

## Guidance for Preparing Earmark Recommendation Lists

### BACKGROUND

In the next surface transportation authorization legislation, the Oregon Transportation Commission (Commission) intends to present Oregon's congressional delegation a limited number of earmark requests for transportation projects that are strategic investments in Oregon's transportation system, address important transportation problems, 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 provide or help provide matching funds and make up any shortfalls for projects on the official Commission Earmark Requests List to ensure these projects are delivered.

The Commission 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 in the reauthorization bill. This guidance explains the process and the steps ACTs and similar bodies will follow to create Earmark Recommendation Lists for consideration by the Commission as required by the Commission Policy on Federal Reauthorization Highway Program Earmark Requests, available at [www.oregon.gov/ODOT/HWY/federal\\_affairs.shtml](http://www.oregon.gov/ODOT/HWY/federal_affairs.shtml).

Each ACT and ACT-like body will be asked to prepare an Earmark Recommendation List containing a small number of priority projects. The Earmark Recommendation Lists will serve two primary purposes. The lists will be used by the Commission in its selection of projects for the Commission Earmarks Request List. The Earmark Recommendation 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. ACTs and similar advisory bodies will develop these Earmark Request Lists during the summer and provide them to ODOT by the end of September so the Commission can approve its Earmark Request List in December.

### 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 [www.oregon.gov/ODOT/docs/LocalProjectSponsorsGuide.pdf](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.

## **EARMARK SPONSOR ROLES AND RESPONSIBILITIES**

Under Commission policy, any local agency<sup>1</sup>, organization, business, or other entity that requests and secures earmark funding for a project not on the official Commission 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. When a project not on the Commission Earmark Requests List receives an earmark, the Department may provide additional funds for the project only in accordance with the Department's funding priorities and only to the extent funds are available after Commission approved earmark requests are fully funded and after other funding priorities have been met. 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, as required under federal law.

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 Commission'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.

## **COMMISSION EARMARK REQUEST CRITERIA**

Earmark projects are often modernization or bridge projects, and the Commission has established 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 Commission established the following additional criteria for ODOT earmark requests. The Commission will only make requests for projects that meet these minimum Earmark Request Criteria:

- *Strategic Investment:* The project is a strategic investment that address problems on Oregon's transportation system, is included in or consistent with 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.

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<sup>1</sup> For purposes of the Commission's policy on earmarks, the definition of "local agency" includes, but is not necessarily limited to, cities, counties, metropolitan planning organizations, ports, special districts, federally recognized Native American tribes, and other units of government.

- *Readiness:* The project has been developed enough to identify potential 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 the end of federal Fiscal Year 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, though tools such as Advance Construct can be used to address issues related to availability of funds.
- *Earmark Request Size:* Oregon's highway project earmarks in SAFETEA-LU, the last surface transportation authorization act, 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. ACTs should generally not recommend earmarks of less than \$1 million.

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 Commission 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 EARMARK RECOMMENDATION LIST AND SUBMIT IT TO THE COMMISSION FOR CONSIDERATION**

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

ODOT region staff, local government agencies, and Metropolitan Planning Organizations (MPOs) should 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. 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 Commission 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 Commission for inclusion in the Commission Earmark Requests List.

Local agencies and ODOT regions will be asked to submit their potential earmark requests, particularly for projects on the state highway system, to the ACTs for consideration and potential inclusion in Earmark Recommendation Lists and the Commission Earmark Requests List. 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 [www.oregon.gov/ODOT/HWY/federal\\_affairs.shtml](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 [www.oregon.gov/ODOT/COMM/act\\_main.shtml](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 Commission 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. These MPO lists of priority projects may contain any of the types of project that can be included on an Earmark Recommendation List, including state highway projects, projects on the local road system, and transit projects (see below). ACTs should also seek input from any other important transportation advisory bodies within their boundaries.

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

Each ACT should prepare a list of one to five priority projects. The 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.

#### *Project Types*

Because the Earmark Recommendation Lists will be provided to the congressional delegation as well as to the Commission, 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 highway system,

- local projects that do not benefit the state highway system,
- transit projects.

#### *Local Projects*

The Commission Earmark Request List will include state highway projects that meet the earmark criteria listed on page 2 of the Commission 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 Commission Earmark Request List if they meet the Oregon Highway Plan (OHP) Policy 2B: Off-System Improvements. The OHP is available online at [www.oregon.gov/ODOT/TD/TP/orhwyplan.shtml](http://www.oregon.gov/ODOT/TD/TP/orhwyplan.shtml). The Commission 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 Commission Earmark Requests List, but they will be included in the list of identified regional priorities that will be provided 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 proposal forms to ACT staff and the ODOT Area Manager by **July 7<sup>th</sup>** to allow ample time for ACTs and similar advisory bodies to consider and recommend projects. Any agency that cannot meet this deadline should coordinate with their ODOT Area Manager and ACT staff to seek an extension. Proposals submitted after this deadline should be considered by ACTs as practical and appropriate.

MPOs should submit their priority lists to the ODOT Area Manager and ACT staff by **July 7<sup>th</sup>** to ensure that ACTs can consider these priorities in their selection process. MPOs should coordinate with their ODOT Area Manager and ACT staff if they will have difficulty meeting this deadline.

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.

ACTs should develop and approve their lists of recommended projects in August and September. ACTs are encouraged to utilize existing project recommendation lists, such as their SB 566 project lists and 2010-2013 STIP recommendations, to simplify this process.

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 Commission.

When ACTs have completed their Earmark Recommendation Lists, ODOT will request supplemental information on each non-transit project included on those lists in order to select projects for the Commission's Earmark Request List. This supplemental information will be due in October.

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

ODOT will draw on the Earmark Recommendation Lists for the creation of the official Commission Earmark Requests List. Projects on the Commission list may also be drawn from other sources, including recommendations from statewide advisory bodies such as the Oregon Freight Advisory Committee (OFAC) and MPO priority lists provided to ACTs. As ACTs and similar bodies are primarily involved in selecting modernization projects, it is anticipated that most projects on Earmark Recommendation Lists will be highway modernization projects, and the Commission may draw on other sources for other types of projects, such as bridges and operations/ITS projects.

The Commission will also consider recommendations from ODOT Regions and Areas, 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 Commission 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 that only contribute to but do not fully fund 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.

**For Further Information**

Please direct any questions on the Commission 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](mailto:travis.brouwer@odot.state.or.us).

<b>Commission Earmark Requests List Process Schedule 2008-09</b>												
<b>Tasks</b>	<b>Feb 08</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>Aug</b>	<b>Sept</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan 09</b>
Draft Earmark Policy to Commission for approval to start outreach	X											
Outreach on the Draft Earmark Policy	X	X	X									
Earmark Policy to Commission for approval				X								
Local Agencies and ODOT prepare proposals and submit to ACTs					X	X						
ODOT Regions, Local Agencies, ACTs and MPOs collaborate to prepare lists					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 Commission									X	X		
Commission reviews Earmark Recommendation Lists and draft Earmark Requests List										X		
Commission approves Earmark Requests List											X	
ODOT presents congressional delegation Commission Earmark Request List												X