

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE 2012-)	RESOLUTION NO. 13-4459
15 METROPOLITAN TRANSPORTATION)	
IMPROVEMENT PROGRAM (MTIP) TO ADD)	Introduced by Chief Operating Officer Martha
THE TRANSPORTATION ALTERNATIVES)	Bennett in concurrence with Council
PROGRAM CONTINGENCY FUND FOR)	President Tom Hughes
ELEVEN PROJECTS)	
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WHEREAS, the Regional Transportation Plan (RTP) is a central tool for implementing the Region 2040 Growth Concept, and constitutes a policy component of the Metro Regional Framework Plan; and

WHEREAS, the Metropolitan Transportation Improvement Program (MTIP) prioritizes projects from the Regional Transportation Plan to receive transportation related funding; and

WHEREAS, Joint Policy Advisory Committee on Transportation (JPACT) and the Metro Council must approve the MTIP and any subsequent amendments to change programming policies to the MTIP per federal regulation 23 CFR 450.324; and

WHEREAS, JPACT the and the Metro Council approved by Resolution the 2012-2015 MTIP on March 15, 2012; and

WHEREAS, the implementation of the new federal transportation authorization, Moving Ahead Toward Progress in the 21st Century (MAP-21) combined several federal funding programs and changed the administration of the combined program which went into effect immediately; and

WHEREAS, the transition to the new MAP-21 funding programs and administration require Metro to fund partially eleven local transportation projects, originally selected for funding by ODOT; and

WHEREAS, when originally selected for funding, these projects had access to ODOT contingency funds to address unexpected costs and ensure timely implementation; and

WHEREAS, without access to contingency funds, projects could face significant delays, higher administrative costs and possible cancellation and repayment of development costs; and

WHEREAS, a proposed contingency fund could be provided from unallocated Transportation Alternatives program funding and not impact funding of existing projects; and

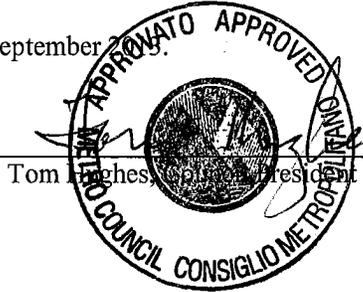
WHEREAS, a work group of project stakeholders, TPAC and JPACT have considered these issues and recommend the 2012-15 MTIP be amended to include a project delivery contingency fund for the eleven projects awarded funding prior to the implementation of the new federal transportation authorization, MAP-21; and

WHEREAS, the projects eligible for contingency funds and the activities the fund will support do not affect the conformity status of the 2035 RTP and the 2012-15 MTIP; now therefore

BE IT RESOLVED that the Metro Council hereby adopts the recommendation of JPACT to:

1. Amend the 2012-15 MTIP to include the project delivery contingency fund for the eleven impacted projects as shown in Exhibit A, attached and incorporated into this Resolution.
2. Amend chapter 1 section 6 in the 2012-2015 MTIP to enable the contingency fund to be established, which is attached as Exhibit B and incorporated into this Resolution.

ADOPTED by the Metro Council this 26 day of September 2013.



Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney

Exhibit A for Resolution 13-4459

Projects Impacted by Transition from the Transportation Enhancements (TE) and Safe Routes to Schools (SRTS) funding programs to the Transportation Alternatives (TA) funding program

Project Name	Project Sponsor	Total TE or TAP \$
SW Birchwood Road: 87 th – Laurelwood Sidewalk	Beaverton	\$398,000
Springwater Trail: Rugg Road – Dee Street	Clackamas County Parks	\$1,200,000
SE 122 nd Avenue and 132 nd Avenue Sidewalk Connections	Clackamas County	\$607,538
Willamette Greenway Trail: Chimney Park – Pier Park	Metro	\$1,499,000
SE Holgate and Ramona: 122 nd Avenue – 136 th Avenue Sidewalk	Portland	\$1,351,800
B Street: 23 rd Avenue – Primrose	Forest Grove	\$350,000
NE 172 nd Avenue: Halsey Street to Glisan Street	Gresham	\$169,000
SE Lake Road: Where Else Lane to Freeman Road	Milwaukie	\$233,724
Pedestrian Crossings at Four Schools	Portland	\$455,827
SW Leahy Road and W Stark Street	Washington County	\$411,000
Portland-Milwaukie LRT: Kellogg Lake Bridge M/U Path	TriMet & Milwaukie	\$1,000,000

1.6 PROGRAMMING FUNDS AND PROJECT SELECTION

As discussed above, project prioritization refers to the process of choosing a subset of projects to advance in any given two-year MTIP cycle, from among all those approved for implementation in the RTP long-range plan. Programming of funds refers to the assignment of project costs by phase (project development, final design, right-of-way and construction) to types of funds and expected years of expenditure. The programming tables in Chapter 3 summarize the programming to be adopted in this MTIP. Project *selection* refers to the process of deciding how to advance some projects ahead of others when funding conflicts develop within a current fiscal year. The answer to this question depends mostly on which agency has primary administrative responsibility for the type of funding that is at issue.

Programming Funds

Metro Regional Flexible Funds. Metro and the Joint Policy Advisory Committee on Transportation (JPACT) selects projects funded with local Surface Transportation Program (STP) and Congestion Mitigation/Air Quality (CMAQ) funds, in cooperation with all of the region's local and regional transportation agencies. These funds are awarded by Metro to sponsoring agencies, which then contract with ODOT to obtain access to the funds. These agencies are ultimately responsible for operation of newly constructed facilities. Unlike all the other regional funding sources discussed above, administrative responsibility for STP and CMAQ funds is essentially split between Metro and a broad selection of local sponsoring agencies.

To manage equitable access to the regional flexible funds, Metro staff coordinates with sponsoring agencies to determine the expected timing of project phases and seeks to schedule expected revenue to planned work phases in each year of the program. For the regional flexible funds, programming requests are solicited and the MTIP adoption process is the means used to prioritize projects for funding and balance allocations to project phases and years of expenditure.

The goal is to assure that all regionally funded projects are able to advance in a timely, logical fashion. Typically, this involves preliminary engineering in year one, right-of-way acquisition in year two and construction in year three. It is very rare that a project can execute more than one phase of work in a single year.

Balancing project expenditures with annual revenue limits becomes more difficult when a single project requires a large sum to complete one or more phases of work in one year. A project that requires above \$5 to \$6 million can make it difficult for other more modest projects to proceed in a given year. There are no adopted rules for making such decisions, except that the volume of project work that can proceed in any one year must fall within the revenue that is available that year, including conditional access to statewide resources, as discussed above.

At the outset of each two-year MTIP cycle, Metro formulates a proposal that seeks to balance these constraints and assure progress across jurisdictional boundaries so that no single agency is unduly delayed in delivering its approved projects. The proposed scheduling of the regional flexible funds is submitted for consideration by a regionally sponsored technical subcommittee for approval by consensus. If projects that are scheduled to spend funds in a given year are

delayed, they receive authority to spend funds in the following year unless delays are expected to push the project schedule to a subsequent year. Every two years, a new schedule is developed to account for advances and delays, and incorporation of newly authorized funds, and the biennial process of expenditure resumes. Projects may be added or taken from the total regional program, or diverted between projects, or project phases, or a project scope significantly changed without notification and approval by Metro.

As part of the approval for funding projects, conditions of approval are attached to specific projects to indicate that additional requirements must be met during project implementation to stay eligible for the funds. These conditions can relate to design considerations or public involvement and outreach activities that must be done. Conditions of approval are one mechanism Metro employs to make sure that project elements, particularly those associated with quantitative points given to a project, are carried out and that the intent behind funding a project is met according to Metro's goals and objectives.

Metro Administered Transportation Alternatives Program. The authorization of the new federal authorization, MAP-21, Metro has the responsibility of jointly administering the Transportation Alternatives (TA) funding program with ODOT. The split administration is based on a population share formula in which Metro expects to administer half of the TA funds available to the region and ODOT will administer the remaining half as part of a statewide funding program. With the TA funding formula going into effect immediately, eleven local transportation projects originally selected for funding by ODOT is now partially funded by Metro. To ensure all regionally funded projects are able to advance in a timely manner, Metro established a contingency fund for the eleven projects being partially funded by both agencies. Only the eleven projects will be eligible for the contingency funds to prevent delays in project implementation due to unforeseen costs and cost overruns. The contingency fund cannot be increased beyond what TA funding is currently available. Contingency funding requests are limited to 10% of their original funding award and must be matched by an equal or greater amount of local funding. Availability of funding to the projects will be considered in the order received. Final decision on requests for contingency funding is the responsibility of the Metro Planning & Development director. ~~and cannot seek additional funding from Metro.~~

ODOT. ODOT, in cooperation with Metro, proposes programming Interstate Maintenance, State Modernization (vehicle capacity projects), federal and state bridge rehabilitation, and highway safety, preservation and operations projects. In practice, ODOT's programming recommendations for these projects are accepted by JPACT and the Metro Council as ODOT is most aware of project readiness issues. Coordination on programming of ODOT funds focuses on ensuring timely implementation of the Transportation Control Measures for air quality and ensuring compliance with air quality emissions budgets.

Public Transit. In cooperation with Metro, TriMet and SMART propose programming of Federal Transit Administration (FTA) funding categories (e.g., Section 5307 and 5309 funds) that are limited to public transit purposes (e.g., bus purchase and maintenance, light rail construction, etc.). TriMet allocates both federal and general fund revenues to implement their five-year Transportation Improvement and Annual Service plans. Again, the MTIP reports only the federal

funding component of TriMet and SMART's overall capital and operations programs other than local funds used as match on federal projects or on regionally significant capital projects.

Federal New Starts funding received by TriMet in the current MTIP consists of funds for the Portland to Milwaukie light rail transit project. TriMet expects to receive its first appropriation for the Portland to Milwaukie light project in federal fiscal year 2013.

Other federal public transit funding categories received by TriMet and SMART (Section 5307 and 5309 formula funds) have greater programming discretion. Metro though, supports bundling these discretionary federal funds into several large programs, (e.g., bus purchases, and bus and light rail maintenance) for purposes of minimizing the complexity of submitting annual federal grant requests to FTA. Metro defers allocation of discretionary federal public transit funds to TriMet and SMART for routine maintenance programs.

In practice, TriMet and SMART's major service decisions are well coordinated with RTP-defined public transit system corridor priorities and new service decisions are reflected in Metro's regional transportation model. TriMet periodically briefs TPAC and JPACT on the allocation of federal funds relative to all funding sources to meet the various categories of cost outlays.

Selection of Projects

When funding conflicts arise between projects within a programmed fund year, it is sometimes necessary to select which projects will advance as programmed and which must be delayed to a future year when additional funds become available. This can occur when actual appropriation or allocation of funds is less than authorized or forecast for a particular year or if there are project cost over runs. Projects on the National Highway System or projects funded under the Bridge or Interstate Maintenance programs are selected by ODOT in cooperation with Metro, TriMet and SMART.

Public transit funds are subject to their own limitation and do not draw down the ability of either ODOT or Metro to spend other fund categories in any given year.

If a current year project is not ready to proceed, Metro or ODOT may select projects scheduled in years two, three or four of the program to proceed. For example, a first-year project may have delays in development of plans and specifications, or its right-of-way acquisition may encounter obstacles. In this instance, Metro, in cooperation with ODOT and other affected agencies, would move the delayed project to a later year and select a project from year two, three or four of the four-year approved program period. This flexibility assures that the region contributes its share to orderly statewide obligation of available funds. Because selection actions are not considered formal amendments under federal regulations, *they do not require re-conformity of the TIP with the State (Air Quality) Implementation Plan.*

Should a project be delayed to a later year, either because it was not ready to proceed or because less funding is made available than expected, the project would then share equal priority with all other projects scheduled in that later year of the Approved Program. Once selected, readiness to proceed determines which projects advance that year.

STAFF REPORT

FOR THE PURPOSE OF AMENDING THE 2012-2015 METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM TO ADD THE TRANSPORTATION ALTERNATIVES CONTINGENCY FUND FOR ELEVEN PROJECTS

Date: September 3, 2013

Prepared by: Grace Cho

BACKGROUND

As the metropolitan planning organization (MPO) for the urban area of the Portland region, Metro receives and distributes different sources of federal transportation funds. Under the new federal funding programs outlined in the federal MAP-21 authorization, several programs were collapsed to create the Transportation Alternatives (TA) program. The TA program establishes metropolitan planning organizations (MPOs) and State Department of Transportation (DOT) to administer the program jointly based on a population share formula. From the formula, Metro expects to administer half of the TA funds available to the region and ODOT will administer the remaining half of TA funds as part of a statewide funding program. The TA funding formula went into effect immediately.

Eleven local transportation projects selected for funding by ODOT will now be partially funded by Metro due to changes under the federal MAP-21 authorization. (See Exhibit A) When originally selected for funding, these projects had access to ODOT contingency funds to address unexpected costs and ensure timely implementation. Without access to contingency funds, projects could face significant delays, higher administrative costs and possible cancellation and repayment of development costs.

Metro staff formed an ad-hoc working group that developed options to address this issue. At the June 28, 2013 TPAC meeting, TPAC members considered the working group options and recommended a preferred proposal for JPACT and Metro Council consideration. At the August 1, 2013 JPACT meeting, JPACT approved staff to move forward with drafting legislation to enable the Metro contingency fund.

The contingency fund cannot be increased beyond what TA funding is currently available. At this time, the funding available is approximately \$120,000, which is the difference between the estimated amount of TA funding coming to the region and the actual amount received. However, based on the total project costs for the eleven projects, the potential maximum contingency liability is upward of \$460,000. The contingency fund is permitted to be supplemented with TA returned funds for projects which are not completed.

The action of creating a Metro administered contingency fund for these eleven projects does not trigger a new air quality conformity analysis. This is because the contingency fund would only apply to projects already conformed in the current MTIP and the scope of the eleven projects would not change by receiving additional funds. Further, these projects focus solely on active transportation, including building sidewalks, bicycling infrastructure and landscaping. In review of the eleven projects, an air quality conformity analysis is not triggered since: 1) the amendment is taking action on projects which are deemed exempt from regional conformity analysis; and 2) additional funds are only being added to the projects if requested and approved. Contingency funds can only be applied to activities identified in the original scope of work. The original scope of work for the eleven projects are consistent with regional policy and help advance implementation of the region's desired outcomes.

ANALYSIS/INFORMATION

1. **Known Opposition:** None known at this time.

2. **Legal Antecedents:** This resolution amends the 2012-15 MTIP, adopted by Metro Resolution 12-4332.
3. **Anticipated Effects** Adoption of this resolution will authorize the Metro Planning and Development Department Director to allocate contingency funds on a first-come, first-serve basis. Only the eleven projects impacted by the MAP-21 changes to transportation alternatives funding will be eligible for contingency funds. The contingency funds, if utilized, will help local alternative transportation projects, including bike lane projects and sidewalk projects, be implemented and prevent local jurisdictions having to return federal transportation funds for not delivering a project in a timely manner.
4. **Budget Impacts:** There is no impact to the Metro budget by the proposed actions of this resolution. Administration of the contingency fund is to be delivered by existing Planning & Development department staff.

RECOMMENDED ACTION

Metro staff recommends the approval of Resolution No. 13-4459.