



Multimodal Active Transportation Fund Rules Advisory Committee

RAC Meeting #2

August 12, 2019

Committee & Staff Introductions

RAC Members	Agency/Organization	Representation
Gary Milliman	Southwest Area Commission on Transportation	ACT Representative
Gery Keck	Tualatin Hills Parks and Recreation District	Grant recipient, Regional Park District
Michele Scalise (formerly Jan Hunt)	Oregon Parks and Recreation Department	State Parks
John Vial	Jackson County	CO Rules Committee (non-bike/ped), County
Julie Warncke	City of Salem	Local Agency
Michael Black	Ashland Parks and Recreation District	Oregon Bicycle and Pedestrian Advisory Committee (OBPAC)
Mike Caccavano	City of Redmond	Local Agency
Penny Arentsen	Joseph Branch Trail Consortium	Local Trails Proponent Group
Phil Warnock	Cascades West Council of Governments/Corvallis Area MPO	Small MPO
Rob Inerfeld	City of Eugene	Public Transit Advisory Committee, Local Agency
Robert Spurlock	Parks and Nature, Oregon Metro	OBPAC, Recreation Trails Advisory Committee, Large MPO
Stephanie Noll	Oregon Trails Coalition	Statewide Trails Advocacy

Staff	Role
Susan Peithman	Active Transportation Policy Lead
Amanda Pietz	Program Implementation Manager, RAC liaison to OTC
Jessica Horning	Bicycle and Pedestrian Program Manager, technical lead, RAC facilitation and coordination
Katie Thiel	Connect Oregon Program Manager
John Boren	Freight Program Manager, CO RAC staff lead



Public Comment

Overview and Refresher

HB 2592 Key Takeaways

Bike/Ped no longer eligible in CO program

7% of CO Fund transferred to newly created Multimodal Active Transportation Fund

ODOT must define the MAT Fund program with the following parameters:
30% match, bike/ped projects, OBPAC review

ODOT can no longer ask for a reimbursement of OPRD lottery dollars for bike/ped projects

OPRD must work with ODOT to select projects with both recreation and transportation function with \$2M in grants and \$2M to signature trails

OPRD requirement to fund bike/ped projects with lottery dollars sunsets on 1/2/2025

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graph LR; A((Connect Oregon, Bike/Ped Element RAC)) -- "2019 Legislative Session" --> B((Multimodal Active Transportation Fund RAC));
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Connect
Oregon,
Bike/Ped
Element RAC

**2019
Legislative Session**

Multimodal
Active
Transportation
Fund RAC

Opportunities for engagement

- Public comment at RAC meetings
- Formal rulemaking public comment period
- Informal communications of RAC members with their networks

Updated MAT RAC Schedule, 2019

Meeting	Topic
June 30	Constitutional Sine Die
Early July	ODOT staff drafts rule based on CO RAC work
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ODOT's Path Program

Focus on off-street multi-use paths

Combine multiple funding sources to create a larger and consistently available pot of funds

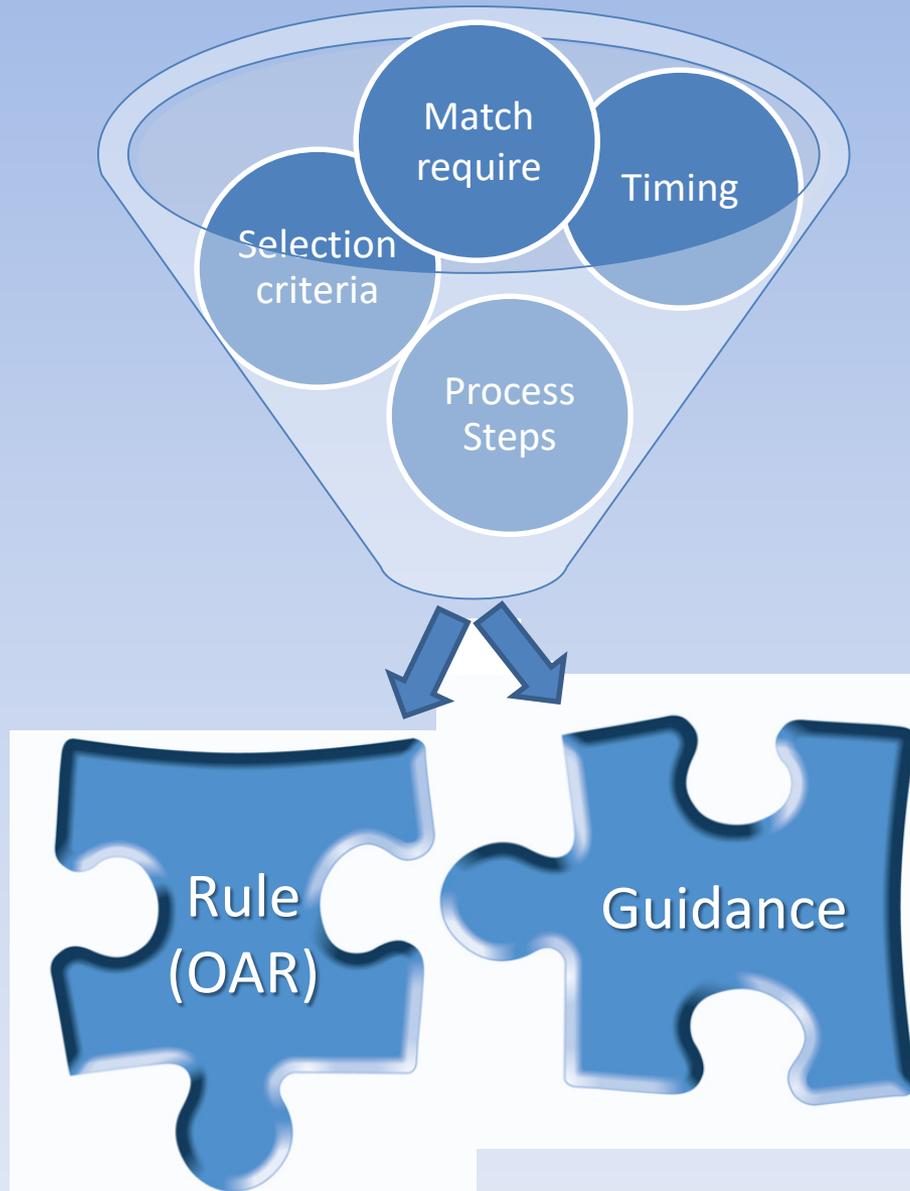
Competitive grant program

Criteria supported by OBPP policies



Draft Structure of Rule

Recommend what goes in Rule vs Guidance



Rule vs. Guidance

Rule (reviewed by RAC and public)	Guidance (internal with advice from OBPAC)
Eligibility (what and who)	Priority for funding
Project type (high level)	Project selection
Solicitation process and/or information	IGA structure and language
Timing	Staffing
Project Selection/Scoring	
Who Reviews and Selects	
Validation	
IGA	
Match	
Administration	

Draft Rule Structure

Structure of Rule	7/30 meeting
Definitions	✓
Purpose of MAT Funds*	✓
Grant Application Procedure and Submission Periods	✓
Eligible Projects and Activities	✓
Grant Application Requirements	✓
Project Selection Criteria	✓
Application Review	✓
Project Selection and Award	✓
Program Validation	
Grant Awards and Match	
Project Administration	

Program Validation

731-035-01100??

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 731-035-00590 (d6).

Commented [HJ11]: This should have already been completed in "application review" 731-035-0050. Does it need to be repeated here?

Grant Award and Match

Grant Awards and Match

- (1) Once a project is selected by the Commission under 731-035-010060 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 731-035-010060(9).
- (4) Project Awardees are responsible for any cost overages that occur during project delivery

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Commented [HJ12]: Does the RAC want donated property to be eligible for match? If so, must account for how its value will be assessed in rule

Project Administration

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.

Commented [HJ13]: Is this section a holdover from CO and is it still needed?

Does RAC desire Applicants to provide any reporting on project performance? E.g. before/after study, facility usage?

Project Administration – Cont.

- (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.

Commented [HJ14]: If grant is paid on reimbursement basis, is this language still needed?

Project Administration – Cont.

- (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.

Commented [HJ15]: Remove if RAC does not require any reporting on projects.

Project Administration – Cont.

- (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.

Commented [HJ16]: Does this language belong in IGA instead of rule?

Review of MAT RAC #1 Discussion

Draft Rule Structure

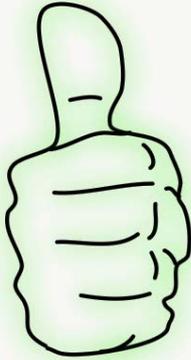
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Project Selection Criteria	✓
Application Review	✓
Project Selection and Award	✓
Program Validation	
Grant Awards and Match	
Project Administration	

Should the Draft Move Forward?

Yes, vote today.

No, hold a third meeting
to discuss.

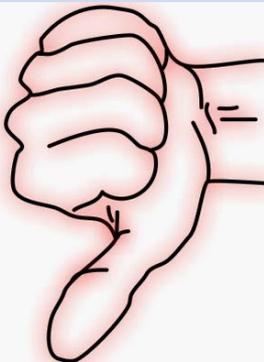
Consensus model



I am fully supportive of this decision or choice.



While I may not be fully supportive of this decision or choice, I can live with it and I will not oppose it.



I oppose this decision or choice and need more discussion

Next Steps

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FIN

HB 2592

Section 20

Changes to ORS 367.080

Removes eligibility for bicycle and pedestrian projects from CO Fund

Section 21

Creates \$50M floor to run a CO program

Each biennium, transfer 7% of CO Fund to Multimodal Active Transportation Fund (est in section 23) for grants for bicycle and pedestrian projects

Section 22

Removes OTC solicitation of OBPAAC recommendations (as there are no longer bike/ped proposals)

Removes CO criteria from bike/ped projects (as there are no longer bike/ped proposals)

Section 23

Definitions for private entity, public body and transportation project

Establishes fund and what monies are included – bike excise, CO, anything from legislature, earnings and other sources.

Section 24

Establishes the Multimodal Active Transportation Program to receive monies from Multimodal Active Transportation Fund

Requires ODOT to adopt rules that define the process for how to apply for grant.

Requires 30% match

OTC selects projects after soliciting recommendations from OBPAC

Section 25

Moves deposit of bicycle excise tax to the MAT Fund

Section 28

Each biennium, OPRD (in cooperation with ODOT) shall allocate up to \$4M of lottery dollars to bike/ped projects that meet recreation and transportation needs

½ of the \$4M to provide grants to through local and regional grant programs

½ of the \$4M for transportation projects on signature, scenic or recreation trails in OR

Section 29

Repeals Section 28 on January 2nd, 2025

CO Bike/Ped Element RAC

- Dec 2018-February 2019
- Confirmed Rule Vs. Guidance
- Drafted Definitions
- Reviewed Rule Language for Match, Readiness, Validation

Recap: CO Bike/Ped RAC Schedule

Meeting	Topic
December 3, 2018	Kick-off: background, charge of committee, discuss definitions
January 16, 2019	Review draft language for definitions. Discuss readiness.
February 4, 2019	Continue review of draft language for definitions, match, and readiness. Discuss project selection process.
March 5, 2019	Review draft rule or continue discussion.
Spring 2019	Determine if any legislative changes will impact draft. Schedule draft rule public review and hearings. Schedule review/approval by OTC.

RAC Refocus

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graph LR; A((Connect Oregon, Bike/Ped Element RAC)) -- "2019 Legislative Session" --> B((Multimodal Active Transportation Fund RAC));
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Connect
Oregon,
Bike/Ped
Element RAC

**2019
Legislative Session**

Multimodal
Active
Transportation
Fund RAC

“The commission may award grants only for bicycle and pedestrian transportation projects that expand and improve commuter routes for non-motorized vehicles and pedestrians, including bicycle trails, footpaths and multiuse trails”

Draft Definitions for OAR

- “**Bicycling**” includes, but is not limited to, use of bicycles. *(Consistent with [737-025-0010](#) (3) SRTS OAR)*
- “**Pedestrian**” has the meaning given that term in ORS 801.385.
- “**Walking**” means use of human-powered forms of transportation, including, but not limited to travel to your destination by foot or wheelchair. *(Consistent with [737-025-0010](#) (31) SRTS OAR)*

Draft Definitions for OAR

- **“Multiuse path”** or **“Multiuse trail”** means a 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.
- **“Bicycle trail”** or **“Bicycle path”** has the meaning given the term “bicycle path” in ORS 801.160.
- **“Footpath”** means a public way that is designated for use by persons walking, except as otherwise specifically provided by law.

Draft Definitions for OAR

- **“Commuter route”** means a multiuse path or trail, including bicycle trails and footpaths, that improves walking and biking access:
 - in high need locations (i.e. transportation disadvantaged areas, surrounding schools, shopping, employment centers, medical services, connections to transit and regional paths, and downtowns);
 - in areas where no connections exist, transportation options are limited,

Draft Definitions for OAR

- *Commuter Route (continued)*
- “...OR; meets the following criteria for Regional Path designation:
 - Is a continuous path made up of one or more connected segments that is primarily physically separated from the roadway;
 - 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;
 - Will serve as a connection point for people commuting between communities; or is part of an officially designated walking and bicycling route,; and
 - Is endorsed by elected bodies along path alignment.

Program Criteria

Key Statutory Parameters



- Outside road ROW
- Expand/improve commuter routes
- Minimum of 10% of the funding for each Region
- 30% match requirement (50% for Class 1 Railroads)
- Must be reviewed by modal committees, ACTs and Regional Solutions

Part 1 Project Selection Considerations

- reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor
- economic benefit to this state
- critical link connecting elements of the transportation system that will measurably improve utilization and efficiency of the system
- how much of the cost can be borne by the applicant from any source other than the Connect Oregon Fund *(to be addressed with match discussion)*
- has a useful life expectancy that offers maximum benefit to the state *(default status for all paths)*
- located near operations conducted for mining aggregate or processing aggregate as described in ORS 215.213 (2)(d) or 215.283 (2)(b) *(TBD how it applies)*

Connect Oregon V & VI – Lessons Learned



Photo credit: City of Tualatin

- Primary causes of trail project delays
 - Incomplete public involvement
 - Unclear match
 - Property, land use, neighbor challenges (NIMBY)
 - Project delivery capacity/experience
 - Political changes
- Opportunities for improvement
 - Rulemaking
 - Application/Instructions

Match

- In Statute: 30% match required
- Clarify in OAR:
 - Land
 - Timing and evidence of availability (specifically other grants)
 - Allowable previous investments (type and timing)

Match

– Draft Freight RAC Language

- 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, construct, or improve property (land, buildings, and fixed equipment) or to adapt the property to a new or different use consistent with the improvements described in the Awarded Project

Match (continued)

– Draft Freight RAC Language

- (A) Monetary outlays for (c) above must have been made within ten years of the application deadline for Connect Oregon grant fund submittals in order to qualify as eligible matching funds.
- (B) The acquisition cost of land may only be counted as match toward 15% of the eligible project costs.
- (C) Except for Federal Aviation Administration grants, other grants or contingent external funding sources must be identified at the time of application submittal and must be awarded or secured in accordance with the timelines identified in OAR 731-035-0060(8)(e).

Readiness

- Required outreach
- Property acquisition
- Environmental review & permitting
- Project timeline
- Local expertise/capacity

Readiness

– Draft Freight RAC Language

- A project will be considered ready for construction if the applicant can demonstrate evidence that may include:
 - (A) Completion of community engagement/outreach at application submission.
 - (B) Project development timeline that includes the duration of each development stage and dates of major milestones to reflect project completion within 3 years of award.
 - (C) Securing matching funds no later than 60 calendar days prior to the Oregon Transportation Commission's final action to select projects.

Readiness

– Draft Freight RAC Language

- (D) Site ownership or control no later than 60 calendar days prior to the Oregon Transportation Commission's final action to select projects.
- (E) Limited land use decision rendered by the appropriate local government received within six months of execution of a grant agreement. If the use is not permitted outright and/or requires a land use decision to be a legally allowable use on the site, the land use decision shall be rendered no later than 60 calendar days prior to the Oregon Transportation Commission's final action to select projects.
- (F) Securing all permits needed for construction within nine months of execution of a grant agreement.

Validation

- 3) Validation shall include:
 - a. Evidence of matching funds available for the project
 - b. Evidence of site ownership or control, or evidence of a land sales agreement or governing body resolution of condemnation action
 - c. Confirmed project delivery schedule that meets program requirements
 - d. Other information identified by the department to complete a grant funding agreement