

## **Guidance for Preparing ACT Earmark Recommendation Lists**

### **PURPOSE**

In the next surface transportation authorization legislation, the Oregon Transportation Commission (OTC) intends to present Oregon's congressional delegation a list of requested earmarks for transportation projects that address important problems on Oregon's transportation system and have broad support. In advancing these projects, ODOT commits to delivering each project if a sufficient earmark is secured by the congressional delegation. ODOT will therefore provide or help provide matching funds and funds to make up any shortfalls for projects on the official OTC Earmark Requests List, as per any agreements with local agencies regarding the project. ODOT will not budget to provide for matching funds or to cover any funding shortfalls for project earmarks received by other agencies for projects not on the OTC list.

The OTC intends to have Area Commissions on Transportation (ACTs) and other advisory bodies recommend the most appropriate and highest priority projects to request earmarks for in the reauthorization bill. In doing so, the OTC hopes to focus earmark funding on transportation projects that have been identified as regional and statewide priorities and that are strategic investments in Oregon's transportation system.

This guidance explains the process and the steps Area Commissions on Transportation (ACTs) and similar bodies will follow to create ACT Earmark Recommendation Lists for consideration by the OTC as required by the OTC Project Earmark Requests Policy (*provide the link*). The ACT Earmark Recommendation Lists will be used to prepare an official OTC Earmark Request List. The ACT lists will also be provided to members of the Oregon congressional delegation to show which projects in each have been determined to be regional priorities.

### **PROCESS OVERVIEW**

In mid-2008, ODOT will ask ACTs and statewide advisory bodies to prepare lists of projects that are priorities and should be considered for earmarks in SAFETEA-LU's successor legislation. Each ACT and ACT-like body will prepare an ACT Earmark Recommendation List containing a small number of priority projects. ODOT will draw on the ACT Earmark Recommendation Lists for the creation of the official OTC Earmark Requests List. Projects on the OTC list may also be drawn from other sources, such as the Oregon Freight Advisory Committee (OFAC), recommendations from ODOT Regions and Areas, and statewide priorities.

ODOT will not ask the ACTs to restrict their projects to the state highway system. Local agencies and ODOT regions will be asked to submit their potential earmark requests to the ACTs for consideration and potential inclusion in ACT Earmark

Recommendation Lists and OTC review. ODOT staff may provide a cursory scoping of projects to ensure some level of accuracy. Local agency projects may be considered for inclusion on the OTC list if they meet the Oregon Highway Plan (OHP) Policy 2B: Off-System Improvements. The OHP is available online at <http://www.oregon.gov/ODOT/TD/TP/orhwyplan.shtml>.

The OTC requires documentation of the projects identification and how each project meets the project eligibility requirements listed on page 3 of this guidance and in the OTC Project Earmark Requests Policy. This summary information must be completed for all projects on the ACT Earmark Project Lists.

### **BACKGROUND ON EARMARKS**

Projects that receive congressional earmarks are considered federal-aid highway projects and are subject to all federal-aid highway requirements. Under the federal transportation program, ODOT administers all federal-aid highway earmarks and works with local agencies to help them deliver projects. For a partial explanation of earmark and federal-aid highway requirements, see *Federal-Aid Funding for High Priority Project Sponsors*, available online at <http://www.oregon.gov/ODOT/docs/LocalProjectSponsorsGuide.pdf>.

Earmarks in the last surface transportation authorization act, SAFETEA-LU, require a non-federal match of at least 11.45% of the earmark amount, and it is anticipated earmarks in the next surface transportation authorization act will have a similar requirement. Earmarks in the next authorization bill will not be available until the legislation is signed into law, which will likely be in 2010 or 2011. Funding from earmarks comes available in a fractional amount each year, and all funding is on a reimbursement basis; no cash is provided up front to pay for projects.

### **LOCAL AGENCY ROLES AND RESPONSIBILITIES**

A local agency that secures earmark funding for a project not on the official OTC Earmark Requests List takes on the role of the project's sponsor and is responsible for fully funding and delivering the completed project. The local agency must provide all matching funds and cover any funding shortfalls for the project. This policy will apply when the local agency's earmark is for a project on the state system in addition to when the earmark is for a project on the local agency's system. A local agency that secures an earmark for a local agency project also is responsible for developing and delivering the projects according to all applicable federal and state requirements, with oversight and technical assistance from ODOT.

ODOT often enters into agreements with local governments for local contribution to projects. Local agency earmarks may not be counted toward local contributions to projects unless the local agency receives prior approval from the ODOT region. ODOT regions may allow this in certain situations, including financial hardship for the

local government and projects for which a local agency is making other transportation system improvements or other significant infrastructure improvements as part of a larger development effort.

### **EARMARK PROJECT ELIGIBILITY REQUIREMENTS**

Earmark projects are often modernization or bridge projects and the Commission has established approval requirements for such projects in the STIP criteria. Therefore, projects recommended for earmark funding requests should meet the approved Statewide Transportation Improvement Program (STIP) criteria as set forth in the *STIP Project Eligibility Criteria and Prioritization Factors*. Earmark projects often have further requirements or special considerations due to their earmarked status; therefore, the Commission established the following additional requirements for earmark request projects. The ACTs are to recommend projects that also meet these minimum Earmark Project Eligibility Requirements:

- *Strategic Investment:* The project is a strategic investment to improve Oregon's transportation system, is included in an existing transportation plan document, and has been identified as a regional or state priority.
- *Meets STIP Criteria:* Projects recommended for earmark funding requests must meet the approved Statewide Transportation Improvement Program (STIP) criteria as set forth in the STIP Project Eligibility Criteria and Prioritization Factors.
- *Support:* The project has strong support, including support from local government agencies, area and/or statewide advisory bodies, the public, and the business community.
- *Readiness:* The project has been developed enough to identify potential environmental concerns and demonstrate that it has no known fatal flaws. Earmark funding received will be used to complete the project or a project phase, including accomplishing a project development milestone, and the work will begin during the timeframe of the transportation authorization legislation.
- *Funding:* Earmarks should provide the "last dollar" for a project or project phase to fill a shortfall after other funding has been allocated. The project may be structured in phases so that the earmark funds received will complete a segment of the project.

### **STEPS TO PREPARE AN ACT EARMARK RECOMMENDATION LIST AND SUBMIT IT TO THE OTC FOR CONSIDERATION**

#### **STEP 1: Agency/ACT Coordination**

ODOT region staff and local government agencies are expected to work together through the ACT or a similar body to identify and recommend appropriate projects that are high priorities for the area and have broad support. Local agencies are

advised to work with their ACT or similar body and their ODOT region and submit earmark requests with or through the ACT or region as this demonstrates support for the project and agreement on priority.

The Area Commissions on Transportation (ACTs) or similar advisory committees should participate in selecting and recommending projects for earmark requests as they do for modernization projects. ODOT staff will provide information and assistance for the ACTs to:

- Consider any existing project needs list
- Evaluate potential earmark projects against the current *STIP Project Eligibility Criteria and Prioritization Factors*
- Evaluate potential earmark projects against the specific requirements for earmark projects described in this guidance (page 3)
- Communicate with any affected local government agencies not participating in the ACT and appropriate statewide advisory committees
- Recommend appropriate high-priority projects with broad support to the OTC for inclusion in the OTC Earmark Requests List

ODOT staff and local agencies who wish to propose projects for ACT consideration should fill out the Reauthorization Earmark Request Form and submit it to ACT staff.

The ACTs should do this work during their regular meetings that are advertised and open to the public. A full description of ACT responsibilities, duties, and expectations is presented in the *Policy on Formation and Operation of the ACTs*, available on the ACT website at [http://www.oregon.gov/ODOT/COMM/act\\_main.shtml](http://www.oregon.gov/ODOT/COMM/act_main.shtml).

## **STEP 2: Prepare the ACT Earmark Recommendation List**

Each ACT should prepare a list of three to six priority projects that meet the earmark requirements spelled out in the OTC earmark policy. While ACTs will not be provided funding targets, they should attempt to balance the number and size of requests. For example, ACTs that recommend large earmarks should advance fewer projects, while those that recommend smaller earmarks can advance more projects. ACTs are urged to present earmark request lists that are in line with their population; smaller ACTs should generally put forward a smaller total dollar amount, while larger ACTs such as MWACT and RVACT may request a larger total dollar amount. The ACT Earmark Recommendation list need not be put in priority order.

ACTs should generally not recommend earmarks of less than \$1 million, as the cost of administering such a small earmark may consume a substantial portion of the earmark. In addition, ACTs should limit earmark requests to no more than \$25 million, as no project in Oregon received more than this amount in SAFETEA-LU, the last surface transportation authorization bill.

ACT lists may include three different types of transportation projects: state projects, local projects that benefit the state transportation system, and local projects that benefit the local system. The official OTC Earmark Request List will include state projects and may include local projects that benefit the state transportation system. The OTC Earmark Request List will not include local projects that do not demonstrably benefit the state highway system. However, ACTs are encouraged to consider other local projects and include those that are deemed regional priorities on their Earmark Recommendation List to demonstrate support for these projects to the congressional delegation.

It is important to note that the amount for the earmark request needs to be reasonable to ensure completion of the project or phase can occur with the earmark and the dedicated funds within the required timeline as there is no ability to fill in any remaining funding gap.

ACTs must complete their Earmark Recommendation Lists by **September 30, 2008**. Any ACT lists received after this date may not be considered by the OTC.

### **STEP 3: Commission Review of ACT Earmark Recommendation Lists**

The OTC will review ACT Earmark Recommendation Lists received from ACTs and other advisory bodies, statewide priorities, and available budget for providing required match and fully funding the project to develop the list of transportation earmark requests that will be sent to the congressional delegation. The OTC may give preference to earmark requests that will complete the funding necessary to fully construct a project over requests that will fund only earlier phases, such as project development activities or right of way acquisition, or only begin construction of a new project. The OTC Earmark Request List will include only state transportation projects and local projects that benefit the state transportation system.

Projects that have the support of multiple parties including local governments, business and community groups, area and statewide transportation advisory committees, and the ODOT region will be preferred over ones that have less support.

| OTC Earmark Requests Lists Draft Schedule 2008-09  |        |     |     |     |      |      |     |      |     |     |     |        |
|--|--------|-----|-----|-----|------|------|-----|------|-----|-----|-----|--------|
| Tasks  | Feb 08 | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec | Jan 09 |
| Draft Earmark Policy to OTC for approval to start the outreach                                     | X      |     |     |     |      |      |     |      |     |     |     |        |
| Outreach on the Draft Earmark Policy   | X      | X   |     |     |      |      |     |      |     |     |     |        |
| Outreach to ACTs on Draft Earmark Policy and process   |        | X   | X   |     |      |      |     |      |     |     |     |        |
| Earmark Policy to OTC for approval   |        |     | X   |     |      |      |     |      |     |     |     |        |
| ODOT Regions, Local Agencies, ACTs and similar decision making bodies collaborate to prepare lists |        |     |     | X   | X    | X    | X   |      |     |     |     |        |
| ODOT staff compiles ACT lists for OTC review   |        |     |     |     |      |      |     | X    | X   |     |     |        |
| OTC reviews list of ACT recommended projects   |        |     |     |     |      |      |     |      |     | X   |     |        |
| The official OTC Earmark Request List to OTC for approval  |        |     |     |     |      |      |     |      |     |     | X   |        |
| ODOT presents congressional delegation OTC Earmark Request List                                    |        |     |     |     |      |      |     |      |     |     |     | X      |