REGIONAL FRAMEWORK FOR HIGHWAY JURISDICTIONAL TRANSFER

Policy Framework

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Subject: Policy Framework Memo

1. Introduction

1.1 Purpose of the Regional Framework for Highway Jurisdictional Transfer

The purpose of the Regional Framework for Highway Jurisdictional Transfer Study (Study) is to identify which state-owned routes in the Portland metropolitan region should be evaluated and considered for a jurisdictional transfer, identify gaps and deficiencies on those routes, to regionally prioritize the routes, and address some of the barriers and opportunities to transfer the prioritized routes from state ownership to local ownership. Jurisdictional transfer (also referred to as interjurisdictional transfer) is the process of changing the ownership of a roadway. The decision framework will serve as a tool for state, region, and local jurisdiction leaders to identify good candidate roadways for transfer and facilitate successful transfer of roadway ownership. The Study is convened by Metro in collaboration with the Oregon Department of Transportation (ODOT).

ODOT owns and maintains some roadways in greater Portland that were originally constructed to provide connections from farmland to the city (referred to as "farm-to-market" roads) and grew to become highways. In 1956, the federal government began building the Interstate Highway System (known as the Dwight D. Eisenhower National System of Interstate and Defense Highways), and between 1960 and 1980, the highway system in Portland was built. It included limited access facilities such as Interstate (I-)5, I-205 and Highway (HWY) 26 which provided more efficient long-distance travel options and replaced the function of the existing state system. As a result, many of these roads now serve a different purpose, providing short-distance travel for vehicles, transit and people walking and biking. The roadways have not only diversified in terms of types of travel, but also in the types of travelers. Today, in the Portland region, a concentration of people of color, low-income or limited-English speakers live and travel along some of these arterials that used to function as highways, such as 82nd Avenue and Tualatin Valley (TV) Highway.

While their function has changed, for many, their roadway classification and their physical design has not; those that remain state highways retain the same classification identified in the 1999 Oregon Highway Plan, as amended (OHP). Transferring non-limited access state highways that function as urban arterials to local jurisdictions would allow them to be operated and maintained consistent with local design standards that may respond better to modern transportation uses and mobility options, land use and development patterns. For this reason, local jurisdictions experience an opportunity cost of the status quo, given underperforming economic development that is often correlated with the condition of these roads.

1.2 Purpose of the Memorandum

This memorandum summarizes the legal, regulatory and policy framework for highway jurisdictional transfers in Oregon. The memorandum also identifies major constraints to the transfer process and provides best practices based on examples of completed roadway transfers in Oregon.

In this memorandum, highway jurisdictional transfer refers to the process of transferring ownership of a highway right of way from ODOT to a local jurisdiction – a City or County. A jurisdictional transfer can also be the transfer of ownership from a local jurisdiction to ODOT.

This memorandum is organized to give decision-makers the overarching policy framework, relevant case studies and best practices needed to identify, analyze and implement jurisdictional transfers in the region:

Section 1: Introduction
Section 2: Policy Framework
Section 3: Case Studies
Section 4: Best Practices

2. Policy Framework

2.1 Relevant Policies and Roadway Classifications

Roadway classifications are categorizations given to a roadway by the federal, state, regional or local government to help delineate differences in roadway purpose and design.[1] A single roadway may have multiple classifications (e.g., federal, state, regional and local) and multiple policy overlays (e.g., expressways, land use, statewide freight routes, scenic byways, lifeline routes, etc.). Roadway classifications define the purpose of a road and its function within the larger transportation network. Classifications are based on how many people use a road, how often they use it, why they use it, and their experience while using it. A roadway's design standards, planning, engineering, maintenance and operations are all influenced by its classification. In general, the classification designated by the owner of the roadway most significantly impacts roadway design. Roadway classifications are delineated in plans and policies. The following sections describe relevant federal, state, regional and local policies, including roadway classifications.

2.1.1 Federal

As part of the National Highway System Designation Act of 1995, Congress adopted highway routes in the National Highway System (NHS). The Federal Highway Administration (FHWA) oversees the NHS and has established the following functional classifications:

- Principal Arterial (all sub-categories are recognized in both urban and rural forms)
  - Interstate
  - Other Freeways & Expressways
  - Other
- Minor Arterial
- Collector (all sub-categories are recognized in both urban and rural forms)
  - Major
  - Minor

[1] Policy Brief: Route Designations and Classifications. Oregon Department of Transportation. n.d.

- Local

The federal classification hierarchy identifies how roadways meet intended travel objectives. These objectives range from serving long-distance passenger and freight needs to neighborhood travel. The coordinated and systemic maintenance of an effective roadway functional classification system supports the strategic allocation of Federal Aid funds to the roadways with the greatest need and enables people and goods to move fluidly through the transportation system.

Functional classification has come to assume additional significance beyond identifying the role of roadways in moving vehicles through a network of highways. Functional classification directly impacts roadway design, funding opportunities, the evaluation of system performance and investment decisions. Expectations about roadway design, access control, operations, capacity and a roadway's relationship to existing land use and future development and redevelopment is associated with functional classification. Federal legislation continues to use functional classification to determine funding eligibility under the Federal-Aid program. Transportation agencies describe roadway system performance, benchmarks and targets by functional classification. As agencies continue to move towards a more performance-based management approach, functional classification is an increasingly important consideration in setting expectations and measuring outcomes for preservation, mobility and safety.[2]

The following federal functional classifications exist on roadways in the Portland metropolitan area:

- **Urban Interstates** are designed and constructed for vehicular mobility and long-distance travel. Roadways in this category are officially designated by the U.S. Secretary of Transportation and all routes that comprise the National System of Interstate and Defense highways belong to this classification.
- **Urban Other Principal Arterials** serve major centers of metropolitan areas and provide a high degree of mobility. They directly serve adjacent land uses.
- **Urban Minor Arterials** serve relatively smaller geographic areas and provide connectivity to the higher Arterial system. They serve trips of moderate length to augment the higher Arterial system and provide intra-community continuity.
- **Urban Collectors** serve a critical role in the roadway network by gathering traffic from Local Roads and funneling them to the Arterial network.
- **Urban Local Roads** are not intended for use in long distance travel, except at the beginning or end of trips. They are designed to discourage through traffic. Local Roads are classified by default; once all Arterial and Collectors are identified, all remaining roadways are classified as Local Roads.

While functional classifications of some roadways can and do change over time, the vast majority of roadways maintain their federally designated classifications. Because of this, the FHWA advises States to focus their efforts on identifying roadways where the functionality has changed. A functional change can occur to the roadway itself, such as an extension or widening, or to surrounding land, such as new development or residential growth.

The Moving Ahead for Progress in the 21st Century Act (MAP-21), enacted in 2012, included provisions to make the Federal surface transportation more streamlined, performance-based, and multimodal and to address challenges facing the U.S. transportation system, including improving safety, maintaining infrastructure condition, reducing traffic congestion, improving efficiency of the system and freight movement, protecting the environment and reducing delays in project delivery. The Fixing America's

[2] Highway Functional Classification Concepts, Criteria and Procedures. U.S. Department of Transportation, Federal Highway Administration. 2013 ed.

Surface Transportation Act (FAST Act) builds on the changes made by MAP-21 by improving mobility on America's highways, creating jobs and supporting economic growth, and accelerating project delivery and promoting innovation. The FAST Act provides long-term funding for surface transportation infrastructure planning and investment.[3]

The FAST Act directed FHWA to establish a National Highway Freight Network (NHFN) to strategically direct Federal resources and policies toward improved performance of the U.S. freight transportation system. The NHFN includes four subsystems of roadways:

- **Primary Highway Freight System (PHFS)** is a network of highways identified as the most critical highway portions of the U.S. freight transportation system determined by measurable and objective national data. In Oregon, I-5 and I-84 are part of the PHFS.
- **Other Interstate portions not on the PHFS** consist of the remaining portion of Interstate roads not included in the PHFS. These routes provide important continuity and access to freight transportation facilities.
- **Critical Rural Freight Corridors (CRFCs)** are public roads not in an urbanized area which provide access and connection to the PHFS and the Interstate with other important ports, public transportation facilities, or other intermodal freight facilities.
- **Critical Urban Freight Corridors (CUFCs)** are public roads in urbanized areas which provide access and connection to the PHFS and the Interstate with other ports, public transportation facilities, or other intermodal transportation facilities.

States and in certain cases, Metropolitan Planning Organizations (MPOs), are responsible for designating public roads for the CRFCs and CUFCs in accordance with section 1116 of the FAST Act.[4]

The U.S. Department of Transportation also designates NHS freight connectors. These are the public roads that connect major intermodal terminals to the highway network. Several criteria are considered when designating an NHS connector including the level of activity of an intermodal terminal and its importance to a state's economy. In the greater Portland area, NHS freight connectors link to intermodal facilities such as the Portland International Airport, Portland Union Station, Portland Greyhound Bus Terminal, Port of Portland, Albina Yards, Brooklyn Yard, NW Industrial Area, and Swan Island Ship Repair Yard.[5]

When a roadway transfer occurs and results in a change in state classification, federal classifications remain, unless the agencies follow the federal process for classification change. Additional research may be required on a case-by-case basis to understand if and how federal designations affect potential transfers.[6]

2.1.2 State of Oregon

The 1999 Oregon Highway Plan (OHP) applies general directives to the state highway system. The plan emphasizes:

- efficient management of the system to increase safety, preserve the system and extend its capacity;
- increased partnerships, particularly with regional and local governments;

[3] Fixing America's Surface Transportation Act of "FAST Act": A Summary of Highway Provisions. Federal Highway Administration. 2016.
[4] National Highway Freight Network. Freight Management and Operations. Federal Highway Administration. 2018.
[5] Intermodal Connectors, Oregon. Federal Highway Administration. 2018.
[6] Highway Functional Classification Concepts, Criteria and Procedures. Federal Highway Administration. 2013.

- links between land use and transportation;
- access management;
- links with other transportation modes and travel demand management; and
- environmental and scenic resources.

The OHP has three main elements: the Vision, the Policy Element, and the System Element. The Policy Element contains goals, policies and actions.

Goal 1 of the OHP is System Definition. This goal is to maintain and improve the safe and efficient movement of people and goods and contribute to the health of Oregon's local, regional and statewide economies and livability of its communities. The System Definition policies define a classification system for state highways to guide management and investment decisions. Policy 1A divides state highways into five categories based on function:

- Interstate
- Statewide
- Regional
- District
- Local

Four special-purpose classifications supplement this foundational hierarchy: land use, statewide freight routes, scenic byways and lifeline routes. They address the special expectations and demands placed on portions of the highway system by land use, the movement of trucks, the Scenic Byway designation and significance as a lifeline or emergency response route. Information contained in these special designations is used to guide management, needs analysis and investment decisions on the highway system.

The following four classifications exist within the Portland metropolitan area:

- **Interstate Highways** provide connections to major cities, regions of the state, and other states. In urban areas, they provide connections for intraregional trips as a secondary function.
- **Statewide Highways** provide inter-urban and inter-regional mobility and provide connections to larger urban areas, ports and major recreation areas. They also provide connections for intra-urban and intra-regional trips.
- **Regional Highways** provide connections to regional centers, statewide or interstate highways or economic and activity centers of regional significance.
- **District Highways** provide connections between small urbanized area, rural centers and urban hubs. They serve local access and traffic.[7]

The 2015, 2018, and 2019 Oregon Legislative Sessions included bills that focused on jurisdictional transfer. While the Oregon Legislature did not pass the following bills, they provide insight on the intentions of the Legislature moving forward.

2015

- Senate Bill (SB) 117 would have created a 12-member Task Force on Jurisdictional Transfers to evaluate and recommend potential transfer of state highways to cities or counties or transfer of county roads or city streets to the state highway program.
- SB 326 would have modified the state modernization program to make projects that facilitated jurisdiction transfers eligible for funding.
- House Bill (HB) 3302 would have allocated about $27 million per year for 10 years to fund jurisdiction transfer projects.

2018

- HB 4060 modified and added laws related to transportation, including transferring jurisdiction of specified highways.

2019

- HB 2846 would have required regions to conduct jurisdictional transfer evaluation and present a report on the evaluations to the Joint Committee on Transportation.

[7] Oregon Highway Plan. Oregon Department of Transportation. 1999. Pg. 37.

Expressways are a subset of the Statewide, Regional and District Highways classifications. They are complete routes or segments of existing limited-access two-lane, multi-lane, and planned multi-lane highways that provide for safe and efficient high-speed and high-volume traffic movements. Their primary function is to provide interurban travel and connections to ports and major recreation areas with minimal interruptions. A secondary function is to provide long-distance and intra-urban travel in metropolitan areas.

System Management, Goal 2 of the OHP, encourages coordination between the State, local jurisdictions and federal agencies to create an increasingly seamless transportation system with respect to the development, operation, and maintenance of the highway and road system that:

- safeguards the state highway system by maintaining functionality and integrity;
- ensures that local mobility and accessibility needs are met; and
- enhances system efficiency and safety.

Additionally, Policy 2C (Interjurisdictional Transfers) requires the State of Oregon to consider, in cooperation with local jurisdictions, interjurisdictional transfers that:

- rationalize and simplify the management responsibilities along a roadway segment or corridor;
- reflect the appropriate functional classification of a roadway segment or corridor; and/or
- lead to increased efficiencies in the operation and maintenance of a roadway segment or corridor.[8]

The State classification system recognizes that some roads, which are currently state highways, often function as local roads. Policy 2C of the OHP states that ODOT will develop a process to identify roads that may be transferred to local jurisdictions in accordance with Policy 2C.

Goal 4 of the OHP, Travel Alternatives, addresses travel modes such as walking, biking, and transit, and transportation demand management strategies that support reductions in single-occupancy vehicle demand on the highway system. ODOT's Highway Design Manual (HDM) provides technical guidance and standards to guide the design of walking, biking, and transit facilities on ODOT owned and managed facilities. In addition, the HDM provides information regarding design exceptions that some jurisdictions pursue to include desired facility designs on ODOT highways in urban areas. A city may pursue a jurisdictional transfer of a state highway to support implementation of pedestrian or bicycle facility designs that would not otherwise be feasible via the HDM.

ODOT's Blueprint for Urban Design provides direction on designing ODOT facilities in various urban and suburban state highway contexts in Oregon. It seeks to align planning and design work for urban transportation projects by developing comprehensive design targets to address the unique needs of urban environments. The effort considers all modes of transportation including motor vehicle, freight, public transit, pedestrian, bicycle and rail.

2.1.3 Regional

Oregon Metro's 2018 Regional Transportation Plan (RTP) is the blueprint to guide investments for all forms of travel in greater Portland. The RTP prioritizes policies, planning and projects identified and adopted by the Joint Policy Advisory Committee on Transportation (JPACT), and approved by FHWA and Federal Transit Administration (FTA) as the region-wide transportation plan. It identifies the region's most urgent transportation needs and priorities for investments over the next 25 years. In 2018, JPACT and Metro Council identified four priority areas: traffic safety, equity, congestion relief and reducing

[8] Oregon Highway Plan. Oregon Department of Transportation. 1999.

impacts to Climate Change. During the development of the RTP 2018, stakeholders and jurisdictions called for a jurisdictional transfer study. As planning for jurisdictional transfers moves forward, the 2018 RTP lays the foundation for successful implementation.

Chapter 3 of the 2018 RTP establishes regional classifications for roadways within the Portland metropolitan area. These classifications categorize roads for each identified regional modal network (pedestrian, bicycle, transit, freight and motor vehicles). Like federal and state classification systems, the RTP's classifications are hierarchical and provide a vision for the modal networks. Each classification describes the volume and type of trips most suited for the group of roadways. The RTP classifications, by modal network, include:

- **Pedestrian**: pedestrian parkway, regional pedestrian corridor, local pedestrian connectors
- **Bicycle**: bicycle parkway, regional bikeway, local bikeways
- **Transit**: existing light rail, commuter rail, enhanced transit corridor, street car, High Capacity Transit (HCT) in progress, future HCT, intercity high-speed rail, frequent bus, regional and local bus
- **Freight**: main roadway routes, regional intermodal connections, roadway connections
- **Motor Vehicle**: throughways, major arterial, minor arterial

Chapter 8 of the RTP establishes the Jurisdictional Transfer Assessment Program as part of the ongoing and future efforts to implement the RTP. Metro created this program as part of near-term planning efforts to apply the plan at the regional scale (section 8.2.3.4 of the RTP).

Chapter 6 identifies ten near-term capital program investment priorities to address greater Portland's most pressing transportation challenges. Of these priorities, Metro Council identified four to act as the pillars of the RTP. These four priorities provide critical guidance and direction for the Study. They will be integrated at each step of the jurisdictional transfer process, from identifying candidates to implementing a transfer. The priorities are:

- Equity – reduce disparities and barriers faced by communities of color and other historically marginalized communities
- Safety – reduce fatal and severe injury crashes, particularly focusing on the High Crash Corridor network
- Climate change – expand transit and active transportation networks, and leverage emerging technology to meet Climate Smart Strategy goals
- Congestion relief – manage congestion and travel demand through low-cost, high value solutions.

2.1.4 Local

At the local level, cities and counties use Transportation System Plans (TSPs) and local code to designate roadway classifications and their design standards. Pursuant to Oregon Administrative Rule (OAR) 660-012-0015, all TSPs require a road plan for a system of arterials and collectors and standards for the layout of local streets and other important non-collector street connections. Roadway classifications in city and county TSPs are also required to be consistent with regional and state classifications.[9] Local classifications often use different systems and/or terminology but are fundamentally consistent in policy.

[9] OAR 660-012-0020.

2.2 Legal Considerations

The jurisdictional transfer process includes completing and approving two documents that can address specific legal issues if they arise: the Jurisdictional Transfer Agreement and the intergovernmental agreement.

The **jurisdictional transfer agreement** should clearly spell out maintenance responsibilities to prevent confusion about which agency performs maintenance and to what standard. In particular, highways that have been constructed or improved using federal funds may still have federal requirements dictating maintenance levels for long periods of time, usually the useful life of the facility. If the highway is not property maintained, FHWA will hold ODOT responsible for rectifying the situation, regardless of whether the state or a local government has jurisdiction over the roadway. From the local government perspective, local governments are often taking on a large financial liability, especially as it relates to potential future tort claims, so it is important for the local jurisdictions to have clarity on whether they have autonomy in determining the level of maintenance needed and other engineering improvements. Therefore, it is in the best interest of all parties to clearly define maintenance responsibilities for roadways that used federal funds.[10]

The **intergovernmental agreement (IGA)** should clearly state the process and timing for transfer and identify the responsibilities of the State and local jurisdiction to address three common legal issues:

- Tort liability;
- Americans with Disabilities Act (ADA) claims; and
- Right-of-way designations.

The IGA addresses tort claims by identifying who assumes liability (i.e., liability for a wrongful act, not including breach of contract or trust, that results in injury to another person's property or the like and for which the injured party is entitled to compensation). Because agencies have six months to respond to tort claims, the involved agencies would likely know of any outstanding claims related to the segment for jurisdictional transfer. The IGA should lay out a clear timeframe for transfer and identify agency roles to prevent liability issues.

Second, the IGA should clearly identify timing and agency responsibilities to ensure federal or state ADA claims relevant to the highway being transferred are appropriately addressed. Unlike tort claims, ADA claims require immediate response from the responsible agency.

Third, the IGA should clearly identify the precise right of way being transferred. The ownership of roadways is complex; in some instances, ODOT maintains the road from curb to curb, while the city owns and maintains the roadway from the curb to the right of way line. The IGA should ensure the ownership of the right of way, and where they right of way is located, is clear to prevent confusion on ownership and liability.

Lastly, the IGA often identifies a cost and source of funding for the transfer that is mutually agreed to by all parties.

2.3 The Legal Process for Transfer in Oregon

Best practice indicates that transferring ownership of a state highway requires years of intentional planning and collaboration among the involved parties. Once a roadway is selected, the formal process that legally transfers property from ODOT to a local jurisdiction can begin. The legal mechanism for this

[10] Transferring Roads: A Handbook For Making Jurisdictional Transfers. Oregon Department of Transportation. 2003.

transfer is a contract between the parties. This is referred to as the jurisdictional transfer process. The following three steps summarize the legal process. There is a more comprehensive overview of the legal process in ODOT's Transferring Roads Handbook (2003).[11]

2.3.1 Step 1: Jurisdictional Transfer Agreement

If the jurisdictional transfer involves one or more local governments, ODOT and the partnering local government(s) begin preliminary negotiations regarding the highway segments to be transferred and/or retained. Based on these negotiations, the appropriate ODOT Region and local agency work together to prepare a draft agreement, along with a preliminary map of the highway segments involved. The agreement describes the necessary terms and conditions, including State and local jurisdiction obligations and general provisions. After the Jurisdictional Transfer Agreement has been approved, ODOT and the local agency sign the agreement to implement the transfer process.

2.3.2 Step 2: Jurisdictional Transfer Conveyance Documents

Negotiating a contract for jurisdictional transfer takes into account several things.

First, the parties must agree to the asset being transferred. The ODOT Right of Way Section, Acquisition Unit, prepares right of way documents, based on the terms of the agreement, and attaches the final exhibit map that clearly defines highway segments to be retained and/or transferred. The local government's Right of Way section will review and coordinate with ODOT's Right of Way section. When right-of-way is not clear or needs specificity, clauses relating to on-going maintenance of assets that are related or connected to the roadway, such as utilities and lighting, may be included in the contract.

The document will clarify roles and responsibilities after the transfer, especially as it relates to ongoing liability and indemnification. Once the agreement is in place and the terms and conditions have been mutually agreed upon by all parties, the formal resolutions and transfer documents finalizing the process are prepared for signature.

Once signed, the document transferring the right of way, with a reversionary clause, is recorded with the county, with the exhibit map attached. These two documents are a Resolution Eliminating a Section of Highway from the State Highway System and Minor Amendment to the Oregon Highway Plan, and a recorded Jurisdictional Transfer Document. The Resolution is the Oregon Transportation Commission's (OTC) formal decision documenting the transfer and amendment to the OHP. The Jurisdictional Transfer Document is a formal legal document finalizing the transfer. This step can also include agreements related to roles and responsibilities for future operations and maintenance of the roadway, liability, claims, and right of way.

2.3.3 Step 3: Changes to the Oregon Highway Plan

The 1999 OHP is the highway element of the state transportation system plan required by the Transportation Equity Act for the 21st Century and the state Transportation Planning Rule. It is a statement of state policy developed and adopted by the OTC and has legal status. A jurisdictional transfer involves a change to the highway system that is noted on the OHP highway map and the OHP list of state-owned highways. The OHP must be amended accordingly, which requires OTC approval.[12]

[11] Transferring Roads: A Handbook For Making Jurisdictional Transfers. Oregon Department of Transportation. 2003.
[12] Ibid.

2.3.4 Changes to the Regional Transportation Plan

The Regional Transportation Plan must be amended if the jurisdictional transfer results in any changes to RTP functional classifications (on the motor vehicle, transit, bicycle, pedestrian or freight system maps) or any changes to the RTP project list.

2.3.5 Relevent Oregon Statutory Authority

Jurisdictional transfers are based on language in state statute and require OTC approval to complete the transfer. Oregon Revised Statute (ORS) gives OTC the authority to "select, establish, adopt, lay out, locate, alter, relocate, change and realign primary and secondary state highways."[13] Oregon statute (ORS 366.290) also allows ODOT to add or remove roads from the state highway system and its considerations are listed below.

> (*1) In the selection of highways or roads to be included in the state highway system the department shall give consideration to and shall select such county roads or public roads as will contribute to and best promote the completion of an adequate system of state highways. Thereafter the construction, improvement, maintenance and repair of such roads shall be under the jurisdiction of the department.*
>
> *(2) In the selection of highways or roads to be included in the state highway system the department shall give consideration to and shall select such county roads or public roads as will contribute to and best promote the completion of an adequate system of state highways.*
>
> *(3) (a) With the written agreement of the county in which a particular highway or part thereof is located, the department may, when in its opinion the interests of highway users will be best served, eliminate from the state highway system any road, highway, road segment or highway segment. The road, highway or segment becomes a county road or highway, and the construction, repair, maintenance or improvement, and jurisdiction over the road or highway will be exclusively under the county in which the road or highway is located.*[14]

Oregon statutes related to jurisdictional transfers include the following:

- ORS 366.340 establishes the highway purposes that ODOT may have for acquiring real property.
- Pursuant to ORS 366.395, the state may relinquish title to any of its property not needed for highway purposes to any other governmental body or political subdivision within the State of Oregon, subject to such restrictions, if any, imposed by deed or other legal instrument or otherwise imposed by the state.
- Pursuant to ORS 373.010, when the route of a state highway passes through a city, the state may locate, relocate, reroute, abandon, alter, or change such routing when in its opinion the interests of the motoring public will be better served.
- Pursuant to ORS 373.020, jurisdiction of streets taken over by the Department of Transportation extends from curb to curb or over the portion of the right of way utilized by the department for highway purposes.

[13] ORS 366.215, Creation of state highways.
[14] ORS 366.290, Adding to or removing roads from state highway system.

3. Case Studies

Since 1993, ODOT has transferred 12 facilities in Region 1 to local jurisdictions. Mandated by Keep Oregon Moving (House Bill 2017), ODOT is currently studying the cost to upgrade and transfer Inner Powell to the City of Portland, and is upgrading Outer Powell to transfer to the City of Portland. ODOT and the City of Portland are also discussing transfer of 82nd Avenue and 99W (Barbur Boulevard). Each jurisdictional transfer is a unique negotiation between ODOT and the receiving jurisdiction. Transfer conditions and agreements are influenced by community input, the local government funding capacity, the state of repair of the roadway and the roadway's relationship to the larger transportation network.[15]

Additional jurisdictional transfers between ODOT and a local jurisdiction authorized by Keep Oregon Moving include:

- Pacific Highway West (Highway 91) from Beltline Highway to Washington Street, and Walnut Street to Interstate 5 from ODOT to the City of Eugene*
- Springfield Highway (Highway 228) from ODOT to the City of Springfield
- The section of Territorial Highway (Highway 200) that is located within Lane County from ODOT to the County*
- Springfield-Creswell Highway (Highway 222) from Jasper-Lowell Road to Emerald Parkway from ODOT to Lane County*
- Delta Highway from Interstate 105 to Randy Pape Beltline from Lane County to ODOT
- Cornelius Pass Road from Highway 30 to Highway 26 from Multnomah and Washington County to ODOT

**ODOT will retain jurisdiction of identified bridges*

3.1 Case Studies: Themes

Case studies of completed highway jurisdictional transfers illustrate a range of conditions and outcomes from past projects, providing useful information for future planning and pursuits. Three themes emerge from the review of several case studies:

Theme 1: Incentive and mutual benefits
Theme 2: Roadway maintenance and design standards
Theme 3: Consistency with current land use

The following sections describe the themes and present case studies that support each theme.

3.1.1 Theme 1: Incentives and Mutual Benefit

Jurisdictional transfers are initiated when the State and local jurisdiction have incentive to execute the transfer. Case studies indicate that local jurisdictions are motivated by the community's desire for an improved roadway and when a change in roadway function will prioritize non-automobile travel modes, to improve traffic safety or support desired land use outcomes. Transfer is easiest when funding is available (for example, through the State Legislature) to upgrade the road prior to transfer. Frequently, transfers reduce maintenance costs and liability for the State, providing long-term financial incentive for the State to complete a transfer.

Once incentives are established, the State and local jurisdiction are motivated to complete a transfer by the prospect of mutual benefits. Because the jurisdictional transfer process is grounded in negotiations, transparent and frequent communication ensures that both parties will receive some type of benefit – a financial benefit or outcome that supports the agency's mission.

Table 1 presents examples where financial incentives and the prospect of mutual benefits motivated the State and local jurisdictions to complete highway jurisdictional transfers.

[15] 82nd Avenue of Roses Implementation Plan: Jurisdictional Transfer Explanation and Case Studies. CH2M. 2016.

Table 1. Case studies - incentive and mutual benefit

Roadway	Transfer to	Transfer from	Year	Reason for transfer	Outcome
Martin Luther King, Jr. Boulevard from Lombard Street to SE Division Street	City of Portland	ODOT Region 1	2002	The roadway served local commercial districts and residential neighborhoods. The community wanted to transform the highway into a boulevard-style roadway that was not consistent with ODOT Highway Design Manual standards. ODOT wanted to transfer the liability and associated maintenance costs to another jurisdiction.	The Portland Bureau of Transportation (PBOT) took full jurisdiction and maintenance of the highway. PBOT added on-street parking, pedestrian islands, crosswalks, and curb-side street trees. As part of the agreement, ODOT turned over easements and lease rights on the East Bank Property and Holman Building. ODOT also rebuilt the viaduct.
Scholls Ferry Road (milepost 0.0 – 5.5)	Washington County	ODOT Region 1	2003	The road served mainly local functions and served as a major county arterial. It needed major improvements to address congestion issues that were not ODOT funding priorities.	The County and ODOT agreed that if the state provided 50 percent funding, the county would take over jurisdiction. County design standards were used to reduce costs, although the cities were able to incorporate some of their unique standards.

3.1.2 Theme 2: Roadway maintenance and design standards

Jurisdictional transfers frequently occur to improve a roadway's maintenance or change its design standards. ODOT design standards are consistent with the Highway Design Manual, and many local jurisdictions use design standards with more flexibility for urban design. Design standards are dictated by a road's classification and may not be consistent with current or future uses of the roadway.

Classifications also can relate to the level of funding a roadway receives from the State; often in the context of limited funding, ODOT invests in maintenance of Interstates or Statewide Highways first.

Table 2 presents examples where jurisdictional transfers were motivated by a need to improve roadway maintenance and change design standards.

Table 2. Case studies - roadway maintenance and design standards

Roadway	Transfer to	Transfer from	Year	Reason for transfer	Outcome
Lafayette Avenue	City of McMinnville	ODOT Region 2	2003	The roadway was a two-lane arterial with no sidewalks and drainage. Pavement conditions varied from fair to poor. The City tried to improve the road through the STIP process. Under ODOT's ownership, the desired project could not be designed to state standards because of the narrow right of way. The project was ineligible for federal funding because it did not follow federal design guidelines.	The City agreed to put general fund money towards the project in addition to bond and systems development charge money to transfer the road. Without having to adhere to ODOT design standards, the City implemented the desired project.
Oregon 47	City of Forest Grove and Washington County	ODOT Region 1	2003	The local community wanted the road brought up to urban design standards and was willing to fund part of the project with property taxes.	ODOT constructed a new state highway bypass, designed to ODOT standards. Part of OR 47 was transferred to the County and part to the City of Forest Grove; Washington County completed the design work and acquired the right of way.
Martin Luther King, Jr. Boulevard Viaduct	City of Portland	ODOT Region 1	2003	A design for upgrading the 1936 viaduct was not compatible with PBOT and community vision for the Central Eastside, specifically around accommodation for pedestrians and bicyclists.	The Design Review Advisory Committee selected a design that did not meet ODOT or FHWA standards, prompting the negotiation for jurisdictional transfer. ODOT agreed to build the selected design if ownership was transferred. The City acquired maintenance and operations in 2011.

3.1.3 Theme 3: Consistency with current and future land use

While jurisdictional transfers often occur to update physical conditions of a roadway, they also occur when a roadway's function is not consistent with current and future land use. Transferring road ownership to a local jurisdiction can help support development or redevelopment by aligning transportation and adjacent land use. The transfer process itself can facilitate development when the negotiation process results in a design that supports adjacent land uses. Negotiation also leads to

creativity and compromise, resulting in an outcome for the roadway that may have otherwise been undiscovered.

Table 3 presents examples where jurisdictional transfer helped align roadway functions with current and future land use.

Table 3. Case studies - consistency with land use

Roadway	Transfer to	Transfer from	Year	Description	Outcome
Sandy Boulevard from Grand Avenue to 99th Avenue	City of Portland	ODOT Region 1	2003	Two segments of Sandy Blvd operated differently from the remainder of the road, with greater mixing of modes as the roadway moved east. The transfer was intended to support redevelopment and growth within the Hollywood Town Center and Main Street improvements.	Under City ownership, the Sandy Boulevard Resurfacing and Streetscape Project made multimodal improvements and changed the streetscape. In 2008, the City prepared a report that found the project to be widely successful. The transfer reduced ODOT's maintenance costs, regional through traffic is served by I-84.
Siskiyou Boulevard	City of Ashland	ODOT Region 3	2003	Located between the library and Southern Oregon University, the state highway functioned as a downtown city street. There was heavy pedestrian and bicycle traffic and safety concerns. The City requested a widening project, but there was disagreement on design issues.	ODOT made the modernization project in the STIP contingent upon the City building the project and taking over jurisdiction along a segment of the boulevard. The biggest issue in the transfer was establishing valuation for maintenance and finding adequate funding.
Interstate Avenue	City of Portland	ODOT Region 1	1993	The City wanted to transfer the road to help construct the new light rail transit line. The Light Rail could not be constructed under ODOT's jurisdiction.	Interstate Avenue was transferred to the City without the exchange of funds. The light rail line was constructed after transfer.

3.2 Major Constraints

Major constraints, as illustrated in the case studies, can delay or limit the ability to achieve the preferred outcome, even if both parties agree a transfer is the best option. However, identifying and addressing constraints early and effectively helps shape expectations for the involved parties. It encourages compromise and creativity to develop a mutually beneficial agreement. Constraints differ on a case-by-

case basis, but can generally be categorized into two categories: fiscal constraints and physical constraints.

3.2.1 Fiscal Constraints

The case studies indicate funding is a major constraint to transferring highway jurisdiction. Transfers hinge on the capacity of the local jurisdiction to incur the costs of roadway maintenance and sometimes the costs to upgrade the facility and/or take on future liabilities. The State and most local jurisdictions in Oregon do not have a dedicated funding source for transfers and, as the case studies illustrate, use a range of creative funding mechanisms, such as bonds.

The state gas tax is the primary source of transportation funding for state and local governments. Oregon's State Highway Fund collects resources from three main sources: taxes on motor fuels, taxes on heavy trucks and driver and vehicle fees. Under the Oregon Constitution, these fees and taxes must be spent on roads, including bikeways and walkways within the highway right of way. State funds can be used for both construction projects and maintenance and operation of state roads. The OTC allocates "fix it" funding for the operation and maintenance of the entire state-owned highway system, including roadways and bridges. Funding is limited.

OTC and ODOT have prioritized maintenance of the Interstate Highway system, which is very expensive.[16] Allocating funds to facilitate and process a highway transfer of an arterial street is challenging. Before the formal process begins, funding availability will likely influence the selection of highways for jurisdictional transfer.

Similarly, local government's ability to raise funds or receive federal or state gas tax funds is not keeping up with the rate of decline of the local roadway system, inflation and the cost of construction. Many local jurisdictions cannot afford to maintain their current transportation assets, in addition to their other aging assets such as utilities and water systems. Often, local governments cannot afford to finance the transfer of the roadway.

3.2.2 Physical Constraints

As part of the process, both parties work towards an agreement on the roadway design and the standards that apply to that design standards, and consider the physical elements of the roadway. In some cases, the parties agree to improvements before the transfer, and other cases, the focus of the negotiations is focused on post-transfer.

If the highway is on the NHS system, whether it is under state or local jurisdiction, the federally-approved design standards apply (in Oregon, ODOT design standards must be used). When the roadway is not on the NHS system, the design standards are determined by the owning agency. To achieve the desired vision, the Transfer Agreement should have clear provisions for the timing and circumstances for turning over the jurisdiction of the roadway.

The transfer process and desired outcomes can be constrained by the physical conditions and elements of the roadway. The following list should be considered when setting expectations for transfer and producing achievable goals.

- **Local zoning and local access**. The local government often oversees the local zoning along the corridor, owns the local streets, and in some cases, issues local building permits to businesses

[16] More information about ODOT's paving projects can be found here: https://www.oregon.gov/ODOT/Pages/ConstructionMap.aspx

and residences along the street. The transfer should take into local comprehensive plans, local zoning, local corridor plans and existing land uses.

- **Outdoor advertising.** The state is required by state law to maintain control of outdoor advertising signs visible to state highways if the section of highway is on the NHS or was part of the Federal aid primary system in existence on June 1, 1991. If the section of highway was not a Federal-aid primary system highway on June 1, 1991, then responsibility for outdoor signage is transferred to the local jurisdiction.
- **Rail crossings.** The jurisdiction whose roadway crosses a rail line is responsible for the crossing markings and the pavement up to the rail line. The owner of the intersecting roadway is responsible for adhering to all the rail stipulations assigned to the former road authority.
- **Highway condition and maintenance.** Parties must mutually agree to the condition of the asset and its state of repair. This includes pavement, bridges, and other features as well as maintenance responsibilities. Highways that have been constructed or improved using federal funds may still have federal requirements or conditions that require maintenance to a standard and for a particular period of time, usually the useful life of the facility. Therefore, any transfer agreement should clearly spell out existing maintenance conditions and on-going maintenance responsibilities.
- **Route designations and signs.** When a highway route number moves from one state-owned road to another, the contract should include a clause regarding ODOT's removal of the signs and replacement by the local jurisdiction.
- **Traffic signals and illumination**. ODOT and the partnering agency may need to renegotiate any existing intergovernmental agreements regarding power, operations and maintenance of signals and illumination. The agreement should define who has power, maintenance and signal timing responsibilities, who has cost responsibility, and how and when any changes take place.

4. Best Practices

The following section presents best practices for highway jurisdictional transfer. These best practices should be followed throughout the entire transfer process –from selection to implementation.

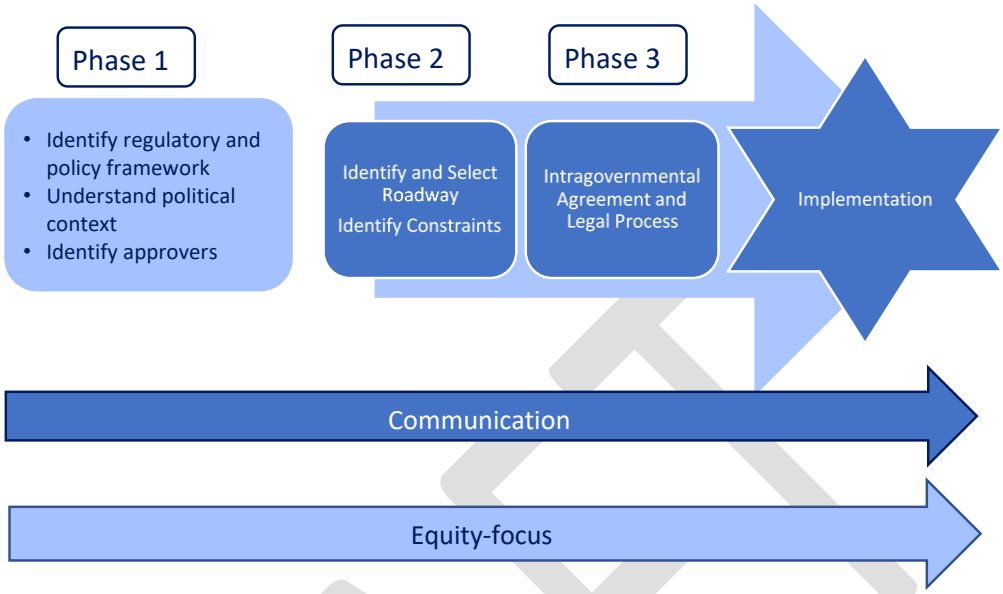
4.1 Follow a Process

The jurisdictional transfer process typically begins years prior to the formal legal process, starting with regional and statewide planning, and continuing through highway selection to implementation of the Transfer Agreement. From initiation to completion, jurisdictional transfers should follow a clear process to enable the State and local jurisdiction(s) to effectively address issues before they become sticking points that prevent or delay the transfer.

Importantly, a fair, equitable process helps jurisdictional transfers meet community goals. Throughout the process, the involved agencies should prioritize community needs and values. In the Portland region, 56% of state-owned arterial highways are located in Historically Marginalized Communities (*areas with higher than average number of people of color, English language learners, and/or lower-income people).* It is imperative for the involved agencies to develop a process and identify equitable outcomes to ensure the results of jurisdictional transfer reduce barriers for people of color and marginalized communities and is consistent with Metro Council's Regional Equity Strategy, which is being carried out across Metro's planning department.

Figure 1 provides an overview of the comprehensive jurisdictional transfer process.

Figure 1. Jurisdictional Transfer Process



4.1.1 Phase 1: Preparing for the transfer

The first phase is preparing for the transfer. During this phase, the involved agencies should:

- identify a regulatory and policy framework;
- understand the political context; and
- identify approvers early.

Identifying a regulatory and policy framework allows the involved agency staff and stakeholders to understand the basis for jurisdictional transfer. The jurisdictional transfer process is rooted in state statute, but it includes intricacies at the federal, regional and local levels. A regulatory and policy framework helps navigate these complexities, such as, roadway ownership, classifications, relevant policies and legal requirements. It also helps involved staff and stakeholders to become familiar with relevant terminology and concepts. This step provides the same information to the involved agencies, ensuring they enter the transfer process with a shared understanding of the applicable regulations and policies.

Understanding the political context in the region and within and among the State and local jurisdiction(s) will help identify funding opportunities, develop a process for transfer and set expectations for the transfer process. Developing a knowledge of the political context, including agency and community priorities, helps determine if highway jurisdictional transfer is the right tool to accomplish the desired outcomes. Jurisdictional transfer can help achieve community goals and result in mutual benefits – but it is not always the most effective route to achieving desired outcomes for the roadway under consideration.

Once a roadway is selected, taking inventory of each agency's priorities, elected officials' interests, and community goals will support a more successful process. Agency priorities will vary and are often influenced by elected officials. Understanding the overall political context will help set expectations for the formal transfer process, ensuring the process and desired outcomes are achievable. Agency

priorities will impact candidate roadways for transfer, available funding sources and levels, and the interests each agency brings to the negotiating table. All these elements should be documented and understood before entering Phase 2 and 3.

Last, identifying the final decision-makers for jurisdictional transfer sets expectation, helps identify realistic outcomes and helps navigate the process to achieve desired outcomes. The decision-makers include those who will agree to enter into negotiations, and those who will sign the transfer documents to formalize the transfer. Section 2.2 describes the necessary steps and documentation. Identifying the approvers early will ensure the process is on track to complete the jurisdictional transfer and avoid backpedaling down the road. It will also set outcomes that are expected to be approved.

4.1.2 Phase 2: Identify and select roadway and identify constraints

Once the foundation for transfer has been established, the agencies are set to identify and select a roadway and identify the constraints to transferring it from one agency to another. Identifying a roadway may hinge on available funding, but best practice indicates that roadways should be selected based on community needs and values. The 2018 RTP recommends the following steps to select roadways for transfer:

- identify state owned routes that the community and stakeholders would like to evaluate and consider for jurisdictional transfer;
- identify gaps and deficiencies on these roadways,
- tier the roadways; and
- address some of the barriers and opportunities to transfer the prioritized routes from state ownership to local ownership.

After the roadway has been selected, constraints should be identified, including both fiscal and physical. Section 3.2 describes common constraints.

4.1.3 Phase 3: Establish intragovernmental agreement and follow the legal process

After the roadway is selected, the agencies can enter into the formal process which implements an intergovernmental agreement. Phase 3 is explained in Section 2 of this memorandum.

4.2 Communicate

Communication is central to carry out a jurisdictional transfer process that results in shared desired outcomes. Best practices include:

- Identify clear roles within ODOT and within the involved local jurisdiction(s), such as a jurisdictional transfer specialist, asset manager, agreements specialist, traffic engineer and financial and support services staff. This will allow staff to develop expertise in the process and foster relationships among the involved staff.
- Set expectations for clear, open and frequent communication among each agency's departments and between agencies.
  - Compromise and creativity between the State and local agencies leads to a fair and acceptable agreement. Communication is particularly pertinent during negotiation.
- Conduct early outreach with the impacted communities.
  - The partnering agencies should do their due diligence to understand the community's needs. Early engagement will lead to a smoother process by preventing tension and backpedaling during negotiation and agreement.

5. Next Steps

As part of this Study, the Study team is developing a Jurisdictional Transfer Atlas to inventory state-owned highways that might be candidates for jurisdictional transfer. Using the Atlas and OHP roadway classification definitions as references, the Study team will prepare recommendations to the OTC to consider potential updates to OHP roadway classifications based on changes in how the roadway now functions. The team will also develop a toolkit that will include methodologies for how to select individual corridor segments for further study and how to estimate costs for jurisdictional transfer. The toolkit will establish a regional approach for how to assess needs and deficiencies for facilities under consideration for transfer and prepare assessments for each corridor segment. The team will rank corridor segments and address the capacity and readiness of a local agency to receive a facility ODOT for those corridors that are most ready. The team will then prepare a final report that describes points of regional consensus as well as the priorities held by individual partners.

Appendix A. List of Acronyms

ADA	American with Disabilities Act
CRFCs	Critical Rural Freight Corridors
CUFCs	Critical Urban Freight Corridors
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
HB	House Bill
HCT	High Capacity Transit
HDM	Highway Design Manual
HWY	Highway
I-	Interstate
IGA	Intergovernmental agreement
JPACT	Joint Policy Advisory Committee on Transportation
MAP-21	Moving Ahead for Progress in the 21st Century Act
MPOs	Metropolitan Planning Organizations
NHFN	National Highway Freight Network
NHS	National Highway System
OAR	Oregon Administrative Rule
ODOT	Oregon Department of Transportation
OHP	Oregon Highway Plan
ORS	Oregon Revised Statute
PBOT	Portland Bureau of Transportation
PHFS	Primary Highway Freight System
ROW	Right of way
RTP	Regional Transportation Plan
SB	Senate Bill
Study	Regional Framework for Highway Jurisdictional Transfer Study
TSP	Transportation System Plan
TV	Tualatin Valley