

MINUTES OF THE OHIO RAIL DEVELOPMENT COMMISSION
REGULAR BI-MONTHLY MEETING
September 9, 2010

CALL TO ORDER

The meeting of the Ohio Rail Development Commission was called to order by Chairman James Bradley at 11:10 a.m. on Thursday, September 9, 2010.

MEMBERS PRESENT

Members present included: Chairman James Bradley, Commissioners Rob Greenlese, Bill Lozier, Kelly Angel for Jolene Molitoris, Larry Sowers, Barbara Hammontree-Bennett, William Murdock, Herk Wolfe, Solomon Jackson, Tom McOwen, Kim Wheeler for Senator Steve Buehrer and Bevan Schneck for Representative Terry Boose. There were ten voting members present, therefore a quorum was obtained.

APPROVAL OF THE MINUTES OF THE JULY MEETING

Chairman Bradley asked for a motion to approve the minutes of the July, 2010 meeting. Commissioner Wolfe moved to approve the minutes and Commissioner Sowers seconded the motion. Roll call was taken. The minutes were approved as presented with ten votes in the affirmative.

Chairman Bradley introduced Attorney Rick Makowski who is attending the meeting for Alan Klodell and Kelly Angel who is attending the meeting until Director Molitoris arrives.

EXECUTIVE DIRECTOR'S REPORT

Director Dietrich presented the Executive Director's Report on page 7 of the meeting packet. Director Dietrich gave an update on the CSX National Gateway TIGER Grant. All agreements must be in place by the end of the month. Tom Burns is the lead on the agreements. The various agreements are as follows: An MOA between the Federal Highway Administration's Eastern Federal Lands Highway Division (EFLHD) and the States in the Coalition delineating roles in the administration of the project; An MOA between EFLHD and CSX on the administration of the project; Preliminary and Conditional Term Sheet signed by the ORDC identifying all of the funding sources for the project; A grant agreement between CSX and the ORDC delineating the administrative fees and ARRA reporting requirements of the project; and the grant agreement between the ORDC and the USDOT for the \$98 million award.

Director Dietrich gave an update on the international shipping containers. ODOT filed seeking approval from the Legislative Joint Committee on Agency Rule Review for an overweight permit process changing weight limits. The elements of the permit are as follows: require a sealed, international shipping container for export only; up to 94,000 pounds and must meet trailer configuration requirements; single route permit from Ohio origins to Ohio intermodal facilities; ODOT Director will approve Ohio intermodal facilities; 45 and 90 day permit durations; pricing consistent with existing general permits; and required usage record keeping and reporting. Director Dietrich said if the rules are approved, they will need to be reviewed again in 5 years. Director Dietrich said this would be an Administrative Rule as opposed to a statute. ODOT will conduct a Public Hearing at Central Office on September 13th. If this is approved, the rule would be effective in October.

Director Dietrich said that the City of Jackson and US Rail are involved in a lawsuit for alleged violations of the Operating Agreement. The ORDC has invested approximately \$6.7 million

since 1986, in the City of Jackson owned Rail Line. We held a meeting in Jackson on August 27th with the shippers, the city, and US Rail, not to discuss the lawsuit, but for the shippers to discuss their concerns. If the city wins and a new operator is selected, the shippers want to know what role they would have, and if the current operator continues, the shippers want to know what role they would have in that relationship as well. The bottom line is that the shippers just want maintained track and good service. Director Dietrich said the ORDC has offered our services in any way we can to both the city and US Rail. The shippers are pleased with the service they have and are concerned about any interruption in service.

Director Dietrich said that we are continuing to work with ODOT on developing the Statement of Work for the 3C Project for FRA concurrence. Once finalized, staff will provide the Commission with the final version.

Director Dietrich said the PUCO, as the lead agency on safety issues to the FRA, has volunteered to lead Ohio's response to section 202 of the Rail Safety Improvement Act, which requires highway-rail grade crossing action plans to be developed by the 10 states that ranked the highest in number of crashes at highway-rail grade crossings. Director Dietrich said we had our initial meeting with PUCO and ODOT and we intend to include additional state partners as we develop the plan.

Director Dietrich thanked Commissioner Murdock and ODOD for providing a briefing to staff regarding ODOD's Ohio Hubs of Innovation and Opportunity.

Director Dietrich said that ORDC staff has taken Director Molitoris up on her offer to assist on the National Gateway. Megan McClory submitted a request for ODOT assistance to administer the highway bridge projects as they relate to the National Gateway.

Director Dietrich said ORDC filed the Annual HSIP report to the FHWA for fiscal year 2010 on August 31st. If anyone has any questions, please ask Susan Kirkland.

Director Dietrich thanked Alan Klodell for his work to ensure that ORDC's public records policy is up to date. Suzy Pettet is our keeper of public records.

Director Dietrich said that the Ohio Conference on Freight will be held September 14th and 15th in Toledo, Ohio. Ryan Ratledge with I & O and Marty Pohlod with Ohio Central will be speakers at the conference. They will be talking about shortlines. The Ohio Transportation Engineering Conference will be held October 19th and 20th in Columbus, Ohio.

Director Dietrich recognized Leonard Evans who has been appointed the Chief Engineer for the FRA. Leonard has been a great asset to the ORDC and we wish him all the best.

(Note: Director Molitoris arrived at 11:25 and replaced Kelly Angel on the Commission.)

Commissioner Greenlese asked how comfortable Director Dietrich is with the Statement of Work. He responded that ORDC could not do this alone and is relying on ODOT. ORDC's passenger experience is in planning and working with host railroads, not in project implementation.

Commissioner Jackson asked about the City of Jackson lawsuit and what the railroad had done to violate the agreement. Director Dietrich said that he would rather not discuss the lawsuit but that ORDC held the meeting because of the state's continued investment in the line, because staff was getting questions from companies, and because there is a lot of potential economic development along the line. He wanted to provide the shippers with a forum to ask questions. He also suggested that the city and the railroad could improve their agreement to try and avoid future issues. Commissioner Jackson commented that it is difficult to vote on projects with a major lawsuit pending. Director Dietrich agreed, and pointed out that that is why the ORDC has been entering into agreements with the city, as they are the owners of the line. Chairman Bradley said he applauds staff for going there and having the meeting, and stated that shippers need stability.

FINANCE REPORT

Megan McClory, ORDC's Secretary-Treasurer, presented the Finance Report to the Commissioners, which can be found on page 49 of the commission packet. Ms. McClory said that the Financial Reports for month ending August 31, 2010 were provided to everyone today as they were not available at the time the packets were mailed. Ms. McClory gave an overview of all of the non-safety ARRA projects that ORDC is administering. The vast majority of the projects have construction under way. Ms. McClory said the loan to Deltech Polymers has closed and that outstanding loans to Ashland Railway, the Indiana and Ohio Railway and Sandusky County-Seneca County-Tiffin Port Authority have been fully paid. Ms. McClory said our intern, Sarah Cunningham, a senior at Walsh University in North Canton, worked with us for six weeks in the fiscal section. She worked on a number of tasks including a project history report, project file updates, fiscal analysis and correspondence. Matt Malich, a senior engineering student at Ohio State University, is working with ORDC's safety section. Matt is working on reviewing Angels on Track reports, updating the Railroad Information System database, assembling data for a potential corridor initiative, and drafting correspondence.

APPROVED PROJECT BRIEFING – INTERNATIONAL TECHNICAL COATINGS (ITC) RAIL SPUR, COLUMBUS GRANT

Lou Jannazo presented the briefing found on page 68 of the commission packet. ORDC is providing International Technical Coatings (ITC) a grant of \$125,000 to help defray the costs of a new NS turnout and/or a short spur track into the building. ITC is a manufacturer of wire mesh shelving and fence products. Ohio was competing with a site in Kentucky that has all utilities, including a rail spur, inside the building. The Columbus site has rail and electric costs that the Kentucky site did not. ORDC funding, and the NS agreement to repair its lead track based on a take or pay agreement, helped make the Columbus site competitive with the Kentucky site. ITC's Vice President Faruk Gole was available to answer any questions. Chairman Bradley asked him what the criteria was that made them choose Ohio. Mr. Gole said the way our highways are strategically placed made sense and that the Ohio team worked the hardest. Commissioner Murdock thanked him for choosing Columbus for their rail investment.

RESOLUTION 10-09 – FRONT STREET DOUBLE STACK CLEARANCE APPLICATION TO MID-OHIO REGIONAL PLANNING COMMISSION

Executive Director Dietrich presented the briefing. Director Dietrich said copies were provided via e-mail last evening and hard copies were distributed today. This is to support and approve an application to MORPC for the Front Street Bridge Undercutting/Double Stack Clearance Project with CSX. ORDC will be the applicant for public funds, similar to what we did on the Heartland

Corridor Extension with OKI. Director Dietrich said this essentially will cut 41 miles out of the route to the East Coast. It will provide better service to the CSX Buckeye Yard Facility. CSX will be able to handle 70,000 additional container lifts. Director Dietrich said MORPC is very excited about this opportunity. Rusty Orben was available for questions. Commissioner Greenlese asked Mr. Orben where exactly the Front Street clearance is. Mr. Orben said it is adjacent to the Convention Center and it is the route west of downtown.

Commissioner Sowers made a motion to approve resolution 10-09. Commissioner Greenlese seconded the motion. Roll call was taken with ten votes in the affirmative.

RESOLUTION 10-10 – EASTERN FEDERAL LANDS HIGHWAY DIVISION GRANT FOR TIGER AWARD ADMINISTRATION

Megan McClory presented the briefing found on page 52 of the commission packet. Ms. McClory said that work is underway on a number of agreements with USDOT related to the award of the National Gateway Project. The award was \$98 million for clearance projects in Ohio, Pennsylvania, West Virginia, and Maryland. The funding will be administered by the EFLHD of the FHWA in a manner similar to the Heartland Corridor Project. ORDC is the only entity involved in this transaction that actually has the legal authority to enter into these agreements. The EFLHD cannot accept the private funds. The EFLHD does not have resources available within their budget to conduct their administrative activities and their oversight of the project. This proposal would allow us to accept funds from CSX and then grant them to EFLHD. Our role is essentially administrative. This enables us to keep the full \$98 million TIGER Award available for the capital construction costs of the project.

Commissioner Lozier asked what EFLHD's role is. Ms. McClory said they will serve as the State DOT for the multi-states effort. Director Dietrich said they will act as the contract administrator and they will oversee the plans.

Director Molitoris made a motion to approve resolution 10-10. Commissioner Jackson seconded the motion. Roll call was taken with ten votes in the affirmative.

RESOLUTION 10-11 – CITY OF JACKSON RAIL LINE REHABILITATION PROJECT LOAN & GRANT THIRD AMENDMENT TO RESOLUTION 08-08, 08-24, AND 09-14

Lou Jannazo presented the briefing found on page 56 of the commission packet. The ORDC would allow the City to use up to \$24,933 in funds remaining in the Richland Tunnel portal repair project for brush cutting, derailment repairs, and purchase of tie plates to facilitate and augment a federal ARRA stimulus project.

(Note: Commissioner Wolfe left the meeting at 12:05 p.m.)

Mayor Randy Heath was available for any questions. The Mayor said the Richland Tunnel came in under budget as well as the rail spur warehouse project of the largest employer in Jackson, Bellisio Foods. Mayor Jackson also said he appreciated Director Dietrich and Lou Jannazo taking the time to go to Jackson. Mayor Jackson said they will keep reinforcing to the shippers that the rail line will continue.

Commissioner Sowers made a motion to approve this resolution. Director Molitoris seconded the motion. Roll call was taken with nine votes in the affirmative.

JOBS AND CARLOADS REPORT

Director Dietrich presented the Jobs and Carloads Report found on page 72 of the commission packet. Director Dietrich said Suzy Pettet compiled the information for this report, but it has been a group effort. This is the process the ORDC has in place to insure our grant and loan commitments are being met. We provide this report annually. Director Dietrich said there is some good news, some bad news and some recommendations. For the most part, everybody is on track in meeting their goals or has met their goals. A couple of projects have not, and staff has recommended we extend the monitoring period given the bad economy. In two cases, the commitments were not met. In both cases, we took proper actions. Crane Plastics repaid the ORDC grant in full. In the other case, we are in litigation to receive that money. Mr. Klodell is working with outside legal council to see if we can come to some successful solution before it actually goes to trial. Director Dietrich said the bottom line is that we take our fiduciary role very seriously with public dollars. At the same time, we are receptive and work with companies to help them continue to grow in Ohio if they need more time.

Commissioner Greenlese made a motion to accept the staff recommendations on the Jobs and Carloads Report. Commissioner Sowers seconded the motion. Roll call was taken with nine votes in the affirmative.

RESOLUTION 10-12 – MODIFICATION OF CITY OF LIMA GREATER OHIO ETHANOL OFF SITE LEAD TRACK AND PASSING SIDING CONSTRUCTION GRANT (AMENDMENT TO RESOLUTION 05-08)

Director Dietrich presented the Preliminary Commitment Letter found on page 76 of the commission packet. We provided a loan of \$1 million to GOE for a facility in Lima. We also provided a \$200,000 grant to the City. The DOD, the local economic development officials and Mayor Berger have worked very hard to find a user for that facility. The PEA Lima LLC will rehabilitate and reopen the facility. Director Dietrich said from a grant perspective, the commitments are less: Thirty-one jobs instead of forty-one; 1,000 carloads instead of 2,500. Unfortunately, we cannot get the original jobs/carloads commitment. Director Dietrich said it is an opportunity to get the use of the facility and the rail assets in which we invested. This Resolution amends the job creation and carload commitments in Resolution 05-08. Commissioner Greenlese said this is a perfect example of mitigating losses and getting something out of nothing. He feels this is a great way to go.

Commissioner Greenlese made a motion to approve resolution 10-12. Commissioner Bennett seconded the motion. Roll call was taken with nine votes in the affirmative.

REPORTS OF COMMITTEES

Panhandle Long Term Lease and Contract & Property Advisory Committee

Commissioner Lozier said a Panhandle Long Term Lease Committee Meeting was held on July 15, 2010. They discussed long-term vs. short-term; 25 years vs. 5 years; open access; cost of lease, etc. Everyone left the meeting with a more clear direction of where to go on the next version of the lease agreement, and staff will be working on a draft.

Commissioner McOwen said there was also a brief report on the Panhandle Long Term Lease given at the Contract & Property Advisory Committee. The Piney Fork Line has been owned for

years by the State. It has been a marginal line. It has had no regular business. It has survived by storing cars. In the future there is potential for coal, etc. The current operators are interested in purchasing at least part of the line. Commissioner McOwen asked staff to take a look at what has changed on the line over the past couple of years to see if we want to recommend sale or if we want continuance of the lease. The staff will report back at the next meeting. Commissioner McOwen said that the committee is going to explore developing criteria for the lease/sale of state-owned lines.

Human Resources – Commissioner Jackson

Commissioner Jackson said that the committee discussed defining where they can add the greatest value to our agency. The committee discussed polling staff to ask what the committee should be focusing on to provide assistance for the agency. Once the information is compiled, we will figure out where to go from there. Commissioner Jackson said that a large number of our people will be retiring at the same time. They discussed what kind of plan needs to be developed to address this issue. Commissioner Molitoris offered ODOT's HR assistance to explore what they are doing to prepare for one half of their staff retiring within the next five years.

Economic Development and Strategic Planning Committee – Commissioner Bennett

Commissioner Bennett said that the committee met with Suzann Rhodes of Wilbur Smith and Associates in July to discuss the next phase of the State Rail Plan. Phase 2 will be the vision, goals and objectives and it will also include a cost benefit analysis. At the July meeting, they had an update of the Futures Plan which included a look at the whole transportation system. Wilbur Smith had an economist look at national, international and state trends in the economy in the transportation systems. Commissioner Bennett has a white paper and summary to assign to the commissioners as homework before the October Retreat. The consultant will also have three or four visions to discuss at the retreat. There will be a draft of goals and objectives which will be a major point of discussion at the retreat. Commissioner Bennett said the commissioners will need to review the State Rail Plan, the white paper, the summary, and the draft of goals and objectives before the retreat in October.

OLD BUSINESS

There was no old business to come before the Commission.

NEW BUSINESS

Director Dietrich said the staff is working on the Annual Report. Given the timing of the HSIP report, the Annual Report is not completely finished. Director Dietrich said the Annual Report will be given to the commissioners at the October Retreat.

The October Retreat is October 7, 2010 at Highbanks Metro Park.

PUBLIC COMMENT

Michael Connor spoke concerning the granting of the work on the Front Street Project. He wonders if we investigated the fact of the increase of intermodal trains vs. passenger trains.

He said he is "stunned" about the 94,000 pound truck limit. Did we do any studies on rural rail freight? Where does it stop? The rationale is poor. The trucks will be on country roads following Amish buggies. It doesn't have to move on highways.

Art Arnold of the Ohio Railroad Association appreciates Director Dietrich keeping the commissioners informed of the international shipping container proposal. He shares much of what Michael Connor has said already. The Strickland administration has brought a breath of fresh air on transportation issues in this state. There have been many meetings across the state discussing what we want our complete transportation system to look like. This proposed container rule is a great divergence away from many of the things the public has said they want our transportation system in Ohio to become. The administrative rule process is what led us to the transportation of steel coils that has grown to the number one item moved by special permit. The subsidy for moving steel coils is approaching \$45 million per year. That is almost one cent of gas tax revenues that are being subsidized for the movement of these heavy commodities by a special permit. Mr. Arnold feels it deserves more study.

Commissioner Lozier asked about the requirement that containers go to an intermodal facility. Mr. Arnold agreed. He said he has the complete Agri Business Report available if anyone would be interested in reviewing it. He is concerned with potential expansions beyond the current proposal and thinks this gives weight to a national effort to raise truck weight limits. Commissioner Lozier said he would like to discuss this issue more at a different time.

Director Molitoris introduced ODOT's Chief of Staff, Steve Campbell, who has been very involved in this proposed rule. Mr. Campbell feels that their department has the best permit system in the country. They issue over 200,000 of these types of permits a year and each permit requires a route check. He reiterated that the permits are for export items only and that the containers must go to a water or rail intermodal facility. They work very closely with law enforcement and local authorities to enforce the weight laws. This issue was part of ODOT's business plans and helps to modernize fees and requirements. Mr. Campbell said there will be a public hearing on Monday concerning the proposal and encourages anyone that is interested to participate.

ADJOURNMENT

Chairman Bradley called the meeting of the Ohio Rail Development Commission adjourned at 12:47 p.m.