

Memorandum

To: Nick Green, City Manager

From: City Attorney's Office, Bryant, Lovlien & Jarvis, P.C.

Date: April 13, 2021

Re: Grant County Federal Funds – City Street Construction
Permissible Uses of Urban Renewal Agency Funding

Our office has been asked to review whether City of John Day ("City") may receive and use certain federal funds granted to Grant County ("County") under the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106-393 (the "Act") for purposes of constructing and improving streets and roads within City, including, without limitation, City streets and roads. This memorandum addresses the permissible use of Act funds (also referred to as SRS funds) and urban renewal agency tax increment funds.

Brief Background

Our understanding is that County has approximately \$50,000,000.00 in reserve funds that have been provided to County pursuant to the Act. City desires to use approximately \$350,000.00 of these funds for road construction projects (associated with new housing developments) located in City's incorporated limits. The federal funds would be loaned to City's urban renewal agency and repaid with proceeds from the agency's TIF funds.

Short Answers

1. County may loan City Title I funds to construct and/or improve City roads and streets. Constructing and/or improving City roads and streets is not a permissible use of Title II or Title III funds.
2. City's urban renewal agency may use TIF funds to repay a loan from County.

Discussion – SRS Funds

1. The purpose of the Act includes, without limitation, to help stabilize federal payments to counties due to declining federal forest receipts (and, therefore, declining revenue sharing payments). Under the Act, SRS payments are divided into the following three types:
 - 1.1 Title I payments must be used in the same manner as revenue sharing payments (i.e., restricted to road and school purposes for the Forest Service payment but available for a broader range of governmental purposes for the BLM payment). Specifically, 75% of Title I funds must go to the road fund and 25% must go to the school fund. See ORS 294.060.
 - 1.2 Title II expenditures, guided by local Resource Advisory Committees, support projects aimed at restoration of public lands and nearby private lands. Example projects include, without limitation, projects intended to restore fish habitat, forest ecosystem health, noxious weed control, and trails.

1.3 Title III of the Act concerns specified county projects. Under this title, county funds must be expended solely on projects approved by the county following a 45-day public comment period. Authorized uses under Title III include, without limitation, the following: (a) search, rescue, and emergency services; (b) community service work camps; (c) easement purchases for nonmotorized access to public lands or conservation easements; (d) forest related educational opportunities; (e) fire prevention and county planning; and (f) community forestry.

2. As described above, road construction does not fall within the permissible uses of Title II and/or Title III funds.

3. Road construction is, however, expressly identified as a permissible use of Title I funds. In addition, the bulk of the payment to County is allocated to the Title I payment (around 80%-85% of the payment for most counties).

4. Notably, ORS 368.722 authorizes counties to expend federal funds from forest receipts pursuant to ORS 294.060 on city streets and bridges. Per ORS 368.722, the expenditure of such funds on city streets and bridges is under such terms and conditions as the county may determine pursuant to ORS 373.260.

5. ORS 373.260 provides, in pertinent part, that a county and city may enter into an agreement for the construction, improvement, or repair of, and the acquisition of right of way for, any county road or city street within the corporate limits of the city.

Permissible Use of TIF Funds

1. Urban Renewal – General.

1.1 The purpose of urban renewal in Oregon is to improve specific areas of a city that are “blighted areas.” Under Oregon law, blighted areas are characterized by the existence of certain conditions, including, without limitation, (a) old or deteriorated buildings, (b) a loss of population and reduction of proper utilization of an area that results in further deterioration, and/or (c) other obstacles to development.

1.2 When an urban renewal agency is activated and an urban renewal area created, the city must also adopt an urban renewal plan. The plan includes, without limitation, identification of projects and activities to be completed by the agency.

1.3 TIF is used to fund urban renewal projects identified in an agency’s plan. Projects and activities that use TIF revenue must be consistent with Oregon law and included in the urban renewal plan. Projects must be consistent with applicable law (discussed below) and must address blighted conditions. Examples of permitted projects include, without limitation, infrastructure improvements, development, rehabilitation, and improvement of buildings, property acquisitions, and building improvement grant and/or loan programs (e.g., façade improvement programs).

2. Applicable Authority

2.1. Oregon Law

a. Under Oregon Constitution, Article IX, Section 1c, TIF revenues “shall be used to pay any indebtedness incurred for the redevelopment or urban renewal project” in the area located in an urban renewal plan. In furtherance of this section, ORS Chapter 457 governs urban renewal activities in Oregon, including, without limitation, authorizing certain urban renewal projects (and permissible uses of TIF revenue). Two statutes generally guide the powers of an urban renewal agency, namely (a) ORS 457.170, and (b) ORS 457.180.

2.2 ORS 457.010(15) defines an “urban renewal project” as any work or undertaking carried out under ORS 457.170 in an urban renewal area. ORS 457.170 describes powers an urban renewal agency may exercise in planning or undertaking an urban renewal project. Under ORS 457.170(5), an urban renewal agency has the power to, among other things, “install, construct or reconstruct streets, utilities, and site improvements.”

2.3 An urban renewal agency is granted additional powers under ORS 457.180. These additional powers include, without limitation, (a) carrying out activities “for the prevention and elimination of urban blight,” and (b) engaging in “community development activities specifically delegated to [the urban renewal agency] by the governing body of the municipality,” including, without limitation, land acquisition, conservation and rehabilitation, and “the making of grants and loans from any available source.” See ORS 457.180(6) and (7).

2.4 Section 4 of the John Day Housing Incentives Plan (the “Plan”) concerns Plan goals. The broad goals include to (a) create new housing stock, and (b) improve existing housing stock. Section V contains the specific means of meeting these goals. These include, without limitation, incentivizing new residence development. Per this section, guidelines are expected to be drafted regarding the programs.

2.5 Consequently, given the broad authority under state law to use TIF funds on street projects and the Plan goal of incentivizing new housing, repaying a County loan with TIF funds for street construction is likely permissible in this instance.

Additional Considerations

1. As noted above, County will need to ensure the funds it loans to City are reserved Title I funds. As of the date of this memorandum, we are unaware if County SRS reserve funds have been obligated to one type of project or another (e.g., as Title II or Title II funds). However, given the size of the reserve, there is likely a sizeable chunk of Title I reserve funds.

2. Per Oregon law, City and County must enter into an agreement concerning the road improvements. This agreement should also address the urban renewal agency’s repayment obligations.

3. Finally, if TIF funds are used to repay the loan from County, the streets constructed with the SRS funds should be within the urban renewal area.