

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Study Session Worksheet

Presentation Date: November 12, 2013 **Start Time:** 10:30 am **Length:** 1 hour
Presentation Title: Funding Transportation Maintenance and Road Surfacing (Continued)
Department: Transportation & Development; Public & Government Affairs
Presenters: Barbara Cartmill, DTD; Diedre Landon, DTD; Chris Storey, County Counsel; Gary Schmidt, PGA

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

This session continues the discussion of a local funding mechanism that would generate additional revenue to fill the funding gaps projected for transportation maintenance operations and paving. A detailed work plan, including public outreach, is offered today to help the Board provide direction on next steps.

EXECUTIVE SUMMARY:

The Board has reviewed several options for potential local funding mechanisms to meet the funding gap for transportation operations and paving maintenance. Today, a detailed work plan is provided which outlines suggested public outreach and education opportunities and how those activities would need to be completed in order to bring potential options to the ballot in May 2014 or in November 2014.

Questions yet to be answered are:

- Polling or no polling?
- Total amount of funding to be derived and the strategy to do so?
- Should potential funding mechanism(s) sunset and, if so, when?
- What is the Board's preferred funding option (gas tax, utility fee, vehicle registration fee)?
- Will the funding option include cities or focus only on unincorporated areas (utility fee by ordinance or by district formation)?
- What is the preferred timing of the election: May 2014, November 2014 or later?

FINANCIAL IMPLICATIONS (current year and ongoing):

The cost for a contractor to conduct a scientific public survey is between \$10,000 and \$30,000, depending on the number of survey questions, the collection methods and timelines. The cost for a contractor to assist with public outreach and education is between \$10,000 and \$100,000 depending on expectations, outcomes and timelines. Staff will present further financial analysis if the Board chooses to use one or more contractors.

LEGAL/POLICY REQUIREMENTS:

Timing and deadlines for public outreach and potential ballot measures are included in the attachments.

PUBLIC/GOVERNMENTAL PARTICIPATION:

A draft public outreach and education plan is attached.

OPTIONS:

1. Choose one or more funding mechanisms for a potential May 2014 ballot.
2. Choose one or more funding mechanisms for a potential November 2014 ballot.
3. Begin a public outreach and education effort with no deadline for a potential ballot.
4. Do nothing.

Funding Transportation Maintenance and Road Surfacing (Continued)

November 12, 2013

Page 2

RECOMMENDATION:

Staff recommends the Board begin a public outreach and education effort for a potential ballot measure. Staff will report back frequently to help the Board decide if it will be feasible to go forward with one, multiple or no funding requests based on public outreach and feedback.

ATTACHMENTS:

Attachment 1 – Draft public outreach and education plan

Attachment 2 – Road Maintenance Funding Options legal memo

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue please contact Gary Schmidt @ 503-742-5908
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Road Funding Initiative Outreach and Education Timeline Options

Nov. 12, 2013 -- DRAFT

ACTIVITY*	MAY 20, 2014 BALLOT	NOV 4, 2014 BALLOT	PARTICIPANTS
<i>Election materials complete and filed</i>	<i>March 11, 2014</i>	<i>Sept. 4, 2014</i>	<i>County Counsel</i>
<i>Election materials submitted to County Clerk</i>	<i>Feb. 24, 2014</i>	<i>Aug. 19, 2014</i>	<i>County Counsel</i>
<i>Second hearing and election referral</i>	<i>Feb. 20, 2014</i>	<i>Aug. 14, 2014</i>	<i>BCC</i>
<p>Public education on crisis in road funding, upcoming election and specific plans for spending additional revenue</p> <ul style="list-style-type: none"> • Populate Website • Cable PSAs • Cable program • Presentations to community and business groups <ul style="list-style-type: none"> ○ talking points ○ PowerPoint ○ handouts • Targeted media outreach • News releases • Articles in <i>Citizen News</i> and other County-generated publications • Public meetings, open houses and town halls • Virtual (online) open house • Coordination with cities, jurisdictions and agencies • Email blasts • Presentations at BCC meetings • Presentations, content development and recruitment of support from business 			<p>Consultants; staff from PGA, DTD, County Administration and BCC offices; Commissioners; EMT members; other elected officials; community and business leaders; jurisdictional partners</p>

<p>groups, labor unions, Clackamas County Business Alliance, West Side Economic Alliance, Oregon Transportation Forum, TMAC, JPACT, MPAC, Metro, Cities, local Chambers of Commerce, Rotaries, social organizations, CPOs, Hamlets, Villages, Advisory Boards and Commissions.</p> <ul style="list-style-type: none"> • Direct outreach, content development and recruitment support of Clackamas County employers -- small businesses with stake in funding outcome. • Direct outreach, content development and recruitment support of public safety and emergency response organizations. 			
<p><i>Deadline for first hearing on funding proposals</i></p>	<p>Jan. 30, 2014</p>	<p>July 24, 2014</p>	<p>BCC</p>
<p><i>BCC resolution initiating consideration</i></p>	<p>Dec. 19, 2013 (assuming no BCC meeting Dec. 26)</p>	<p>June 19, 2014</p>	<p>BCC; County Counsel</p>
<p><i>Economic feasibility report and projected revenues and expenditures for first three years of district completed and included in formation petition</i></p>	<p>Dec. 19, 2013 (assuming no BCC meeting Dec. 26)</p>	<p>June 19, 2014</p>	<p>DTD; County Counsel</p>
<p>BCC Business Meeting -- discuss survey results and proposed resolution initiating consideration</p>	<p>Jan. 7, 2014</p>	<p>April 10, 2014</p>	<p>BCC; PGA</p>
<p>BCC Study Session on survey results</p>	<p>Dec. 30, 2013</p>	<p>April 1, 2014</p>	<p>BCC; PGA; Consultant</p>
<p>Conduct random sample telephone survey**</p>	<p>Dec. 11-22, 2013</p>	<p>March 3-14, 2014</p>	<p>Consultant</p>
<p>Conduct informal online survey</p>	<p>Dec. 11-22, 2013</p>	<p>March 3-14, 2014</p>	<p>Consultant; PGA</p>
<p>Conduct focus groups</p>	<p>---</p>	<p>Feb. 26-28, 2014</p>	<p>Consultant</p>
<p>BCC approval of random sample telephone</p>	<p>Dec. 10, 2013</p>	<p>Feb. 25, 2014</p>	<p>BCC; PGA; Consultant</p>

survey				
Development of random sample telephone survey	Dec. 1 - Dec. 9, 2013	Feb. 3-14, 2014	Consultant	
Hire consultant to conduct random sample telephone survey	Dec. 1, 2013	Jan. 9, 2014	BCC; PGA; DTD	
Publish RFP for consultant to conduct random sample telephone survey	Nov. 15, 2013	Dec. 15, 2013	PGA; Purchasing	
Plan and carry out public outreach on crisis in road funding <ul style="list-style-type: none"> • Website • Cable PSAs • Cable program • Presentations to community and business groups <ul style="list-style-type: none"> ○ talking points ○ PowerPoint ○ handouts • Media outreach • News releases • Articles in <i>Citizen News</i> and other publications • Public meetings and town halls • Virtual (online) open house • Coordination with cities and other jurisdictions and agencies • Email blasts • Presentations at BCC meetings • Presentations to ABCs • Presentations to staff and unions 	Nov. 5, 2013 - Jan. 30, 2014	Nov. 5, 2013 - July 15, 2014	Consultants; staff from PGA, DTD, County Administration and BCC offices; Commissioners; jurisdictional partners	

**Items in italics are legal requirements and the dates are legal deadlines. **The next regular County Community Survey, which is conducted every two years, would be scheduled for early 2014. The survey on road issues could be a separate survey or could be part of the larger community survey. If the latter, more time would be needed to develop the larger survey and have it vetted through appropriate parties.*



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

MEMORANDUM

DATE: October 2, 2013

TO: Board of County Commissioners
Donald Krupp, County Administrator
Laurel Butman, Deputy County Administrator

FROM: Chris Storey, Assistant County Counsel
Diedre Landon, Senior Policy Analyst for DTD

RE: **Road Maintenance Funding Options**

Stephen L. Madkour
County Counsel

David W. Anderson
Kimberley Ybarra
Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Assistants

Our office has been asked to review and analyze possible additional funding mechanisms to support road maintenance and capital improvements efforts. DTD staff is preparing a briefing on the current state of road maintenance efforts and current funding sources which should be reviewed prior to this memorandum. Below is an overview of the four possible funding options we have been exploring, a description of the process required to establish said funding option, a list of advantages and challenges relating to each, a related timeline to establish and receive funding, and an analysis of the potential revenue that would be generated under the described option. The four possible funding options are a (i) gas tax, (ii) vehicle registration fee, (iii) utility fee, and (iv) county road district.

I. Gas Tax, Countywide

General Description: A local gas tax levied on sales of gas within the boundaries of the taxing area. This can be either a countywide tax, sales in unincorporated areas, or some mixture in-between. The gas tax as levied by the state is a cents-per-gallon tax but could also be levied as a percent-of-sales tax. The tax could be a permanent increase, or tied to a specific transportation project with a sunset clause once sufficient revenue has been raised.

If the gas tax is imposed countywide, the county would need to decide if revenue should be shared with the cities in whose jurisdictions those distributors exist. If the tax is not charged countywide, residents could choose to purchase gas in cities to avoid the added cost per gallon. Given the nature of the tax, consumers may choose to purchase their gas outside the county if the tax creates a material price differential.

Process to Establish: ORS 319.510-950; Oregon Constitution Art IX, Section 3a; HB 2001

ORS 319.950 states: **Local tax on fuel for motor vehicles.** A city, county or other local government may enact or amend any charter provision, ordinance, resolution or other provision taxing fuel for motor vehicles after submitting the proposed tax to the electors of the local government for their approval. [2009 c.865 §27]

Note: 319.950 becomes operative January 2, 2014. See section 28, chapter 865, Oregon Laws 2009.

Therefore this statute, once it goes into effect on January 2, 2014, allows the Board to adopt a proposed county ordinance imposing the gas tax. If adopted by the board, the ordinance would need to be referred to the voters of Clackamas County for their approval.

Advantages:

- User Fee approach seeks to align use by citizens with cost through fee.
- Administered by the State of Oregon so no additional staffing needed.

Challenges:

- Revenues may decline as higher gas prices reduce demand.
- Revenue will at a minimum fluctuate based on consumer patterns.
- State will charge an administration fee for collection.

Timeline:

The earliest an ordinance can be adopted would be a 1st reading on January 2nd and a second reading on January 16th. This would allow sufficient time for the proposed ordinance to be referred to the voters for the May 20th, 2014 election. Paperwork would have to be completed and filed by March 11, 2014, excluding a time period for challenges. If it passes in May 2014, the clerk has 30 days to certify the results of the election and provide that certification to the Board. The Board would then issue a confirming order and the ordinance would go into effect on the date designated therein, most likely July 1, 2014. For subsequent election cycles, the lead times are the same. Once passed, collections would begin once the State is in a position to implement, which likely would be between 6 and 9 months.

Page 3

[Financial analysis of Gas Tax]

II. Vehicle Registration Fee

General Description: All passenger cars, commercial vehicles, trailers and motorcycles must be registered through the Oregon Department of Motor Vehicles ("DMV"). The DMV issues vehicle registrations as well as titles. The registration is required to be renewed. The State currently imposes a \$43 per low-weight vehicle per year fee by statute (ORS 803.430(24)), with other vehicle classes at differing rates. Vehicle registrations are renewed every two years.

Clackamas County could impose a vehicle registration fee ("VRF") surcharge on all vehicles in the County. The county must share collected revenue – 60% to the County and 40% to the cities in the County. The overall portion of the fee charged cannot exceed the State's \$43 (or equivalent for different classes) fee and must be charged in whole dollar amounts.

Process to Establish: ORS 801.040, 041; 803.445; HB 2001; by ordinance without voter approval but subject to referendum.

The relevant statutes state:

ORS 801.040 Authority to adopt special provisions. This section describes circumstances where special provisions are made concerning the authority of cities, counties or other political subdivisions in relation to some portion of the vehicle code. This section is not the only section of the vehicle code that applies to such authority and shall not be interpreted to affect the vehicle code except as specifically provided in this section. The following limits are partial or complete as described:

(6) Except as otherwise specifically provided in this section, in accordance with the provisions of ORS 801.041, the governing body of a county may establish by ordinance registration fees for vehicles registered at a residence or business address within the county.

ORS 801.041 Terms and conditions for imposition of registration fee by county. The following apply to the authority granted to counties by ORS 801.040 to establish registration fees for vehicles:

(1) An ordinance establishing registration fees under this section must be enacted by the county imposing the registration fee and filed with the Department of Transportation. ****The governing body of the county imposing the registration fee shall enter into an intergovernmental agreement under ORS 190.010 with the department by which the department shall collect the registration fees, pay them over to the county and, if necessary, allow the credit or credits described in ORS 803.445 (5). The intergovernmental agreement must state the date on which the department shall begin collecting registration fees for the county.

(2) The authority granted by this section allows the establishment of registration fees in addition to those described in ORS 803.420. There is no authority under this section to affect registration periods, qualifications, cards, plates, requirements or any other provision relating to vehicle registration under the vehicle code.

(3) Except as otherwise provided for in this subsection, when registration fees are imposed under this section, they must be imposed on all vehicle classes.

(4) Any registration fee imposed by a county must be a fixed amount not to exceed, with respect to any vehicle class, the registration fee established under ORS 803.420 (1). For vehicles on which a flat fee is imposed under ORS 803.420, the fee must be a whole dollar amount.

(5) Moneys from registration fees established under this section must be paid to the county establishing the registration fees as provided in ORS 802.110.

ORS 803.445 Authority of counties and districts to impose registration fees; rules; maximum amount. (1) The governing body of a county may impose registration fees for vehicles as provided in ORS 801.041.

(2) The governing body of a district may impose registration fees for vehicles as provided in ORS 801.042.

(3) The Department of Transportation shall provide by rule for the administration of laws authorizing county and district registration fees and for the collection of those fees.

(4) Any registration fee imposed under this section shall be imposed in a manner consistent with ORS 803.420.

(5) No county or district may impose a vehicle registration fee that would by itself, or in combination with any other vehicle registration fee imposed under this section, exceed the amount of the fee imposed under ORS 803.420 (1). The owner of any vehicle subject to multiple fees under this section shall be allowed a credit or credits with respect to one or more of such fees so that the total of such fees does not exceed the amount of the fee imposed under ORS 803.420 (1).

In summary, the VRF is available to be imposed by ordinance by the County but there are several administrative processes that must be followed to implement and is subject to referendum.

Advantages:

- Consistent revenue stream that grows with the number of cars using road.
- Allows a pay for use system of some fairness for shared infrastructure.
- State administers collection; fee must be a whole dollar amount.

Challenges:

- 40% of revenue must be shared with cities unless otherwise agreed.
- Certain vehicles exempt, including school buses, farm trailers, travel trailers, government vehicles, etc.
- Local fee cannot exceed state fee.
- Multnomah County is the only county in Oregon that has implemented a VRF to date.*
- State would charge an administrative fee, estimated at \$40,000 for implementation, and ongoing per transaction fee.

Timeline: ODOT requests 3 weeks to approve ordinance prior to passage, and a minimum of six months for implementation, including IGA for collection and cost recovery, computer programming and related steps. Two months from effective date of the ordinance (after ODOT implementation complete) to allow due notice and begin collection. Estimated minimum of 9 months, one year more likely from initiation to effectiveness, assuming that the ordinance is not referred out to an election.

* = Washington County is considering a VRF; it passed out of advisory committee on a 11-2 vote on September 9, 2013.

[Financial Analysis of VRF]

III. Road Utility Fee

General Description: A road utility fee is a monthly fee collected on all residences and businesses within the unincorporated areas of the county. In essence, the transportation system infrastructure becomes a public utility and fees are charged to recover the cost of maintaining this utility in addition to existing supports. The theory is to generate a proportionate and universal fee that is based on the volume of trips generated by specific users.

This fee could be based on average daily trips (“ADT”) based on traffic studies of trips generated from single family homes, multifamily dwellings, commercial uses and industrial uses. It could also be based on the weight of the vehicle, similar to the weight mile tax paid to the state. If the Board desires to pursue this option further, it would be presented with different possible configurations with ADT, weight, or other options for the utility fee.

The County would be responsible for administration. It would require staff or contracting for direct billing of all residences and businesses in the county, collection efforts, reconciliation and management. It is an open policy question of how to deal with vacant property, uninhabited homes, and similar issues. Some utilities “turn off” when unoccupied, such as water. Others continue to bill once connected to the system due to the difficulties of “deactivating” service and establishing when use has resumed, such as sewer.

Process to Establish: County Ordinance, subject to referendum.

Advantages:

- Fee based on type of dwelling or business and estimated road usage – closer model to pay for service than general property tax.
- Not a tax on property, but a user fee based on occupancy. It uses average occupancy as a proxy for road usage.

Challenges:

- Subject to referendum.
- System would need to balance revenue requirements with excluding or limiting impact on underdeveloped or unused property.
- Would require administrative efforts to establish billing lists, processing, collection and communications.

Timeline: The Board could begin consideration of an ordinance quickly. Implementation is likely to control the timeline to receive revenue. There would need to be an extensive public communications effort to vet the issue with citizens and if established would likely take multiple months to implement the program and begin billing. The timeline for implementation of the utility fee is most under the County’s control with the exception of being subject to referendum, and can be managed more than the others to attempt to meet desired outcomes.

[Financial Analysis for Utility Fee]

IV. County Road District

General Description: The County may form a special road district on any territory in any unincorporated area of the county. The District does not have to be contiguous, but must not overlap with a similar district. Also, cities must affirmatively consent to be included in the proposed boundaries. In this instance, the only possible areas of exclusion would be cities that opt out and the Government Camp Road District area.

All property owners situated within the road district would be assessed a property tax levy. The district could also charge a utility fee similar to that described in Section III. All roads within the County could be declared to fall under the district, including local roads, in this case the annual levy would vary depending on the project list. As a marketing tool and/or to demonstrate prioritization and local benefit, multiple road districts can be proposed/created at the same time in subsections of the county so long as they do not cover the same geographic area.

There is no maximum duration for a special district, unless the Commissioners impose one. Each district established would require the adoption of a master order authorizing its business plan, and require individual budgets, audits, management agreements and careful attention to the manner in which funds are held to ensure they do not get commingled into general county funds, including the road fund. The issue of ownership and responsibility of the roads would need to be accurately described. The most likely model is similar to the extension district, where the road district(s) would be a dedicated funding source that is then transferred to the County to accomplish the purposes of the district by agreement.

Process to Establish: ORS 451,¹ 198

The applicable steps are:

1. Draw the proposed District boundaries. This decision will have a material impact on the steps required to achieve formation – see Step 2.
2. To the extent territory within the proposed District boundaries is also within a city, a resolution of the governing body of a city approving the proposed inclusion within the District must be included in the initial formation request (ORS 198.835).
3. The Board of County Commissioners can initiate formation of the District by adopting a Board Order setting forth:
 - a. Intention of the Board to form District;
 - b. Name and proposed boundary of the District;
 - c. The date, time, and place of a public hearing on the proposal; and
 - d. Certified copies of consents from all cities implicated by the proposed boundaries. (ORS 198.835)
4. The Board then holds a hearing on formation of the District, which must be held not less than 30 nor more than 50 days after adoption of the Board order stating intent to form the District (ORS 198.800).
5. At the hearing, the Board will determine, in accordance with the criteria set forth in ORS 199.462, whether the area could be benefited by the formation of the District. The Board can modify the proposed boundaries of the District or give it

¹ I have assumed for purposes of this memorandum that the BCC is not interested in establishing an ORS 371 independent road district with independently elected directors who would co-manage and co-fund county road efforts.

- a determinate life span of no more than 10 years, or leave it of indefinite duration (ORS 198.805).
6. A second hearing must be held on the question before final approval, no less than 20 and no more than 50 days from the first hearing (ORS 198.810(2)).
 7. Once the Board approves the petition for formation, it must refer the question of formation for election if the District would be funded by a permanent rate limit for operating taxes (ORS 198.810(4)).
 8. Such a referral election must be held on either a primary or general election date for which the filing deadline can be met (ORS 198.815(2)), which would be either the third Tuesday in May or the first Tuesday after the first Monday in November (ORS 255.345(1)). The filing date for such election dates are 61 days prior to the date of the election (ORS 254.103(1)).
 9. After the election, the Board enters an order establishing and forming the District if supported by the election, or else enter an order dismissing the petition for formation (ORS 198.820(1)). From the date of formation order, the District is considered established.
 10. If formed in May, the District may submit materials to collect property tax revenue in the same year. If formed in November, the district will wait a year before collecting revenue.

Advantages:

- Funding can be for capital or maintenance at BCC's discretion.
- Consistent revenue source, predictable and able to support debt issuance separate from County borrowing authority.
- Measure 5 impact likely minimal outside cities; may have an impact within cities facing compression (if included in the proposed district boundaries).
- Low administrative costs for property tax collection.

Challenges:

- Requires voter approval if levying property taxes.
- Normal collection issues would apply.
- If cities are sought to be included, they must consent by city council resolution.
- If some cities do not consent, what consequences and incentives?

Timeline:

For Unincorporated area only district²:

Working backward, the election is to be held on **Tuesday May 20, 2014**;

Election materials must be complete and filed by **Tuesday March 11th**.

Election materials must be submitted to the County Clerk by **Monday February 24th** to allow 15 days for election challenges prior to deadline.

Election Referral and 2nd Hearing's last possible date: **Thursday February 20th**.

1st Hearing's last possible date: **Thursday January 30th**.

² For purposes of this District proposal, I have assumed the target is the May 2014 election.

BCC resolution initiating consideration last possible date: **Thursday December 19th** (This date was arrived at by noting December 31st is the first possible date, which is a Tuesday. It is unlikely the BCC will hold a business meeting on December 26th). An economic feasibility report showing projected revenues and expenditures for the first three years of the district's life and proposed legal boundary description must be completed by this date and included in the petition of formation. The same time considerations apply for any other election date, and the vote must be held on either a May or November ballot.

For County-wide District including cities³:

Timeline for November 2014 election on question:

Working backward, the election is to be held on **Tuesday November 4, 2014;**

Election materials must be complete and filed by **Thursday September 4th.**

Election materials must be submitted to the County Clerk by **August 19th** to allow 15 days for election challenges prior to September deadline.

Election Referral and 2nd Hearing's last possible date: **Thursday August 14th.**

1st Hearing's last possible date: **Thursday July 24th.**

BCC resolution initiating consideration on formation petition last possible date: **Thursday June 19th.** An economic feasibility report showing projected revenues and expenditures for the first three years of the district's life and proposed legal boundary description must be completed by this date and included in the petition of formation.

If the BCC desires a citizen petition in lieu of direct Board action, time would be needed to submit the petition for approval and gather signatures.

Again, I note that city resolutions are required beforehand, and the timing between hearings assumes the BCC does not modify the petition for formation. So the formal process of consideration must start no later than June 19th, 2014 to reach a deadline for being on the November ballot given statutorily-mandated time periods between hearings and notice requirements. Earlier action would add more flexibility and reserve for the schedule.

³ For purposes of the city-inclusive district, I have assumed a November 2014 election date due to the necessity of receiving city consents before formation may be legally proposed.

[financial Analysis for District options]

