsection**, in regard to the notion of a project being of statewide significance because its intermodal; the proposed change would define what the minimum freight flow would be for an intermodal facility:

(9)(a)(D)(iv) adds an intermodal connection, or enhances an existing intermodal connection that results in a freight volume of at least 50,000 TEUs/year or 100 trucks/day in each direction

### RATIONALE

ODOT conducted internal research and identified a standard used by the Federal Highway System, which describes tiers of minimum freight flow; these tiers are what are required for the national highway system. Tier 1 (described above) is a high bar, but could be useful to validate statewide significance if projects demonstrate this category of improvement in their application.

### DISCUSSION

1) Concern: This (Tier 1) seems like an unachievable standard for large projects, let alone small(er) projects
   a. Clarification from ODOT: Adjusting/lowering the standard to the Federal Highway System’s Tier 2 might conflict with ensuring that the project is demonstrating statewide significance
   b. Clarification from ODOT: There are multiple avenues that projects can demonstrate their **statewide significance**; a project must demonstrate **statewide significance** through (9)(a)(A), but then has the option to demonstrate through options (9)(a)(B), (9)(a)(C), (9)(a)(D)

### ACTION

ODOT staff will change (9)(a)(D)(iv) to Tier 2 benchmark numbers

Committee member brought up the concern regarding the wording in (9)(a)(B), questioning whether ACTs could trump a modal plan. ODOT staff clarified that an ACT cannot trump a modal plan but could have an area-wide strategy identifying key investments that could help defend a project’s statewide significance, if it were to be described in that area-wide strategy.

### CHANGE TO RULE

Within the **Part 2 Specific Considerations subsection (pg11)**, (9)(b) – (9)(g) language is added

### RATIONALE

This language is taken directly from the statute

### DISCUSSION

N/A

### ACTION

No action required.

### SECTION 3

Section 3 includes HB 2017 Dedicated project rules.
Changes in this section include retained language adopted by OTC to award grants for dedicated projects. Changes also include removal of obsolete language related to pre-proposals. The intent with these revisions was to not change anything since there are several project plans underway.

**SECTION 4**
Section 4 is a new subsection to the existing rule. This new language includes validation steps to ensure that projects going before the OTC are ready. The validation step also speeds up the post-award process.

Additional, notable changes are below:

<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>Within the <strong>Readiness/Validation subsection (pg22)</strong>, the addition of <strong>Program Administration</strong> language has been added</th>
</tr>
</thead>
<tbody>
<tr>
<td>RATIONALE</td>
<td>This language will guide program administration and expectations of applicants and Connect Oregon program administrators more explicitly</td>
</tr>
</tbody>
</table>
| DISCUSSION    | 1) Question: What is the intent of designating *up to 150% of available funding*?  
   a. Clarification from ODOT: The 150% approved is in anticipation that projects drop out and then subsequent projects would then become eligible to receive funding; the assumption is that these projects have been validated at a higher level and already in the queue to expedite and streamline the process  
   b. Suggestion: Recommendation that this 150% rule should be added into the Review Process section to make this component of the process more cohesive throughout entire rule language  
   c. ODOT response: The Final Review Committee will still provide the OTC a prioritized list that includes all of the projects. The 150% list is just the level at which staff will validate information in the application so that there are additional projects ready to go if others drop out. |
| ACTION        | No action required. |

**SECTION 5**
Section 5 includes grant award and match requirements and rules of covering administration of grants. Changes to the existing rule include clean up changes, changes made by RAC to address match requirements, description of the cap on amount of land that may be used as a match, and clarification of eligible costs.

Additional, notable changes are below:

<table>
<thead>
<tr>
<th>CHANGE TO RULE</th>
<th>Within the <strong>Match subsection (pg24)</strong>, adding language specifically about Class I railroads</th>
</tr>
</thead>
<tbody>
<tr>
<td>RATIONALE</td>
<td>To clarify the bifurcation that Class I railroads in explaining that grant awards will</td>
</tr>
</tbody>
</table>
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not exceed 50 percent of the total eligible Project costs

**DISCUSSION**  
N/A

**ACTION**  
No action required.

**CHANGE TO RULE**  
Within the Match subsection (pg24), addition of detail and conditions relating to monetary outlays

**RATIONALE**  
Language drafted from RAC discussions to provide more clarity on match parameters

**DISCUSSION**  
1) Concern: is 10 years as a threshold for when the property was purchased too limiting for projects to qualify for that land value to be matched?  
   a. Clarification from ODOT: DOJ advised that more important than value is to examine the purpose of purchase and to have applicants provide verification to support the intent of the purchase  
   b. Suggestion: Add in language stating that land cannot be accepted and used as a successful match more than once in a Connect Oregon application  
2) Suggestion: Match (3)(a) language needs to add that land value for Class I railroads. Change language to, “may only be counted as 50% of the required match” so that it covers both Class I railroad requirements of 50% match and other projects at 30%.

**ACTION**  
- Sections (3)(a) and (3)(b) will be flagged/highlighted to get special attention and solicit feedback during the public review period  
- ODOT to add language regarding awarding land matching funds to applicants for a property only once, the same property cannot be reused as a match after one successful award  
- ODOT will explore options for exceptions to the 10-year limit for prior land purchase  
- ODOT will solicit RAC member, Martha Meeker’s, input on the Federal Aviation Administration grant language.

   ODOT response: Martha and staff suggested changing the word “received” to “awarded” and are otherwise comfortable with the language.

**CHANGE TO RULE**  
Within the Administration subsection (pg25-27), redundant language was removed and adding language that “bad actors” may not apply for future Connect Oregon funds.

**RATIONALE**  
The latter addition was a result from previous RAC discussions

**DISCUSSION**  
N/A

**ACTION**  
No action required.

**FURTHER DISCUSSION REGARDING NEXT STEPS WITH THE DRAFT RULE**
In anticipation of possible statutory changes to HB 2017 during the upcoming legislative, there will be an adjournment on further, official Connect Oregon rule review and revisions until the 2019 legislative session was completed.

RAC members and ODOT staff discussed the potential for the draft rule to be shared within their network. It was agreed that while the draft rule is available for review by the public, any substantive changes and responses to (public) feedback would not be considered until a formal public comment process is established at some point after the legislative session is complete. RAC members would act as liaisons of this rule and committee with their respective networks; ODOT staff will draft guidance language/document to supplement the draft rule to support RAC members when sharing this preliminary document within their networks.

**OTHER CONNECT OREGON ISSUES**

The following major topics were unresolved identified issues/items that were raised during the first RAC meeting (September 2018) that presented themselves to be beyond the scope of the rulemaking process in which the committee was formed to around.

Jeanne asked ODOT Government Relations staff, Lindsay Baker, to characterize how the following discussions should be framed as: *these discussions are an issue-spotting exercise and a way for the committee to convene on points that might lead to programmatic changes or legislative changes in the future.*

**MODAL SEPARATION (bike/pedestrian)**

- Question posed to RAC members: is it that we won’t want bike/ped in Connect Oregon at all or that we want to distinguish the funding for bike/ped within Connect Oregon?
  - One RAC member share that counties would agree that trying to get bike/ped to agree under the existing rule would be awkward. He suggested that bike/ped should have completely separate funding that would be run by separate rules (if possible).

**10 PERCENT ALLOCATION**

- The committee discussed the 10 percent allocation of funding across all regions- although it was not favored, many acknowledged its purpose in providing necessary income for some counties.
  - Committee members floated the idea of reducing the allocation to 5 percent which would preserve the program and possibly be more politically viable. Reducing the regional distribution to 5 percent could concurrently supply more funding to be allocated toward Part 2 projects of statewide significance.
  - Committee members recognized that there have been good project proposals submitted across Oregon counties and that the modal committees and ACTs should be able to recognize the value of the proposal (assuming it meets all the eligibility requirements), and not just review the proposal on how well it was written.
  - One committee member posed this question to the group of whether the distribution could be based on population?
MINIMUM PROGRAM SIZE
- There was previous discussion of removing the bifurcation of Part 1 and Part 2 funding.
  o One response was not in favor of removing Part 2 because of the work that Representative McKeown had put forth in creating it. Her intention was for Part 2 to focus funding on maintenance which is not a priority in Part 1.
- There was confirmation on when and who determines whether they are pursuing Part 1 or Part 2 funding.
  o Clarification from ODOT: The applicant determines whether they are applying for Part 1 or Part 2. The caveat is, if there is not enough money in the fund ($75 million) then all the funding stays within Part 1 rules and all applicants need to be eligible solely under Part 1.

NEXT STEPS AND CLOSE
Jeanne, John, and Erik closed the meeting with the following next steps for RAC members and ODOT to carry forward:

- In about two weeks, ODOT will provide a revised draft rule document as well as a memo explaining the draft rule and an explanation of where it stands, moving forward. The intent of the memo will be to provide context and assistance (to RAC members and the public) to more comprehensively understand the draft rule document.
- RAC members were encouraged to share the draft with their network to get feedback but that formal public review would happen at a later date.
- The possibility of the RAC reconvening after the legislative session would be contingent on how the session goes and if there are significant changes to HB 2017 that would impact the Connect Oregon draft rule. No future meeting date was set.

Jeanne, Erik, and John thanked the Committee and closed the meeting.