

Columbia River Crossing Light Rail Tolling Project Resolution

RES. 2013-11-03

WHEREAS #1, integrity is the foundation for any valid project and the Columbia River Crossing Light Rail Tolling Project must be managed with integrity in order to be valid; and

WHEREAS #2, Tiffany Couch, certified forensic accountant at Acuity Forensics, published findings in six reports, and has submitted testimony to the Board of County Commissioners regarding the findings and reports. Each one of these six reports contains the following statement:

“As a Certified Public Accountant and Certified Fraud Examiner, it is my professional opinion that these questions warrant further investigation by an agency of appropriate jurisdiction.” and

WHEREAS #3, each of these 6 reports contain findings about significant questionable transactions involving the Columbia River Crossing Project, including:

1. Potential Violations of Washington State Open Public Meetings Act (Report #1)
2. Potential Violations of State and Federal Contracting Practices (Report #2)
3. Questionable Contracting Practices, including (Report #2):
4. Cost overruns in excess of \$50 Million on the environmental study stage of the project
5. Potential duplicate work performed by contractors
6. Project Costs outside of the bridge area (Report #3)
7. Significant funding plan discrepancies, including (Report #4):
 - a. Nonexistent federal programs
 - b. Toll requirements of \$3.5 billion – more than \$2.0 billion in excess of promises made to public and legislators
8. Potential violations of IRS code related to persons employed in independent contractor status (Report #5)
9. Discrepancies in excess of hundreds of millions of dollars in costs of interchanges reported to legislators (Report #6)
10. Discrepancies in excess of hundreds of millions of dollars in costs of bridge tear down and rebuild reported to public and legislators (Report #6)

WHEREAS #4, C-TRAN Board Resolution BR-08-019 was incorporated into the CRC Locally Preferred Alternative, and states in section 1.E.2:

“Any means chosen to finance operations of the HCT component of the CRC project shall be submitted to impacted C-TRAN voters for approval.”;
and further states in section 1.E.3:

“Initiation of HCT service in Clark County should provide a net service benefit to existing C-TRAN patrons, without diverting existing revenues from C-TRAN's current operating and capital costs.”; and

WHEREAS #5, Regional Transportation Council (RTC) Resolution 07-08-10 amended the Locally Preferred Alternative to include the following requirement:

“Any means chosen to finance operations of the HCT component of the CRC project shall be submitted to impacted C-TRAN voters for approval.”; and

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WHEREAS #6, C-TRAN Board Policy # PBD-015, as currently effective, prohibits the use of any of C-Tran's voter-approved 0.7% sales tax revenue from being used for any aspect of the CRC Light Rail Tolling project, stating in part as follows:

"C-TRAN funding, including the current voter approved 0.7% sales tax revenue or capital reserves, will not be used to fund any aspect of the CRC Project. Expenses that may result from the CRC Project will be funded from advertising revenue and contained in CTRAN's biennial budget and will not exceed \$100,000 per year for the 2013/2014 biennium."; and

WHEREAS #7, staff report #13-024 of the May 21, 2013 C-Tran Board meeting states that the purpose of PBD-015 was to reassure voters that any sales tax revenue that was already approved by the voters, would not be used for the CRC project, stating as follows:

"The C-TRAN Board of Directors adopted Board Policy PBD-015 on December 13, 2005. The purpose of the policy was to establish guidance for C-TRAN's participation in planning for the CRC project and to reassure voters that any voter approved sales tax revenue, including the successful September 2005 ballot measure, would not be used to fund the CRC project."; and

WHEREAS #8, C-Tran stated to voters in the 2011 voters' pamphlet as follows:

"Without your vote, C-TRAN will cut 35% of bus and C-VAN (Paratransit) service. " and "All revenue from Prop 1 will fund bus service only, not light rail."; and

WHEREAS #9, the C-TRAN High Capacity Transit Expert Review Panel stated that not simply the revenue, but the cost of Light Rail operations and maintenance requires voter approval, as follows:

"Light rail and bus rapid transit are the HCT components of C-TRAN's 2030 Plan. C-TRAN is planning to utilize the state's HCT Act, RCW 81.104, to fund the operations and maintenance cost for the extension of light rail from the Expo Center in Portland to Clark College, and the local share of operations and maintenance costs for the Fourth Plain bus rapid transit. In accordance with state law, the Governor's Office, Secretary of Transportation, and chairpersons of the House and Senate Transportation Committees appointed the members of the Panel.

The Panel's technical review is necessary to guarantee that the C-TRAN Board of Directors can make appropriate decisions for investments in high capacity transit for our region."; and

WHEREAS #10, the C-TRAN High Capacity Transit Expert Review Panel Findings and Recommendations stated as follows:

"In order to qualify for this discretionary capital funding source, local project sponsors must adhere to a strict series of requirements spelled out by federal regulations administered by the FTA. All projects nationwide that seek FTA New Starts funding must follow this process, which is tracked by FTA staff at regional and headquarters levels."; and

"The FTA specifically prohibits transit agencies from degrading local bus service by transferring funds from existing service to finance high capacity transit operations."; and

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WHEREAS #11, the C-TRAN High Capacity Transit Expert Review Panel Findings, in compliance with the above FTA prohibition, did not consider any existing C-Tran revenues as valid funding sources for High Capacity Transit O&M and therefore only considered new revenue and stated as follows:

“The panel has further advised C-TRAN of its concern that too many C-TRAN tax revenue accounts in place today are dedicated to support specific services.”; and

WHEREAS #12, the C-Tran finance plan is not consistent with the High Capacity Transit Expert Review Panel recommendations and diverts substantial sales tax revenue from C-Tran bus service and C-Van service to Light Rail operations and maintenance; and

WHEREAS #13, C-TRAN records show that all of the existing revenue is needed and is dedicated to providing bus and C-Van service; and

WHEREAS #14, C-Tran’s current plan is to fund the cost of Light Rail operations and maintenance without voter approval while not providing sufficient funds necessary to continue providing sustainable bus and C-Van service; and

WHEREAS #15, the C-TRAN Board placed Proposition One on the November 2012 ballot as a means to fund High Capacity Transit, including Light Rail and Bus Rapid Transit, and a majority of voters in that election rejected the measure; and

WHEREAS #16, C-Tran assured voters that the 2011 Proposition One sales tax increase would not be used to fund Light Rail operation and maintenance as the voter pamphlet stated
“All revenue from Prop 1 will fund bus service only, not light rail.”; and

WHEREAS #17, Light Rail Advisory Vote No. 1 was placed on the ballot in the November 2013 General Election which asked all registered voters in Clark County the following question:

“Should the Clark County Board of Commissioners approve proposed Resolution 2013-07-17 which opposes any Light Rail project in Clark County unless it is first supported by a majority of the voters in a county-wide advisory vote of the people?”; and

WHEREAS #18, the majority of the voters (68.4%, 223 out of 228 precincts) voted Yes indicating that the CRC Light Rail Tolling project is not supported by the majority of the voters in Clark County unless a specific project is approved by the voters; and

WHEREAS #19, the Locally Preferred Alternative, as approved in the Record of Decision, was a bi-state 5-mile I-5 highway improvement project with seven interchanges with Light Rail, funded by a \$450 million grant from Oregon, a \$450 million grant from Washington, and a \$400 million grant from the FHWA; and

WHEREAS #20, a single state Light Rail only project has been substituted for the Locally Preferred Alternative that indefinitely defers all Washington I-5 improvements except those needed for a Light Rail bridge funded with toll-backed debt for virtually all non-light rail costs, with zero funding from the FHWA, zero funding from Washington, no funds identified to pay for \$86.4 million in mitigation losses to three Clark County businesses, and Oregon controlled tolls; and

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WHEREAS #21, the CRC FEIS claimed that tolls would cause only minimal traffic diversion from I-5 to the I-205 and the Record of Decision published the expected toll rates would be between \$1 and \$2.50 each direction; and

WHEREAS #22, the CDM Smith CRC Traffic Analysis Report and the Impresa CRC Traffic Analysis Report reveals that the traffic diversion is expected to be substantially higher (31,000 to 64,000 vehicles per day) and expected to cause unacceptable traffic congestion problems on the I-205 Glenn Jackson Bridge; and

WHEREAS #23, the I-5 Bridge has been characterized as structurally deficient, yet the Army Corp of Engineers rates it as structurally sound and the Oregon Department of Transportation (ODOT) published report states "This personalized care, combined with large maintenance projects, has kept the spans healthy and free of weight restrictions."

"With ongoing preservation the bridges can serve the public for another 60 years," the report says, adding that "Transportation funding experts estimate a replacement bridge would cost between \$500 million and \$1 billion."; and

WHEREAS #24, the Locally Preferred Alternative was specified as a bi-state project with both Washington, and Oregon financing and project management but then Washington failed to approve funding for the project; and

WHEREAS #25, another project has been substituted for the original Locally Preferred Alternative with Oregon considering an "Oregon-only" plan which excludes Washington State and with fundamentally different financing and specifications that are not consistent with the original Locally Preferred Alternative; and

WHEREAS #26, the new Locally Preferred Alternative finance plan which gives Oregon the exclusive authority over setting toll rates, is not consistent with the Record Of Decision; and

WHEREAS #27, the Coast Guard failed to follow their own written policies and requirements as stated in the following letter from Vice Commandant Sally Brice-O'Hara:

"In order for the Coast Guard to accept a bridge permit application and ultimately adopt the EIS, the five comments need to be addressed in the EIS and supported with detailed information"; and

"Need to address any minimization, avoidance or mitigation measures for Schooner Creek Boat Works now that Schooner Creek requires 125'; and

WHEREAS #28, the FTA requires a stable and reliable funding source to be committed to Light Rail O&M and the primary assumption is that the sales tax revenue on transportation projects could be eliminated by the Washington Legislature; and

WHEREAS #29, even though the voters have not authorized any means to fund CRC Light Rail operation and maintenance, the C-TRAN Board voted on September 26, 2013, to authorize C-TRAN to enter into a contract with TriMet to fund Light Rail operations and maintenance; and

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WHEREAS #30, the C-Tran bylaws section 4.8.2 states that “Every action of the Board of a general or permanent nature and every action otherwise required by state statute shall be by Resolution or Ordinance.”; and

WHEREAS #31, the TriMet / C-Tran contract is not compatible with numerous adopted board policies as referenced above and establishes new policies not adopted by the C-Tran Board such as a \$5 million liquidated damages liability; now, therefore,

BE IT ORDERED, RESOLVED AND DECREED BY THE BOARD OF COMMISSIONERS OF CLARK COUNTY AS FOLLOWS:

Section 1. In support of this Resolution, the Board of Commissioners of Clark County adopts as its findings the recitals set forth above and the supporting references below.

Section 2. The Board of Commissioners of Clark County hereby states its condemnation of the CRC Light Rail Tolling project for acting contrary to the commitments made to the people, for failing to follow adopted policies, for failing to comply with the requirements and conditions agreed upon in the governing documents, for failing to respect the 2012 Proposition One vote of the people who rejected funding for Light Rail, and for authorizing the contract with TriMet.

Section 3. The Board of Commissioners of Clark County calls upon Oregon to give full disclosure of these findings to the public and to any financial institution that might consider financing bonds to fund the CRC Light Rail Tolling project.

Section 4. The Board of Commissioners of Clark County directs the County Administrator to provide copies of this resolution to the Federal Transit Administration, the Federal Highway Administration, the legislatures of Washington and Oregon, WSDOT, ODOT, TriMet, C-TRAN and the Regional Transportation Council, stating that the CRC Light Rail Tolling project should not be funded.

Section 5. The Board of Commissioners of Clark County asks that this resolution along with the supporting references be made easily available to the public and published online wherever the official documents of the CRC Light Rail project are stored..

Section 6. The Board of Commissioners of Clark County calls upon the appropriate authorities to conduct a full investigation of the CRC Light Rail Tolling project as called for by Tiffany Couch, certified forensic accountant at Acuity Forensics. Diligent scrutiny should be applied to uncover potential mismanagement, waste, fraud and abuse.

Section 7. The Board of Commissioners of Clark County believes that the C-Tran / TriMet contract be should be challenged as invalid and be rescinded, repealed, and repudiated.

References:

Referenced documents supporting each “Whereas” statement are listed in the table located at: <http://www.clark.wa.gov/IntegrityResolution>

The “Whereas” statements are numbered so each associated reference document starts with that number. The “Whereas” number is followed by “w” to indicate that the referenced file is the whole document. Otherwise, the number is followed by “e” to indicate that the referenced file is an excerpt of a larger document.

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The agenda showing the Integrity Resolution can be found at <http://www.clark.wa.gov/TheGrid> for November 26, 2013.

Attest:

FOR CLARK COUNTY, WASHINGTON


Clerk of the Board

Steve Stuart, Chair

APPROVED, EXCLUDING
REFERENCES, AS TO FORM ONLY:
Anthony F. Golik,
Prosecuting Attorney


Tom Mielke, Commissioner

By: 
Christine Cook
Deputy Prosecuting Attorney


David Madore, Commissioner