

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)	RESOLUTION NO.05-3617
THE TRANSIT-ORIENTED)	Introduced by Metro Councilor Robert
DEVELOPMENT (TOD) PROGRAM)	Liberty with the concurrence of Metro
WORK PLAN TO ALLOW A PROCESS)	Council President David Bragdon
FOR CONSIDERATION OF)	
UNSOLICITED PROPOSALS FOR)	
METRO TOD/CENTERS PROGRAM)	
OWNED LAND.)	

WHEREAS, on April 9, 1998, the Metro Council adopted Resolution No. 98-2619 (For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development (TOD) Implementation Program at Metro), which authorized start-up activities for the Metro Transit-Oriented Development Implementation Program (the “TOD Program”) and set forth the operating parameters of the TOD Program in a Work Plan providing for selection criteria for TOD projects; and

WHEREAS, the TOD Work Plan was amended to expand the TOD Program area to Frequent Bus Corridors by Resolution No. 04-3479 (For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program), adopted July 15, 2004; and

WHEREAS, the TOD/Centers Implementation Program was established to provide Metro with a set of development tools that help implement Metro’s Region 2040 Growth Concept by being a public partner in high density, mixed use development projects in light rail station communities in regional and town centers, along main streets and frequent bus corridors; and

WHEREAS, the COO is authorized to execute Development Agreements and to acquire sites in station communities, at frequent bus stops, along main streets, and in regional and town centers that have been approved by the TOD Steering Committee; and

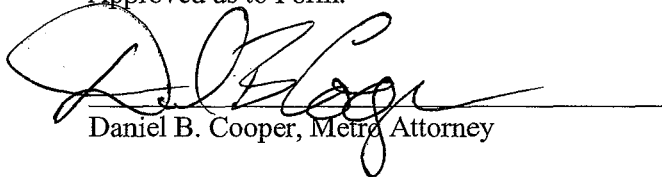
WHEREAS, unsolicited proposals are an important tool used by public agencies to allow the private sector to respond creatively to development opportunity sites owned by the public to maximize the public benefit on their investment in joint development projects; now therefore

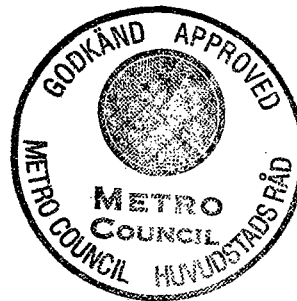
BE IT RESOLVED, that the Metro Council amends the TOD Program Work Plan to allow a process for consideration of unsolicited proposals for Metro-owned land as set forth in Exhibit A.

ADOPTED by the Metro Council this 13th day of September, 2005.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



TRANSIT-ORIENTED DEVELOPMENT IMPLEMENTATION PROGRAM

WORK PLAN

Planning Department
Metro

March 1998

Revised July 2004

Revised May 2005

Revised September 2005

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1. INTRODUCTION

This document describes the objectives, activities, and governance of the Metro Planning Department's Transit-Oriented Development Implementation Program (TOD Program). The Program seeks to increase transit ridership and lessen the risk and costs associated with the construction of TOD projects. 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. TOD Program utilizes joint development tools such as land acquisition and Development Agreements to implement projects located in close proximity to rail transit stations and "Frequent Bus" stops throughout the region. These locations are shown on Figure 1.

2. PROGRAM OBJECTIVES & ACTIVITIES

2.1. PROGRAM OBJECTIVES

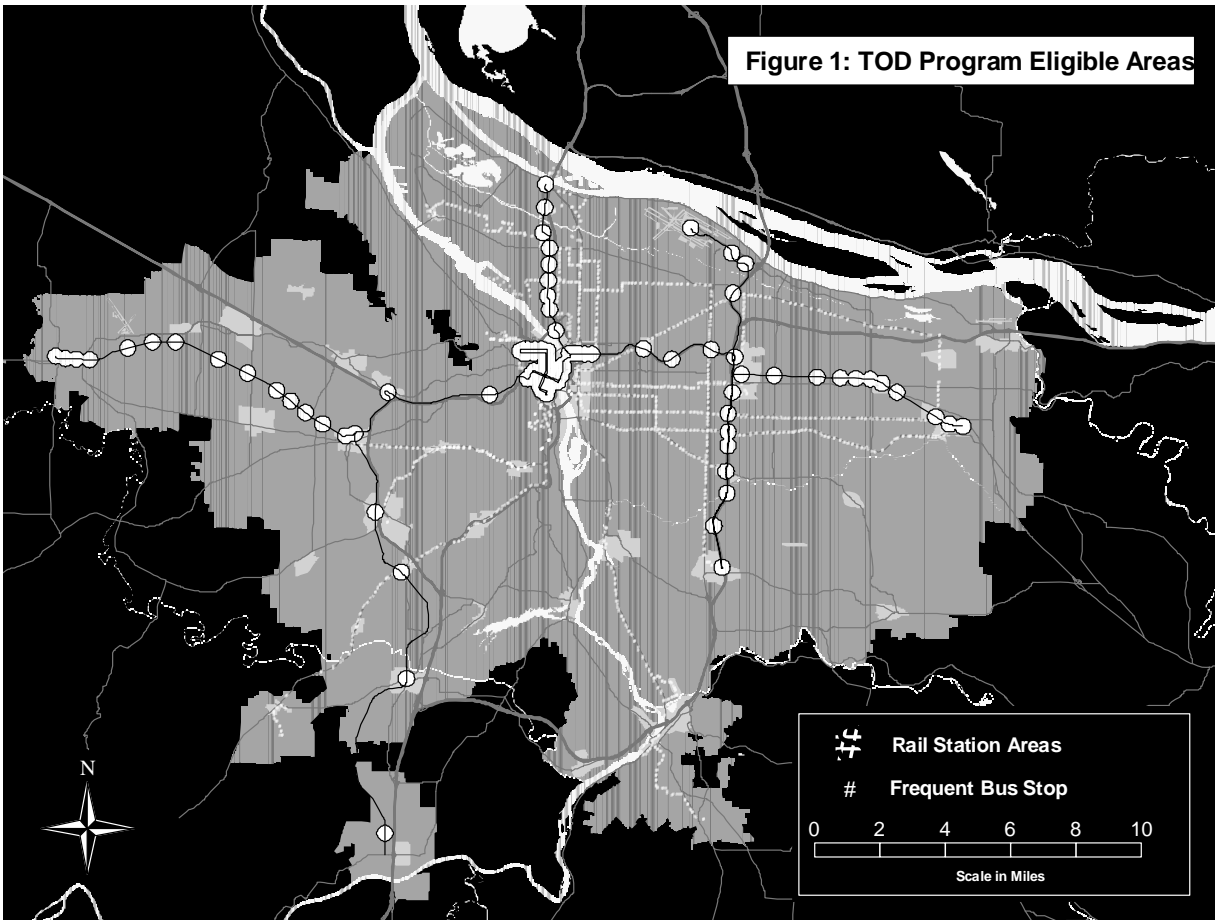
Specific objectives of the Program include:

- 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.

2.2. PROGRAM ACTIVITIES

The TOD Implementation Program is a joint development program focusing on site-specific project implementation. 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 to a transit agency, or a combination of both. The Federal Transit Administration (FTA) approved a grant for Metro to start the TOD Program in 1997. 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

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.



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.
- Site preparation and site improvement activities funded directly or by the acquisition of TOD Easements.

3. 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 (when the use Federal Funds are involved)
- The Metro Council

The role of the Steering Committee 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 became the TOD Steering Committee with responsibility to approve projects within criteria established by the Metro Council.

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

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 Planning Department

4. OPERATING PARAMETERS FOR PROGRAM

4.1. PROJECT SELECTION CRITERIA

4.1.1. System-wide RFP Criteria

The competitive evaluation criteria of Request For Proposals to solicit development proposals includes a point based evaluation of:

- 1) Quality and experience of developer team,
- 2) Proposed program;
- 3) Connectivity of TOD to light rail;
- 4) Business plan;
- 5) Timeliness of performances, and certain other minimum qualifications of the proposal;

In the event two or more proposals are equal, the project(s) located in Regional and Town Centers will be given priority.

These criteria are the “TOD Proposal Criteria.”

4.1.2. Opportunity Site Criteria

The criteria to acquire sites from property owners include:

- 1) The potential for a physical or functional connection to transit.
- 2) The ability to enhance the existing transit system when developed with a TOD.
- 3) The extent to which the site represents an opportunity to demonstrate TOD Program objectives.
- 4) The location relative to Regional and Town Centers.

These criteria are the “TOD Site Criteria.”

4.1.3. Site Improvements 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 improvement 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 a station area to support Metro’s 2040 Growth Concept,
- 6) Project location relative to Regional and Town Centers.

These criteria are the “TOD Site Improvements Criteria.”

4.1.4. Frequent Bus Line Criteria

Proposed projects located on frequent bus lines will be evaluated against three sets of the criteria: base, mandatory and additional. Base criteria depend upon the nature of the project and will consist of the TOD Proposal Criteria (section 4.1.1), TOD Site Criteria (section 4.1.2) or TOD Site Improvements Criteria (section 4.1.3).

Manadatory Frequent Bus Criteria include:

- 1) Project is in an area that will help spur additional development and help create a node around the transit stop;
- 2) The project represents an attempt to build the base of developers that can be used in other centers
- 3) There are not adequate local government funds available to close the financing gap;
- 4) The project will be within 800 ft. from a high frequency bus line;
- 5) The project demonstrates a market concept applicable to high frequency bus line or the project will test the market for new product types for high frequency bus routes.

Additional Project Criteria for Frequent Bus Projects:

- The project uses new building materials or building systems that result in lower construction costs and/or tests new markets for a building type.
- The project provides market rate and affordable housing, including rental or for sale, in a project that would otherwise be a single use building such as retail or office.
- The project spurs job creation.
- The project uses a high level of sustainable practices including building materials and energy conservation.
- The project is located in or near a center.

- The project has a favorable ratio of TOD dollars to total development costs.
- There are not similar projects in the area done without public funding.
- The project improves the quality of the environment for the transit patron.

Frequent bus project should attempt to respond to as many of the additional criteria as possible.

Collectively, these three sets of criteria are the “Frequent Bus Criteria.”

4.2. PROPERTY ACQUISITION POLICIES

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.

4.3. FEDERAL TRANSIT ADMINISTRATION POLICIES

The Federal Transit Administration’s grant conditions and Federal funding regulations 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

5. 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.

5.1. 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 Chief Operating Officer will provide written notification to the Metro Council of TOD proposals and the Council will have seven (7) days to notify the COO 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 (when required by the grant), and be forwarded to the FTA (when Federal funds are proposed for use). Upon approval by the Steering Committee and FTA (when appropriate), the Chief Operating Officer is to execute Development Agreements with developers of successful proposals.

5.2. OPPORTUNITY SITES

To acquire a site without a developer, Metro staff will evaluate the site using the TOD Site Criteria, and the Frequent Bus Criteria, if appropriate, then forward recommendations to the Steering Committee. As soon as practical upon approval by the Steering Committee, the Chief Operating

Officer will provide written notification to the Metro Council of potential TOD projects and the Council will have seven (7) days to notify the COO 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 (when FTA funds are being used). Upon approval by the Steering Committee and the FTA (as appropriate), the Chief Operating Officer is to execute a Purchase and Sale 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, as appropriate

5.3. SITE IMPROVEMENTS

To fund site improvements, Metro staff will evaluate the proposed improvements using the TOD Site Improvements Criteria and the Frequent Bus Criteria, if appropriate, then forward a recommendation to the TOD Steering Committee. As soon as practical upon approval by the Steering Committee, the Chief Operating Officer will provide written notification to the Metro Council of the proposed improvements and the Council will have seven (7) days to notify the COO of a request to review the proposed improvements in executive session. Following this authorization process, the Executive Officer may execute a Development Agreement, with the principle developer of the project in which the TOD site improvements are located. A TOD Easement will be recorded on the property to ensure the project remains in transit supportive use.

5.4. UNSOLICITED PROPOSALS

Metro will accept unsolicited proposals on development sites owned by Metro’s TOD/Centers Program. A prospective developer may offer in writing to develop a parcel indicating the proposed parcel, the development program, track record of the development team, timelines for development and financial consideration. Metro staff will evaluate the proposal according to project type criteria in Section 4.1.2, 4.1.3 and 4.1.4 as appropriate and, if deemed acceptable, prepare a written analysis and recommendation. Contact with Metro staff is permissible and should be encouraged with the limited objective of conveying to the prospective offeror an understanding of Metro’s needs relative to the type of development contemplated. If staff makes a recommendation to accept the proposal, it will then be advertised for a period of 2 weeks in a publication of general circulation. Any additional proposals for that specific development site will be evaluated and a recommendation forwarded to the Steering Committee for action to approve the most beneficial acceptable proposal. As soon as practical, upon the approval of a proposal by the TOD Steering Committee, the Chief Operating Officer will provide written notification to the Metro Council and the council will have seven (7) days to notify the COO of a request to review the unsolicited proposal in executive session. Metro may execute an Exclusive Negotiating Agreement with the developer for up to 120 days to determine if agreement can be reached by both parties to develop the site. Within the 120 day period, the parties may enter into a Development Agreement if consistent with the granted approval.

5.5. PROFESSIONAL SERVICES

Consultants on a “task order” basis will provide technical assistance to Metro staff and the Steering Committee. The disciplines covered by consultant services include:

- Planning & Urban Design
- Environmental
- Development Services
- Real Property Appraisal
- Market Analysis

- Technical Studies
- Land Acquisition, Relocation, Disposition & Escrow Services
- Legal Services
- Architectural & Engineering Services
- Public Process Facilitation

6. OTHER PROGRAM ACTIVITIES

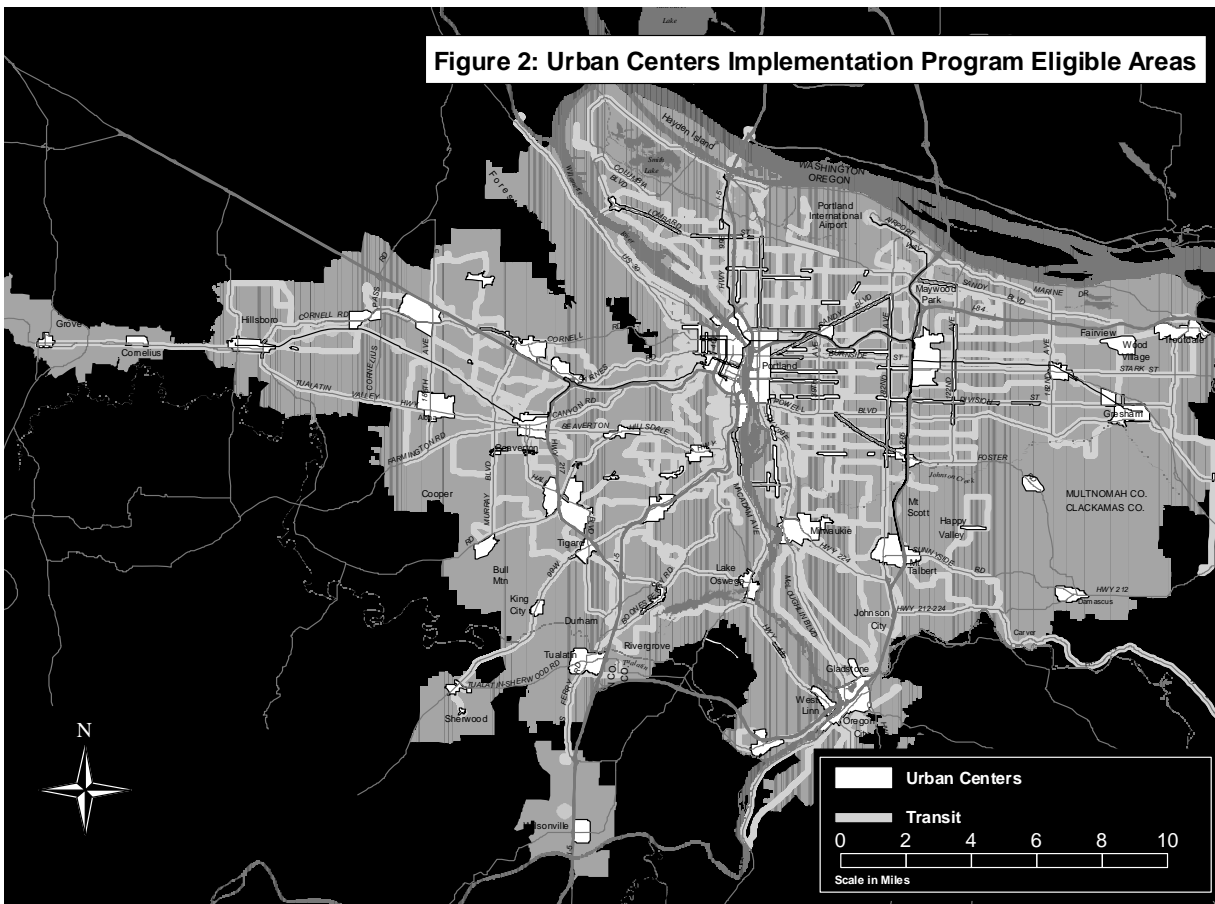
6.1. URBAN CENTERS IMPLEMENTATION PROGRAM

The 2040 Growth Concept looks to the Central City, Regional and Town Centers, Station Communities and Main Streets as the centers of urban life in the region and depends for its success upon the maintenance and enhancements of the Urban Centers.

Metro Council Resolution 03-3381A allocated one million dollars to create a site specific, project based implementation program to operate in designated Urban Centers (Regional and Town Centers), even if they are not currently served by rail or Frequent Bus transit. These Urban Centers are shown in Figure 2.

6.1.1. Urban Centers Project Criteria

Criteria for selecting potential Urban Centers implementation projects are as follows: 1) provision for mixed-use and higher density development; 2) project creates a sense of place in the Center; 3) site control by public entity or willing and capable private developer; 4) project participation by other public partners; 5) potential reduction in regional VMT or of home to work trip length; 6) increase in walk, bike and transit trips; 7) floor area ratio as close to or exceeding 1:1 as possible. These criteria will be called the Centers Implementation Selection Criteria



6.1.2. Urban Centers Program Operation

To fund a Centers project, Metro staff will evaluate the proposed project using the Centers Implementation Selection Criteria and forward a recommendation to the TOD Steering Committee. As soon as practical upon approval by the Steering Committee, the Chief Operating Officer will provide written notification to the Metro Council of the proposed project and the Council will have seven (7) days to notify the COO of a request to review the proposed funding in executive session. Following this authorization process, the COO will execute a Development Agreement, with the principle developer of the project.

6.2. EDUCATION, ADVOCACY AND TECHNICAL ASSISTANCE

Recognizing that the TOD and Centers Implementation Program are complex strategies to help manage regional growth, Program staff will undertake an education, advocacy and technical assistance effort to jurisdictions and agencies (local, national and international) working to implement TOD and/or urban center programs, plans and projects; to academicians studying TOD and public/private partnerships and to members of the private real-estate development community.

6.3. TOD PROGRAM LOAN OR LIMITED PARTNER

The federal guidelines for Transit Oriented Development state that TODs “can be accomplished through a sale or lease of federally funded property, or through direct participation of the funded property, or through direct participation of the transit agency in the development as a (limited) partner.” (Federal Register, Vol. 62, No. 50, Friday, March 14, 1997). In instances where the land value write-down is insufficient to close the financing gap, as a result of cost premiums, additional funding may be provided as a loan or as an equity position in the project to be structured to compliment the developers’ equity capital and mortgage financing.

6.4. GREEN BUILDINGS PROGRAM

TOD and Urban Centers projects will submit applications to the Oregon Department of Energy Business Energy Tax Credits (BETC) Program when they are eligible. Revenues from these tax credits will be used to initiate a “sustainable development” program to integrate green building practices (such as energy and water conservation, the reuse of salvaged building materials and other sustainable practices) into TOD Program funded projects.

6.5. SMALL PROJECTS CATEGORY FOR TOD/CENTERS PROJECTS

A Small Projects category is established for projects with a total development cost of \$1.0million per project. These small projects should not exceed \$100,000 of TOD funding per year. In addition to meeting the TOD/Centers funding criteria outlined in the Work Plan, additional criteria will apply to small projects: 1) funding should not benefit the developer personally for either housing or a business; 2) a developer fee will not be considered as part of the proforma.

6.6. 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 payback schedules for each project. Generally, these individual project payback 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.

6.7. 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

IN CONSIDERATION OF RESOLUTION NO.05-3617, FOR THE PURPOSE OF AMENDING THE TRANSIT ORIENTED DEVELOPMENT (TOD) PROGRAM WORK PLAN TO ALLOW A PROCESS FOR CONSIDERATION OF UNSOLICITED DEVELOPMENT PROPOSALS FOR METRO TOD/CENTERS PROGRAM OWNED LAND.

Date: September 6, 2005

Prepared by: Andy Cotugno
Phil Whitmore

BACKGROUND

The TOD/Centers Implementation Program was authorized to acquire development opportunity sites in light rail station communities, frequent bus stops, along main streets, and in regional and town centers, in order to catalyze the market in these areas to respond more quickly to higher density, mixed use development as envisioned in the 2040 Growth Concept. The Metro Council has approved the use of the following joint development tools:

- Land acquisition and sale,
- RFP for development opportunity sites owned by Metro,
- Development Agreements and acquisitions of TOD Easements in private development projects,
- Public-private Co-use of transit station structures, site improvements or land,
- Air or subterranean rights on Metro owned land;
- Loan Program or Limited Partner;

Unsolicited proposals are another joint development tool used by public agencies to allow the private sector to respond to development opportunity sites owned by the public the ability to accept unsolicited proposals will allow private sector firms to submit innovative, creative and proprietary proposals to Metro that can be tailored to meet Metro's needs and requirements for TOD/Centers projects. The private sector has the ability to respond more quickly to market changes and investor timelines, and may be more creative and less risk-averse than public agencies. This joint development tool will allow the TOD/Centers program to develop Metro-owned sites more quickly and with a creative and willing private partner.

It is recommended that the following language be added to the TOD Work Plan to allow the TOD/Centers Program to use this joint development tool:

5.4 UNSOLICITED PROPOSALS

Metro will accept unsolicited proposals on development sites owned by Metro's TOD/Centers Program. A prospective developer may offer in writing to develop a parcel indicating the proposed parcel, the development program, track record of the development team, timelines for development and financial consideration. Metro staff will evaluate the proposal according to project type criteria in Section 4.1.2, 4.1.3 and 4.1.4 as appropriate and, if deemed acceptable, prepare a written analysis and recommendation. Contact with Metro staff is permissible and should be encouraged with the limited objective of conveying to the prospective offeror an understanding of Metro's needs relative to the type of development contemplated. If staff makes a recommendation to accept the proposal, it will then be advertised for a period of 2 weeks in a publication of general circulation. Any additional proposals for that specific development site will be evaluated and a recommendation forwarded to the Steering Committee for action to approve

the most beneficial acceptable proposal. As soon as practical, upon the approval of a proposal by the TOD Steering Committee, the Chief Operating Officer will provide written notification to the Metro Council and the council will have seven (7) days to notify the COO of a request to review the unsolicited proposal in executive session. Metro may execute an Exclusive Negotiating Agreement with the developer for up to 120 days to determine if agreement can be reached by both parties to develop the site. Within the 120 day period, the parties may enter into a Development Agreement if consistent with the granted approval.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

The Federal Transit Administration (FTA) approved a grant for Metro to start the TOD Program in 1998. 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.

The TOD program was originally transferred from TriMet to Metro by Intergovernmental Agreement (IGA) executed by Resolution #96-2279 For the Purpose of Authorizing an Intergovernmental Agreement With Tri-Met to Assist in Establishing a Transit-Oriented Development and Implementation Program at Metro on May 16, 1996. The Metro Council authorized start-up activities on April 9, 1998, by Resolution No. 98-2619 For the Purpose of Authorizing Start-Up Activities For the Transit-Oriented Development (TOD) Implementation Program at Metro.

The Work Plan was amended to include provision for a site improvements category by Resolution 00-2906 For the Purpose of Amending the TOD Program Procedures to Facilitate TOD Projects Including the Round at Beaverton Central, adopted March 9, 2000, and amended to include additional light rail corridors, streetcar, frequent bus, urban centers and green buildings by Resolution No. 04-3479 For The Purpose Of Amending The Transit-Oriented Development (TOD) Program Work Plan To Expand The TOD Program Area And Initiate An Urban Centers Program, adopted July 15, 2004.

3. Anticipated Effects

The authorization for the TOD/Centers Implementation Program to accept unsolicited proposals for development opportunity sites owned by Metro TOD/Centers Program will allow the private sector to present Metro with innovative development proposals that leverage private financial resources and maximize return on public investment in joint development projects.

4. Budget Impacts

There are no budget impacts to the Metro General Fund as a result of the change in selection criteria. TOD/Centers projects do not use General Funds.

RECOMMENDED ACTION

It is recommended that the Metro Council approve the process for accepting unsolicited proposals in Exhibit A.