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GENERAL COUNSEL DIVISION

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**MEMORANDUM**

DATE: September 12, 2013

TO: Matthew Garrett, Director  
Oregon Department of Transportation

FROM: Ethan R. Hasenstein, Assistant Attorney General  
Government Services Section *EH by ADJ*

SUBJECT: I-5 Bridge Replacement Project/Columbia River Crossing: Authority for  
Activities in the State of Washington  
DOJ File No.: 731020-GG0641-11

**INTRODUCTION**

The Oregon Department of Transportation ("ODOT") is engaged in further planning to pursue the I-5 Bridge Replacement Project ("IBRP"), also known as the Columbia River Crossing ("CRC"), under Oregon project and financial leadership. As described to us, the State of Oregon proposes to finance and construct, with the assistance of local jurisdictions, what is referred to as an initial phase of the CRC and described in the project's Final Environmental Impact Statement ("FEIS") under the National Environmental Policy Act ("NEPA"). In summary, it is our understanding that the initial phase includes construction of the following improvements:

- Oregon-side highway and light-rail transit ("LRT") improvements
- Multimodal river crossings
- Basic improvements to the Washington State Route ("SR-14") interchange with Interstate 5 ("I-5") to facilitate the connection of the highway crossing; and
- An extension of the Tri-County Metropolitan Transportation District ("TriMet") MAX Yellow Line LRT to Clark College in Vancouver

The CRC, as originally conceived, was to have been jointly-funded by the States of Oregon and Washington. With the adjournment of the 2013 Washington legislature without having taken up a transportation revenue package that would have funded Washington's contribution to the

project, Governor Kitzhaber has asked ODOT, the Oregon State Treasurer, and the Oregon Department of Justice to evaluate alternatives to deliver the project's first phase under Oregon's leadership. As an initial matter, we wish to emphasize that the multi-faceted legal issues associated with a project of this magnitude have not changed appreciably, although the change in project leadership and financing correspondingly presents some new legal issues and requires consideration of existing legal issues dealing with the unilateral aspects of a bi-state project.<sup>1</sup> This analysis considers the fundamental questions of legal authority under state law for ODOT to deliver the CRC's initial phase, including elements of the project that may be located in the State of Washington.

The purpose of this memorandum is to address two foundational questions of legal authority raised by Governor Kitzhaber's August 28, 2013 letter to Senate President Courtney and House Speaker Kotek. We anticipate forthcoming memoranda and advice of this office that will address additional legal issues related to the project.

### QUESTIONS AND SHORT ANSWERS

QUESTION: May ODOT enter into an agreement with the State of Washington to construct bridge, highway and light-rail transit (LRT) improvements within the borders of Washington State?

SHORT ANSWER: Yes.

QUESTION: May highway funds, toll revenue and bond proceeds be used for CRC project development and construction, including elements that will be within the borders of Washington State?

SHORT ANSWER: Yes, within limitations associated with the use of dedicated highway funds.

### DISCUSSION

- A. ODOT is authorized by Oregon law to enter into an agreement with the State of Washington to construct bridges over the Columbia River, including into specified areas of the I-5 corridor located within the State of Washington as required to carry out the bridge construction.**

Oregon statutes establish ODOT authority for construction and operation of interstate bridges, including bridges that span the Columbia River.<sup>2</sup> For many years, ORS 381.005 and

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<sup>1</sup> In many legal issues affecting this project, the State of Washington and Oregon and Washington local governments remain important partners. The Oregon Department of Justice anticipates continuing its productive relationship with the Washington Attorney General's Office, including the attorneys representing the Washington Department of Transportation on issues of Washington law and its interpretation, as well as counsel for the affected local governments.

<sup>2</sup> When interpreting a statute, our chief objective is to discern the intent of the legislature. *See PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993); ORS 174.020(1)(a) ("In the construction of a statute, a court shall pursue the intention of the legislature if possible."); *see also State v. Gaines*, 346 Or 160,

381.010 have authorized the Oregon Department of Transportation (ODOT) to construct, reconstruct, improve, operate and maintain, bridges over the Columbia River, and to enter into agreements with the State of Washington for that purpose.

**381.005 Construction, acquisition and maintenance of Columbia River bridges.** The Department of Transportation in the name of the state may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over the Columbia River to the State of Washington.<sup>3</sup>

**381.010 Agreements for carrying out powers.** For the purpose of carrying out or putting into effect the right, power and authority granted by ORS 381.005 to 381.080 or any other law, the Department of Transportation in the name of the state may make and enter into agreements with:

- (1) The Government of the United States or any of its agencies.
- (2) The State of Washington.
- (3) Any county, municipality, port or other political subdivisions or agencies of the State of Washington.
- (4) Any county, municipality, port or any other political subdivisions of this state.
- (5) Any persons, associations, corporations, domestic or foreign.

As a result of House Bill 2800 (2013), Or Laws 2013, ch 4, the 2013 Oregon Legislative Assembly amended ORS chapter 381 to clarify Oregon's authority to carry out the Interstate 5 bridge replacement project. Section 2 provides as follows:

**SECTION 2.** The Legislative Assembly finds that it is in the interests of this state to undertake the Interstate 5 bridge replacement project, a bistate, multimodal corridor improvement project between the Washington State Route 500 interchange with Interstate 5 in Vancouver, Washington, and the Victory Boulevard interchange with Interstate 5 in Portland, Oregon. The project includes:

- (1) New multimodal river crossings;
- (2) Replacement, modification and removal of the existing Interstate 5 bridges;
- (3) Improvements to existing interchanges; and
- (4) Multimodal improvements to facilitate travel in the bistate corridor.

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171-72, 206 P3d 1042 (2009). The appropriate methodology for interpreting a statute is a three-step analysis: (1) examine the statute's text and context, according plain, natural, and ordinary meaning to words of common usage; (2) review the legislative history; and (3) if the legislature's intent remains unclear, apply maxims of statutory construction. *Gaines*, 346 Or at 171-72. The Supreme Court has clarified that legislative history at the second step may be proffered and considered even if the court does not perceive an ambiguity in the statute's text. "However, the extent of the court's consideration of that history, and the evaluative weight that the court gives it, is for the court to determine." Moreover, [w]hen the text of a statute is truly capable of having only one meaning, no weight can be given to legislative history that suggests--or even confirms--that legislators intended something different. *Id.* at 173.<sup>3</sup> The quoted statutory language was amended by 2013 House Bill 2800, § 4, 2013 Or Laws ch 4, discussed in detail later in this memorandum.

Thus, the text of these statutes unambiguously establishes ODOT's authority to construct and operate the CRC, and to enter into agreements with the State of Washington for that purpose.<sup>4</sup>

Bridges exist within the context of the highways that are connected by the bridge. In Oregon, the state highway system is administered by ODOT through the Oregon Transportation Commission. *See generally* ORS 336.005 and 366.220. In § 4 of HB 2800, the legislature confirmed the scope of ODOT authority for the CRC as a part of the state highway system by amending ORS 381.005, as follows:

**SECTION 4.** ORS 381.005 is amended to read:

381.005. (1) The Department of Transportation in the name of the state may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over the Columbia River [*to the State of Washington*].

**(2) Notwithstanding the designation of state highways within this state under ORS 366.005 and 366.220, the department may acquire real property necessary for the Interstate 5 bridge replacement project, together with approaches and connecting roads, on both sides of the Columbia River. For the purposes of the Interstate 5 bridge replacement project, the Oregon Transportation Commission by resolution may designate additional approaches, connecting roads and related facilities within the Interstate 5 corridor on both sides of the Columbia River as a part of the Oregon state highway system.**

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<sup>4</sup> It is beyond the scope of this memo to analyze or interpret Washington law, but it is relevant to note that the Washington legislature has defined the "Columbia River Crossing project" as "the bistate, multimodal corridor improvement program between the state route number 500 interchange in Vancouver, Washington and the Victory Boulevard interchange in Portland, Oregon." Revised Code of Washington (RCW) 47.56.890. As part of the bill that enacted RCW 47.56.890, the Washington legislature also made the following findings:

The legislature finds that the replacement and improvement of the Interstate 5 Columbia river crossing is critical for the west coast's transportation system and for the safety of Washington and Oregon drivers. The interstate bridge includes two side-by-side structures built in 1917 and 1958. In 2005, approximately one hundred thirty-four thousand vehicles traveled across the interstate bridge each day, and about forty billion dollars in freight crosses the river each year. Collisions on and near the bridge occur at a rate almost twice as high as other similar urban highways, and the aging bridges are vulnerable to earthquakes. Replacing these structures and making multimodal improvements to facilitate travel in the bistate corridor is essential for the economy of the region. Therefore, the state must develop a comprehensive approach to fund an Interstate 5 Columbia river crossing project.

2012 ch 36 § 1. Washington Department of Transportation is also authorized to enter into agreements with its counties, and with adjoining states or their counties to investigate toll bridge projects "for the bridging of a river forming a portion of the boundary of this state, and the adjoining state." RCW 47.56.042.

Significantly, § 4 amends ORS 381.005(1), deleting the phrase “to the State of Washington,” thus avoiding any question about actually landing the bridge in Washington.<sup>5</sup> Removing that phrase from the statute affirms that the bridge necessarily includes some elements that must be located on the Washington side of the Columbia River. This legislative intent is further expressed in the statutory language added in subsection (2).

Beginning the new subsection (2) with the phrase “*Notwithstanding the designation of state highways within this state under ORS 366.005 and 366.220*” provides additional statutory context. The function of a “notwithstanding” clause in a statute is to establish an “exception to the provisions of law referenced in the clause.” *Severy v. Board of Parole*, 318 Or 172, 178, 864 P2d 368 (1993); *see also State v. Kolisch*, 185 Or App 418, 422, 60 P3d 576 (2002). In particular, ORS 366.005 provides a general statutory definition of “state highway”, and ORS 336.220 authorizes creation of the Oregon state highway system by the Oregon Transportation Commission. Here, § 4 of HB 2800 removes any ambiguity that might have been lurking in applying those statutes to the CRC. Section 4 declares that the Oregon Transportation Commission may designate the project as part of the Oregon state highway system up to and including the specified locations along the Interstate 5 corridor on both sides of the Columbia River. Effectively, the CRC (including associated approaches, connecting roads and related facilities) is expressly incorporated into the Oregon state highway system.

Based on the text and context of the statutes cited above, we conclude that the legislature has authorized ODOT to enter into an agreement with the State of Washington to construct bridge, highway and light-rail transit improvements within the borders of Washington State for these purposes, including the areas of the Interstate 5 corridor that were identified in HB 2800. ODOT is authorized to treat the CRC as an integral part of the Oregon state highway system.

**B. The State Highway Fund may be used for state highway purposes including the CRC, subject to several constraints.**

HB 2800 begins with legislative findings that it is in the interests of the State of Oregon to undertake the CRC project, as described in HB 2800 § 2. The 2013 Oregon Legislative Assembly also provided for financing the CRC, including the issuance of bonds to fund its equity share in an amount not to exceed \$450 million, subject to certain conditions including but not limited to the State of Washington having committed funds to the CRC no later than September 30, 2103. *See* HB 2800 § 2(4)(a);<sup>6</sup> Oregon Laws 2013, chapter 705 (referred to herein as Senate Bill (SB) 5506), § 7. However, the 2013 Washington Legislature adjourned without having passed a transportation revenue package that would have funded Washington’s equity contribution.

Certain amendments to HB 2800 and SB 5506 are needed in order to authorize an Oregon-financed, Oregon-led project proposal. For example, HB 2800, §3(4) would need to be amended to remove the limitation on the State of Oregon’s financing authority that required Washington legislative action. In addition, the bonding authorizations in HB 2800, § 3(3) and SB 5506 require amendment. Assuming the law is amended to allow Oregon to take on sole

<sup>5</sup> HB 2800 § 6 likewise repealed ORS 381.075.

<sup>6</sup> A copy of the enrolled session bill is attached for reference.

financing authority over the project's initial phase, ODOT has statutory authority to designate the bridge, approaches, and connecting roads in the State of Washington as part of the Oregon State Highway System. Therefore, we must consider whether the constitutional dedication of state highway funds in Article IX, § 3a, of the Oregon Constitution<sup>7</sup> limits the State of Oregon's authority to expend state highway funds for project elements in the State of Washington. This question was anticipated and addressed in HB 2800 § 5, as follows:

**SECTION 5.** ORS 381.020 is amended to read:

381.020. The Department of Transportation may *[pay out of state highway funds or] use moneys in the State Highway Fund, and any other [funds] moneys* available to *[it] the department, to pay* any part of the cost of the construction, purchase, **financing**, maintenance, operation, repair, reconstruction and improvement of any bridge mentioned in ORS 381.005. *[assessed and allocated to this state. In the event the bridge is operated as a toll bridge, then the share of toll revenues accruing to this state shall be applied by the department to reimburse the state highway funds for expenditures made in connection with the bridge.]*

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<sup>7</sup> Article IX, Section 3a, of the Oregon Constitution provides as follows:

Section 3a. Use of revenue from taxes on motor vehicle use and fuel; legislative review of allocation of taxes between vehicle classes. (1) Except as provided in subsection (2) of this section, revenue from the following shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state:

- (a) Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; and
  - (b) Any tax or excise levied on the ownership, operation or use of motor vehicles.
- (2) Revenues described in subsection (1) of this section:
- (a) May also be used for the cost of administration and any refunds or credits authorized by law.
  - (b) May also be used for the retirement of bonds for which such revenues have been pledged.
  - (c) If from levies under paragraph (b) of subsection (1) of this section on campers, motor homes, travel trailers, snowmobiles, or like vehicles, may also be used for the acquisition, development, maintenance or care of parks or recreation areas.
  - (d) If from levies under paragraph (b) of subsection (1) of this section on vehicles used or held out for use for commercial purposes, may also be used for enforcement of commercial vehicle weight, size, load, conformation and equipment regulation.
- (3) Revenues described in subsection (1) of this section that are generated by taxes or excises imposed by the state shall be generated in a manner that ensures that the share of revenues paid for the use of light vehicles, including cars, and the share of revenues paid for the use of heavy vehicles, including trucks, is fair and proportionate to the costs incurred for the highway system because of each class of vehicle. The Legislative Assembly shall provide for a biennial review and, if necessary, adjustment, of revenue sources to ensure fairness and proportionality.

The text of ORS 381.020, as amended, establishes that ODOT may use moneys in the State Highway Fund for the project. While there are no specific statutory limitations included in amended ORS 381.020, our previous analysis of the constitutional constraints on uses of the State Highway Fund must be considered in this context.

**1. Oregon highway funds may be expended for highway purposes on approaches, ramps, and project components in Washington.**

Article IX, § 3a, of the Oregon Constitution and statutes implementing that constitutional provision contain an apparent geographic constraint on the expenditure of highway funds “exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas *in this state*.” Or Const Art IX, § 3a(1) (emphasis added). Thus, the question arises whether funds derived from toll revenues may be expended for the construction, improvement, operation, and maintenance of that portion of the CRC highway, approaches, interchanges, and other highway improvements located on the Washington side of the Columbia.<sup>8</sup>

In our view, Article IX, § 3a does not prohibit ODOT’s expenditure of toll revenue on project components located in Washington, provided that the expenditure is for highway purposes that would facilitate the Oregon State Highway System and otherwise be permissible in Oregon. First, we think a persuasive argument may be made that the construction, maintenance, and operation of bridge components, approach roads or exits in the State of Washington directly facilitate the “improvement, \* \* \* operation and use” of the Oregon components of the CRC. Simply put, a bridge’s utility is primarily measured by users’ ability to get vehicles on and off it, as well as travel to and from the State of Oregon. *See Rogers v. Lane County*, 307 Or 534, 545, 771 P2d 254 (1989) (Article IX, § 3a permits funding of “other projects or purposes within or adjacent to a highway, road, street or roadside area right-of-way that primarily and directly facilitate motorized vehicle travel”).

Second, as a contextual matter, the putative geographic limitation on the use of Oregon highway funds pre-dates the adoption of Article IX, § 3a. That provision’s predecessor, *former* Article IX, § 3, of the Oregon Constitution was adopted in 1942, and although it contained dedications of highway funds to police and park purposes that the voters ultimately eliminated when they adopted Article IX, § 3a, it provided in part that “the proceeds from any tax or excise levied on the ownership, operation or use of motor vehicles shall \* \* \* be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation, use and policing of public highways, roads and streets *within the State of Oregon*.” (Emphasis added.) While *former* Article IX, § 3 was in effect, the Oregon legislature in 1955 enacted the statute now codified as ORS 383.096, which provides in part that ODOT:

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<sup>8</sup> In our view, Oregon’s constitutional highway fund dedication would prohibit expenditure of toll revenues to be pledged as additional security for federal transit grant anticipation bonds. *See* 48 Op Atty Gen 345 (1997) (use of highway funds to generate funds for non-highway purpose violates Article IX § 3a).

may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over the Snake River *into* the State of Idaho, and may acquire any real property necessary for any such bridge, together with approaches and connecting roads, *on both sides of the river*.

Or Laws 1955, ch 85, § 1 (emphasis added). When it enacted the Snake River bridge statutes, we assume that the legislature viewed *former* Article IX, § 3 as no impediment to authorizing the expenditure of highway funds on the Idaho side of the river to facilitate the construction, maintenance, and operation of bridges over the Snake River. However, the legislative history to these statutes contains no discussion on this point.

Likewise, for reasons discussed earlier in this analysis, the legislature had previously determined that bridges across the Columbia River are part of the Oregon highway system. ORS 381.005 as amended by HB 2800 definitively establishes that the entirety of the CRC is part of Oregon's state highway system, including the statutorily specified components that may be located within the State of Washington. ORS 381.020 as amended by § 5 of HB 2800 directly authorizes ODOT to "use moneys in the State Highway Fund, and any other moneys available to the department, to pay any part of the cost of the construction, purchase, financing, maintenance, operation, repair, reconstruction and improvement of" the I-5 bridge over the Columbia River which is not limited to only Oregon-side components.

We are not aware of any court decisions or opinions of this office addressing whether the expenditure of dedicated highway funds is limited to highway improvements physically located wholly within Oregon's borders. However, in our view, Art IX, § 3a, of the Oregon Constitution probably does not constrain ODOT's authority to expend highway funds on bridge components, improvements, approaches, and interchanges provided that they primarily and directly facilitate motor vehicle use of the Oregon portion of I-5 and other Oregon state highways.<sup>9</sup> *See Rogers*, 307 Or at 545 (expenditure of dedicated highway funds "must be limited exclusively to expenditures on highways, roads, streets and roadside rest areas themselves and for other projects or purposes within or adjacent to a highway, road, street or roadside rest area right-of-way that primarily and directly facilitate motorized vehicle travel"). Moreover, the legislature has expressly included the I-5 bridge replacement project within the Oregon State Highway System and has further explicitly authorized use of the State Highway Fund for the purposes authorized in ORS 381.020 as amended.<sup>10</sup>

## **2. Toll revenues accruing to Oregon are constitutionally-dedicated highway funds.**

The expenditure of Oregon state highway funds on the CRC must be for highway purposes, consistent with the constitutional highway fund dedication in Article IX, § 3a, of the Oregon

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<sup>9</sup> As the project moves beyond the first bridge landing and highway connection at SR-14, however, we believe it less likely that a court would find such northward improvements to primarily and directly facilitate the Oregon highway system.

<sup>10</sup> ODOT may wish to examine and update any internal project or account controls that may limit out-of-state highway fund expenditures.

Constitution. It is our understanding that the construction, operation, and maintenance of the CRC will be financed, in part, by tolls on bridge users. In our view, toll revenues accruing to the State of Oregon would be constitutionally-dedicated highway funds because tolls are a “tax or excise levied on the ownership, operation or use of motor vehicles [.]” Or Const Art IX, § 3a(1)(b). Oregon’s courts construe the constitutional highway fund dedication narrowly. *Auto. Club of Oregon v. State of Oregon*, 314 Or 479, 840 P2d 674 (1992).

It is well-settled that revenues derived from an Oregon highway fund asset (that is, an asset constructed with trust funds) are themselves highway funds subject to the use-benefit constraints of Article IX, § 3a. In other words, revenues derived from the use of a highway fund asset retain the asset’s character as a trust fund asset, and may not be diverted to non-highway purposes. 37 Op Atty Gen 349 (1975) (royalties from mineral leases on property acquired with highway funds accrue to the Highway Fund); *Rogers*, 307 Or at 541; *Oregon Telecom. Assoc. v. ODOT*, 341 Or 418, 144 P3d 935 (2006) (“[T]he focus of the text [of Article IX, § 3a] is on the connection between the process or activity and the public highway, not the connection between the process or activity and the motor vehicle traffic that may from time to time use the public highway.”).

Although ORS 383.003(6) rather circularly defines “toll” as a “fee or charge for the use of a tollway,” under Oregon’s framework for constitutional and statutory construction, to determine the intent of the people or the legislature in adopting a constitutional provision or statute, the courts look first to the plain, ordinary meaning of the words used in the provision. *See note 2, supra; Schmidt v. Mt. Angel Abbey*, 347 Or 389, 402, 223 P3d 399 (2009) (citing dictionary as key resource in plain meaning analysis). “Toll” falls within the plain meaning of “excise,” as that word is defined in the edition of the Merriam-Webster Dictionary used by our state’s courts to analyze plain meaning: “1 \* \* \* DUTY, TOLL, TAX \* \* \* any of various taxes upon privileges[.]” WEBSTER’S THIRD NEW INT’L DICTIONARY 792 (2002 ed, unabr). *See Pac. First Federal v. Dept. of Revenue*, 308 Or 332, 779 P2d 1033 (1989) (a tax on the exercise of a privilege is an excise). A toll imposes a fee for the privilege of driving over the Columbia River on Interstate 5. It is thus an excise imposed on the use of a motor vehicle on that portion of I-5 constructed and maintained with highway fund assets.

In addition, ORS 366.505 implements the intent of the voters in adopting Art. IX, § 3a by creating the State Highway Fund as a trust fund, into which, among other revenue streams, gas taxes, federal highway funds, bond proceeds, and “all moneys and revenues received from all other sources which by law are allocated or dedicated for highway purposes” are deposited. ORS 383.505(1)(e). The Oregon legislature has further made clear its intent that toll revenues are highway funds by creating the State Tollway Account in the Highway Fund under ORS 383.009.<sup>11</sup>

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<sup>11</sup> As constitutionally-dedicated highway funds, Oregon’s toll revenues may not be permanently diverted to non-highway uses. Thus, while toll revenues accruing to the State of Oregon may be expended on limited transit facility improvements with a primary and direct connection to the highway, it is doubtful that toll revenue may be pledged toward or used to service federal transit grant anticipation bonds.

## CONCLUSION AND FURTHER CONSIDERATIONS

In summary, we conclude that the State of Oregon has the legal authority to enter into agreements with the State of Washington to construct an Oregon-financed initial phase of the CRC in the State of Washington and that toll revenue and other state highway funds may be expended on Washington-side highway improvements that directly facilitate use of the Oregon highway system.

We emphasize, however, that these conclusions come with some important qualifications. Chiefly, such authority cannot be exercised unilaterally. Substantial cooperation and participation by the State of Washington and its Executive Branch agencies is still required. We note that the Oregon Attorney General cannot opine as to the extent of Washington state agency authority. While our review of Washington statutory authority gives us some confidence that the State of Washington can, without further action by its legislature or additional appropriation of funds, take certain key measures to facilitate Oregon's proposal to finance and construct the initial phase of the project, only the Washington Attorney General can provide reliable legal opinions that confirm the scope of this authority.

This proposal implicates key attributes of state sovereignty. For example, the State of Oregon is without authority to exercise eminent domain outside its borders. Moreover, we are informed by attorneys in the Washington Attorney General's Office that WSDOT cannot transfer title to WSDOT right-of-way to ODOT. Thus, ODOT will need WSDOT to secure right-of-way for the bridge touchdown and corresponding connections to SR-14 and provide ODOT with a long-term lease or other permit to occupy WSDOT right-of-way for, at minimum, the repayment period of Oregon's bonds, which could exceed 30 years. We are further informed by WSDOT's counsel that WSDOT engineering approval must be granted to locate Oregon highway facilities on WSDOT right-of-way and link it to the Washington state highway system.

Further, a legal structure to enable the construction, improvement and operation of the TriMet LRT within the City of Vancouver requires further development. This aspect of the initial phase calls not only for key decisions and actions by the State of Washington, but also local governments including TriMet, the City of Vancouver, and Clark County's public transit benefit authority, C-TRAN. Again, while our office can provide opinions and advice as to the scope of the State of Oregon's legal authority, counsel for those local governments are in the best position to opine on their clients' legal authority. We intend to engage with counsel for these agencies to further these important conversations and secure the legal opinions and agreements that clarify these jurisdictions' roles and responsibilities. In any event, however, a full discussion of legal aspects of the transit element of the CRC is beyond the scope of this initial memorandum and will be taken up in full in subsequent advice from this office.