

Guidance for Preparing ACT Earmark Recommendation Lists

BACKGROUND

In the next surface transportation authorization legislation, the Oregon Transportation Commission (OTC) intends to present Oregon's congressional delegation a list of earmark requests for transportation projects that address important problems on Oregon's transportation system and have broad support. In advancing these projects, the Oregon Department of Transportation (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 make up any shortfalls for projects on the official OTC Earmark Requests List to ensure these projects are delivered. ODOT will make no advance commitment to provide matching funds or cover any funding shortfalls 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 for which to request earmarks for in the reauthorization bill. This guidance explains the process and the steps ACTs and similar bodies will follow to create ACT Earmark Recommendation Lists for consideration by the OTC as required by the OTC Policy on Federal Reauthorization Highway Program Earmark Requests, available at http://www.oregon.gov/ODOT/HWY/federal_affairs.shtml.

Each ACT and ACT-like body will be asked to 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), MPO priority lists provided to ACTs, recommendations from ODOT Regions and Areas, and statewide priorities. The ACT lists will also be provided to members of the Oregon congressional delegation to show which projects in each district have been determined to be regional priorities.

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 most recent surface transportation authorization act, SAFETEA-LU, required a non-federal match of at least 11.45% of the earmark amount, and it is anticipated that 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

Under OTC policy, any local agency, organization, business, or other entity that requests and secures earmark funding for a project not on the official OTC Earmark Requests List takes on the role of the project's sponsor. The earmark requestor will be expected to provide the required non-federal matching funds. Except for funding already allocated in the STIP, ODOT will not make any advance commitment to allocate additional funds to provide matching funds or cover any shortfalls for earmarks received for projects not on the official OTC Earmark Requests list, though these projects will be able to compete for funding within the normal STIP process. 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 project according to all applicable federal and state requirements, with oversight and technical assistance from ODOT.

Earmarks for projects on the state highway system are generally intended to supplement rather than supplant state and local resources already committed to the project, and the OTC's earmark requests will be focused on filling gaps in projects that have not been fully funded. Earmarks for state highway projects will first be applied to any unfunded balance; once a project is fully funded, earmarks secured by local agencies may be counted toward the local agency's expected contribution.

OTC EARMARK REQUEST CRITERIA

Earmark projects are often modernization or bridge projects, and the OTC has established approval requirements for such projects in the Statewide Transportation Improvement Program (STIP) criteria. Therefore, projects recommended for earmark funding requests should meet the approved 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 OTC established the following additional criteria for ODOT earmark requests. The OTC will only make requests for projects that meet these minimum Earmark Request Criteria:

- *Strategic Investment*: The project is a strategic investment to improve Oregon's transportation system, is included in an existing transportation plan document or needs list, and has been identified as a regional or state priority. Projects should provide significant benefits to Oregon and its transportation system in areas such as economic development, freight mobility, environmental quality, congestion relief and mobility improvement, safety, and other priority areas.
- *Meets STIP Criteria*: Projects recommended for earmark 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. The work

will begin during the timeframe of the transportation authorization legislation (2010-2015).

- *Funding:* Earmark funding, when combined with funding already committed to the project and additional available resources, will be used to complete the project or a project phase, which may include planning, environmental work and project development, preliminary engineering, right of way acquisition, or construction. Construction of the project may be structured in phases so that the earmark funds received will complete construction of a segment of the project.

ADDITIONAL GUIDELINES FOR PROJECT RECOMMENDATIONS

ACTs should also consider these general guidelines when selecting projects:

- *Project Type:* Most earmark funding for Oregon highway projects in SAFETEA-LU went to modernization projects. Bridges and Transportation Enhancement projects also received substantial funding, but other types of projects, including safety and operations, are also eligible for earmark funding.
- *Project Timeline:* The next reauthorization bill will likely be signed into law in 2010 or 2011 and will continue through federal FY 2015. Earmark funding will come available after the bill becomes law and will be available in annual increments through 2015. Funding should only be requested for projects or project phases that will begin during this period. Project selection should take into account that not all funding will be available immediately upon enactment of the legislation.
- *Earmark Request Size:* Oregon's highway project earmarks in SAFETEA-LU ranged from \$90,000 to \$23.5 million, with a mean of about \$4 million and a median size of \$2 million. 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. 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.

ODOT has limited ability to fill any funding gap remaining after securing an earmark, so ACTs should recommend projects that could reasonably cover funding gaps with an earmark. ACTs should also consider that the amount of funding secured is usually significantly lower than the amount requested. For example, in SAFETEA-LU ODOT received only 41% of the amount of funding requested for projects on the OTC earmark request list. ACTs should ensure that there is a commitment to bridging any remaining funding gap and a contingency plan that will allow projects to move forward even if full funding is not secured.

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

STEP 1: Agency/MPO/ACT Coordination

ODOT region staff, local government agencies, and Metropolitan Planning Organizations (MPOs) 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 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 OTC earmark request criteria.
- 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.

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 and local agencies who wish to propose projects for ACT consideration should fill out a Reauthorization Earmark Proposal Form and submit it to ACT staff and the ODOT Area Manager. The Reauthorization Earmark Proposal Form is available online at http://www.oregon.gov/ODOT/HWY/federal_affairs.shtml.

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.

Coordination with Metropolitan Planning Organizations

Because of the important role MPOs play in determining transportation priorities within urban areas, the OTC expects ACTs to coordinate with MPOs and seek their input for projects within MPO boundaries. Each MPO should submit a list of priority projects to their respective ACT prior to the ACT's selection of projects, and ACTs should take this input into consideration as they recommend projects. ACTs should also seek input from any other important transportation advisory bodies within their boundaries.

STEP 2: Prepare the ACT Earmark Recommendation List

Each ACT should prepare a list of one to five priority projects. The ACT Earmark Recommendation list need not be put in priority order.

Size and Number of Projects

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 may request a larger total dollar amount.

ACTs may wish to refer to the amount of earmarked funding secured for projects within their boundaries in SAFETEA-LU as a guide for the next reauthorization legislation.

Area of State	Total	Percent of Statewide Allocation
Central Oregon ACT	15,600,000	4.77
Cascades West ACT	24,503,000	7.49
Hood River County	3,200,000	0.98
Lane County	44,120,000	13.49
Lower John Day ACT	1,800,000	0.55
Portland Metropolitan Region (Multnomah, Washington, Clackamas counties)	126,519,200	38.69
Mid Willamette Valley ACT	31,245,600	9.56
Northeast ACT	8,900,000	2.72
Northwest ACT	595,200	0.18
Rogue Valley ACT	16,907,000	5.17
South Central ACT	6,800,000	2.08
South East ACT	0	0
South West ACT	37,277,200	11.4

Project Types

Because the ACT priority lists will be provided to the congressional delegation as well as to the OTC, ODOT will not restrict ACT recommendations to the state highway system. ACT lists may include the following types of transportation projects:

- state highway projects,
- local projects that benefit the state transportation system,
- local projects that benefit the local system,
- transit projects.

Local Projects

The OTC Earmark Request List will include state highway projects that meet the earmark criteria listed on page 2 of the OTC Policy on Federal Reauthorization Highway Program Earmark Requests and may include local projects that benefit the state highway system. Local agency projects may be considered for inclusion on the OTC Earmark Request 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 Earmark Request List will not include local projects that do not demonstrably benefit the state highway system. However, ACTs may consider 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.

Transit Projects

Because of the important role public transit plays in Oregon's transportation system, ACTs may include a separate section of their list for transit projects to show support for projects that will be requested by local transit agencies. These projects will not be included in the OTC Earmark Requests List, but they will be included in the list of identified regional priorities that will be sent to the congressional delegation. The list of transit projects will not count against the limit on highway projects ACTs can include on their list.

Timeline

Local agencies and ODOT staff are asked to submit their project proposals to the ACTs by July 14th to allow ample time for ACTs to consider and recommend projects. Proposals submitted after this deadline may be considered by ACTs as practical and appropriate.

ACTs should develop a process for selection of projects to recommend in June and July. This may include creation of a special subcommittee to recommend a list of priority projects.

MPOs should submit their priority lists for ACT consideration by July to ensure that ACTs can consider these priorities in their selection process.

ACTs should develop and approve their lists of recommended projects in August and September.

ACTs must complete their Earmark Recommendation Lists and provide them to the ODOT Director's Office, by way of the ODOT Area Manager, by **September 30, 2008**. Any ACT lists received after this date will be considered as practical and appropriate by the OTC.

STEP 3: OTC Review of ACT Earmark Recommendation Lists

The OTC will review ACT Earmark Recommendation Lists received from ACTs and other advisory bodies, MPO priority lists submitted to ACTs, 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.

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.

Please direct any questions on the OTC Policy on Federal Reauthorization Highway Program Earmark Requests or the process for regional project selection to Travis Brouwer, ODOT Federal Affairs Advisor, at (503) 986-3448 or by e-mail to travis.brouwer@odot.state.or.us.

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 outreach	X											
Outreach on the Draft Earmark Policy	X	X	X									
Earmark Policy to OTC for approval				X								
Local Agencies and ODOT prepare proposals and submit to ACTs				X	X	X						
ODOT Regions, Local Agencies, ACTs and MPOs collaborate to prepare lists				X	X	X	X	X				
ACTs send lists to ODOT Director's Office								X				
ODOT staff compiles ACT lists and prepares draft Earmark Requests List for OTC									X	X		
OTC reviews list of ACT recommended projects and draft Earmark Requests List										X		
OTC considers and approves Earmark Requests List											X	
ODOT presents congressional delegation OTC Earmark Request List												X