CONNECT OREGON RULES ADVISORY COMMITTEE

Meeting 6 Summary
August 19th, 2019 – 1:00-4:00PM
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
Paul Langner, Teevin Bros. Land and Timber Company
Martha Meeker, State Aviation Board, Chair (via phone)
Toby Van Altvorst, Goose Lake Railway LLC
John Vial, Jackson County

RAC MEMBERS NOT PRESENT
James LaBar, State of Oregon
Mark Landauer, Oregon Public Ports Association
Deena Platman, International Trade Systems (via phone)
Annette Liebe, State of Oregon
Representative Caddy McKeown, House District 9

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

OBSERVERS
2 observers, present in person
WELCOME AND AGENDA

Erik Havig, ODOT, welcomed the Committee, and briefly reviewed the agenda and the purpose of the meeting. The meeting agenda was as follows:

1. INTRODUCTION
   a. Welcome
   b. Gathering
   c. Agenda review
   d. Review of RAC process to date

2. HB 2592 CHANGES TO CONNECT OREGON
   a. Overview of changes
   b. Review legislation and discuss recommended rules
   c. $50 million floor
   d. Removal of Part 2
   e. Elimination of 10% minimum per region
   f. Further modal separation

3. DEDICATED PROJECTS

4. FUTURE COMPETITIVE PROCESS

5. PUBLIC COMMENT

6. ACTION ON RECOMMENDATIONS

7. WRAP UP AND NEXT STEPS

INTRODUCTION

The purpose of the meeting was to review legislative changes to Connect Oregon and develop recommendations on proposed rule modifications. Erik recapped the Rule Advisory Committee’s (RAC) process and progress over the previous five meetings between September 2018 and January 2019; during those five months, the committee was able to refine a set of rules and streamlined process for determining Connect Oregon fund allocation, to be presented to the legislature for approval.

During the 2019 session, there were some legislative changes to the rule, which required the RAC to reconvene and resolve the changes while preserving the initial intent of the rule.

One committee member asked if there was still an opportunity to incorporate additional (new) changes to the rule- Erik and ODOT staffers confirmed that this was still possible as it is part of the ultimate goal to reach a final set of rules.

Jeanne Lawson, JLA Public Involvement, noted six additional ideas to be addressed by the RAC as part of finalizing the Connect Oregon rules. These topics were briefly characterized by the following list:

- Litigation
- Non-taxpayer
- Jurisdictional definition
- Other funding sources – daylight
- Aspirational projects
- Queue-jumping other projects
HB 2592 Changes to Connect Oregon

John Boren, ODOT, provided a brief overview of previous work of the Connect Oregon RAC, the legislative changes to HB 2592, a review of the draft rule with changes, and an update of the ‘dedicated projects’ status. See Presentation-Meeting6_.pptx for the PPT presented to the RAC.

John reminded the committee that by the time of the 5th meeting, the RAC had crafted a rule that implemented HB 2017 and made key programmatic changes, which includes:

- Creation of a (new) Part 2 that defined statewide significance;
- Enhanced definitions for project ‘match’ and ‘readiness’ requirements;
- Streamlining of the Connect Oregon application review process.

There were four distinctive legislative (HB 2592) changes to Connect Oregon. These included:

1. Decreasing the program fund floor to $50 million (previously $75 million);
2. Removal of Part 2 (that defined statewide significance);
3. Elimination of the 10 percent minimum allocation per Region;
4. Further modal separation (bike/ped).

**CHANGE 1: Established $50 million floor.** Aside from the dollar amount, the change to the $50 million floor maintained nearly similar language to the previous draft of the rule. John reviewed the details of the rule and the earmarks within the Connect Oregon Fund that would be allocated by the biennium to: Connect Oregon projects (92%), Multimodal Active Transportation (7%), and program administration (1%).

ODOT staff reviewed the fund distribution process and clarified that the 7 percent allocated to Multimodal Active Transportation would be a one-time allocation, based off of the $50 million floor and not by funds carried over from the previous program grant cycle. The following graphic (slide 6 of the presentation) was included to help clarify the fund distribution:

![How the funds move](image)

**CHANGE 2: Removal of Part 2.** The Removal of Part 2 language reverted the program to the structure it had operated within previous competitive rounds. The legislative changes included removal of any Part 1/Part 2 distinctions in definitions and removal of Part 2-specific
considerations. The current definition of *statewide significance* (defined through *Considerations A, B, and C*) will continue to be used as a test for all (Part 1) projects review and evaluation.

Jerri Bohard, ODOT staff and RAC member, shared that the removal of Part 2 details was not a loss of RAC effort and deliberations, but was recognized by the legislature that the considerations for funding is highly complex.

Other RAC members agreed that the Part 2 development and discussion process (including adding more detail for the *statewide significance* definition) was a productive exercise; through the process, RAC members considered a spectrum of possible interpretations of the rule and used anticipated scenarios to improve overall rule language in order to maintain the intent of the rule, with the assumption of OTC’s ‘good judgement.’

**CHANGE 3: Elimination of 10% minimum per region.** As directed by the legislative session, the proposed language has softened the mandatory 10 percent spending minimum in each region and rephrased the rule as “to consider the distribution of funds among the five ODOT regions.”

The previous language would have obligated the Oregon Transportation Commission (OTC) to distribute Connect Oregon funds with limited ability to holistically consider the quantity and quality of projects in a given region. ODOT staff shared that the legislature made a conscious decision to take out the 10 percent distribution, but that it is still within the OTC’s charge to evaluate the regional distribution of projects across the state.

ODOT staff also clarified that the OTC is required to present a final report that shares the evaluation and applicant scoring process; despite changes to the removal of the fund distribution minimum, there are check-points within the Connect Oregon review process that filter projects that are not as well positioned to successfully implement their proposal (i.e. ‘project readiness’ definition).

RAC members deliberated on potential tradeoffs with this change—some including: the potential for politicizing this OTC and/or the Connect Oregon review process and scenarios where natural disasters/emergency relief proposals may cluster more uniquely around a specific geographic region. The committee resolved that despite specific hypotheticals, the proposed language (directed by the legislature) was the best version of the rule.

**CHANGE 4: Further modal separation (bike/ped).** John updated the RAC that Multimodal Active Transportation (MAT) projects will be removed from the Connect Oregon program and will complete their own rule-making process.

**RAC DISCUSSION OF ADDITIONAL CONSIDERATIONS/CHANGES TO THE RULE**

Earlier in the meeting and through discussion of the legislative changes to the rule, RAC members generated a brief list of additional issues to consider as the program rules are finalized. Many of the considerations related to anticipating and preventing applicants from unfairly leveraging the rules to disproportionately benefit their interests or “game the system.” Many of the following concerns are informed by RAC members observations of lessons learned from previous projects.

**LITIGATION.** RAC members discussed how to manage or avoid the risk of funding projects that incurred litigation. Members highlight the importance of having an application process that can tease out contentious applications/projects as well as understand the capacity for managing projects that encounter litigation after they are awarded.
While there may always be a level of risk for this to occur, committee members discussed the usefulness of applying a practical definite to what litigation so that applicants/projects could continue through the review and award process without being derailed by citizen complaint, for example.

ODOT staff share that part of the application process that address this concern as well as some staff capacity to manage projects that encounter litigation (although there is no prescribed process). ODOT staff remind RAC members that there has been increased accountability for projects to keep to their timelines; projects/applicants that are in litigation would likely have their timelines impacted, which could be a method of disqualifying projects through the existing program rules/operations. In addition, ODOT staff point out that adding more litigation and eligibility language might create additional resources from the OTC (and staffers) to monitor/manage than is currently feasible.

RAC members conclude that the existing language in the current rule, community engagement requirements, and program administration all support to mitigate/avoid projects or applicants that will encounter litigation.

**NON-TAXPAYER.** RAC members discussed how the Connect Oregon review process could avoid awarding applicants/projects that might have other outstanding financial payments; it would be problematic for the program to award entities that have paid their respective business/personal taxes, for example. ODOT staff assured RAC members that aspects of the application and review process are responsive to this concern and have already implemented measures to avoid CO awards to applicants who might have a compromised financial status.

**JURISDICTIONAL DEFINITION.** RAC members revisited the existing language for the jurisdictional definition and clarified the interpretation of rule- the applicant (and ownership) is within the State of Oregon, and that it provides economic benefit to Oregon. There are a number of project examples where entities in Oregon are working with partners in neighboring states (WA, CA); ODOT staff pointed to the jurisdictional definition on page 4 of the rules and affirmed that this aspect of applications is closely monitored.

**OTHER FUNDING SOURCES – DAYLIGHT.** RAC members discussed the necessity of applicants disclosing all project-related funding sources. This is required as part of the application and used when evaluating an applicant’s project readiness and match contribution.

**ASPIRATIONAL PROJECTS.** RAC members cited past examples of projects that were not able to fulfill their initial proposal; members wanted to ensure that this type of scenario would not happen again. The group was reminded that the additional language developed in the project readiness and the match requirements were specific criteria to prohibit less-developed projects from receiving awards. ODOT staff also assured that projects that do not show sufficient evidence of their ability to implement the project are filtered out through the evaluation process.

**QUEUE-JUMPING OTHER PROJECTS.** Some concerns were raised with the current review process and the disconnect between Modal Committees and the ACTs evaluation of value and merit to actualizing CO’s program intent. One RAC member shared their experience (as a member of a Modal Committee) with prioritizing projects that were demonstrating coordination with other projects, however, these projects were not ranked as highly during the ACTs review process which was a barrier for those projects to move forward for consideration. The discussion posited a strategy for applicants to more comprehensively demonstrate their respective project’s coordination with others.

ODOT staff responded that while the application currently prompts applicants to explain their coordination with other projects (which is recognized as valuable), it would be difficult to truly validate and measure the level of coordination a project/applicant suggests to have with other projects; it would create an additional process that there is currently not capacity for.
DEDICATED PROJECTS
Erik Having, ODOT, then reviewed the dedicated projects, sharing that OTC just approved two intermodal projects in July 2019 (Mid-Willamette Valley Intermodal Center in Millersburg and Treasure Valley Reload Center in Nyssa).

This means that 3 of 4 Dedicated Projects have been approved by the OTC; and per the statute, these projects must be funded prior to the next competitive cycle.

FUTURE COMPETITIVE PROCESS
ODOT staff shared that the exact timing of the next competitive process is currently unknown due to the nature of the privilege tax, and previous obligations to dedicated projects. Based on economic forecasts, they estimate that the program will need roughly 3-4 years until the fund reaches the $50 million threshold. An additional factor in the future competitive process is accounting for the $12 million that must first go to the Department of Environmental Quality’s rebate program before restoring the coffers of the Connect Oregon fund.

RAC members expressed interest in staying involved with the program and their role within the committee for when the next competitive process occurs. Members agreed to preparing a written statement, summarizing the accomplishments of the RAC to submit to the legislature with the intent to express their desire to stay involved in the future.

RAC members collectively agreed to draft and sign the letter.

PUBLIC COMMENT
There were no requests for public comment during this meeting.

ACTION ON RECOMMENDATIONS
RAC members tentatively approved language for the current proposed revisions, with the assumption that some revisions will be made based on the committee’s discussion and after DOJ review/approval.

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

- RAC members will collectively draft and sign a letter to submit to the legislature of their interest in continuing their role for the next competitive process.
- ODOT staff will bring the draft rules to DOJ for a final legal review of rule language.
- John Boren will acquire RAC member availability to schedule a phone meeting for RAC members to complete a final review of the rule language.
Jeanne, Erik, and John thanked the Committee for their thoughtful contributions and closed the meeting at 3:23 p.m.