

MINUTES OF THE COUNCIL TRANSPORTATION AND PLANNING COMMITTEE  
OF THE METROPOLITAN SERVICE DISTRICT

August 11, 1992  
Council Chamber

Committee Members Present: Richard Devlin (Chair), Susan McLain  
(Vice Chair), Roger Buchanan, Ed  
Washington

Committee Members Absent: Larry Bauer

Vice Chair McLain called the regular meeting to order at 6:05 p.m.

1. Informational Briefing - Western Bypass Study

Michel Wert, Oregon Department of Transportation (ODOT); Bill Ciz, ODOT Western Bypass Project Manager; and Robert Brannan, ODOT, were present to provide and informational briefing on the Western Bypass Study.

ODOT staff distributed and summarized handouts, copies of which are included in the record of this meeting.

Vice Chair McLain stated she appreciated the update. She expressed concerns about dropping any options at this stage in the study. Ms. Wert noted that the option proposed for deletion would not solve the problem identified in the study.

Robert Liberty, 522 SW 5th, Portland, appeared to testify. A transcript of his testimony is included in the record of this meeting and attached to these minutes.

Chair Devlin adjourned the meeting at 7:20 p.m.

Respectfully Submitted,



Susan Lee  
Committee Clerk

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Testimony of Robert Liberty  
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Robert Liberty - For the record and this time it is going to be for the record because I may not be able to attend your meeting in two weeks, my name is Robert Liberty. My address is 522 SW Fifth Ave. Suite 1330, Portland, 97204. I'm representing myself as a citizen.

There's some reminders that I think are useful about the process which I observed at the very beginning and I would like to think that I am the father, or at least the grandfather of LUTRAQ, since that was my idea. Although, I have not been making any support payments lately. So Keith has really assumed that responsibility.

But I listened to Ms. Wert talk about some of the process before you and I think it is useful to remind you what this process is not. Because it has been underway so long and there are some new faces on the Council, that it is useful to review that. But first of all, at the most fundamental level, your role now is monitoring their process. I think that that is a fundamental mistake. This should be your process in which the Department of Transportation is involved. I also think that, and I know this has been a matter of discussion in the past, that you have the authority to make this decision. I don't think it is disputed that you have the authority to veto this decision. But I think you have the authority, perhaps the responsibility to make the decision, not the Oregon Department of Transportation.

Secondly, let's consider the fundamental question that Ms. Wert raised again, and appropriately, this is called the, "Bypass Study". That's the problem that was defined in the Southwest Corridor Study, bypassing congestion on the existing road network. Even under the Southwest Corridor Study, review of the numbers showed that a great deal of movement of the projected bypass was to move outside the urban growth boundary, onto the bypass, and back in. In other words, short trips that are making use of a facility that was justified on the basis of long inter-regional trips. People who testified in support of the bypass even said we need a highway so that we can get from Salem to the coast. That is not as I understand, what the analysis shows. That really there is a lot of internal congestion. The big difference in Washington County, and I've said this often enough, is that a bypass built by the Department of Transportation has different political repercussion than a long overdue set of improvements to an arterial system because, they are paid for by different people.

So that is the first point is that it is their process, not yours. And I guess the second point is the problem has been incorrectly defined. I think that rather than gliding over this issue, you ought to make sure that it's addressed and invite people to address the issue of, "what is the problem?" and, "what does the research," whether it's from the Southwest Corridor Study or new

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information prepared as part of this process, "show about what the problem is." And that's also, part of the question is what is the priority for that problem as opposed to other transportation problems of the region.

Another important and fundamental point about the EIS process is that it does not, can not legally, satisfy the requirements of statewide planning goals. This has been raised at the beginning. What is happening is that the statewide planning goals are going to be treated as a detail at the end. What difference does it make? Well, it is a very big difference. The Environmental Policy Act does not require the protection of the environment. It requires a consideration of impacts of different approaches to problems that are receiving federal funding. It does not require you to protect the environment, just to consider the impacts when you make that decision. That's completely different from Oregon's planning goals which are substantive requirements, not process requirements. We will protect the farmland. We will protect forest land. We will reduce automobile dependency. We will consider compact urban form. Those are mandates, not factors to be considered. You are going to finish this process and then you are going to start a draft saying they are substantive to the Oregon planning program.

I know through an allocational responsibility through the County, another source of concern for me because its a regional decision, a regional body should be making it, but people keep forgetting. They keep thinking its all environment and it doesn't matter, it is completely different process, excuse me, it's completely different because one is process and the other is substance. That's not even on this chart. No work is being done on it. When this issue came up in connection with the Southwest Corridor Study, the County though it was going to be done with goal compliance issues by now. No one is talking about goal compliance issues and you will go through and select an alternative before you have considered the statewide planning objectives. That strikes me as ludicrous. It's not going to be measured against RUGGOs as far as I know. Am I wrong? The big fight over the RUGGOs last fall, was whether or not they actually applied to anything. The answer was no, only through functional plans. So, I guess through the extent that RUGGOs have been expressed and implemented to the RTP, which I don't think, but maybe that will be done in '94. But it is not going to be done up front.

This project is not going to be measured against the Statewide Planning Goal 12 Administrative Rule. That rule is only implemented through adoption of transportation plans by local governments. That does not mean that Goal 12 does not apply. Although we may anticipate an argument that the Goal 12 Rule expresses and embodies Goal 12 and therefor if it does not apply

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because local transportation system plans have not been adopted then therefor it does not apply to this regional transportation issue of regional consequence. That is a very serious question as well, that's not being addressed.

I think the discussion of the LUTRAQ also points out that the fundamental error in assuming the fixity of land use plans. In the typical biennium, there are six-thousand plan amendments approved in this state. A lot of them are small and a lot of them are not. A certain proportion of those, I assume somewhat more than you would assume by the population, since we have more growth here occurring in the Metro area. So we are talking here about plans that there are thousands of amendments every year. Yet, we start with the assumption that the growth is going to occur according to the zoning that is in place. That is a very strange assumption. It is a counter-factual assumption. You can't evaluate something like a transit intensive alternative without considering the corresponding and logical changes to land use planning. I am delighted that 1,000 Friends, a private organization, has gotten funding to have this alternative considered. But, they are not the decision makers and logically, you, or in default, ODOT should be considering that alternative. The only reason against consideration of that alternative by ODOT that I ever heard of was tradition, or an assumption that I thought was grotesque under the circumstances that local plans couldn't be changed by ODOT therefore, that alternative couldn't be considered. There is a lot of things that ODOT can not do in terms of implementing Transportation Demand Management that are being considered. I think that that is a terrible mistake. You are lucky that you had an organization that was able to get the funding for such a massive undertaking and a pioneer undertaking. That is not the way to do business. Instead of the alternatives being developed by private parties, with some government funding, and then you consider it at the end.

I also want to remind you that the steering advisory committee, at the time of its employment, had a clear majority of either individuals, or of representatives from local governments that had officially endorsed the highway alternative. So, that is who the steering advisory is that looks at alternatives. I remember saying at the beginning and saying to members of the editorial board at the Oregonian, "it is a stacked deck, nothing good can come out of something where it is obvious that a majority are already on record supporting one of the alternatives." I was told, "no, no, no, we will give full consideration to all the alternative, etc., you have to trust the process." Well look what the products are that are coming out now, elimination of the transit intensive alternative, no consideration of land use patterns. To the extent that you think you can rely on those advisory committees, and I submit to

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you that that is naive, and that if I certainly was a member of the citizen advisory committee at this point, who is concerned about full attention and equal weight given to alternatives, I would resign. I think that they are legitimating a process that remains fundamentally flawed.

If you look at the factors here, how you analyze alternatives, there are interesting omissions, one of course is land use goals. For that matter, RUGGOs, or any of the other policy mandates that have to be considered. Another one, I guess is cost. Now when Metro itself endorsed the Western Bypass alternative that is, the one outside the urban growth boundary, that was the most expensive alternative, 90 million dollars. It seems to me, 90 million dollars more. It seems to me when you are going to consider alternatives, one of the things you can do is say, "How much bang can we get for the buck?" Maybe one alternative would cost more, you can say, "what if we took that same money and applied it to some additional kinds of improvements?" I don't know if that's going to be a factor, or if you're going to factor it in. It was surprising to me that the debate over Council's original choice of the Western Bypass, no one said, "This costs almost 40% more to deliver over the 20 year period approximately the same level of transportation improvements."

Finally, I do have a question, which is, when the Council decides whether or not to drop strategies, I think that that is an appealable land use decision. And, if I was advising an individual organization, I would say they are obliged to appeal for the same reason 1,000 Friends and STOP were obliged to appeal in these prior decisions. You do not want to let it go and find out, oops, we should have appealed that one. That does happen. Then of course, we are going to have all the land use decisions along the way. One of the questions would be, "Is this appealable in the EIS process, are we somehow also eliminating alternatives that will have to be considered under ORS 197.732(1)(c) the reasons alternative for urban use outside the urban growth boundary, are we waiving goal compliance issues generally by not pursuing this or is there going to be another process later, when is it?" So, I did get for the record, I did get an affirmative nod from the Committee Chair that he, in his opinion, the decision to eliminate alternatives would be an appealable land use decision. I know that is not binding on you.

Chair Richard Devlin - That's my understanding though.

Robert Liberty - I think that a decision making process that leads to unnecessary repetitive appeals is not a well designed system. And that includes both the system that omits basic alternatives and a system that does not place responsibility where it belongs, with

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you, not with the ODOT staff, but with you. And a system that does not integrate what could have been integrated which is the Environmental Impact Analysis and statewide goal compliance. Even though they are completely different you could have been run on the same track so you have one set of decisions. Now maybe you'd have to appeal different bodies, but I feel you could have greatly reduced the number of appeals. Also of course, the decision making has been fragmented now between Metro and the Counties with respect to the statewide planning goals which is going to spin-off more additional filings. That seems like unnecessary deficiency.

So, what do I recommend? I recommend that at your hearing when you consider dropping alternatives you have a specific item or matter to be addressed, what the problem is in the minds of the public, and whether or not this study should proceed, or whether or not the problem has changed shape and this is not the appropriate response to it. Secondly, I urge you to retain strategies and all the strategies and all the alternatives. Third, I think you ought to set now, and begin now, the weighing, or at least to find the process for this Council to do its share of the responsibility in determining goal compliance, so that that decision is made simultaneously. I don't see that described, now maybe you have determined that you are going to do that, but that's going to take substantial staffing as well. That is, somewhere between the selection of final alternative. Obviously, you'd have to be ready there. But at some point, you have to be at a position with well defined alternatives you're supposed to fall back on if you determine that goal compliance can not be achieved. I think that if you defer goal compliance then the tendency of everyone, it's human nature, we've had this long process, we spent all this time, so now that we have selected an alternative, let's get on with it and cross the t's and dot the i's of goal compliance. It's a mistake. In terms of the legal weight to those different standards, I don't think that there is any question that the goal standards are the tough ones. The Environmental Impact Statement can be challenged on procedural grounds for lack of due consideration of alternatives. But that's not the biting, the policy with teeth. The second, there ought to be RUGGOs. You have not, you have rejected the suggestion that you apply RUGGOs even in an advisory role. This is a major land use transportation and land use issue for the region and to have it exempted from some sort of RUGGO scrutiny. I think it's a mistake. So I think you ought to, even if you don't regard it as legally binding, I think you ought to do that, perform that exercise.

I would be glad to answer questions.

Chair Richard Devlin - Any questions for Mr. Liberty.

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Andy Cotugno - Mr. Chair, can I comment?

Chair Richard Devlin - Yes. Actually, I don't want to get into another hour and a half discussion, but maybe if you could comment, and in your comment discuss some of the discussions we've had relative to transitional planning. New terminology, I'm sure you're familiar with the discussions also.

Robert Liberty - I've heard about them but I have not heard of this new term. Always glad to hear a new acronym. TP, cleaning up the problems with TP.

Andy Cotugno - I wanted to comment on some of these comments and maybe add some clarification. What is currently reflected in the Regional Transportation Plan is a recognition that there is a circumferential problem and a recognition that a variety of alternatives are being examined and that a final decision is yet to be made on which of those alternatives will be selected and implemented to address that problem. It specifically acknowledges that a bypass is being looked at, that other improvements to the highway system in lieu of a bypass are being looked at, and that transit alternatives are being looked at, and it is fairly general in all three of those cases. As a result, the selection of the preferred alternative step from our perspective, constitutes a regional transportation plan amendment. I had envisioned certainly, that the selection of the preferred alternative step, at the end of the EIS step, is the step at which the RTP amendment is adopted. Mike referred to the local governments having to approve that preferred alternative. That may be true and that is certainly what is called for in the intergovernmental agreement. We will have to approve the preferred alternative because we will have to amend the Regional Transportation Plan to reflect that preferred alternative. If we don't take action, or if we approve it, or if we approve, or if we don't approve it, nothing can be built. As it relates to the bypass or it's alternatives.

Robert Liberty - Is that the step at which you anticipate addressing the goals?

Andy Cotugno - That is the step at which we anticipate addressing goals, and RUGGOs apply to functional plans. The RTP is a functional plan. An RTP Amendment is a functional plan amendment. So we do expect that to be both a goal and a RUGGO step.

Robert Liberty - Remind me who, under the intergovernmental agreement, who has responsibility for goal compliance determinations. You split that responsibility.

Andy Cotugno - You mean the staff responsibility for compiling the

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information?

Robert Liberty - No, originally, maybe this has been modified, Washington County was going to address some of the goals and Metro was going to address others.

Andy Cotugno - And there has been no further work that I know of to refine that. We still have questions frankly, because of the extent of our jurisdictional boundary and the area covered outside of our boundary here on which goals we ought to apply versus which one they ought to apply.

Robert Liberty - Do you remember what the allocation was?

Andy Cotugno - No, I don't.

Robert Liberty - I know Goal 14 you have, but I'm curious about 11, 12, 3, 4, and 5?

Michal Wert - (responded without her microphone on - unable to transcribe response)

Robert Liberty - Obviously, an intergovernmental agreement can not control the jurisdiction, but that is the least of my worries. I am more concerned when and who addresses the goals and how they are addressed and you have already heard my views on that. I hope you would consider that testimony for your hearing in two weeks.