



U.S. Department  
of Transportation

**Federal Highway  
Administration**

400 Seventh St., S.W.  
Washington, D.C. 20590

May 14, 2007

Ms. Pamela Lowe  
Executive Director  
Idaho Department of Transportation  
P.O. Box 7129  
Boise, ID 83707-1129

Dear Ms. Lowe:

The Federal Highway Administration (FHWA) has completed its review of the Idaho Transportation Department (ITD) Special Experimental Project No. 15 (SEP-15) application for the Connecting Idaho Grant Anticipation Revenue Vehicles (GARVEE) Bond Program (Program or Project). The application was received by the FHWA Idaho Division Office (Division Office) and was forwarded to the SEP-15 Steering Committee (Steering Committee) on February 6, 2007. The Steering Committee coordinated the review of the application within FHWA and recommended that the application be accepted for administration under SEP-15. I concur with the Steering Committee. FHWA's response to the proposed experimental features for the Project is discussed below.

FHWA's acceptance of the Project for administration under SEP-15 does not commit Federal-aid funding for the Project and does not waive any other Federal requirements applicable to the Project. Until there is formal FHWA project approval, FHWA retains the right to deny Federal funding for the Project at anytime. If you wish to proceed with the Project under the SEP-15 program, the next major action will be to work with you to draft an Early Development Agreement (EDA) for the Project. The EDA will contain parameters to guide key elements of the Project and identify the performance measures that will be used to evaluate the success of the experimental features.

### **Background**

Based on your application, we understand that the Connecting Idaho GARVEE Bond Program was enacted into law in April 2005 to provide approximately \$1.2 billion to advance 260 miles of multilane or high performance roadways located on 13 corridors throughout the State of Idaho over the next six to ten years. In 2006, the Idaho State Legislature approved legislation to permit the sale of the first GARVEE bonds to fund work for six of the 13 corridors. The six corridors are:

**MOVING THE  
AMERICAN  
ECONOMY**



1. US-95, Garwood to Sagle;
2. US-95, Worley to Setters;
3. SH-16, Junction I-84 to South Emmett;
4. I-84, Caldwell to Meridian;
5. I-84, Orchard to Isaacs Canyon; and
6. US-30, McCammon to Soda Springs.

On May 23, 2006, the Idaho Housing and Finance Association sold the first series of GARVEE bonds raising approximately \$200 million in bond proceeds for the six corridors. On October 17, 2006, the Idaho Transportation Board approved a plan to invest a total of \$998 million for projects to improve seven Connecting Idaho highway corridors and by adding a seventh corridor, US-93, Twin Falls Alternate Route to the six corridors to be funded by the first series of GARVEE bonds. The plan includes four additional annual bond funded phases, ranging from \$264 million for phase two to \$145 million for phase five. We understand that the Idaho Legislature will consider the sale of additional GARVEE bonds to fund phase two of the program during the 2007 legislative session. If passed, bond sales are expected to occur in mid-2007.

The Connecting Idaho program is being administered by the Connecting Idaho Partners (CIP), a Joint Venture of Washington Group International and CH2M Hill. ITD has established a dedicated GARVEE Program Unit to administer and provide ITD oversight of the Program. ITD's proposed experimental features are designed to expedite the delivery of projects and encourage greater private sector participation in the management of the Connecting Idaho GARVEE Bond Program.

#### Experimental Features

**Experimental Feature 1:** In ITD's SEP-15 application, the State requests FHWA concurrence in allowing CIP to have approval authority for certain functions in delivery of the Connecting Idaho GARVEE Bond Program. Specifically, ITD requests FHWA approval to assign CIP as ITD's agent to procure, sign, hold and administer contracts for final design, construction, and procurement of real property, right-of-way, or other interests in real property required for specific projects. ITD also seeks FHWA's approval for ITD to assign CIP to take approval actions, and deal directly with FHWA, with oversight by ITD in the management of the Program.

The proposed experimental feature raises several Federal-aid program accountability issues which FHWA discussed with ITD. At this time, we understand that ITD would like to withdraw this experimental feature and to work with FHWA's Idaho Division Office to develop a management approach which is more consistent with current FHWA statutory and regulatory program implementation and oversight requirements. However, if the proposed management approach cannot be carried out within existing requirements, ITD may submit an amended SEP-15 application for consideration by the FHWA.

**Experimental Feature 2:** ITD requests a waiver to procure final design services and, in certain cases, advance final design activities prior to conclusion of the environmental review process pursuant to the National Environmental Policy Act of 1969 (NEPA, codified at 42 U.S.C.

§§ 4321, et. seq.). ITD proposes that this would include soliciting, selecting, scoping, negotiating, contracting, and issuing a Notice to Proceed (NTP) for final design activities. Also, in certain cases that will not influence the NEPA decision-making process, ITD would like to undertake final design activities, i.e., final design activities for a project or section of a project where the NEPA process has evolved to the point that there is only one "build" alternative under consideration.

*Purpose:* According to ITD, this experiment would improve efficiency and provide the means for timelier project implementation, which will lead to advancing the design, and therefore the follow-on right of way acquisition, construction and operational start-up of the facility by six to nine months, without jeopardizing NEPA compliance.

*Deviation from FHWA requirements:* FHWA regulations prohibit the initiation of final design activities until completion of the environmental review process. (See 23 U.S.C. § 112(b)(3)(B) and § 139(f)(4)(d) and 23 C.F.R. 771.113(a).)

*FHWA Response:* ITD may conditionally proceed with this experimental feature. ITD may procure final design services and begin final design activities on segments that are common to all alternatives under consideration. Procurement of final services and initiation of final design activities may not bias the ongoing environmental process and may not occur until the following events have occurred: (1) publication of the draft environmental document for public comment; (2) completion of public hearings on the document; (3) close of the public comment period; and (4) analysis by ITD of all comments and preliminary selection of a preferred alternative. Final design on other segments must be undertaken in accordance with FHWA regulations and after completion of the NEPA process.

*Experimental Feature 3:* ITD requests to deviate from FHWA's regulations that limit the acquisition of right-of-way prior to conclusion of the NEPA process to acquisitions which are necessary to prevent imminent development and an increase in acquisition costs. (23 U.S.C. § 108(c)(2); 23 C.F.R. 710.203, 710.501, and 710.503) ITD would like to acquire parcels on predominantly rural corridors with limited residential, commercial, and industrial development. The experiment would be limited to the acquisition of parcels for three corridors: (1) US-95, Garwood to Sagle; (2) SH-16/I-84 to South Emmett; and (3) I-84 / Ten Mile Interchange. ITD contemplates that the following conditions must be satisfied prior to negotiating a closing with a landowner: (1) acquisitions would be limited to entire corridors which are being evaluated in an environmental impact statement (EIS) or an environmental assessment where the public hearings are complete but prior to the conclusion of the NEPA process; (2) before an offer is extended to a landowner, the parcel to be acquired under the experiment must be included in a categorical exclusion covering the acquisition and must be supported by findings in the draft EIS; (3) acquisitions under this experiment would not include parcels affected by the National Historic Preservation Act, codified at 16 U.S.C. § 470(f).

*Purpose:* According to ITD, this experiment would allow ITD and CIP to respond quickly and efficiently to affected landowners in addressing the preservation of right-of-way within entire corridors and realize a significant cost savings in acquiring real property located in areas of highly accelerated land development.

*Deviation from FHWA requirements:* This experimental feature deviates from FHWA's Advance Acquisition of Real Property statute, right-of-way acquisition regulations, and Environmental Impact and Related Procedures regulations because ITD seeks to acquire all parcels located in a specific corridor prior to completion of NEPA. (23 U.S.C. § 108(c)(2); 23 C.F.R. 710.305, 710.503, and 771.113(a).) Generally, contact with affected property owners must be deferred until after NEPA approval. (23 C.F.R. 710.203(a)(3).) However, States may acquire property in advance of completion of NEPA as set forth in 23 U.S.C. § 108 and 23 C.F.R. 710.501 and 710.503. Pursuant to 23 C.F.R. 710.503, advance acquisition of parcels for corridor preservation is allowed for particular parcels to prevent imminent development and increased acquisition costs. (23 C.F.R. 710.503)

*FHWA Response:* ITD may conditionally proceed with this experimental feature. ITD may acquire parcels within a proposed corridor which do not meet the threshold requirement that such advance acquisition is necessary to prevent imminent development or increased costs under 23 C.F.R. 710.503(a) and (b). ITD may only acquire those properties on segments that are common to all alternatives, offered for sale voluntarily by the landowner and which are acquired in their entirety. These advance purchases would be on a volunteer basis, which means that eminent domain will not be used until the environmental process is complete. When acquiring properties, ITD must have appropriate safeguards in place to avoid the appearance of undue influence on property owners and perceptions of unfavorable treatment for those properties that are not acquired. ITD must ensure that no activities take place on the acquired properties that could produce an environmental impact. Only general property management activities to keep the property in good condition relative to the surrounding area may be undertaken. For example, ITD should: (1) not undertake substantial ground disturbing activities; (2) not demolish structures on the property except, after consultation with FHWA, to the extent necessary to neutralize or eliminate substantial health or safety risks; and (3) take appropriate steps to secure and monitor vacant property to prevent vandalism, illegal occupants, deterioration of the property, etc.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act, 42 U.S.C. §§ 4601 et. seq) must be adhered to on all acquisitions, including the relocation provisions. ITD must show that the acquisition of properties under this experimental feature did not influence the NEPA decision. No parkland, historical property, or other sites subject to section 4(f) of the U.S. Department of Transportation Act of 1966, 49 U.S.C. § 303, may be acquired prior to completion of the NEPA process.

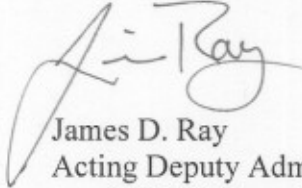
### **Proposed Performance Measures and Reports**

The SEP-15 program requires each approved experiment to be governed by a set of performance measures and for the project sponsor to submit reports prepared by an independent party, as deemed necessary by the FHWA, for each experimental feature. Performance measures will include those which evaluate the effectiveness of the acquisition process and measure the estimated time and cost savings discussed herein. ITD will be required to conduct an independent evaluation of the experiment to be submitted to the FHWA Idaho Division

Administrator within 6 months after completion of the NEPA process. The evaluation should utilize stakeholder input from property owners, tenants, State DOT personnel, FHWA Division Office staff, and environmental process participants. It should provide objective analysis of the positive and negative results of the advance acquisitions, including any impacts on the environmental process and impacts on the project schedule and costs. FHWA will provide questions to be researched by ITD's independent evaluators with the stakeholders. The performance measures and reporting requirements will be fully developed in the EDA and incorporated into a project timeline.

I have asked Ms. Gloria M. Shepherd, Associate Administrator for Planning, Environment, and Real Estate Services, and Mr. Peter Hartman, Division Administrator for the FHWA Idaho Division Office, to serve as the co-facilitators for the SEP-15 project. Ms. Shepherd and Mr. Hartman will establish a FHWA interdisciplinary team to work with ITD to develop the provisions of the EDA.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jim Ray". The signature is fluid and cursive, with a large initial "J" and "R".

James D. Ray  
Acting Deputy Administrator  
and Chief Counsel