720 SW Washington St.
Suite 500
Portland, OR 97205
503.243.3500
www.dksassociates.com

MEMORANDUM

DATE: February 12, 2015
TO: Matt Hermen, AICP, Clark County
FROM: Ray Delahanty, AICP, Benjamin Chaney, EIT

SUBJECT: Clark County TIF Update
Task 6: TIF Credit System Update Memorandum P#14199-000-006

The purpose of this memorandum is to provide an overview of potential changes to the handling of excess Traffic Impact Fee (TIF) credits under a updated TIF program, including:

- Approaches to handling existing credits that were generated under the existing Traffic Impact Fee (TIF) system, and
- An option for handling future situations where a developer constructs improvements in excess of what is required by TIF obligation.

The following memorandum intends to provide evidence to Clark County for making a well-informed decision for the TIF program Update. The conclusion does not offer a recommendation, but rather facilitates discussion. The language should not be construed to favor one option over another.

Review of Current Excess TIF Credit System

TIF credit may be available for developments/developers electing to construct a portion of roadway infrastructure that is identified on the Capital Facilities Plan (CFP). The portion of roadway infrastructure that is eligible for TIF credit only comprises improvements that are above and beyond what would have normally been included in a condition of approval for the proposed development. (i.e. If the development's traffic study showed that right turn lanes were necessary to facilitate the development, this improvement would not be TIF credit eligible). Typically, the developer elects to construct TIF credit eligible infrastructure immediately adjacent to their proposed development.

Once the TIF credit eligible roadway infrastructure has been constructed, or is under construction, the applicant may request TIF credits. TIF credits available to the applicant are based on the estimated costs identified in the Capital Facilities Plan and are calculated by the following:

> *(Proportion of the total system improvement, provided by the developer) x (estimated cost of system improvement identified in the CFP)*

The TIF credit amount requested by the developer typically comes in the form of actual construction cost estimates. The County Engineer's designee (Design & Construction Management) evaluates the submitted construction costs, for validity, and compares them to the formula outlined above. Once the construction cost is validated and any subsequent

adjustments are made, a staff report is prepared. This staff report documents the analysis findings and establishes the amount of TIF credit to be issued. When the County Engineer signs and issues the staff report, a request for TIF credit account set up is made to the Community Development Finance Assistant. Also, at this time, Concurrency Staff enters the account information into the TIF credit-tracking tool. Once the account is set up, it is available for immediate use. The County Engineer may adjust the credit amount to reflect extraordinary construction costs, i.e. cuts, fills, structural, etc.[1]

If the TIF credit-eligible roadway infrastructure is under construction when TIF is assessed, the applicant may request up to 85% of the allowable TIF credits. This 85% of the allowable TIF credits may only be issued when the system improvements have been assured by a bond or other guarantee to be completed no later than the date of occupancy or final building inspection. When the required system improvement is completed, the remainder of the TIF credits may be issued.[2]

The TIF credits issued may be used in lieu of cash payment of traffic impact fees for the subject development, and/or any other development within the same TIF service area.[3] Developments in the Highway 99 overlay district are eligible for additional TIF deductions when amenities that lower vehicle dependence are proposed as part of development. This overlay was put in place to promote the redevelopment of the Highway 99 corridor area.

The TIF credits are treated like a commodity and can be traded or bought/sold amongst the public, and coordinated with the County. The County Concurrency Engineer maintains a TIF credit database, tracking the outstanding credit amounts, ownership, and district designation. Maintenance of this database is a substantial effort as credits are transferred and used, and the County would like a system that has less administrative burden.

The credit system can create construction schedule issues for the County. If a TIF credit is redeemed in order to help construct a project, the County may not have scheduled construction of the project to occur at that time, since the outstanding credit represents a portion of an infrastructure asset and not full construction costs.

Currently[4], outstanding TIF credits total more than $6,250,000 across all five TIF districts, with the majority in the Mt. Vista and North Orchards Districts. The County currently honors TIF credits indefinitely.

[1] See Clark County Code 40.630.060 (B & C)
[2] See Clark County Code 40.630.060 (D)
[3] See Clark County Code 40.630.060 (E)
[4] TIF Credit Snapshot as of December 9, 2014

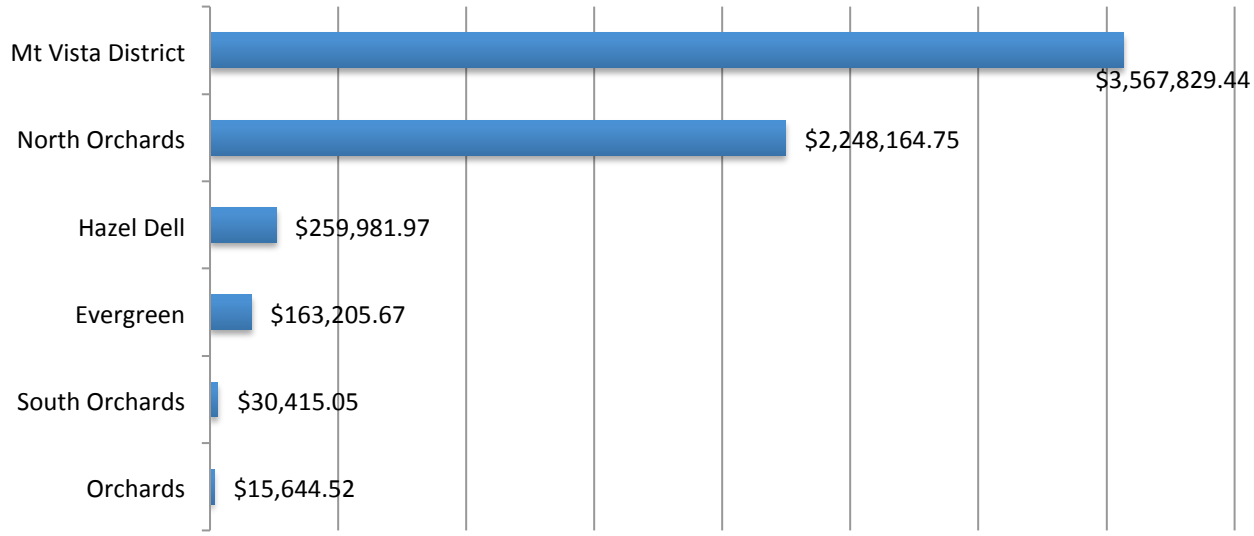

Figure 1: December 9, 2014 TIF Credit Snapshot

Management of Existing Credits after Program Update

The County has options for handling the outstanding credits, including:

- Expire existing credits (i.e., setting a "sunset" date)
- Continue to honor the outstanding credits, but transfer them to the new district system
- Continue to honor the outstanding credits and apply them to the district system under which they were generated

These options are discussed below and summarized in Table 1.

Credit Expiration

Clark County currently has more than $6,250,000 in outstanding TIF credits. The maintenance of tracking and administering the TIF credit database requires staffing resources for consistent management. However, setting an expiration date to existing credits raises issues of fairness, as the credit holder previously elected to provide improvements above and beyond their required TIF contribution. Not acknowledging and honoring those previous efforts and improvements may not be seen as reasonable.

Transferring Credits to New District Boundary System

If the County chooses to continue to honor outstanding credits and maintain the TIF credit database, then one option would be to honor those credits based on the newly adopted district boundary system. In this case, all outstanding credits would need to be assigned to districts under the new system based on the parcel location associated with the credit. Those credits would only be valid for TIF projects in the new district to which they are assigned. This approach can be seen as more fair than expiring the credits, but it may affect the ability of credit holder to sell or trade credits if they have been assigned to a smaller district or one with les development activity.

Honoring Credits with Application in Previous District Boundary System

The County may choose to apply credits using the district system under which they were generated rather than transferring them to the newly adopted district system. In this scenario, the database of credits should be frozen on the date when the new district boundary map is adopted, and then administered according to the district boundary map under which the credits were generated. After this date, all TIF transactions would occur within the new district map system.

Some TIF districts in the previous district system were shared between the County and the City of Vancouver. The Evergreen district holds the most outstanding credits of any previously shared districts, just over $160,000. Further coordination with the City of Vancouver TIF program may be needed to decide how these credits could be applied in the future, since the future Evergreen district (called Cascade under the new Vancouver TIF program) will lie almost entirely within the City, with just a small reminder of the old district in unincorporated Clark County.

Tradeoffs between the three approaches are shown in Table 1 below. While allowing outstanding credits to expire is simplest from an administrative perspective, maintaining the credits recognizes the infrastructure investments previously made by credit holders, and is likely to be seen as the most fair approach. Applying the credits under the existing district system ("old system" once a new program is adopted) will maintain the nexus and fairness that was established

Table 1: Summary of Trade-Offs

	Fairness	Ease of Implementation	Ongoing Maintenance
Expire Credits			✓
Credit Transfer to New System	✓	✓	
Apply Credits Under Old System	✓✓	✓	

✓ Option is somewhat responsive to criteria ✓✓ Option is very responsive to criteria

Alternative to TIF Credit System

State law does not require jurisdictions to offer excess credits for improvements provided by developers. Therefore, Clark County has the option of abandoning the existing excess credit system once the updated TIF program is adopted. While this would take away a tool that can help the County construct a project before funding is in place, abandoning the excess credit system may have the following benefits:

- Removes administrative burden of tracking outstanding credits, including transfers of credit ownership
- Avoids situations where a developer redeems a credit in order to pay for a project, but the project can not be built because the County does not have sufficient cash available

Street Latecomer Agreements

Street Latecomer Agreements, also known as recovery contracts or reimbursement agreements, are an alternative financing tool to construct TIF projects.[5] The City of Vancouver has chosen Latecomer Agreements (street project assessment reimbursement contracts)[6] as their preferred tool to credit developers who construct projects in excess of their TIF burden. There is a provision in the County Code that currently allows for Latecomer Agreements. Latecomer Agreements have only been used by a developer conditioned to construct an infrastructure improvement *not* identified in the County's CFP and are not eligible for TIF credits.

Street Latecomer Agreements set in place a system for initial developers who build projects to recover a portion of their costs from property owners who later develop and make use of the completed transportation improvements. The burden to recover costs is then put on the private parties, leaving the jurisdiction free of financial management. The Revised Code of Washington (RCW) Chapter 35.72[7] sets out the procedures for Latecomer Agreements to be used with street improvements that are required by ordinance as a condition of property development. Clark County Code Chapter 12.36[8] covers provisions for road improvement reimbursement.

The process for implementing a Latecomer Agreement is as follows:

1. The County formulates an assessment reimbursement area based on which parcels adjacent to the street improvements would require similar improvements upon development.
2. The determination of assessments and area boundaries, along with information for the property owners describing their rights and options, is sent to the owner of record for all parcels in the area. Owners have 20 days to request a hearing on the preliminary determination.
3. The contract is recorded in the County Auditor's Office within 30 days of execution of the agreement.
4. The contract is binding on all owners of record within the assessment area, even those not party to the contract.

The property owner who provided the street improvement can be reimbursed a portion of the costs of the project for a period not to exceed 15 years. Reimbursement amounts are a pro rata share of design, construction, and contract administration costs of the project. The amount is based on the latecomer's benefit from not being required to install a similar street project because it was already provided by the original developer.

It is the responsibility of the property owner owed reimbursements to update the County every two years with any changes to property ownership. The County can participate in this agreement and be reimbursed in the same manner as property owners, adding additional flexibility to implement projects. If the County chooses not to provide excess TIF credits, Street Latecomer Agreements may provide funding options that are fair to developers.

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[5] http://www.mrsc.org/Home/Explore-Topics/Public-Works/Finance/Latecomer-Agreements-for-Cities,-Towns,-nbsp;Count.aspx
[6] See Vancouver Municipal Code Chapter 11.10
[7] http://app.leg.wa.gov/rcw/default.aspx?cite=35.72
[8] http://www.codepublishing.com/wa/clarkcounty/clarkco12/clarkco1236/clarkco1236.html