

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF)	RESOLUTION NO. 00-2906
AMENDING THE TOD PROGRAM)	
PROCEDURES TO FACILITATE TOD)	Introduced by
PROJECTS INCLUDING THE ROUND)	Executive Officer
AT BEAVERTON CENTRAL)	Mike Burton

WHEREAS, BY Resolution No. 98-2619 the Metro Council authorized start-up activities, including adoption of procedures in the Work Plan for the Transit-Oriented Development Implementation Program (TOD Program); and

WHEREAS, Resolution No. 98-2619 and the FTA grant provides for implementation of TOD projects through land acquisition; and

WHEREAS, the TOD Program as approved by Resolution No. 98-2619 and the Federal Transit Administration (FTA) does not currently include a site improvements component; and

WHEREAS, the FY00 Metro budget identifies the need to establish a site improvements funding mechanism for TOD projects; and

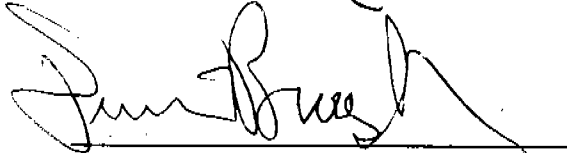
WHEREAS, securing of transportation "Priorities 2000" funding and execution of an IGA with Tri-Met now provides the funding flexibility and means for site improvements funding; and

WHEREAS, a component of the TOD Program Work Plan is to close out projects selected under the CMAQ/TOD Program authorized by Resolutions 93-1731A and 93-1829A; and

WHEREAS, implementation of a TOD at Beaverton Central is a specific objective listed in the close-out tasks of the Work Plan; now therefore,

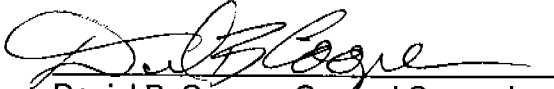
BE IT RESOLVED, that the Metro Council amends the TOD Program Work Plan (Exhibit A) to establish a "site improvements funding mechanism" to facilitate transit-oriented development projects, including The Round at Beaverton Central.

ADOPTED by the Metro Council this 9 day of MARCH, 2000.



David Bragdon, Presiding Officer

Approved as to form:


Daniel B. Cooper, General Counsel

TRANSIT-ORIENTED DEVELOPMENT IMPLEMENTATION PROGRAM

WORK PLAN

Transportation Department
Metro
March 1998
Revised February 2000

INTRODUCTION

This document describes the objectives, activities, and governance of the Metro Transportation Department's TOD Implementation (TOD) Program. The Program will fund land acquisition for eligible TOD projects in station areas along the Banfield and Westside-Hillsboro light rail corridor. Specifically, the Program will operate within one-quarter mile of light rail stations; these station areas are shown on Figure 1.

Projects considered for the Program will exhibit a mix of moderate- to high-intensity land uses, a physical or functional connection to the transit system, and design features that reinforce pedestrian relationships and scale. The Program seeks to increase transit ridership and lessen the risk and costs associated with the construction of TOD projects. To meet these goals and ensure the highest and best transit use, land sales to the private sector may include a "write-down" of land value, if needed, to assist in offsetting cost penalties associated with higher density, mixed-use, and/or strong pedestrian amenities. The write-downs will be determined by an independent appraisal or economic analysis utilizing the "highest and best transit use" approach. The Federal Transit Administration (FTA) recently approved this approach for joint development. The proceeds from land sales will return to the Program for use on another TOD.

PROGRAM OBJECTIVES & GRANT-FUNDED ACTIVITIES

Program Objectives

Specific objectives of the Program include:

- Causing construction of higher density housing, mixed-use projects (i.e. apartments over retail, office over retail), and destination uses that have a physical and functional connection to transit, through partnerships with the private sector;
- Developing suburban building types with the lowest reasonable parking ratios and highest reasonable floor area ratios (FAR's);
- Increasing the modal share of transit and pedestrian trips within station areas while decreasing reliance on personal automobiles;
- Leveraging and focusing public expenditures within station areas to support Metro's 2040 Growth Concept.

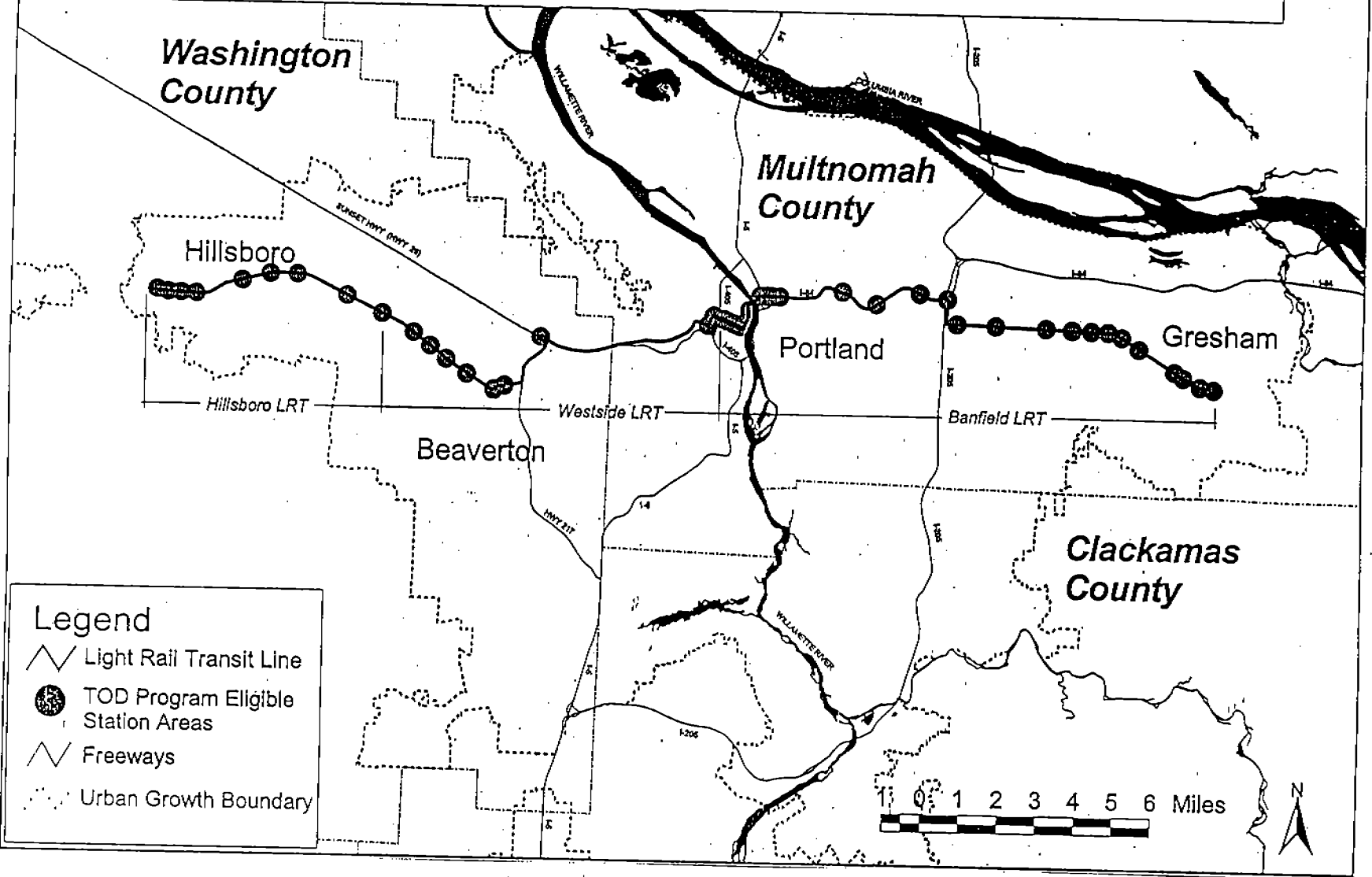
Grant-Funded Program Activities

Capital budget activities of the program are funded by a FTA grant approved in June 1997. Grant approval is to acquire property physically or functionally connected to light rail stations to encourage TODs. Initial land acquisitions will be within station areas of the Banfield, Westside, and Hillsboro LRT lines. The property will then be sold or leased in parcels with specific restrictions and conditions to private developers for construction of transit supportive development/livable community projects. The funds from the sale or lease of the development sites will be used to establish a revolving capital fund that will maintain an on-going transit-supportive development site acquisition and improvement program.

Other site preparation and site improvement activities may be funded from locally derived joint development revenues when the project meets the criteria of the Program. The site improvements may be provided directly or by acquisition and land sale write-down that may include TOD related cost penalties.

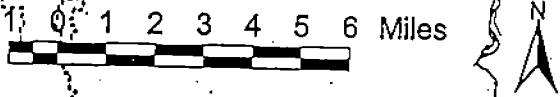
The TOD Implementation Program is a joint development program. Joint Development refers to a collection of public and private sector partnership techniques, strategies, and development "tools" that can be used to link development to transit stations to increase the efficiency of a mass transit system. The increase can take the form of new ridership (caused by the construction of TODs), new revenue

Figure 1: TRANSIT ORIENTED DEVELOPMENT IMPLEMENTATION PROGRAM
 Metro Regional Government, Oregon



Legend

- Light Rail Transit Line
- TOD Program Eligible Station Areas
- Freeways
- Urban Growth Boundary



to a transit agency, or a combination of both. Authority to use FTA funds for joint development are included in the Intermodal Surface Transportation Act of 1991 (ISTEA) and codified under 49 USC 5309, 49 USC 5307, 23 USC 133 (STP) and 23 USC 149 (CMAQ). According to these laws, TOD Program activities are defined as transportation projects provided there is (1) a physical or functional relationship to the transit project; and (2) an enhanced effectiveness of the existing transit system.¹

Specific joint development tools that may be used by the Program include:

- Site Control (land acquisition and sale) to ensure design and density of a TOD can be determined before the land is developed.
- Pre-development activities to assist in making environmental and programmatic determinations including financial analysis, conceptual design and permit acquisition; these activities do not include the preparation of architectural construction documents;
- Request for Proposals (RFP) to ensure the competitive offering of development opportunities;
- Development Agreements to establish a set of performances by both parties and to protect public interests in the development of the TOD sites;
- Public and Private Co-use of transit station structures, site improvements, or land to reinforce the connection of a TOD to the transit system;
- Air or Subterranean Rights to increase the density, urban character and/or feasibility of a TOD.
- Provision of site preparation and improvements to physically or functionally connect transit to the adjacent development and/or offset cost penalties of a TOD.

GOVERNANCE

The activities of the TOD Program will be overseen by a number of local, regional, state, and Federal officials and public-private partnership specialists. These include:

- The TOD Steering Committee
- The Federal Transit Administration
- The Metro Transportation Planning Committee

The role of each is described in the following text. A more detailed history of the TOD Steering Committee is provided under the "Other Program Activities" section of this document.

TOD Steering Committee

Prior to awarding the grant, FTA indicated that Metro was to include Tri-Met and others in the TOD Program. FTA accepted the proposal that the existing Congestion Mitigation Air Quality/Transit-Oriented Development (CMAQ/TOD) Steering Committee be used for this purpose. The CMAQ/TOD Committee was created to allocate \$3.48M of ISTEA funds to projects that could demonstrate innovative ways to address traffic congestion and air quality through TOD projects. Successful projects such as Belmont Dairy, Fairview Village, Steele Meadows, Gresham Central, and The Round at Beaverton all include CMAQ/TOD funding.

Under the TOD Implementation Program, the Steering Committee would become the TOD Steering Committee with responsibility to approve projects within criteria established by the Metro Council.

The Steering Committee would add a Metro Councilor to provide a strong liaison between the Committee and Council. The membership of the Steering Committee is listed below. Metro will provide staff support for the Steering Committee.

¹For a full discussion see the memo from FTA Chief Counsel Berle M. Schiller to FTA Administrator Gordon Linton entitled "Statutory Authority in Support of FTA Funding of Joint Development Projects," March 15, 1995.

TOD Steering Committee
Governor's Office (Chair)
Department of Environmental Quality (DEQ)
Oregon Department of Energy (ODOE)
Department of Land Conservation & Development (DLCD)
Oregon Housing & Community Services Department
Tri-Met
Metro Council
Oregon Department of Transportation (ODOT)
Oregon Economic Development Department (OEDD)
Portland Development Commission (PDC)

Staff: Metro Transportation Department

Operating Parameters for Program

The competitive evaluation criteria of the Request For Proposals to solicit development proposals includes a point based evaluation of a) quality and experience of developer team, b) proposed program, c) connectivity of TOD to light rail, d) business plan, e) timeliness of performances, and certain other minimum qualifications of the proposal. These criteria are the "TOD Proposal Criteria."

The criteria to acquire sites from property owners include a) potential for a physical or functional connection to transit, b) ability to enhance the existing transit system when developed with a TOD, and c) the extent to which the site represents an opportunity to demonstrate TOD Program objectives. These criteria are the "TOD Site Criteria."

The criteria to evaluate proposed site improvements include: 1) the potential of the improvements to create or strengthen a physical or functional connection to the transit station; 2) the extent to which the improvements cause construction of higher density housing, mixed-use projects and destination uses; 3) the extent to which the improvements develop building types with the lowest reasonable parking ratios and highest reasonable floor area ratios; 4) the extent to which the improvements increase the modal share of transit within station areas while decreasing reliance on personal automobiles; and 5) the potential of the improvements to focus and leverage other expenditures within station area to support Metro's 2040 Growth Concept. These criteria are the "TOD Site Improvements Criteria."

Property will be acquired at Fair Market Value as established by the Federal Transit Administration in accordance with policies and regulations under 49 CFR Part 24 (the Uniform Act) using independent certified appraisals and will be sold at the "highest and best transit use" value determined by an independent economic analysis or appraisal approved by the FTA. The highest and best transit use value uses a "residual value approach" in which extraordinary costs of the TOD such as fire and seismic building codes for mid-rise buildings, building over parking or structuring parking, and pedestrian improvements including plazas and promenades, are absorbed by the land value.

Federal Transit Administration

The Federal Transit Administration's grant conditions and Federal funding regulation require the TOD Implementation Program to ensure public participation, identify and mitigate any adverse environmental impacts cause by the Program, and pursue environmental justice. These requirements are to be addressed through the following activities:

- Completion of a programmatic Environmental Assessment (EA)
- Public and agency review of the EA
- Site specific environmental analysis and a Memorandum on Response to Criteria
- Creation of the TOD Steering Committee

Program Operation

Operation of the TOD Program will include three broad categories of projects: a) system-wide RFPs, b) opportunity sites, and c) site improvements.

System-wide RFP

RFPs for development projects will be authorized for release by the Metro Council. Metro staff will conduct the technical evaluation of RFP submissions according to the TOD Proposal Criteria, and submit the proposals to the Steering Committee. As soon as practical upon approval by the Steering Committee, the Executive Officer will provide written notification to the Metro Council of TOD proposals and the Council will have seven (7) days to notify the Executive of a request to review a proposal in executive session. Subsequently, proposals will have appraisals completed, site specific environmental work done (including traffic, wetlands, cultural and historic, and hazardous materials), a Memorandum on Response to Criteria prepared (as required by the grant), and be forwarded to the FTA. Upon approval by the Steering Committee and FTA, the Executive Officer is to execute Development Agreements with developers of successful proposals.

Opportunity Sites

To acquire a site without a developer, Metro staff will evaluate the site using the TOD Site Criteria, and forward recommendations to the Steering Committee. As soon as practical upon approval by the Steering Committee, the Executive Officer will provide written notification to the Metro Council of potential TOD projects and the Council will have seven (7) days to notify the Executive of a request to review a potential project in executive session. Subsequently, projects will have appraisals completed, site specific environmental work done (including traffic, wetlands, cultural and historic, and hazardous materials), a Memorandum on Response to Criteria prepared, and then be forwarded to the FTA. or upon approval by the Steering Committee and the FTA, the Executive Officer is to execute a Purchase Agreement with the property owners of TOD project sites. The sites will then be planned and parceled, if necessary, and sold for private development with specific conditions at a value determined by an independent economic analysis or appraisal at the "highest and best transit use" method in accordance with guidance by the FTA, as published in the Federal Register, March 14, 1997, or subsequent formal guidance from FTA.

Site Improvements

To fund site improvements, Metro staff will evaluate the proposed improvements using the TOD Site Improvements Criteria and forward a recommendation to the TOD Steering Committee. As soon as practical upon approval by the Steering Committee, the Executive Officer will provide written notification to the Metro Council of the proposed improvements and the Council will have seven (7) days to notify the Executive of a request to review the proposed improvements in executive session. Following this authorization process, the Executive Officer will execute a Development Agreement, with the principle developer of the project in which the TOD site improvements are located.

Technical assistance to Metro staff and the Steering Committee will be provided by consultants on a "task order" basis. The disciplines covered by consultant services include:

- Planning & Urban Design
- Development Services
- Market Analysis
- Land Acquisition, Relocation, Disposition & Escrow Services
- Architectural & Engineering Services
- Environmental
- Real Property Appraisal
- Technical Studies
- Legal Services
- Public Process Facilitation

Transportation Planning Committee

The Transportation Planning Committee will review TOD Program activities on a regular basis.

OTHER PROGRAM ACTIVITIES

Oregon Transportation Infrastructure Bank

Upon execution of an agreement with the Oregon Transportation Infrastructure Bank (OTIB) a \$2.0M reservation of transit account funds for up to five years will be available for use by the TOD Program. Funds for individual TOD projects will be drawn down in specific amounts with specific pay-back schedules for each project. Generally, these individual project pay-back schedules would be for 6-18 months with deferred interest; however, a project might borrow OTIB funds for up to the life of the OTIB fund reservation— five years.

This use of both OTIB and TOD grant funds will allow the purchase of larger parcels of vacant or redevelopable land than possible using only TOD grant funds. As outlined in the "Grant Funded Program Activities" section above, after Metro acquires land, plans and designs a TOD, parcels the land (if appropriate), and executes Development Agreements with qualified developers, it will then sell the land at a price established by independent appraisals.

Upon sale, the OTIB will be returned the full amount of money it loaned for the initial acquisition. If the land sale(s) included a land value write down, this would be absorbed by the TOD Implementation Program grant, not the OTIB transit account.

The advantages of OTIB participation include:

- Increasing Metro's ability to affect a greater proportion of development surrounding light rail stations;
- Increasing the opportunity to purchase large tracts at wholesale prices, then parceling it to individual developers, which will further leverage TOD grant funds;
- Increasing the incentive for private developers to participate in public-private partnerships by allowing Metro to carry the land during planning and predevelopment activities;
- Financial participation by OTIB in the building of transit projects with minimal financial risk;
- A short turnaround time for OTIB loans.

CMAQ/TOD Program Administration

The CMAQ/TOD Program was sponsored by the Department of Environmental Quality (DEQ) and was proposed for CMAQ funding under ISTEA. The germination of the program came from a series of strategies recommended by the Governor of Oregon's Task Force on Motor Vehicle Emissions Reduction. The strategies revolved around demonstrating pedestrian, bike and transit friendly land use options for new construction that reduced auto emissions and traffic congestion. The CMAQ-TOD Program was the region's first effort to directly influence TOD projects with the use of Congestion Mitigation/Air Quality funds. Initiated in 1994-95 with \$3.48 million in federal funds, it has resulted in a number of successful projects including Belmont Dairy, Fairview Village, Steele Park, Orenco Station, Gresham Central, 172nd and East Burnside, Buckman Heights, the Round at Beaverton, and Gresham Civic Neighborhood. Six of the above projects have executed Agreements and are completed or underway, with the funding for the last three, Buckman, the Round, and Gresham Civic committed but still pending execution of Financial Agreements. Uncommitted funds as of January 1998, total less than \$100,000.

Funding for the program was from Federal Highway Administration (FHWA) to ODOT, with DEQ the program sponsor. Project solicitation was by RFP with selection determined by the CMAQ/TOD Steering Committee discussed earlier. Staff for the program was by contract with the PDC because of its background and expertise in public-private development projects.

Due to cutbacks in staff, PDC can no longer manage the program and has recommended that Metro assume administrative responsibility for this existing CMAQ/TOD Program, since Metro has expertise in TOD Program issues and Federal funding requirements. This is acceptable to ODOT and DEQ and the proposal is currently being circulated among the other members of the Steering Committee.

Work remaining includes successfully implementing the remaining projects of the Round and Gresham Civic (Buckman is underway), meeting federal requirements for the grant, resolving issues of eligibility as they arise, meeting reporting requirements and producing a summary and analysis of the CMAQ/TOD Program to date.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 00-2906 FOR THE PURPOSE OF AMENDING THE TOD PROGRAM PROCEDURES TO FACILITATE TOD PROJECTS INCLUDING THE ROUND AT BEAVERTON CENTRAL

Date: February 15, 2000

Presented by: Andrew C. Cotugno

PROPOSED ACTION

It is recommended that the Metro Council amend the Transit-Oriented Development Implementation Program (TOD Program) Work Plan procedures to create an additional category of site improvements for TOD project funding. This will allow for a project such as The Round at Beaverton Central to use TOD Program resources.

EXISTING LAW

The TOD program was originally transferred from Tri-Met to Metro by Intergovernmental Agreement (IGA) executed by Resolution #96-2279 on May 16, 1996. This was augmented by the recent IGA with Tri-Met executed November 22, 1999, by Resolution #96-2279. Section 7(2)(c) of the Metro Charter allows Metro to contract with local governments and special districts to provide services under mutual agreement, provided Metro is compensated. Tri-Met's authority for joint development is established under ORS 267.200, (4), (7) and (11).

BACKGROUND AND ANALYSIS

A transit-oriented development at the Beaverton Central MAX station has been envisioned for a number of years by both elected officials and growth management advocates. For example, the 1982 Westside Corridor Draft Environmental Impact Analysis, the 1992 Beaverton Downtown Plan, and the City of Beaverton's 1995 development proposal solicitation all call for a TOD to be constructed at the Beaverton Central station. In May 1997 BCB Developers, Inc. was selected from a competitive RFP. BCB began constructing a TOD project in August 1997 called The Round at Beaverton Central. The CMAQ-TOD Program and the MTIP allocation provided funds to the City of Beaverton for street and esplanade improvements.

Unfortunately, the project experienced financial difficulties and construction was halted in January 1999. The TOD Program attempted to secure resources to assist the project, including funds for the public plaza (an area the size of Pioneer Square) adjacent to the light rail station. An application for \$2.0 M of funding from the federal TCSP Program was not successful. However, the TOD Program has been approved for \$4.0 M of additional federal transportation funding from "Priorities 2000." The recent IGA executed between Tri-Met and Metro converts some of the funds into local funds which will provide the necessary flexibility for a project such as The Round which has already started construction. Two million dollars are now potentially available for The Round which will be used for land acquisition and/or construction of the plaza, subject to private financing of the project.

Work Plan Amendments

The Council established acquisition procedures as part of Resolution 98-2619 (TOD Program start-up activities). However, the TOD Program currently does not have procedures for funding site improvements, since the FTA did not approve site improvements in the original grant. This shortcoming is identified in the proposed FY00 Metro Budget, which calls for “establishing the site improvements funding mechanism for TOD Projects,” and is being proposed under this resolution. The IGA executed with Tri-Met last November provides local revenues that could be used for this type of program.

Specifically, the original resolution in combination with the proposed amendments to the Work Plan (Exhibit A) will result in three broad categories of projects: 1) system-wide RFPs for land acquisition, 2) opportunity sites for land acquisition, and 3) site improvements. Selection criteria and funding procedures are also established for the new site improvements category. This site improvements category is for an existing or proposed project and activities may include site acquisition in order to facilitate the write-down of a site to offset the cost of site improvements and other cost penalties of a TOD. Proposed criteria include: 1) the potential of the improvements to create or strengthen a physical or functional connection to the transit station; 2) the extent to which the improvements cause construction of higher density housing, mixed-use projects and destination uses; 3) the extent to which the improvements develop building types with the lowest reasonable parking ratios and highest reasonable floor area ratios; 4) the extent to which improvements increase the modal share of transit within station areas while decreasing reliance on personal automobiles; and 5) the potential to leverage and focus private expenditures within station area to support Metro’s 2040 Growth Concept.

To fund TOD site improvements, Metro staff will evaluate the proposed project using the TOD Site Improvements Criteria. Approval of a specific project will follow the process of TOD Steering Committee selection and notification to the Metro Council per the existing process for acquisition projects. Development Agreements will be executed for approved projects.

TOD Work Plan Procedures for Project Approval

This site improvements program, if approved by Council, is proposed to be used at the Round for TOD Program funding, although specific funding approval by Council is not being requested at this time. The Work Plan amendments make it possible for a transaction to be structured and increases level of certainty among potential financial sources. Pursuant to TOD Program procedures (Resolution #98-2619) that have resulted in six projects to date, the Steering Committee takes action on a specific funding proposal and the Executive Officer issues a Seven-Day Notice to the Council. The Council may act to bring the project into executive session or not. Otherwise the funding is approved and goes directly to the Executive Officer to be executed through a Development Agreement. The Seven-Day Notice on the Round at Beaverton has been issued through the existing Work Plan process subject to modification of the Work Plan.

BUDGET IMPACT

There is no impact to the Metro budget resulting from this amendment to the TOD Work Plan. The TOD Program operates with federal transportation funds with the local match provided by contributions from local governments and developers. Federal to local funds exchanged through the recent Tri-Met IGA do not have a match requirement. The "Priorities 2000" funding recently approved anticipated the creation of a site improvements category and possible funding for The Round.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Metro Resolution No. 00-2906.