CONNECT OREGON RULES ADVISORY COMMITTEE

Meeting 4 Summary
December 7th, 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 (via phone)
Jana Jarvis, Oregon Freight Advisory Committee, Member
Senator Betsy Johnson, District 16 – Scappoose
James LaBar, State of Oregon (via phone)
Mark Landauer, Oregon Public Ports Association (via phone)
Caddy McKeown, District 9 – Coos Bay
Deena Platman, International Trade Systems (via phone)
Katie Thiel, ODOT
John Vial, Jackson County

STAFF
John Boren, ODOT
Erik Havig, ODOT
Ayano Healy, JLA Public Involvement
Hannah Mills, JLA Public Involvement

OBSERVERS
5 observers, present in person

WELCOME AND AGENDA
Ayano Healy, facilitator with JLA Public Involvement, introduced herself, welcomed the Committee, and briefly reviewed the agenda. The agenda was as follows:

1. Rule Language for Match Requirements
2. Project Readiness Presentation and Discussion
3. Statewide Significance Part 2 Refinement
4. Proposed Review Process
5. Potential Issues for Legislative Action
6. Next Steps and Close
Ayano explained that the purpose of the meeting is to provide guidance for development of Connect Oregon policies, specifically:

- Refining the rules for Match Requirements
- Developing direction for definition of Project Readiness
- Refining the Statewide Significance Part 2 definition
- Identifying potential issues for proposal to legislature

Erik Havig, ODOT, explained that the work group to review and refine the rules for the bicycle/pedestrian portion of the Connect Oregon program began meeting the week prior.

Senator Betsy Johnson asked for further clarification on the elements of the legislation in regards to bicycle and pedestrian funding from Connect Oregon. Ayano put this issue in the “parking lot” to be addressed in the future.

RULE LANGUAGE FOR MATCH REQUIREMENTS

Using a PowerPoint, John Boren, ODOT, gave a presentation on the match requirements rule language. The statutory framework on eligible match language is as follows:

367.082 Grants from Connect Oregon Fund; rules.

(3) The Department of Transportation shall adopt rules specifying the process by which a public body or private entity may apply for a grant under this section and prescribing the terms and conditions of grants. An applicant receiving a grant must provide the following amounts:

- (a) For public bodies and private entities, other than Class I railroads, 30 percent of the moneys required for the transportation project.
- (b) For Class I railroads, 50 percent of the moneys required for the transportation project. [2005 c.816 §3; 2015 c.707 §2; 2017 c.750 §79]

Below is a summary of John’s comments on the match requirements rule language:

ODOT staff used the Committee’s feedback from the last meeting to determine how it worked with the statute.

**Statutory framework on eligible match**

- The statute is framed around moneys required (costs incurred) required to implement project
- Costs vs. Value for land as match
  - Costs are what the applicant spends on land, design, and improvements
  - Value describes the monetary worth of the investment

**Policy implications of using appraised value**
• Based upon a professional judgement at a given moment in time
  o Fluctuating market could encourage ordering appraisals at the peak
• Costs, that are properly documented, are not disputable in terms of the raw number
  o E.g. copy of deeds, receipt for professional services
• Benefits long term property owners

Legal challenges with allowing value as match

• Department of Justice advised using appraised value not consistent with statute
• Cost spent for the land, which comes from moneys spent by the applicant fits in with the framing of the statutory language
• If the goal is to put smaller entities on better footing to compete, other ways must be found to help with that

Highlights of the draft rule

• Specifies what the applicant can spend moneys on that will count toward the required match
• Limits cost of the land to count toward half the required match, i.e. within the required 30% match, no more than 15% may come from moneys spent purchasing land
• Other grants/external funding begin used as match need to be identified ahead of time, and the timing needs to be set for award prior to OTC final decision

Discussion and Questions

Below is a summary of the Committee’s discussion and questions regarding the presentation on eligible match requirements:

• A committee member expressed the need for more clarity around the term “money” – is this cash in hand, or does that include infrastructure and land?
  o Erik explained that they are working with the Department of Justice to address this concern. The goal is to balance how land is being valued based on out of pocket expenditure vs. the historical value of the land.
  o John noted that there is a time limit for purchasing land, and land purchased over 10 years prior does not meet the match requirement.
• A committee member asked whether other grants can be included in the match requirement as long as they are relatively secure.
  o John confirmed this, but explained that this does not apply to federal aviation grants.
• Committee members noted that many airports and other properties date back to World War II and were not purchased for the purpose of a potential project. How would these properties be eligible for match?
  o Jerri Bohard, ODOT, explained that properties that were donated or purchased prior to the 10-year mark can only account for half the 30% match. However, if the property was purchased with the intention of the project within the last 10 years, it can be included in the match.
• The Committee asked how the 10-year mark was determined.
  o Erik explained that it seemed like a balanced number – five years seemed too short and
    20 years seemed too long. However, he noted that the Committee could discuss
    adjusting the timeframe.
• A committee member expressed support for extending the timeframe to 20 years. Another
  committee member asked how many projects would be impacted by a 10-year timeframe.
  o A committee member suggested creating exception language for extending beyond the
    10-year mark, noting that the review process will likely weed out projects that are
    trying to game the system.
• Several committee members expressed discomfort regarding how well this is meeting the
  legislative intent. One Committee member noted that they were concerned about bringing land
  into the match requirement to begin with.
  o Staff committed to double checking the language.

PROJECT READINESS PRESENTATION AND DISCUSSION

Continuing the PowerPoint, John began the presentation on project readiness. Below is a summary of
his comments:

The statute (unchanged in House Bill 2017) states as a consideration:

(e) Whether a proposed transportation project is ready for construction;

However, this is stated as a consideration and the statute does not specify how readiness is
gauged, a timeline for readiness (three years from the bond sale is the maximum), or the
property ownership or ability to control. This has posed problems in the past – projects being
presented as “ready,” but then proving otherwise once awarded.

The current rules do not address ownership/legal rights to the project site, design readiness,
permits or approvals, etc. In the past, project readiness was determined based on incomplete
information.

A rule was drafted to address these issues:

• Timelines for:
  o Availability of matching funds
  o Site control/ownership
  o Land use
  o Public engagement/community outreach
• Validation step by Program Administration staff between the Final Review Committee
  and the OTC, ODOT will validate information presented within applications

DISCUSSION AND QUESTIONS

Below is a summary of the Committee’s discussion regarding project readiness:
A committee member suggested including environmental impacts in addition to land use in the timeline for project readiness, noting that it wouldn’t necessarily disqualify a project, but would play a part in determining viability.

Are all permits needed within nine months of execution?
  - ODOT staff explained that permits would be needed by the time of execution, meaning the last signature on the agreement. This does not mean by OTC approval, but approximately within six months following OTC approval.

Projects are supposed to be 80% complete by three years from the bond sale. How does this affect projects that are just beginning their land use process at the time of the bond sale and therefore surpass the three year window? Will projects that require a NEPA process qualify since they regularly take approximately a year?
  - Erik explained that this issue is part of the reason for this effort. If a project can’t get the required permits then it would be at risk of not receiving funding, which helps narrow down the eligible projects.

A committee member requested creating language that gives preferential treatment to projects that are prepared with the required permits.
  - ODOT staff explained that the scoring process should address this.

A committee member suggested working with projects that have permitting processes that extend beyond the nine-month mark to determine what those permitting expectations are.
  - Erik expressed support for this concept.

Would construction and design costs need to be kept separate?
  - Katie Thiel, ODOT, explained that the agreements just ensure compliance with the public contracting code. The contracting agreement doesn’t delve into the method of delivery. The priority is ensuring deliverability within the three-year requirement. ODOT’s director has the authority to preclude what is not in the language if there is evidence that a project can be completed, but the permitting process extends the time requirement.

A committee member suggested using the term “implementation” rather than “construction” in the readiness language.
  - Katie committed to exploring this alternative and will bring her findings back to the Committee at the next meeting.

STATEWIDE SIGNIFICANCE PART 2 REFINEMENT

Using the PowerPoint, John began the presentation on the finalization of Statewide Significance. He explained that since the last committee meeting, ODOT staff clarified that Part 2 projects must show policy and strategy consistency, along with one or more of the following:

- On the adopted list of statewide significant projects
- Economic analysis/return on investment analysis
- Quantifiable system improvements
John directed the Committee to their handout illustrating the draft rule language regarding Statewide Significance, noting that the (D) is the only part the Committee had not seen before.

\[(D) \text{ Whether the proposed project has quantifiable improvements in at least one of the following:} \]
\[
(i) \text{ increasing system velocity or} \\
(ii) \text{ Increasing system capacity, or} \\
(iii) \text{ reducing system congestion or conflict points} \\
\]

**DISCUSSION AND QUESTIONS**

Below is a summary of the Committee’s discussion on statewide significance:

- A committee member explained that it’s important that project statewide significance are weighted accordingly and do not have a set numbers for determining quantifiable improvements.
  - ODOT staff agreed, and Erik noted that points will be awarded based on how projects withstand the statewide significance test, and how projects are completed.
- A committee member suggested including multimodal connectivity as a part of determining a project’s statewide significance, specifically with regards to expanded service, service to the business community, and service to industry.
  - ODOT staff noted that much of this would be covered in (C) in the draft language.

**PROPOSED REVIEW PROCESS**

Using a PowerPoint, John reviewed the existing and proposed review process graphics as seen in Figures 1 and 2.
DISCUSSION AND QUESTIONS

Below is a summary of the Committee’s discussion regarding the existing and proposed review processes:

- A committee member asked how much time will be saved by the changes in the proposed review process.
  - ODOT staff responded that it would save approximately six weeks.
- A committee member noted that in the existing review process the Super ACTs played a significant role, and suggested that different regions potentially hold combined ACT meetings.

POTENTIAL ISSUES FOR LEGISLATIVE ACTION

Ayano asked the Committee to consider issues they would like brought to the legislature. Below are the issues the Committee identified as needing legislative action:

- The 10% allocation of minimum threshold by region has been something the Committee has consistently brought up as needing further discussion, and could prevent the ability to have a Part 2 process.
- Increasing from $70 million to $75 million, and whether projects can fund to that threshold.

DISCUSSION AND QUESTIONS

Below is a summary of the Committee’s discussion regarding the potential issues for legislative action:

- A Committee member expressed concern about whether the State would be responsible for Connect Oregon projects that could not be completed but still used funding.
  - Jerri explained that the applicant would be responsible for lost funding.
- If a project has failed using Connect Oregon funding previously, is there a way to track that if/when they reapply for funding?
  - Erik explained that if an agreement is entered into there will be a definitive scope that the applicant is held accountable to deliver upon. If they do not deliver, they will not get reimbursed and they will be required to repay any money previously allocated through the program.
- A committee member asked how many projects have failed previously and whether there were any patterns indicating why projects had failed.
  - ODOT staff committed to getting a list of previously cancelled projects, but noted that it should be recognized by the Committee that the reasons for cancellation varied. Erik also explained that Katie has since been brought on and brings practical experience that will improve the process.
  - Jerri also mentioned that many of the projects that were cancelled were due to smaller amounts of money than was needed for preparation.
- Senator Johnson noted the existence of a $1.5 billion Forest Trust Land Counties lawsuit that will be going to trial on October 27, 2019 that the OTC should be made aware of.
NEXT STEPS AND CLOSE

Ayano noted the items that will be discussed at the next meeting, including:

- Clarification of bicycle and pedestrian funding within the Connect Oregon program
- Staff to provide the list of cancelled projects
- Identification of where funding will be allocated and where it will come from

Erik explained that at the next meeting the Committee will be working to draft the new rules. The Committee agreed to plan on expanding the length of the next meeting to ensure all topics are adequately addressed.

The next meeting will take place on January 14, 2019, and will allow for additional time if need be.

Erik and project staff thanked the Committee and closed the meeting.