

OREGON TRANSPORTATION COMMISSION

Minutes of the Regular Monthly Meeting July 20, 2005 Portland

On Wednesday, July 20, the Oregon Transportation Commission (OTC) and Oregon Department of Transportation (ODOT) staff held an agenda briefing session in Conference Room 344 at ODOT Region 1 Headquarters, 123 NW Flanders, Portland. The regular monthly meeting was held in Public Meeting Rooms A and B.

Notice of these meetings was made by press release of local and statewide media circulation throughout the state. Those attending part or all of the meetings included:

Chair Stuart Foster	Executive Officer for Highways John Jackley
Commissioner Gail Achterman	Rail Division Administrator Kelly Taylor
Commissioner Mike Nelson	Motor Carrier Trans. Admin. Gregg Dal Ponte
Commissioner Randy Papé	Public Transit Administrator Martin Loring
Commissioner Janice Wilson	Transportation Safety Admin. Troy Costales
Director Bruce Warner	Region 1 Manager Matthew Garrett
Deputy Director Central Services Mike Marsh	Region 2 Manager Jeff Scheick
Deputy Director Highway Doug Tindall	Region 3 Manager Paul Mather
Communications Admin. Patrick Cooney	Interim Region 4 Manager Mark Usselman
Trans. Development Admin. Craig Greenleaf	Region 5 Manager Monte Grove
Chief of Staff Lori Sundstrom	Chief Engineer/Tech. Serv. Mgr. Cathy Nelson
DMV Administrator Lorna Youngs	Commission Secretary Jill Pearson

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Chair Foster called the meeting to order at 9:43 a.m.

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Director's report highlights:

- Commissioner Papé's reappointment to the Commission was confirmed by the Senate on July 11, 2005.
- Commissioner Foster has been reappointed as Chair and we anticipate Senate confirmation soon.
- Federal reauthorization appears to be near. A conference report was rumored to be ready by July 19, when the eighth extension of the current bill is set to expire. Agreement has apparently been reached on a 6-year funding level of \$286.4 billion.

The highway-transit split has 18.57% going to transit, which is higher than the 18.2% in the current law. We are hearing that there is \$6 billion in highway High Priority Project money available for earmarks.

We receive daily reports on the progress of the bill from a variety of sources. Negotiations have been described by one Congressional aide as a “major goat rodeo,” and Senator Christopher Bond, R-Mo., predicting an imminent conference report said, “Even elephants deliver babies after two years of gestation. It’s getting near that time.”

- The son of an ODOT employee will start college this fall with financial assistance from the Glenn Jackson Scholarship Program. The Glenn Jackson Scholarship was established in 1985 in honor of Glenn Jackson for the 20 years he served as a Transportation Commission Member.

Chris Beckstrom, a 2005 West Salem High graduate, is the recipient of this year’s Glenn Jackson Scholarship. He is the son of Kevin and Christy Beckstrom; Kevin is a 7-year employee in ODOT’s Communications Division. Chris will receive \$2,500 per year for four years to complete a four-year college program. He will be offered summer employment with ODOT during that time as jobs become available.

At West Salem High, Chris received numerous awards, including the Louis Armstrong Award three years in a row as the jazz band’s pianist. He also played clarinet, guitar, saxophone, and drums, and served as the drum major for the marching band. As a freshman, Chris played soccer and in his junior year, he took up track and field. Chris served as editor of the school paper and helped coach a youth soccer team. On the side, he and several friends created a band, “The Porcupines,” that won West Salem High’s Battle of the Bands top award.

Even with all his activities and accomplishments, Chris says he was surprised—and deeply honored—to receive the award.

- On Friday July 1, two noteworthy events occurred. In the space of 10 minutes that afternoon, Highway Division Deputy Director Doug Tindall signed the largest highway contract in Oregon history – \$129.9 million for the Pioneer Mountain – Eddyville project, and he denied the first Measure 37 claim in ODOT history.

Ground breaking for Pioneer Mountain-Eddyville is scheduled for August 4 and is scheduled to be complete in 2009.

The Measure 37 claim came from the Rogue Regency Hotel in Medford and involved an access management decision.

The claim was denied because:

- Access Management is not a land use action,

- Our actions to limit access were actions on our property, not private property, and
 - Our actions were taken to protect public safety.
- Former Commission Secretary, Jill Pearson, recently took a promotion to work in the Office of Innovative Partnerships and is helping implement the Vehicle Miles Traveled pilot project. Kim Jordan has been filling in for Jill. Kim has accepted a permanent appointment to the position. Kim does a great job and she will take good care of the Commission.
 - ODOT has once again been recognized nationally for our fine work. This time, the National Trust for Historic Preservation is bestowing on ODOT one of 16 National Preservation Honors Awards for our efforts to preserve our historic highway bridges.

ODOT was selected to receive this award out of nearly 200 nominations nationwide and we will receive the award at a National Preservation Conference that will be held here in Portland in September. ODOT is a co-sponsor of the Conference along with the Oregon Historic Preservation Office.

- This was Director Warner's last Director's Report. He addressed the Commission.

"I want to close today with telling you how much I have enjoyed working with you as a Commission and as individuals. Oregon has a well-deserved reputation for the high quality of citizen participation in governance, and I think that this Commission has to be one of the highest performing commissions in state government. You are outstanding and unselfish citizen leaders and Oregon is better for your service.

"Janice, in your short time on the Commission you have already contributed in important ways through your support of our new workforce development policies and your leadership on transit issues and ensuring that the right policy issues are brought before the full Commission.

"Mike, you are a constant reminder to all of us that "all our impacts are local." You have really helped the Department to focus on economic development, jobs, and, of course, on the important needs of rural Oregon.

"Gail, I want to say thank you for pushing us; for pushing us to go way beyond our comfort level and for leading by example. Because of your work on the OTP, we are clearly thinking differently about Oregon's future. It will be a more sustainable future because of you.

"Randy, your calm and cool manner and your impeccable connections to most of Oregon's business community has helped us innumerable times to successfully navigate difficult and complex problems. I wish we had come to closure on the West Eugene Parkway, but my successor will need something to work on.

“And Stuart, your dedication and enthusiasm for the Department’s mission can be seen in many of our accomplishments over the years. Recently, of course, you have rolled up your sleeves and taken on the task of making transportation and land use more compatible. Your leadership in transforming the STIP project selection process has changed Oregon. Communities now have confidence that if a project gets on the STIP, it will actually be built.

“You have all been a joy to work with, and to work for, and I am grateful to have had such a wonderful experience. I know that under your leadership and care the Department will continue to deliver what Oregonians need and want in a transportation system.”

Chair Foster spoke for the Commission:

“Bruce, things have been kind of dull with you around. I remember the good old days, when we had our continuing battles with the legislature and the stakeholders. Things got calmed down. Things aren’t as exciting as they used to be. To your credit, you have done a tremendous job. I speak for the whole Commission in saying that. I have the greatest admiration for you. You have built a tremendous team. We’re really upset, really upset, to see you leave. But, we know that you have left a great team behind that is going to carry on and continue to perform in the manner that they have been performing under you. You have brought this department to a new level. You have been willing to change the way we do business and lead us forward in changing the way to do business. The agency is a totally different agency than it was when you came a short four years ago. We are really, really going to miss you. We look forward to our working relationship with you in your new job. I am really at a loss of words to express what it means to us to lose you and what it means to the department and the State of Oregon to lose you. Your skills are tremendous, your ethics are tremendous, your judgment is tremendous. We all wish you the best. We all want to continue our warm personal relationships, too. Thank you.”



Commission member reports:

Commissioner Achterman said that all of the Commission appreciates the work that Director Warner has done for the department. They will all miss him very much personally and professionally. Congressman Blumenauer and Congressman Walden have been working together to develop a strategy for Mount Hood. She distributed a graphic prepared by Region 1 staff. She and Matt Garrett were invited by the congressmen to attend the session they had on strategic transportation planning for the Mount Hood region. Matt presented the work that ODOT is doing to address the safety, capacity, preservation and other highway needs on the mountain. Both congressmen were very excited by the work that we were doing and the opportunities that we saw for multimodal connections to facilitate tourism and economic development as well as move goods through this extremely critical corridor. The Commissioner also spent time

working on the update of the Oregon Transportation Plan. She met with representatives and board members of the Bicycle Transportation Alliance and the Willamette Pedestrian Coalition to encourage those organizations, who are turning into statewide advocacy organizations for bicycle and pedestrian issues. They were very laudatory of the work of ODOT Safety staff. She encouraged the organizations to start working on getting engaged in the STIP process because there is a lot more we can do to build bicycle and pedestrian issues into a number of our highway improvements.

Commissioner Papé met with the Lane County Metropolitan Policy Committee (MPC). They have developed a citizen's advisory committee. Lane County is still in need of an Area Commission on Transportation (ACT). At least, in the MPO, they now have what would be akin to an ACT. That group met jointly with the MPC. They discussed roles and where they fit in and how they function to provide the kind of public input that the MPC group was looking for in Eugene, Springfield, Coburg and Lane County. He also met with Region 4 Manager Mark Usselman in Bend, with Judge Cooper from Crook County. The judge brought up transportation issues, not only in the area, but that affect the area. He talked about the corridor link between Portland and central Oregon and its relevance to their growth and development. Judge Cooper also sent his regards to Commissioner Achterman. He thanked Mr. Usselman for setting up the meeting. Commissioner Papé said that it has been a true honor and privilege to have had the opportunity to serve on this Commission, but in that timeframe to work with Bruce Warner as the leader of ODOT, because he marvels at people who have the vision and the desire and ability to effectuate change, and that's not always easy in any organization, particularly in public organizations. He appreciates all that Director Warner contributed and expects that he will contribute from his new position as well.

Commissioner Nelson made no report except to say that he has been involved in state government for many years, especially the transportation department. Director Warner is the best that he has seen. Mr. Warner's management style makes running a department look easy, and makes the department run easy. The quality of his regional managers and the quality of the people they pick makes this whole process look so easy, yet it is so complicated and difficult. It is the greatest commendation that he can give that Mr. Warner's management abilities are beyond anybody's that he has seen in a long time. Most of all, he is a man of integrity.

Commissioner Wilson spent time with staff continuing to get educated about ODOT business and also worked with Public Transit staff on the allocation of resources. She complimented Martin Loring and his staff who have done an excellent job with the work. As one of her last jobs on the Portland Development Council (PDC), she had the privilege to vote for Mr. Warner as its new Executive Director. He is the best public manager that she has worked with in 30 years. She knows that the same skills that he brought to ODOT, he will bring to PDC. She thanked Mr. Warner for what he has done and for what he will do in the future.

Chair Foster participated in a joint meeting of the OTC and Land Conservation and Development Commission (LCDC) transportation subcommittee on the Transportation

Planning Rule (TPR). They continued to look at the next stage of amendments to sections 070 and 050 of the rule. The group is nearing completion of good products that will, in one case, eliminate duplication of processes. With a little bit of fine tuning the amendments will be ready to go to the LCDC and, hopefully, will be adopted late this year or early next year. There is still a degree of “heartburn” being expressed regarding the one-half mile radius of influence around interchanges on the Interstate. We continue to reassure them that we want to have a partnership approach to dealing with those interchanges and that we have just as great an interest in seeing mixed use transit oriented development as does local government. We will work through those issues and find that in the long run the revised TPR will be a more workable rule and subject to less acrimonious litigation and heighten the discussion that we all need to have on how we manage our Interstate system in the State of Oregon. This is a happy and sad day. All of the commissioners have spoken to that. It is appropriate to express our appreciation. Chair Foster led a standing ovation for Director Warner.



Institute of Transportation Engineers (ITE) Oregon Section President Massoud Saberian and past president Robert Morast presented a “Project of the Year” recognition plaque to ODOT for its OTIA initiative. (Background material in General Files, Salem.)

ITE is an international, individual member educational and scientific association. It is one of the largest and fastest growing multimodal professional transportation organizations in the world. ITE members are traffic engineers, transportation planners and other professionals who are responsible for meeting society’s needs for safe and efficient surface transportation through planning, designing, implementing, operating and maintaining surface transportation systems worldwide. Founded in 1930, ITE serves as a gateway to knowledge and advancement through meetings, seminars, publications and through its network of more than 16,000 members working in some 90 countries. Oregon ITE Section came to life in 1963, but it was not until 1973 that its charter was adopted. Since then, Oregon ITE has grown to be a very active organization in the state and has had distinguished guests as its speakers and has held many technical workshops, seminars, and conferences throughout the state, independently and in cooperation with other professional organizations.

One of Mr. Robert Morast’s charges last year, when he was Oregon ITE President, was to research and select projects that ITE could recognize with an outstanding project award. ITE selected ODOT to receive the award for its OTIA initiative because it has such a statewide impact.

Director Warner accepted the award for ODOT.



In Deputy Director for Highways Doug Tindall's, absence, Director Bruce Warner provided the monthly status report on the OTIA III State Bridge Program. (Background material in General Files, Salem.)

There was not a lot of activity over the last month. After further evaluation, another nine bridges will need no work, based on the Oregon State University study. We believe we have eliminated another \$41 million of expense from this program.

We recently had the Transportation Research Board (TRB) do a peer review of the Oregon State University's analysis of the cracked bridge problem. Their report essentially made some big conclusions, indicating the reinforcing steel inside the cracked bridge girders was not stressed enough to get metal fatigue. The other thing they said is because of the diagonal nature of many of the cracks and the roughness of the concrete internal to those cracks, there was some roughness that allowed grip from one side to the other. Between those two factors, those bridges will not fail rapidly, which reduces public safety issues. The other thing that we learned from the report was that we should utilize a tool called load resistance factor rating as a way to assess the remaining strength in these beams. The TRB confirmed that the OSU conclusions are sound. TRB did not, however, go so far as to say that we should adopt all the work that OSU did as a new federal standard, but they did affirm that what ODOT is doing is correct and no further review or analysis is needed based on OSU's work.

The Commission asked for an update on what, if anything, the Legislature is doing on consideration of bills that would have budgeted, dedicated or earmarked any savings from the bridge program.

House Bill 3415 passed both the House and Senate and was signed into law by the Governor. The bill says that *if* there is any savings in completing stages one through five, it will go to projects that were identified by the Freight Advisory Committee as important for freight through the original OTIA I, II and III programs. There is about \$4 billion worth of needs in that report. Secondly, the Legislature would like any savings to go toward projects of statewide significance adopted by the Commission.

It will be at least another year before we can determine whether there will be any savings or not. Escalating costs for steel and cement may override any savings we see from bundling projects and using the program management firm.



Commissioner Achterman, Transportation Development Division Administrator Craig Greenleaf, Oregon Transportation Plan (OTP) Manager Carolyn Gassaway, and Hugh Lough, from Cambridge Systematics, Inc., led an informational discussion of OTP policy analysis issues. (Background material in General Files, Salem.)

The Oregon Transportation Plan Update Steering Committee briefed the Commission previously on the OTP scenarios. The four policy scenarios address issues such as

reduced funding, increased funding, greater focus on operations, and roadway pricing. Those scenarios were run through the Statewide Land Use-Transportation Model. The Steering Committee's findings are as follows.

Major Conclusions

Flat Funding assumptions include:

- No new funding for transportation
- Declining system maintenance and preservation for most modes
- Highway mobility would decline – local impacts greater than statewide impacts

A focus on maximum operations would assume:

- Reduction in travel time
- Rural benefits are primarily safety, information and reliability
- Future development more compact
- Economy grows faster than reference scenario
- ODOT's existing operational investments continue
- Components of delay – crashes/incidents cause over 50% of delay
- Full Intelligent Transportation System deployment
- Current delay savings in Portland area
- Future technologies

Major Improvements assumptions would include:

- Major projects in Regions 1, 2 and 4
- Capacity enhancements would provide benefits across the state

Roadway Pricing assumes:

- Value pricing/tolling has the greatest impact on travel demand
- Pricing maintains capacity and concentrates land use and economic activity

The Commission commented that in this 20-year period, we need to plan for the four-laning of Highway 97, which would have a very significant impact on I-5 from a freight transportation standpoint.

Overall Conclusions

1. The flat funding scenario will not result in an immediate loss of mobility, but will lead to dramatic declines in system condition over time.
2. Major improvements and tolling impact mobility on the statewide highway system.
3. Removal of bottlenecks and major modernization of highways and rail result in network-wide benefits. Improvements in major hubs increase mobility in central and eastern Oregon – especially for freight.
4. Additional operational investments can help manage capacity, but some benefits are already realized.

5. The impact of an emphasis on operations and major improvements in existing plans will be primarily on local and regional travel.
6. Fuel price increases have limited mobility impacts, but significant cost and economic impacts.
7. Expanding the supply of developable land beyond that necessary to maintain a 20-year supply is not expected to impact state transportation.

The Steering Committee summarized a lot of broad themes. They recognize that the transportation system is about supporting economic opportunity, our communities, and livability. In order to do that we must address capacity issues, eliminate bottlenecks and improve traffic flow to support economic activity.

The transportation system has to work better for everyone. We need to be able to move easily between modes and jurisdictions. When the freeway system is congested, the local system needs to be able to handle the extra traffic.

Whatever system we have must be sustainable for the environment, land use and the economy. The system needs to support local shippers so they can get their goods to market in rural and urban areas. In the same way, we have to preserve our infrastructure, services and funding.

Many Steering Committee members see a major emphasis on operations. We have to be visionary and aggressive. Our investments need to be strategic. New approaches to funding need to be explored. New approaches to organizing transportation functions may be needed. Safety is always important, as is equity. All parts of the state must prosper.

Director Warner said that our agency must provide a safe, efficient transportation system that provides economic opportunity and livability for Oregonians. In order to do that, the transportation system in the future really needs to be about jobs and competing in the regional and global economy. We need to have a system that can meet those changing demands. We also need to protect and preserve the system we have today and we need to operate and maintain, not only a highway system, but all of the modes, in a much more aggressive way. Those same kinds of operational improvements can be brought to rail and transit. We do need to make strategic investments in the system to get us ready for the future. We also need to embrace new technology, new options of how we pay for the system that may have some added benefits of maximizing operations of the system.

The investment strategy framework includes a flat revenue strategy, a preservation strategy, and a major improvements/pricing strategy. There are three potential levels of investment; 1) responding to flat funding, 2) preserving existing infrastructure and services, and 3) adding and expanding facilities.

The Commission made note that the OTP seems to be very highway and commuter oriented. It stressed the need to develop a freight mobility strategy to address alternate mobility, moving some freight back to rail. The Commission asked if the plan addresses the need to move freight from trucks to rail.

Craig Greenleaf responded. The characteristics of freight movement are very challenging to integrate into a model. The model cannot be effective right now in analyzing that question. We have, however, acknowledged that the model cannot help us answer that question and we are seeking additional considerations or influences so that analytically, we can put that question more sharply in focus. We are trying to make further investment into the rail infrastructure in order to improve services. Addressing this issue will take partnerships with key stakeholders like the rail interests in the state.

The Steering Committee has several big issues and concerns. One is how to achieve flexibility in funding so that we can fund the most strategic investment. What about public transit? Do we need more state commitment to help expansion of any systems on the condition of the fleet or better supporting elderly and disabled transit? Maintaining air service in Pendleton, Klamath Falls and other places where service is marginal is also a concern. Public investment in rail freight needs to be addressed. Partnerships and organizational changes to facilitate development and the operation of the system will need to take place.

The Commission provided feedback on major themes, issues and concerns.

- We need to build support for increased funding.
- Americans are in love with the automobile. Increasing investment in other modes may not change current patterns unless we can understand what it means to have that car and freedom. If you give people alternatives, will they actually choose the alternatives? Change is difficult.
- Get the trucks off the interstate. It will be difficult to make much of an impact, unless huge investment is made.
- On the other side – family wage jobs could be impacted as a result of fewer trucks on the road.
- Unless people are well informed on how to use, or are forced to use public transit, they will not.
- We are on the leading edge of technology and application of technology in the management of our system, but we need to work hard to promote more use of technology.
- We must develop a strategy for freight mobility with a bigger focus than just the I-5 corridor. We need to have a statewide perspective. Freight movement is critical to all communities. We must collaborate with the Metropolitan Planning Organizations and other organizations on developing a statewide freight mobility strategy.



Transportation Development Division Administrator Craig Greenleaf provided a preview of the recommended 2006-2009 Statewide Transportation Improvement Program (STIP). (Background material in General Files, Salem.)

The STIP Stakeholder Committee developed Project Eligibility Criteria and Prioritization Factors for the 06-09 STIP, which the OTC approved in November 2003. Criteria and factors were used to select modernization, bridge and preservation projects for 2008 and 2009. Project documentation and maps (where the locations were known) were presented to the OTC in September 2004.

The STIP financial base includes federal revenue (\$849 million), state revenue (\$414 million), and other revenue (\$4 million) for an estimated total of \$1,267 million in revenue available for the 06-09 STIP.

Mr. Greenleaf reviewed the financial base by program area (preservation, bridge, operations, safety, modernization, etc.), as well as the breakdown in funding by region.

Project selection and scoping was scheduled for January through April 2004. Scoping included site visits with technical staff to determine project needs and estimated costs. Projects were adjusted as necessary based on scoping outcome.

The draft 06-09 STIP was available for public review during October and November 2004. Area Commissions on Transportation and regions hosted 34 public meetings around the state with 565 people attending. Comments were also received by mail, phone and e-mail. STIP programs were adjusted as necessary based on the public input.

Air quality conformity determinations for Metropolitan Planning Organizations are expected by the end of September (Eugene/Springfield area by the end of December). The 06-09 STIP will be presented to the OTC for approval, contingent on air quality conformity, in August. Once approved, the STIP will be forward to the Federal Highway Administration and the Federal Transit Administration for review and approval (expected in November 2005).

Anticipated outcomes of the STIP will include:

- Pavement conditions are projected to be steady at 85% fair or better by the end of 2009.
- Bridge conditions on the National Highway System, due to structural or clearance deficiencies, will decline slightly to 66% fair or better by the end of 2009.
- Fatalities are targeted to be reduced to 0.99 per million vehicle miles traveled by 2010.



The Commission approved the next two meeting dates as:

- Tuesday, August 16, and Wednesday, August 17, 2005, in La Grande.
- Wednesday, September 14, and Thursday, September 15, in Yachats.



The Commission considered approval of the following Consent Calendar items:
(Background material in General Files, Salem.)

1. Approve the minutes of the June 15, 2005, Commission meeting in Salem.
2. Adopt a resolution for authority to acquire real property by purchase, condemnation, agreement or donation.
3. Approve the following Oregon Administrative Rule (OAR) actions:

a.	Amendment of OAR 734-020-0005, 0430 and 0460 relating to adoption of the 2003 Edition of the Manual on Uniform Traffic Control Devices.
b.	Amendment of OAR 735-070-0185 relating to reports of positive drug test results.
c.	Amendment of OAR 740-035-0200 relating to motor carrier education program.
4. Request approval to appear before the September meeting of the Legislative Emergency Board to request approval to submit an application to participate in the Federal Highway Administration's (FHWA) AMBER Plan Implementation Assistance program.
5. Approve an amendment to the 2004-2007 Statewide Transportation Improvement Program (STIP) to cancel the OTIA II project: Arndt Road Improvements – Clackamas County Phase 2. The total project cost is \$3,484,000.
6. Approve the establishment of a speed zone of 50 miles per hour on the Corvallis-Lebanon Highway in Linn County (OR 34) from milepoint 9.00 to milepoint 9.59.
7. Approve a transfer of right-of-way and jurisdiction for a portion of Cape Arago Highway and Cape Blanco Highway, the Ophir Safety Rest Area and surplus property located at Otter Point to the Oregon Parks and Recreation Department, and the transfer of surplus property located adjacent to the Ochoco Highway No. 41 to ODOT. Approve the Deputy Director for Highway Division to sign the Jurisdictional Transfer Agreement.
8. Approve an amendment to the 2004-2007 STIP to add the US 199: Redwood Highway at Tussey Lane (Grants Pass) project. The total cost for this project is \$100,000.
9. Approve an amendment to the 2004-2007 STIP to add the OR 138E at Rifle Range Road (Roseburg) project. The total cost for this project is \$700,000.

10. Approve a request to seek Legislative approval to apply for and use \$250,000 for Supportive Services for the Disadvantaged Business Enterprise (DBE) program from FHWA.

Commissioner Papé moved to approve the items on the Consent Calendar. The motion passed unanimously. Commissioner Wilson was not present.



The Commission recessed for lunch with ODOT staff in Administrative Conference Room 344.



Office of Innovative Partnerships Manager James Whitty, Geoffrey Yarema of the Nossaman law firm, Keith Curry from Public Financial Management, and Pamela Bailey-Campbell from Carter & Burgess, Inc., provided an informational presentation on Public/Private Partnership (PPP) arrangements. Edward Kussy, Acting Chief Council for the Federal Highway Administration, provided information about the Special Experimental Program #15 (SEP-15) approval ODOT received on May 5, 2005, for this PPP Request for Proposal (RFP) solicitation process. (Background material in General Files, Salem.)

The Commission was pleased to have in attendance for this presentation, the Washington State Transportation Commission (WSTC), Chair Dan O'Neal, Bob Distler, Edward Barnes, Elmira Forner, Dale Stedman, Karen Bonaudi, and Richard Ford.

The Washington State Legislature recently approved a public/private program. A committee has been established within the WSTC to focus on the program. Members of that committee are Elmira Forner (Chair), Dale Stedman and Edward Barnes. The key Washington State Department of Transportation (WashDOT) staff person for that committee is Jeff Doyle. Don Wagner, WashDOT SW Region Administrator, and Reema Griffith, WTSC Administrator, also staff the committee.

James Whitty explained that in January, the OTC approved ODOT to solicit for three highway projects and several maintenance stations. Requests for Proposals were issued on the three highway projects on April 29, 2005. The maintenance stations RFP will go out sometime in August.

The Oregon Department of Justice analyzed Washington's two legislative bills and they are very similar and compatible with Oregon's. Oregon is committed to helping Washington in developing its own public/private partnerships program.

Geoffrey Yarema began with an overview of the previous briefings done over the last year. In September 2004 the OTC received a briefing on the background and lessons learned in regard to public/private partnerships (PPP). And on January 20, 2005, it gave

approval to proceed with formal solicitation on five projects. A single RFP was developed offering up to three highway projects to the private sector simultaneously. Those wishing to participate could submit proposals on one, two or all three projects.

The output of the decision-making process among the available PPP options was a two phased agreement. The first phase is called a pre-development phase which is the time between when the agreement is assigned and the day the project becomes financially, technically and operationally feasible. During that time, the agreement would provide that ODOT and the private partner would agree to perform certain services and contribute certain funds. That combined work program, together with other stakeholders would move the project to feasibility. The agreement would allocate the costs between ODOT and the developer. We will have to carefully address the National Environmental Policy Act (NEPA) issues because NEPA runs concurrently with this work program.

The second phase in the process is the implementation phase. If and when a project proves feasible, ODOT and the developer will negotiate a subsequent agreement covering the design, construction, operations, maintenance and/or financing of the project.

The approach that was selected was based upon project characteristics and sponsor priorities. The approach is also based on lessons learned from other states, including WashDOT.

Ultimate implementation agreements will be based on the proposal and subsequent negotiations. ODOT does not favor one likely implementation agreement structure over another. It is up to the proposers to justify any deviations from the traditional approach and reconcile any competing goals.

Likely implementation agreement structures include public financing of Design Build (DB)/Design Build, Operations and Maintenance (DBOM) contracts, non-profit intermediary agreements, or for-profit concessions.

Questions from the WSTC: Would the income to the bond holders from the private activity funding and the non-profit intermediary concept still be subject to alternative minimum tax? Would they still be considered private activity funding, while allowing new private activity funding? Mr. Yarema promised to provide the answer.

Keith Curry said that there are many reasons for the evolution of innovative finance in transportation project delivery – the gas tax does not keep pace with inflation; new legislation allows leveraging of the federal gas tax; project costs have escalated faster than inflation; greater acceptance of private sector project and investment capacity; improved procurement and project management efficiency; and risk mitigation.

Innovative finance techniques include limited state appropriations, development value capture, toll/revenue finance, Transportation Finance Innovation Act (TIFIA), concessions, corporate credit supports, subordinated debt, and infrastructure banks.

Public agencies have an inherent advantage in access to tax-exempt financing. Tax-exempt rates can substantially increase the leveraging capacity of a project cash flow. The IRS management contract guidelines have dampened the interest in long-term concessions by private investors and operators. As a result, we have seen the emergence of non-profit 63-20 structures to access the capital markets. New federal legislation may provide some relief to this issue.

In doing risk management and due diligence, agencies must understand the project cash flow as a public asset. In a Design/Build Operations and Maintenance approach, the financial health of the lead firm is crucial, and the ability to obtain performance bonds and ensure liquidated damages must be assured. When shell corporations are used, financial commitments must run to the parent corporation. Agencies must plan for bond holders, rating agencies and insurers to demand risk mitigation. PPP does not mean a free project for the public sector or free money for the private sector. Also important are the corporate credit worthiness and the ability to negotiate control of bond or other cash assets.

Pamela Bailey Campbell provided an update on the procurement process and the remaining steps. ODOT completed an internal project screening process in the fall of 2004 where about a dozen projects with potential financial, technical and environmental feasibility to be PPPs were identified. ODOT selected and the OTC approved five projects to pursue, including three highway projects. ODOT issued an RFP for the three highway projects on April 29, 2005. We are currently in the proposal preparation phase, including responding to questions and one-on-one meetings with proposers. Proposals are due on August 29, 2005.

Once proposals are received, next steps include evaluating and ranking proposals for each project. Commission approval is required to proceed with each negotiation. Negotiations for each project will then take place. If approved by the OTC a pre-development agreement will be awarded. Then, they have the opportunity to negotiate for an implementation agreement to deliver the project.

Each of the three highway projects are at the conceptual level. Consequently, the procurement process has a heavy emphasis on private partners who have the qualifications to help establish feasibility and put together a program to deliver the project and approach. The three projects will be evaluated separately. Then there will be a value determination, first by an evaluation panel and then by the OTC.

The major elements of submitted proposals are qualifications and experience, project approach, public support, and compensation.

Three groups will help in the evaluation process; an evaluation panel that will make the recommendation, an ODOT technical review team, and several consultants will help with the technical analysis.

After proposals are received, they will be reviewed for responsiveness. The OTC will be updated at its September meeting, after which technical analysis will be conducted and the technical review team will evaluate the proposals. A local consultation process will occur and then the evaluation panel will review and interview proposers, prepare a final ranking and value determination, make recommendation to the ODOT Director, and then to the OTC who will decide whether or not to move forward to pre-development agreement negotiations.

James Whitty said that in order to preserve federal eligibility for the projects in our existing procurement, in December, ODOT applied to the Federal Highway Administration (FHWA) for a special exception from the Title 23 rules, under its new program Special Experimental Program 15 (SEP 15). ODOT received approval from FHWA on May 6, 2005. Over the next several weeks, we will negotiate an early development agreement with FHWA.

Ed Kussy said that the FHWA has done a number of things to strengthen its ability to deal with PPP. It created liaisons with the private sector. FHWA meets quarterly with state and federal officials and private industry to learn and stay up to date on current issues. A new office and senior official within the office of the administrator, whose job it is to coordinate and anticipate needs in PPP, was recently created. The agency has developed new skills in terms of leverage financing.

Federal highway laws are built around a very traditional way of doing business – design, bid, build. The agency has, however, been able to identify more up-to-date ways and a greater variety of ways of doing business. A number of years ago, SEP 14 was created, which enabled them to experiment with different ways of contracting for federal work. Out of that, grew an amendment which allowed design/build. As FHWA got more involved in PPP, it realized that was not enough, so SEP 15 was created, which allows them to experiment with the entire way in which projects are delivered. At looking at what Oregon wants to do, it is exactly what FHWA had in mind.

FHWA has a provision in statute that allows FHWA to experiment with any material, program or process. It is based on that authority that FHWA creates special experimental projects. They have not interpreted those to allow them to experiment outside of Title 23, but they can experiment within the bounds of the Federal Highway Act and the regulations that implement it in ways that they think will help FHWA do business better in the future. It is anticipated that there will be legislative changes in the future.

The National Environmental Policy Act cannot be experimented with in ways that is not envisioned in the federal law. We can, however, decide when in the project development process we do the Environmental Impact Statement.

The early development agreement with FHWA includes reporting and evaluation requirements, which ODOT will follow.



Chair Foster adjourned the meeting at 3:15 p.m.



Following the OTC meeting, a meeting of the OTC and Washington State Transportation Commission Joint Subcommittee on the Columbia River Crossing was held. Minutes for this meeting are provided separately.

Stuart Foster, Chairman

Gail Achterman, Member

Randy Papé, Member

Mike Nelson, Member

Janice Wilson, Member

Kim Jordan, Commission Secretary