

Memorandum Date: September 8, 2009
Meeting Date: September 23, 2009

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Celia Barry, Transportation Planning & Traffic

AGENDA ITEM TITLE: DISCUSSION AND ACTION/Providing Direction on a Process to Develop a Proposed Charter for the Formation of a Lane County Area Commission on Transportation

I. **MOTION**

Move approval of staff recommendation.

II. **AGENDA ITEM SUMMARY**

Staff is providing alternatives and seeking Board direction on a process to develop a proposed Area Commission on Transportation (ACT) Charter to form a Lane County ACT, to be delivered to the Oregon Transportation Commission (OTC) by September 30, 2010 pursuant to Senate Bill (SB) 944.

III. **BACKGROUND/IMPLICATIONS OF ACTION**

A. **Board Action and Other History**

The 2009 Oregon Legislative session enacted SB 944, requiring Lane County, in consultation with other elected local officials and with transportation stakeholders in Lane County, to develop, not later than September 30, 2010, a proposed charter for the formation of an ACT.

Since July 15, 2009, ODOT and Lane County staff held meetings on the topic with individual Board members, including Commissioners Fleenor, Sorenson, Handy, and Stewart, to gather preliminary thoughts about process options. Commissioner Handy invited Rob Zako to attend two of these meetings. Commissioner Handy expressed support for the West Eugene Collaborative process in which Dr. Zako played a leadership role. He sought and submitted a draft proposal from Dr. Zako for inclusion in these materials, Attachment A.

On August 19, 2009 the Board of Commissioners invited the SB 944 legislation sponsors, Senator Prozanski and Representative Holvey, to attend a work session in order to discuss the legislation. At the work session some Commissioners expressed support for hiring a consultant, in particular Dr. Zako. After the August 19 work session, the Board directed staff to return within approximately five weeks with alternatives. The Board also expressed support for staff to meet with City Managers and Mayors to gather their preliminary input, stating it could occur before or after staff returned with alternatives.

Commissioners Sorenson and Handy provided emails with requests to staff for information as

part of the alternatives formulated for Board consideration. Specifically:

- Include an alternative where ODOT takes the lead/spends the staff time on forming the ACT and charter; and
- County staff take the lead and spend the staff time and county resources on forming the ACT.

On September 4, Oregon Department of Transportation (ODOT) and Lane County staff met with the County Administrator and all but two City Managers and Administrators from Lane County cities (Westfir and Dunes City managers did not attend). Attachment B is the material County staff prepared and distributed for that meeting. Included in the materials is a memorandum and table prepared by ODOT staff, summarizing Oregon ACTs and their charters (note this is a work in progress). Also included is the OTC Policy on Formation and Operation of ACTs, a map showing ACT boundaries, and SB 944.

The City Managers held a round table discussion and recommended:

- that City Mayors and the Board Chair meet to develop a proposal for a proposed ACT charter spelling out the process to form an ACT. They believe that as elected officials, Mayors and the Board Chair would be an appropriate group to come up with the process that best involves cities and identifies other key stakeholders.
- that representatives from Lane Transit District (LTD), the Port of Siuslaw, and Native American Tribes also be included in these initial discussions.
- Once the proposed charter and ACT formation process is developed, identify and involve others as appropriate.
- that ultimately the proposed charter be submitted to each City Council for a formal resolution on the matter. (The City of Florence has already passed a resolution in support of formation of an ACT).
- Focus the ACT charter on the areas of influence that the locals actually have, i.e., as an advisory body to the OTC.

The following tasks for staff came out of the meeting. The associated follow-up that will occur is provided:

1. Gather information about the advantages/disadvantages of various ACT processes. Jerri Bohard, ODOT, can assist. ODOT staff are investigating when and how Ms. Bohard's assistance can be provided.
2. Ask existing ACTs how their membership has changed over time and specifically what business is being transpired. The Rogue and Mid Willamette Valley ACT would be good candidates for getting feedback. ODOT staff have succeeded in confirming the presence of at least one ACT representative at your meeting. Staff's goal is to have at least three ACTs represented.
3. In staff's preparation for an upcoming meeting with Mayors, provide links to the ODOT ACT web site and various ACT web sites. Be sure mayors receive the appropriate level of education about ACTs before being asked to provide input. ODOT staff noted that one initial Mayoral meeting was held last winter.

ODOT and County staff asked the city managers for input about ACT composition. Their suggestions are in the notes from the meeting included in Attachment C.

B. Policy Issues

SB 944 provides legislative direction. One of the policy issues is whether to spend Road Fund

resources on the ACT formation process. The expenditure is Road Fund eligible. The resources would be allocated from the existing adopted budget for Transportation Planning and Road Fund Reserves would be used for any shortfalls. If appropriate, an Order reflecting Board direction can be prepared once the Board decides how to proceed.

C. Board Goals

The following two goals from the Strategic Plan, page 13, are relevant:

- *Provide opportunities for citizen participation in decisionmaking, voting, volunteerism and civic and community involvement.*
- *Contribute to appropriate community development in the areas of transportation and telecommunications infrastructure, housing, growth management, and land development*

The Lane County Board of Commissioners met in March and again in July of 2008 to discuss the County's priorities and set goals to guide the organization for the coming one to two years. Goals for 2008 to 2010 include:

- *Build public trust through intensive communication and engagement.*

D. Financial and/or Resource Considerations

The following alternative staffing for the process have been suggested and Commissioners have asked these alternative staffing scenarios to be addressed in this memo:

1. ODOT

ODOT staff has suggested they not take the lead in this effort lest there be a perception that the OTC or ODOT is forcing a specific process or specific proposed charter upon local officials or their stakeholders. They indicated having the County as the lead agency is more appropriate, and recommend the model be continued.

ODOT has been actively working with local staff and officials in the meetings described above and in providing informational resources. ODOT staff indicate they are committed to providing continued staff support, as requested, in the form of information and advice, scheduling and hosting of meetings, taking and distributing of meeting minutes, and preparation of draft documents. ODOT has been clear, including in the County's previous work session, that they will not, however, be paying for or reimbursing County costs associated with developing the proposed charter to form the ACT, including not contributing to any costs associated with hiring of a consultant or facilitator to aide in the process.

If ODOT is asked to take the lead in this effort then Area Manager Sonny Chickering and Sr. Region Planner Savannah Crawford from the Springfield ODOT office would assume the lead roles and responsibilities. This option would require significant participation and assistance from County staff, and would likely result in substantially the same outcome(s) as a County led process. ODOT is concerned, and County staff agree, that an ODOT-led process could reduce the level of trust and acceptance perceived by the local agencies and stakeholders involved in the process.

It is also important to understand that having ODOT take the lead in facilitating the process to create a proposed ACT charter will not remove the ultimate responsibility of completing the task from the Lane County Board of Commissioners.

2. Lane County Public Works Transportation Planning

Whether ODOT or an outside facilitator takes the lead in staffing the effort, or whether County

staff takes the lead, County staff expects to be involved in order to provide oversight, ensure fulfillment of obligations and Board expectations, to ensure that the Board receives timely information, materials are prepared to required guidelines, and meetings are scheduled supporting the Board's ability to meet the requirements of SB 944. To date County staff time equates to approximately one week (40 hours, Transportation Planning manager).

The cost to the County is in time not devoted to other Transportation Planning work, or work deferred, in order to make progress on this project. Division work products include program area oversight (planning, development review, road inventory maintenance), metro area regional partner coordination, strategic management, operations, budget planning, and revenue research and programming activities. Indirect oversight of traffic and geographic information systems is unlikely to be effected.

3. A Private Consultant

Some Commissioners expressed interest in inviting an independent consultant/facilitator, with an estimated ceiling cost of \$30,000, to staff the proposed charter and ACT formation process. Dr. Rob Zako in particular was named as a possible candidate. The value was stated as providing a third party, "local honest broker" who brings expertise in transportation, not only in facilitation. This expense would likely come from the Road Fund reserve.

Lane Manual 21.117 and 21.118 (Attachment D), Personal and Professional Service Contracts requirements apply when hiring a private consultant:

1. The County may contract directly with any qualified contractor without competitive selection for \$10,000 or less, except that the County may contract without competitive selection for \$25,000 or less for any qualified architect, engineer, land surveyor, or provider of related services for public improvement projects involving a highway, bridge "or other transportation".
2. Contracts valued at greater than \$25,000 and up to and including \$50,000 require three quotes.
3. Contracts valued at greater than \$50,000 up to and including \$100,000 require a written solicitation (Request for Proposals, RFP).

If the Board decides that an outside consultant is most appropriate, and is willing to allocate more than \$25,000 to the effort, you have the option of soliciting additional proposals either by asking for three proposals from identified sources or through an RFP process. However, this would increase the time devoted to this initial step of complying with SB 944.

E. Analysis

In addition to actually developing a proposed charter for the formation of an ACT, the most critical outcome of the process used to propose a charter for the formation of an ACT is buy-in, support, and trust from the broad community, as represented by those ultimately composing the ACT. The process chosen and whether the result is community buy-in, support, and trust, is possibly the single most important outcome over which the Board has influence.

The Board's decision as to staffing the effort is viewed as an opportunity to begin the ACT process collaboratively. In other words, even this decision is one that ought to be made by a larger representation from the community to eliminate all perception of bias. The Board can maximize the potential of success in development of the charter and forming an ACT by deferring the staffing decision, and making it collaboratively with City Mayors.

Since SB 944 requires that the proposed charter for the formation of an ACT be developed in consultation with other elected officials, the proposal that Mayors be convened with the Board Chair and others would allow compliance with SB 944. As primarily elected officials, the group would have excellent knowledge to develop a preliminary list of other community stakeholders.

Given the importance of process to the success of this endeavor, it makes sense to consider each procedural decision as critically important to the success of the effort. It allows the Board to obtain additional information without giving away its decision making authority. If, after meeting with other elected officials, it is determined that a consultant is appropriate, this option is still available to the Board. The consultant would have additional information to inform the process, information that would have been gathered later anyway.

The city managers also expressed the perspective that the ACT ought to keep its focus on the tasks that are typical of all ACTs. Here again the Board may wish to consider what other elected officials think. The Board may wish to consider that it is quite possible that drafting the charter through two or so meetings among mayors, the Board Chair, and representatives from LTD, the Port, and Tribes may streamline the process for complying with SB 944. Doing so would not preclude the ACT, once up and running, from expanding its purpose, including other stakeholders, and otherwise evolving to attain higher aspirations for community dialogue and outcomes. This could include assistance from a private consultant.

Endorsement by the OTC of the charter is also necessary. Provided the proposed charter complies with OTC's policy (Attachment B.2.), OTC endorsement will occur. SB 944, Section (4) provides that If the proposed charter establishes procedures that are all consistent with the Policy on Formation and Operation of ACTs the OTC may not reject the proposed charter based on the composition of its membership.

SB 944 Section 3 requires ODOT to provide staff support. ODOT has committed to providing the staff support necessary to ensure consistency with OTC policy but is clear that the agency will not fund a consultant nor anything beyond ODOT staff time, meeting space, information, and other basic support. Staff recommends the County continue to maximize use of this resource. This minimizes use of County resources. State legislators also indicated in your work session they would be unlikely to support forcing ODOT to provide additional resources.

County staff's involvement is likely inevitable no matter what option is chosen. Whether or not the Board chooses to use a consultant, County and ODOT staff would wish to be included in these discussions if only to listen and ensure fulfillment of staff obligations. ODOT has already provided significant support. The materials in Attachment B.1. list all the elements of a charter. It is anticipated that initial direction on developing a charter and forming an ACT could occur among a group such as that suggested by the city managers without significant staff preparation.

In summary, there are three general options for staffing the process to develop a charter and form an ACT, and no matter which option is used it is likely that County staff will continue to be necessary and desirable. Involvement of a consultant at this point in time may be premature and may permanently preclude broad community support for the ACT process. The decision to hire a consultant may best be deferred until hearing from other jurisdictions, and will not eliminate the possibility of hiring a consultant in the future.

F. Alternatives/Options

1. The Board could choose now how to start up the proposed charter development process,

using an outside consultant to develop and facilitate the process. If a decision is made to retain a consultant at this time, staff would pursue the necessary steps as to contractual arrangements based upon Lane Manual requirements.

2. The Board Chair could convene a meeting with City Mayors and representatives from LTD, the Port, and Tribes, who would be supported by their respective staff. This group would provide initial direction on whether:

- to retain a private consultant;
- to consider the proposal in Attachment A;
- the charter should focus on typical ACT work or consider tasks outside those normally handled by ACTs statewide;
- to begin identifying other stakeholders; and
- to proceed with proposed charter development.

3. The Board could develop a third alternative or group of people using the options listed above as a starting point.

4. Do nothing.

IV. TIMING/IMPLEMENTATION

It is important to make continued, timely progress in this matter in order to meet the timelines spelled out in SB 944. September 30, 2010 is the required deadline to develop a proposed charter for the formation of an ACT.

V. RECOMMENDATION

Option 2. Essentially staff recommends that a more inclusive process occur before the Board decides to hire a consultant or chart a specific course without involvement from other elected officials, to ensure a step isn't taken that spells failure for this effort. Option 2 would allow for that to happen. If that group so determined, an outside facilitator could be brought in at a later time if that's the direction that results from the more inclusive process.

This approach is recommended because it is supported by key players -the small cities, and in order for the Board to demonstrate its commitment to a partnership approach. It is important that the ACT be a partnership for it to be successful.

This approach would also allow for a streamlined yet effective process to include appropriate stakeholders. The existing ACT model allows for flexibility, inclusivity, and change as time progresses. Nothing would be set in stone, so stakeholders and ACT operations could be changed as time goes on. This would create a "win-win" for the Board by including key players in all steps of decision-making, and not precluding the Board's ideas of hiring a consultant, and/or aspiring to a pioneering ACT model.

VI. FOLLOW-UP

If the Board agrees with the staff recommendation then the next step is to schedule a meeting with the Mayors, LTD, Port, and Tribal representatives. County staff would work with ODOT to contact the appropriate regional and city staff to make this happen.

If the Board provides direction to hire a consultant then depending on whether Dr. Zako is

specifically chosen, and cost ceiling, the necessary steps to comply with Lane Manual's contracting requirements will be taken.

VII. ATTACHMENTS

- A. Proposed Process for Forming a Lane County ACT, dated August 31, 2009, submitted by Commissioner Handy
- B. Materials Distributed to Lane County Administrator and City Managers/Administrators on September 4, 2009:
September 2, 2009 Memorandum and Attachments
 - 1. Savannah Crawford's August 24, 2009 Memo Summarizing Oregon ACTs
 - 2. OTC Policy on Formation and Operation of ACTs
 - 3. ACT Map
 - 4. SB 944, Lane County ACT legislation
- C. Notes from September 4, 2009 Regional Managers meeting
- D. Lane Manual 21.117-118