

Memorandum Date: July 20, 2010, Supplement 3  
Meeting Date: No date certain; the July 7, 2010 agenda item was postponed indefinitely

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TO: Board of County Commissioners  
DEPARTMENT: Public Works  
PRESENTED BY: Rob Zako, Consultant  
Celia Barry, Transportation Planning & Traffic  
AGENDA ITEM TITLE: In the matter of proposing bylaws for an Area Commission on Transportation (ACT) for Lane County

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At your meeting on June 23, 2010, the Board considered Board Order 10-6-23-15, in the matter of proposing bylaws for an Area Commission on Transportation (ACT) for Lane County. At that meeting, the Board voted to continue discussion of this matter at a meeting on July 7, 2010. Subsequently, the Board voted to postpone this matter indefinitely.

Here staff is providing *additional* options and seeking Board direction on proposing bylaws for an ACT for Lane County.

Also attached please find a letter dated July 14, 2010, from Mr. Dave Jacobson, Chair of the Central Lane MPO Citizen Advisory Committee (CAC), clarifying the status of the letter dated July 5, 201, from 1000 Friends of Oregon and others, in particular, CAC member Mr. Paul Adkins (distributed previously with Supplement 2). This letter is part of the record for the above Agenda Item Title.

I. ADDITIONAL OPTIONS

A. Courses of Action

Senate Bill 944 requires the Board, in consultation with other local elected officials and with transportation stakeholders in Lane County, to develop proposed bylaws for an ACT.

In light of the recommendations from the Forum on an Area Commission on Transportation for Lane County (FACT-LC), the Board could take any of several courses of action:

- a. **Accept FACT-LC Recommendations:** Submit to the OTC the bylaws as recommended by the FACT-LC.
- b. **Unilaterally Change FACT-LC Recommendations:** Submit to the OTC the bylaws as recommended by the FACT-LC, with changes adopted unilaterally by the Board.
- c. **Seek Broad Agreement:** Engage in discussions with other local jurisdictions and stakeholders to resolve remaining differences with the proposed bylaws, looking to reach broad agreement on what to submit to the OTC.
- d. **Punt the Differences:** Submit to the OTC the portion of the bylaws for which there is broad agreement, leaving the remaining differences to be resolved later.
- e. **Do Nothing:** Do not submit anything to the OTC by the September 30, 2010, deadline.

## B. Alternatives for Bylaws

The Board appears to be most concerned about the makeup of the voting membership of the ACT, specifically the *number* of Citizen (Private Sector) voting members and *who* appoints these *how*.

**Number:** Staff is offering alternatives for the number of Citizen (Private Sector) voting members ranging from up to six (6) to (definitely) nine (9). Regardless, there appears to be broad agreement that there should be one additional voting member, appointed by the Board, to represent the Highway 126 East corridor. With the different alternatives, the total number of voting members of the ACT ranges from up to twenty-seven (27) to (definitely) thirty (30).

**Who / How:** Staff is offering alternatives for who appoints the Citizen (Private Sector) voting members and how: appointed solely by the ACT, appointed solely by the Board, nominated by the ACT and confirmed by the Board, nominated by the Board and confirmed by the ACT, or appointed partially by the Board and partially by the ACT.

In total, staff is offering ten alternatives for the Board to consider. Attachment 1 is a table summarizing the alternatives. Attachment 2 is a table summarizing the membership of the ten existing ACTs around the state. Attachment 3 is a memo from ODOT Planner Savannah Crawford, dated August 24, 2009, summarizing the charters of the ten existing ACTs in greater detail. Attachment 4 is the proposed bylaws with alternatives.

Note that Alternative #1 is what the FACT-LC recommends. Alternative #5 is effectively what 1000 Friends of Oregon suggests in their letter dated July 5, 2010 (see Supplement 2).

## C. Analysis: The Importance of Broad Support

Recall your discussion last fall of the importance of getting broad support for whatever form of ACT is eventually proposed. There are several good reasons to seek broad support.

First, the OTC's *Policy on Formation and Operation of ACTs* discusses how an ACT is established: "The proposal [for an ACT] is circulated among local jurisdictions for comment, revision and eventually expressions of support" (Appendix B of the OTC's policy). Indeed, members of the OTC and ODOT staff have indicated that the OTC will be looking for broad support for whatever is proposed. They do not want to be asked to step in and try to arbitrate local differences.

Second and perhaps more importantly, once established the ACT will be "a voluntary association of government and non-government transportation stakeholders" (proposed bylaws Article III: Authority). The final step in establishing the ACT will be for the members of the ACT to ratify their own bylaws. As a voluntary association, stakeholders cannot be compelled to be members of the ACT. In order to actually come together, the ACT needs to enjoy broad support.

Third, the proposal is for the ACT itself to strive to make decisions by consensus. Doing so will require a level of mutual respect, trust, commitment and give and take that has not always been common practice. And there is a good reason to strive for consensus: The ACT will be an advisory body with "no legal regulatory, policy or administrative authority" (proposed bylaws Article III: Authority). As such, "decisions" by the ACT will carry weight only to the extent that other entities—in particular, the OTC—see such decisions as reflecting the broad desires of Lane County. In an era of limited fiscal resources, funds are more likely to be directed to projects enjoying broad support than to those that are controversial.

Finally, it is important to appreciate that once the ACT is established, unanticipated problems may arise that require changes to the bylaws. Whatever form of bylaws is proposed, these will represent a significantly new and different way for setting transportation priorities in Lane County. Thus it may not be possible to get the bylaws “exactly right” on the first try.

In light of these considerations, staff urges the Board to follow one of two courses of action leading to broad support for what to propose to the OTC: course of action “a” (Accept FACT-LC Recommendations) or course of action “c” (Seek Broad Agreement).

Course of action “b” (Unilaterally Change FACT-LC Recommendations), without broad agreement from other local elected officials and transportation stakeholders in Lane County, would likely cause the OTC to balk at chartering the ACT. Course of action “d” (Punt the Differences) is risky and could result in no ACT being established. And course of action “e” (Do Nothing)—or failing to do something by the deadline set by Senate Bill 944—would fail to meet the legal requirements.

#### **D. Analysis: Number of Citizen (Private Sector) Members**

As Attachment 2 indicates, the most number of private sector members any other ACT has is eight (8): Northwest Oregon ACT (NWOACT) and Southeast ACT (SEACT). Moreover, the most number of non-elected members any other ACT has—not counting MPO or ODOT representatives is ten (10): South Central Oregon ACT (SCOACT). ACTs in more rural areas of the state tend to have more non-elected members for the simple reason that there aren’t many incorporated cities with elected officials.

The FACT-LC proposal is to have up to six (6) private sector members, plus an additional Highway 126 East member, plus representatives from the Lane County Roads Advisory Committee (RAC) and the Central Lane MPO Citizen Advisory Committee (CAC). In total, the FACT-LC is proposing nine (9) citizen members, which is at the high end of what other ACTs do, exceeded only by South Central Oregon ACT.

Note that the FACT-LC proposal to have “up to six (6) Citizen (Private Sector) members” already represents a compromise between those who wished to have fewer and those who wished to have more. The phrase “up to” was part of that compromise.

In light of these considerations, staff suggests focusing attention on Alternatives #1 through #5, which limit the total number of citizen members, including Highway 126 East, the RAC and the CAC, to nine (9), in line with the range of what other ACTs do.

If the experience of the ACT suggests that additional citizen representation is warranted, the bylaws could be amended at a future date to allow for additional citizen members.

#### **E. Analysis: Selection of Citizen Members**

As Attachment 2 indicates, for most ACTs, the counties contained within the ACT appoint the private sector members of the ACT, often in consultation with other voting members of the ACT. Typically, each county appoints just one (1), two (2) or three (3) such members. Lake County appears to appoint the most private sector members: one (1) private industry representative and three (3) additional at-large members.

For South West ACT (SWACT) and Rogue Valley ACT (RVACT), the ACTs themselves appoint the private sector members, in consultation with other jurisdictions.

For all ACTs, no single other jurisdiction appoints more than a few members of the ACT, and

thus no single jurisdiction has an undue influence over the makeup of the ACT.

In light of these considerations, staff suggests the Board focus attention on alternatives for which the Board unilaterally appoints no more than four (4) citizen members of the ACT, i.e., on Alternatives #1 through #4. To reach a compromise, the Board may wish to look at options in which the Board and the voting members of the ACT work together in some manner to appoint citizen members of the ACT, as is common practice for some other ACTs.

As an opening counteroffer, the Board could take a harder line. But insofar as the mayors of all but the two smallest cities in Lane County have indicated they “see no point in further meetings with [the Board]” on the issue of the ACT (see Supplement 1), a hard line counteroffer risks creating a stalemate, or at least dragging out discussions beyond the deadline set by Senate Bill 944.

To put it another way, when trying to reach consensus, the minority has a responsibility to make a counteroffer that is reasonably likely to be accepted by the majority. In turn, the majority has a responsibility to respect the concerns of the minority and to consider reasonable proposals.

To reach consensus, it is often helpful to not stake out a position but rather to talk about the kind of outcomes you want to see. Sometimes when you focus on outcomes, you find that there is more common ground than you initially thought, and consensus is within reach. In the present case, it might be helpful to focus solely on who appoints citizen members how, but to also talk about what you are looking to see in such appointments.

In the end, with consensus you don’t necessarily get all that you want, but merely something you can live with—and something you can live with is better than something you can’t. Staff urges the Board and other local elected officials and transportation stakeholders to consider what they could live with to get an ACT up and running, perhaps giving others an initial benefit of the doubt, and perhaps putting in place agreements to handle what to do should trust not prove warranted.

## II. TIMING/IMPLEMENTATION

Senate Bill 944 requires the Board to develop bylaws for an ACT “not later than September 30, 2010.”

If the Board ultimately follows course of action “a” (Accept FACT-LC Recommendations), it could do so as late as September and still meet the Senate Bill 944 deadline.

On the other hand, if the Board follows course of action “c” (Seek Broad Agreement), it will need to allow time for other jurisdictions to schedule their own meetings to review what the Board proposes. As a practical matter, that would require the Board to propose something reasonably likely to be accept by other jurisdictions, say, by Labor Day, September 6, 2010.

In the latter case, the Board should take action during one of these weeks:

- ~~July 20-21 (no Board meetings)~~
- July 27-28 (project manager unavailable)
- August 3-4
- ~~August 10-11 (no Board meetings)~~
- August 17-18
- August 24-25
- August 31-September 1 (project manager unavailable)

Also, if the Board opts for course of action "c" (Seek Broad Agreement), staff seeks guidance on how to best work with other jurisdictions to try to reach broad agreement. Perhaps the most efficient way to proceed would be to call a meeting of agents of the Board empowered to reach a deal (the Board chair and vice-chair? All five members of the Board?) with similarly empowered agents of other jurisdictions. A possible date for such a meeting could be:

- August 11, 5:30 p.m. (second Wednesday of the month)

### III. RECOMMENDATIONS

Course of action "a" (Accept FACT-LC Recommendations), i.e., Alternative #1; or course of action "c" (Seek Broad Agreement) with bylaws Alternative #2, #3 or #4.

### IV. ATTACHMENTS

1. Table of bylaws alternatives
2. Table of membership structure of other ACTs
3. ACT Charter Summary, Savannah Crawford, August 24, 2009
4. Proposed bylaws with alternatives
5. Letter dated July 14, 2010, from Mr. Dave Jacobson

### V. OTHER MATERIALS

- Supplement 1: Letter dated July 2, 2010, from Creswell Mayor Bob Hooker and other mayors
- Supplement 2: Letter dated July 5, 2010, from Ms. Mia Nelson and others