



# Clatsop County

## County Counsel

800 Exchange St., Suite 420  
Astoria, OR 97103  
(503) 325-1000 phone / (503) 325-8325 fax  
www.co.clatsop.or.us

January 19, 2021

Mike Sargetakis  
Oxbow Law Group  
620 SW Main St #706  
Portland, OR 97205

Re: December 7, 2020 Letter/Clatsop County Resiliency Plan

I represent Clatsop County. I understand that you represent a group of citizens ("Concerned Friends for Clatsop County") that is in opposition to the proposed purchase of a portion of the Lewis & Clark Mainline Road and the "Sorting Yard" for relocation of the Public Works Department.

On December 7, 2020, you sent a letter raising questions about the use of the road monies to fund the proposed relocation.

### **Background**

The Clatsop County Public Works Facility is currently located within the inundation zone at 1100 Olney, Astoria, Oregon. In conjunction with evaluating the options and feasibility of relocating the Public Works facility, the County is simultaneously evaluating evacuation and alternate travel routes to move people, equipment and supplies in the event of a major disaster.

The County is in the due diligence review to purchase two functionally separate properties: (1) the Sorting Yard for the relocation of the Public Works Facility and (2) the southern portion of Lewis and Clark Mainline Road to provide an alternate route to Highway 101 in the case of an emergency. Attached is a map that shows the locations of Phase 1 – the Public Works Facility; Phase 2 – the southern portion of the Lewis and Clark Mainline Road; and Phase 3 – the Twilight Pipeline Route. *The County is no longer pursuing the northern portion of Lewis and Clark Mainline Road.*

For both Phase 1 and 2, the County spent approximately \$79,000 to date in expenses on due diligence. The due diligence period is to allow the County to assess the suitability of the two properties. *No final decision has been made.*

### **Legal Assertions**

*County Measure 4-4*

You allege that the revenue from Road District 1 is restricted because the levy (Measure 4-4) enacted in 1988 limited the expenditures to maintenance only. As discussed below, the levy was for maintenance “and for long range programs.” From the full text of the levy, the 1988 levy is not limited to maintenance or bridge replacement. The levy is clearly intended to support the continued operations of county roads and bridges, including the indirect costs to maintain the roads such as the supervisors and equipment necessary to maintain the road.

The full text of the measure is the following:

9C1	CLATSOP COUNTY OFFICIAL PRIMARY MEASURES BALLOT PAGE MAY 17, 1988	BALLOT CARD NO.
<hr/> <b>CLATSOP COUNTY ROAD DISTRICT NO. 1</b> <hr/>		
<b>MEASURE 4-4</b>		
TO ESTABLISH A NEW TAX BASE		
QUESTION: Shall Clatsop County Road District No. 1 establish a new tax base of \$841,750.00 effective in the 1988-89 fiscal year?		
EXPLANATION: Clatsop County Road District No. 1 has a current tax base of zero (0) dollars and depends on yearly levies to continue operations. The levy for 1987-88 is \$925,000.00 and the district is proposing to establish a tax base of \$841,750.00 effective in the fiscal year 1988-89. Passage of this tax base would mean a reduction of \$83,250.00 from the serial levy previously approved by the voters for the fiscal year 1988-89. The proposed tax base will provide the means for continued maintenance of county roads and bridges and will assure the stability of long range programs such as bridge replacement, that involve federal and state matching funds and take over one year for completion.		YES 160  NO 162

The monies raised by the tax levy could be used for “long range programs” and to continue operations. Both the relocation of the Public Works Facility (to the extent it is necessary for road operations) and the acquisition of an alternative route would be consistent with the purpose of the 1988 levy.

Regardless, the 1988 serial tax levy is no longer in existence. In 1997, Measures 47 and 50 cut all existing levies and replaced the levies with permanent tax rates. In this case, Measure 4-4 was replaced with a permanent maximum tax rate of \$1.0175/\$1,000. The new maximum permanent tax rate does not carry the specific restrictions of the original levy, but it is used for the purposes of operating the Road District. Both the relocation of the Public Works Facility and the acquisition of an alternative route would be consistent with the operation of the Road District.

### *Timber Funds*

In addition to the taxes from Road District 1, the County also receives timber funds pursuant State Forest Trust Lands. These timber funds are unrestricted funds, meaning that the County may utilize these funds for any lawful purpose. Traditionally, these timber funds have been utilized for road and bridge purposes and utilizing the timber funds for the proposed relocation of the Public Works Department and purchase of the Lewis and Clark Mainline Road would be consistent with past use. According to the County Finance Department, since 2006, Road District 1 has received and saved \$9.2m from the timber revenues.

## *Gas Tax*

The County does not plan to utilize gas tax monies for the resiliency plan, so this argument does not need to be addressed. However, ORS 366.774(2) allows the County to utilize gas tax money for “operations and maintenance” and “construction and expansion.” If the County chose to use gas tax monies for the purchase and improvement of the Lewis and Clark Mainline, it could do so because such work would be for the construction and expansion of a county road. Further, if the County chooses to use gas tax monies for the proposed Public Works relocation, it could do so because the monies can be used for “operations and maintenance” and “administrative expenses.”

## *County Road Status*

You allege that the County cannot purchase and improve the Lewis and Clark Mainline because it is currently classified as a local access road. Although ORS 368.031(2) prohibits expenditures on “local access roads,” the County can designate the Lewis and Clark Mainline as a “county road,” allowing the County to expend funds on improvement or maintenance of the road.

One last note, the name “Clatsop County Road District No. 1” is misleading because the road district is neither a special district formed by a principal act nor a county service district. The County will correct its budget so that it no longer refers to the Road District as a county service district.

Thank you for bringing this issue to our attention; it has helped the County review the appropriate statutes and law regarding the funding for this proposed project.

Sincerely,



Joanna Lyons-Antley  
County Counsel