

MEETING MINUTES

Spokane Regional Transportation Council
Board of Directors Meeting – Thursday October 8, 2020
Zoom Video Conference Meeting

1. Call to Order/Record of Attendance/Excused Absences - Chair Ben Wick brought the meeting to order at 1:01 pm.

Board Members Present:

Mayor Ben Wick	City of Spokane Valley (Chair)
Council Member Paul Schmidt	City of Cheney (Vice-Chair)
Council Member Sonny Weathers	City of Airway Heights
Mayor Shane Brickner	City of Liberty Lake
Council Member Lori Kinnear	City of Spokane
Larry Stone	Major Employer Rep.
Matt Ewers	Rail/Freight Rep.
Commissioner Al French	Spokane County
E. Susan Meyer	Spokane Transit Authority
Kennet Bertelsen	TAC Chair
Karl Otterstrom	TTC Chair
Kelly Fukai	WA St Transp. Commission
Council Member Micki Harnois	Town of Rockford, Small Cities & Towns Rep.

SRTC Staff Present:

Sabrina Minshall	Executive Director
Eve McMenamy	Principal Transportation Planner
Jason Lien	Principal Transportation Planner
Mike Ulrich	Principal Transportation Planner
David Fletcher	Assoc. Transportation Planner III
Michael Redlinger	Assoc. Transportation Planner II
Julie Meyers-Lehman	Admin-Exec Coordinator
Greg Griffin	Administrative Services Manager
Stanley Schwartz	Legal Counsel

Board Alternates Present

Council President Breean Beggs, City of Spokane
Larry Larson, WSDOT-East. Region
Commissioner Josh Kerns, Spokane County

Guests Present

Laura McAloon, Legal Counsel for STA
Amber Lenhart, Spokane Regional Health Dist.
LeAnn Yamamoto, CommuteSmart NW
Donna DeBit
Paul Kropp
Anna Ragaza-Bourassa, WSDOT-East. Region
Katy Allen, City of Liberty Lake
Chad Coles, Spokane County
Melanie Rose, TAC Member
Char Kay, WSDOT-East. Region
Kevin Picanaco, City of Spokane
Brandi Colyar, Spokane County
Gabe Phillips, WSDOT
Sean Messner, HDR
Joe Tortorelli, Good Roads Association
Ron Valencia, Spokane County
Cary Driskell, Legal Counsel for City of Spokane Valley
Mark McClain, Legal Counsel for Spokane County

2. Public Comments – There were no public comments.

3. Executive Director’s Report – Ms. Minshall reported on:

- As part of its RTPO requirements, SRTC is currently reviewing Spokane County comprehensive plan amendments.
- The Freight Subject Matter Expert Team will be meeting for the fourth time next week; the focus will be the connection between freight and environmental justice and continuation of review of regional freight flows.
- The consultant hired to perform the financial forecast as part of the MTP update is wrapping up their forecasting work and information will be presented to the TTC and the Board in upcoming meetings.
- SRTC began implementing the land use methodology approved by the Board last month. Staff is working with jurisdictions to get information about pending development, which is factored into the forecast.
- Due to the pandemic, the timeline for completion of the U.S. Census has been pushed out, which will also delay when final numbers are released. This impacts SRTC as census numbers are used to calculate dues, the ILA, and transportation analysis zone forecasting.
- The US 195/I-90 future conditions report is under review by the study’s advisory team to be followed by stakeholder and public engagement. The Board and TTC will receive information as well.
- Announced that for personal reasons she is now a dual resident of Washington and Idaho and working virtually from both location. She said it is her intent to eventually pursue a full-time position in Boise and the Board Administrative Committee will discuss the timeline and details of the Executive Director recruitment process in November.

ACTION ITEMS

4. Consent Agenda (a) September 2020 Meeting Minutes (b) September 2020 Vouchers– Chair Wick called for any discussion of the consent agenda. There was none.

Mr. Schmidt made a motion to approve the Consent Agenda as presented; Ms. Fukai seconded. Motion passed unanimously.

5. 2021-2024 Transportation Improvement Program (TIP)– Ms. McMenemy provided an overview of a TIP and noted there are 69 projects in this program totaling \$714 million of investment spending in the upcoming four years. She presented a chart that showed the number of projects by type and the percentage of funding they represent. She described the public outreach for this program and the virtual public meeting held on 09/15/20, in which representatives from City of Spokane Valley, WSDOT and the City of Spokane spoke about high profile projects. There were no questions or discussion.

Ms. Meyer made a motion to approve the 2021-2024 TIP as presented and Mr. Schmidt seconded. All votes were in favor.

6. TIP Delivery & Project Readiness Policies – Ms. McMenemy explained why new policies for project delivery are being discussed. To ensure that the federal obligation target is met more consistently, a process to improve project delivery and strategies meet the target earlier began this spring; she presented a timeline of discussions highlighting the times this topic has been discussed by the TTC, stakeholders and the Board.

She provided details about TIP Guidebook policy change recommendations which were to (1) Increase flexibility to move projects into an earlier year of the TIP, (2) Conduct a biennial SRTC preservation call for projects and (3) De-federalize funding for flexibility. She also explained recommended updates to TIP practices (1) Phasing for larger projects, (2) Move the internal SRTC obligation target date to June 30 and (3) Require agencies to submit a Plan B for delivery options. There were no questions or discussion.

Ms. Meyer made a motion to approve the TIP Delivery & Project Readiness Policies as presented; Ms. Harnois seconded. Motion carried with all votes in favor.

Chair Wick said that Mr. Schwartz had not yet joined the call and asked if there was any objection to moving ahead to the information and discussion items and then coming back to Item #7. There were no objections.

INFORMATION & DISCUSSION ITEMS

8. Data Applications for Transportation Analysis (DATA) Project Update – Mr. Ulrich provided a history of the project and prior Board action to fund the design and implementation. He defined what planning tools SRTC currently uses and outlined reasons for needing improved data collection and analysis tools, which is the impetus behind the DATA project. He spoke about the multi-jurisdictional project team and public involvement to date. He presented the project's phasing plan and noted that a recommendation of potential analytic tools will come before the Board for consideration later in the year. There were no questions or discussion.

9. Legislative Regional Priority Projects – Chair Wick said this came out of discussions earlier in the year from the joint chambers of commerce about regional transportation priorities and how to prepare for a potential revenue package coming from the state legislature. He provided a background of creation of the project list and the groups involved. He noted that legislative leadership approached Greater Spokane Inc in mid-September and requested the priority list be sent to them within a week, which was done.

Chair Wick asked if the Board would like to consider endorsing the regional project priority list at a future meeting.

Ms. Fukai said the Board has a voice in this conversation and the voices are stronger when we stand together. She said the business sector has ideas of what is significant from an economic development standpoint and SRTC could assist in providing the community's viewpoint.

Mr. French noted that existing Connecting Washington projects should be listed as the region's primary priorities; funding for other projects would be a bonus but Connecting Washington projects must come first and foremost.

Mr. French questioned the source of the data supporting the list. He stated it may be just a wish list of projects which have not received robust analysis. He suggested narrowing down the list to projects that have been vetted. Mr. Larson agreed; he said it helps a funding request to be able to tell a story that is backed up with data.

Mr. French, Mr. Larson and Ms. Meyer remarked that Connecting Washington projects should be listed and have highest priority for funding.

Chair Wick said the suggested edits will be made to the list and asked if there was objection to bringing this item back for Board action next month. There were no objections.

ACTION ITEM

7. Resolution 20-03: Declaring Intent to Add New Voting Members and Providing for Other Administrative Matters Related Thereto – Chair Wick noted that Mr. Schwartz had joined the meeting and asked him to provide a background to this topic. Mr. Schwartz spoke about RCW 47.80.50(2) and the multiple discussions earlier this week between himself and attorneys representing STA, Spokane County and City of Spokane Valley regarding the differing interpretations of implementation of the statute as a result of ambiguities in the ILA. He reiterated that the result of non-compliance with the legislation is potential loss of RTPO funding, which is approximately \$300,000 per biennium. He said the course of action outlined in his memo of 10/6/20 is the most conservative and has the least amount of risk for non-compliance with the requirements of the legislation.

Mr. Schwartz said the law requires that RTPOs offer federally recognized Tribes within the planning area voting membership "every two years or when the composition of the board...is modified in an ILA" The attorneys' collective opinion is that resignation of Spokane Airports (SIA) from SRTC effective 12/31/20 is a modification of the ILA and therefore the offer of membership must occur before that date.

Mr. French read from the ILA Section 13: Amendments and New Members which states "*This Agreement may be amended by unanimous consent of the Member's governing bodies, except WSDOT may take action through its Secretary. Upon majority consent of the voting Members, new members may join the Council upon written acceptance of the terms of this Agreement*".

Mr. French questioned the opinion that withdrawal of SIA constitutes a modification of the ILA. He said adjustment of the current weighted voting formula is the only thing that must happen right now as the result of SIA withdrawal. He agrees that the opinion that amending or changing the ILA must come from the signatory members, not from the Board member representatives of the signatory members. He suggested that member agencies be contacted to discuss the terms of new SRTC membership and other provisions in the ILA.

Ms. Harnois said, as the Small Cities & Towns representative, she is not sure that the jurisdictions she represents will be in favor of sharing their vote with an additional two member agencies.

The group discussed the two sentences from Section 13 of the ILA.

Mr. Schwartz pointed out the addition of new members is controlled by the voting members and stressed the importance of advancing the matter as soon as possible. He recommends that the Board consider the suggested motion.

Mr. Beggs said if the first step is to send a letter to member jurisdictions and they do not respond then we are in the same dilemma. He suggested adding a deadline date to any proposed motion. Mr. French disagreed the addition of a deadline.

Ms. Kinnear asked for clarification on the schedule of action. Mr. Schwartz said if a motion is approved by the Board today, then SRTC will send a letter to member agencies asking for their approval of membership extension; once the responses are returned, the offer of membership would be extended to the Tribes.

Several members suggesting sending membership offers to the Tribes now and the details could be worked out later. Mr. French questioned how an offer of membership can be made without knowing the membership terms; any offer must include terms or they won't know what they are accepting.

Mr. Schmidt sought clarification about the process; he asked if the Board approves the motion today that would direct the Executive Director to send a letter to all members and assuming majority approval, then in November or December the Board would take on a discussion about terms of new membership? Or does a discussion of terms go back to all agencies? He said he is hearing that the legal counsel is recommending the suggested motion as having the least risk for non-compliance with state law, but he is unclear if discussions of the membership terms is a Board decision or signatory agency decision.

Mr. Schwartz the Board will need to hold discussions to identify and agree upon new membership terms, since response of signatory members is just to offer membership to new members with terms to be negotiated. He reiterated that terms of SRTC membership were not discussed by the attorneys.

Mr. Schmidt asked if the approval of adding new members is done by passed a majority or if it must be unanimous. Mr. Schwartz referred back to Section 13 that says new members can be approved by a majority consent of voting members; amending the ILA has to occur with regards to *how* the new members are added and then first sentence of Section 13 becomes operative. He stated that whatever amendment is made to the ILA will be returned to the members' governing bodies for ratification. He said in the short term the offer can be made now then terms will have to be negotiated; he noted this may be a good time to evaluate how the conversation about terms will occur. The recommended action is seeking approval from member agencies to give SRTC the authority to being the process.

Ms. Meyer asked if the new members accept the invitation, are they accepting the terms of the current ILA? If that is the case, then the ILA does not have to be amended prior to offering membership to the Tribes. She suggested that modifications of the ILA that would identify the new members voting structure and participation do not have to be made right now. The Tribes can accept the invitation under the current ILA, which does not identify their role, and then work can begin on a new ILA which will identify their role. Mr. Schwartz agreed that new members have to accept to the terms of the existing ILA, but noted they must be offered *voting* membership according to the statute and the definition what that looks like must be addressed. Mr. Schwartz said he realizes this is confusing, but the statute does not provide clear guidance.

Mr. Brickner left the meeting at 2:30 pm.

Mr. French said the Tribes have only trust lands in the planning area, not tribal lands with residents, therefore giving them each a vote on this body while all the cities and towns in Spokane County with populations under 5,000 (Cites of Millwood, Deer Park, Medical Lake and Towns of Fairfield, Spangle, Waverly, Latah and Rockford) must share a single vote is unfair to those cities and towns. He said we need to discuss how to treat all members equitably; the current ILA does not have a category for the Tribes and so that must be created in a new ILA. He stressed the importance of detailing terms of membership prior to offering it. Mr. French stated that while the negotiators for the ILA *can* be members of SRTC Board, but they don't *have* to be; they can be other members of the legislative body that come together to negotiate the agreement.

Chair Wick commented that if it is taking a team of attorneys holding multiple conversations to interpret the existing ILA, that may be a clear indication that it needs to be updated. He feels that jurisdictions have appointed Board members to act as their representatives to SRTC and while he agrees with sending this out to jurisdictions for approval, he would like to add some definition to the membership terms first. He said he is also hearing

reluctance to adding two dedicated seats on the Board, so perhaps it could be a shared position, but either way the role should be identified first with new members accepting that role until the new ILA is negotiated.

Mr. Schwartz said this is the very first time there has been Board discussion this specific about the operation of the statute and the issues are very significant for a number of reasons; he suggested convening a special meeting of the Board within the next two weeks to define what the offer will be so the jurisdictions have something more specific to vote on rather than just simply giving the authority to SRTC to craft an offer. He said the offer must include terms of membership and voting structure, and he again emphasized that the legislation does not offer any guidance. He said if the Board is willing, this is a good opportunity for a workshop to discuss this one particular topic.

Mr. Beggs read a potential action which he had written in the chat box *"I move that the Board, by affirmative vote of a majority of those present, direct the Executive Director to send letters requesting that the Member jurisdictions of the signatories of the ILA, through their governing bodies, take action pursuant to RCW 47.80.050(2) no later than November 30th to inform the Executive Director whether or not the Member jurisdiction consents to offer membership on the SRTC to the Spokane and Kalispel Tribes membership pursuant to Section 13 of the current ILA."* He noted this takes everyone's points into consideration but does not attempt to discuss the terms of membership or a new ILA and would reach to the goal of being in compliance with the legislation.

Mr. French asked for clarification of Mr. Beggs proposal. Mr. Beggs said he suggested that we ask SRTC member agencies whether they agree to make the offer and then terms of offer will need to be outlined. But pursuant to Section 13 and the statute, we first to have to decide if an offer will be made at this time. He has no objection to Board members discussing terms of membership.

Mr. French replied that the legislation is not an option of offering membership to the Tribes or not, so asking member agencies if they agree has no merit. He said the question on the table is who determines membership will be added and how it will be done, which he feels is ultimately will be the decision of ILA signatories. Therefore, he feels the signatories should convene to discuss who will represent them and then additional meetings to discuss membership, however it is unlikely that can all happen before 12/31/20.

Mr. French said he would be supportive of that course of action because SRTC does not have the authority to define membership terms; it would be a waste of time for SRTC to craft membership terms which could be rejected by the member agencies. It must be the ILA signatories making that determination, otherwise it is destined for failure.

Mr. Beggs said he was trying to determine if we extend the offer before 12/31/20, which provides us the maximum protection from non-compliance, or do we wait until the deadline of 08/01/21. He feels we should ask member agencies if they want to extend membership by 12/31/20 or not.

Mr. Weathers stating he is seeing this as segmented based on counsel's recommendation that there be a workshop to better define the terms. He said that instead of waiting until next month to send a letter requesting jurisdictions consider offering membership to the Tribes, he suggested the Board pass a motion today with the understanding that workshop will take place very soon, so that by the time that member jurisdictions are discussing it, the terms are in place.

Mr. French said any motion of that nature has no weight of authority; it's only the members of the ILA that can make that offer.

Mr. Wick asked if the Board wanted to put a recommendation to our individual member agencies to very narrowly extend invitations with very narrowly defined terms to the Tribes before the end of the year or does the Board have more conversations to put together what those terms would be to be included in the recommendation to the members?

Mr. Schmidt said in the original packet there was a draft resolution which spelled out membership terms; he asked if the Board agreed to these terms and then sent a copy of the resolution out to signatory members, per the second sentence of section 13, the members would know exactly what terms are being offered.

Mr. Wick replied that the resolution in the packet was from a prior recommendation by legal counsel saying this could be done by an action of the Board, but the subsequent conversation by the attorneys determined that a better option would be to send it to member agencies to approval. The supplemental memo (dated 10/6/20) from legal counsel recommended the Board action with slightly more vague language. He asked Mr. Schmidt if he is suggesting that inclusion of the specifics from the draft resolution be included in the Board recommendation; Mr. Schmidt affirmed.

Mr. French made a motion that the Board, by affirming a vote of a majority of those present, direct the Executive Director to send letters requesting the members of the signatories of the ILA to their governing bodies to convene and define the terms and conditions of a membership offer to be made to the Spokane Tribe and the Kalispel Tribe of Indians. Mr. Weathers seconded the motion.

Ms. Kinnear asked for clarification that this motion is what was recommended by legal counsel and will withstand any legal challenge. She said Mr. French has just stated we will be making an offer without any terms and she feels this is very confusing. She would like to know from Mr. Schwartz that this will withstand legal challenge.

Chair Wick pointed out that Mr. French's motion was based on legal counsel's recommendation, but with the addition of the wording "*requesting the members of the signatories of the ILA to their governing bodies to convene and define the terms and conditions of a membership*".

Ms. Kinnear said that her question to Mr. Schwartz still stands; would the addition of that wording withstand legal challenge and does it make sense. Mr. Schwartz said he feels the motion is reasonable and the additional language suggested by Mr. French comports with the statute.

Mr. Beggs asked Mr. Schwartz if there should the inclusion of a completion date of on or before 12/31. Mr. Schwartz that could be helpful; before the end of the year or 12/15 or something similar, in terms of passing the motion to the governing body members, based on the discussions of the group of attorneys. He doesn't see any harm in adding deadline.

Mr. Beggs made a motion to amend Mr. French's motion to add the words "no later than 12/15/2020" after the last sentence. Ms. Kinnear seconded the motion.

Chair Wick said the motion was to convene a group to define the terms and conditions of membership and this adds a response date; he asked once this group defines what the membership conditions will be, then it will go to all member agencies for ratification before the offer is extended? Mr. Schwartz replied he thinks that would have to be the process.

Mr. French restated that this body has no authority to tell the ILA signatories to do anything in a prescribed period of time. The inclusion of a deadline would be meaningless because SRTC does not define to ILA signatories how or what to do. He doesn't want to build an expectation that something is going to happen by a certain date when SRTC does not have the authority to enforce it.

Mr. Kinnear said the conversation is very confusing; there have been conflicting statements made and she is not ready to vote until things are clearer.

Mr. Schwartz stated he felt Mr. French's motion is clear. The question becomes what happens when the terms and conditions are developed by the committee. He interprets Mr. French's motion to say that the identified terms and conditions then go back to the governing bodies again for ratification. Mr. French affirmed that was his intent.

Chair Wick said that while he hears Mr. French's comments about SRTC lacking the authority to set a deadline, he feels it is the opinion of legal counsel that we risk the loss of RTPO funding if this is not complete by the end of the year. However, it is very unlikely that all signatory agency members will be able to convene, discuss and ratify all this by the end of the year. He said an option could be to include a deadline in the recommendation or another option is to include a statement from legal counsel regarding the risk to lose funding from the State of

Washington if the process is not complete by the end of the year. Mr. Schwartz restated that the best course of action is to get this done as rapidly as possible.

Mr. Schmidt asked to clarify that the motion is not speaking about convening the SRTC Board, but all 17 member jurisdictions/agencies to discuss membership terms/conditions. Chair Wick confirmed that was correct. Mr. Schmidt said it will not be possible to get 17 governing bodies together to discuss this before the end of the year; he stated that these discussions have been very confusing.

Mr. Larson said in conversations with Mr. Gribner in preparation for this topic, no mention was made of a 12/31/20 deadline for this to be completed. He said legislation specifies a deadline of 8/1/21 and commented that of course he is not an attorney and not trying to override the opinion of legal counsel, but he is unaware of any risk of losing funding if the membership offer is not done by December. He said 8/1/21 is the deadline being monitored by WSDOT and agrees that meeting a December deadline with the suggested course of action is highly unlikely.

Mr. Beggs commented that the 12/15/20 deadline is not for the ILA update; it just means that we will meet our obligation under our legal counsel's interpretation of the law that an offer be extended. He said the offer doesn't have to have any details or say when they would actually join and so I just think it's better safe than sorry. The motion as stated by Mr. French gets all the ILA signatory members and preserves all those rights and just adding Dec 15 for the invitation by a majority of the Board follows the second sentence of Section 13 without obligating us to anything beyond that. It's just an attempt to follow our lawyer's advice and meet the concerns raised by Mr. French.

A vote was taken on Mr. Beggs' motion to amend. There were 3 votes in favor and 9 votes against. Motion did not pass.

Mr. Stone called the question on the original motion. Chair Wick called for additional discussion on there was none.

A vote was taken on Mr. French's motion; There were 10 votes in favor and 2 votes against. Motion carried.

12. Board Member Comments - There were no comments.

13. Adjournment - There being no further business, the meeting adjourned at 3:17 pm.

Julie Meyers-Lehman, Clerk of the Board