

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE)
TRANSIT-ORIENTED DEVELOPMENT)
(TOD) PROGRAM TO EXPAND THE TOD)
PROGRAM AREA AND INITIATE AN)
URBAN CENTERS PROGRAM)

RESOLUTION NO. 04-3479

Introduced by Chief Operating Officer
Michael J. Jordan, with the concurrence of
Council President David Bragdon

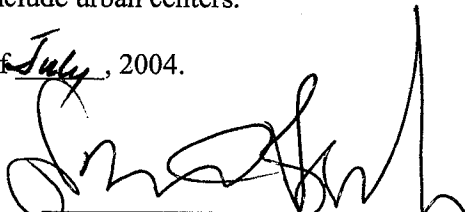
WHEREAS, by Resolution No. 98-2619, adopted April 9, 1998, For the Purpose of Authorizing Start-Up Activities For the Transit-Oriented Development (TOD) Implementation Program at Metro, the Metro Council authorized start-up activities, including adoption of procedures in the Work Plan for the Transit-Oriented Development Implementation Program (TOD Program); and

WHEREAS, the Work Plan was amended to include a site improvements category by Resolution 00-2906, adopted March 9, 2000, For the Purpose of Amending the TOD Program Procedures to Facilitate TOD Projects Including the Round at Beaverton Central; and

WHEREAS, the Metropolitan Transportation Improvement Plan funded an expansion of the TOD Program to include Interstate MAX, Airport Max, South Corridor, Portland Streetcar, and Regional and Urban Centers; now therefore

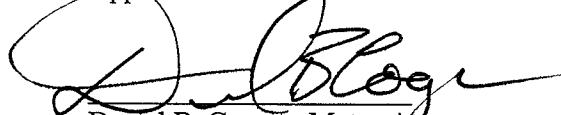
BE IT RESOLVED, that the Metro Council amends the TOD Program Work Plan (Exhibit A) to expand the TOD Program geographic area and also include urban centers.

ADOPTED by the Metro Council this 15th day of July, 2004.



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

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.

PROGRAM OBJECTIVES & ACTIVITIES

Program Objectives

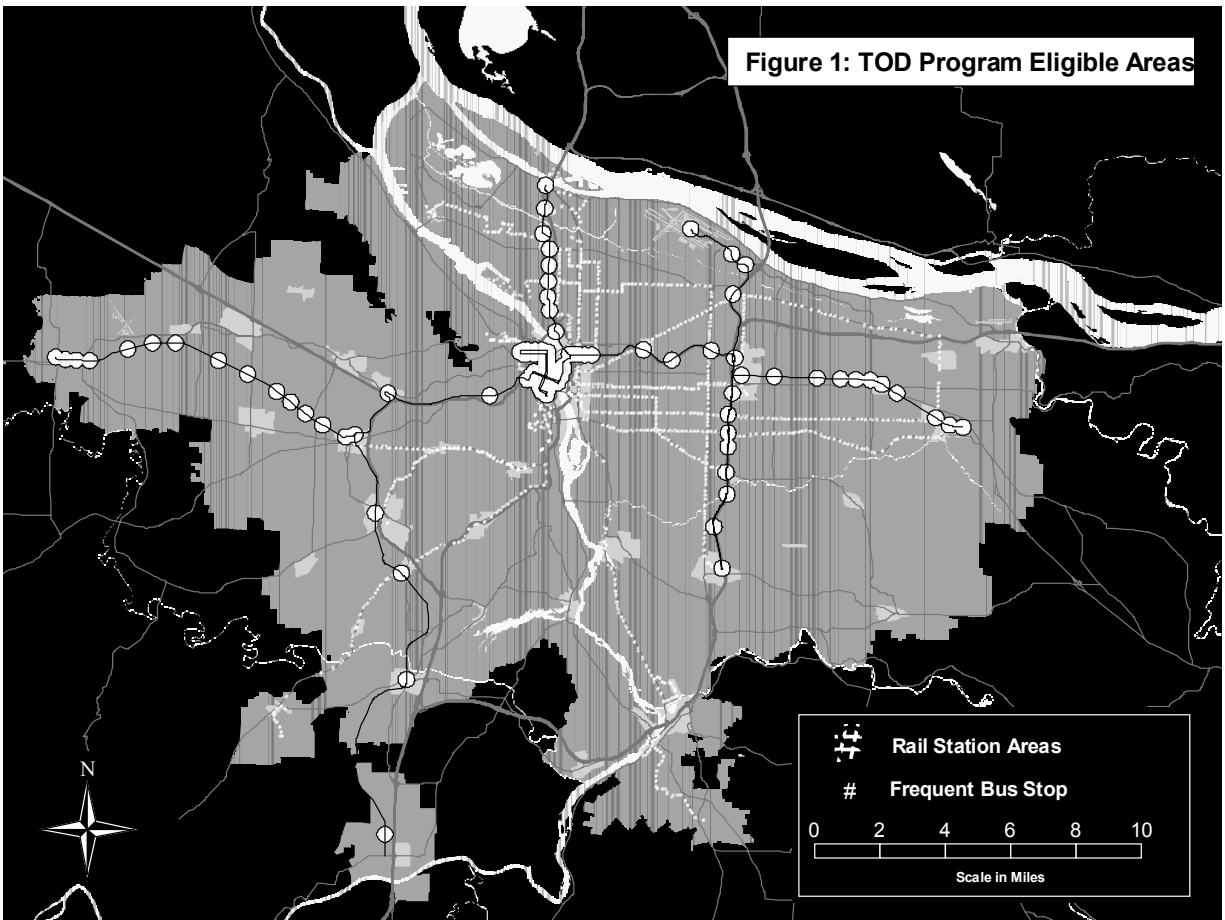
Specific objectives of the Program include:

- 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.

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.

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 Transportation Department

OPERATING PARAMETERS FOR PROGRAM

Project Selection Criteria

The competitive evaluation criteria of 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. 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.”

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, d) location relative to Regional and Town Centers. 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 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."

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.

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

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 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.

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 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. Sales will be authorized by the same process as purchases.

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 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 Chief Operating Officer will 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.

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

OTHER PROGRAM ACTIVITIES

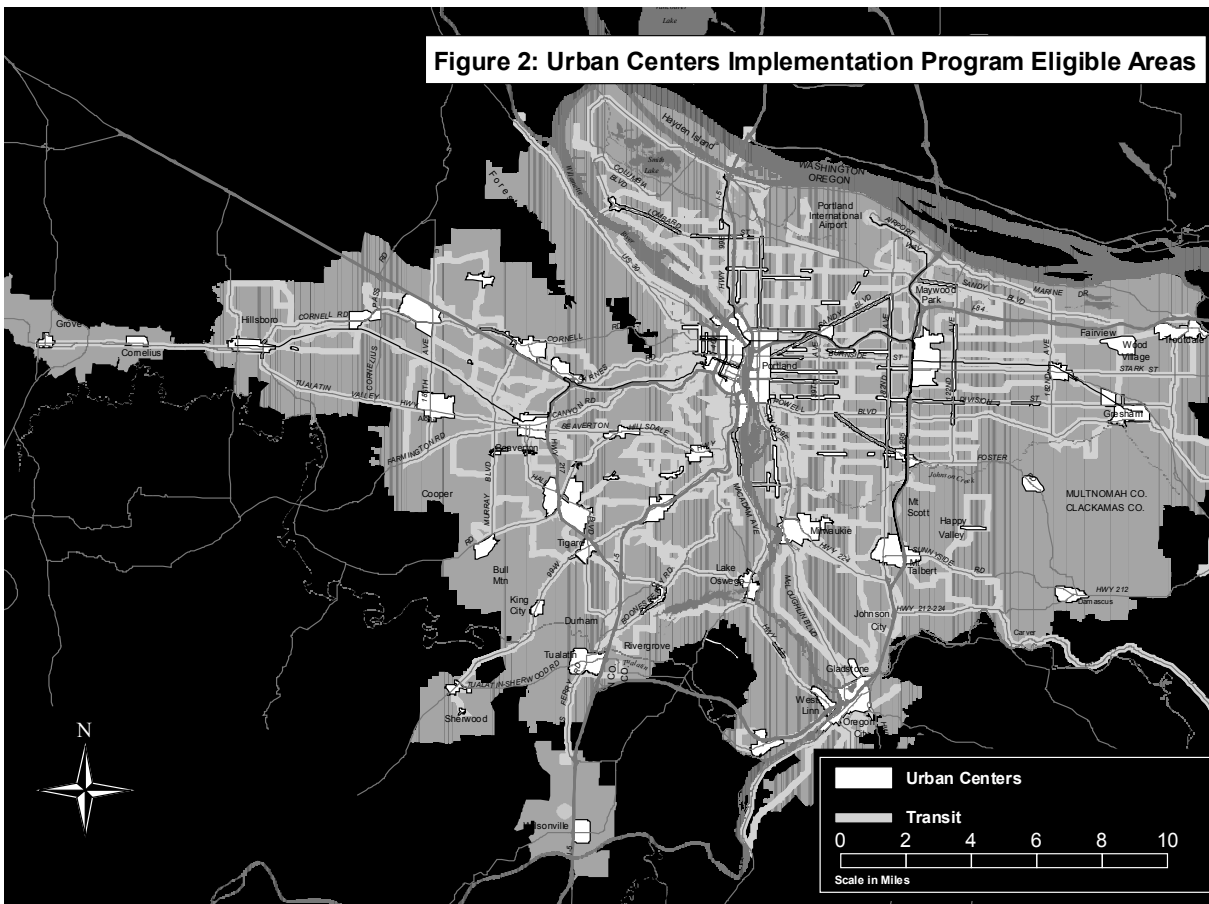
Urban Centers Implementation Program

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.

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

Figure 2: Urban Centers Implementation Program Eligible Areas



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.

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.

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.

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.

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.

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. 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.

Date: June 30, 2004

Presented by: Phil Whitmore

BACKGROUND

During the last Metropolitan Transportation Improvement Program (MTIP) process, the existing Transit-Oriented Development (TOD) Program was allocated \$3.0 M to be expanded from the current Eastside and Westside MAX to now include Interstate MAX, Airport MAX, South Corridor and Portland Streetcar. A separate grant for \$1.0 M was also approved for creation of a TOD-like program for regional and urban centers and high frequency bus corridors. The period for the allocation is FY2005, 2006 and 2007. The Work Plan sets the operational boundaries of the TOD Program and needs to be updated to reflect these additions from the MTIP allocations. Both TODs and Urban Centers will operate by acquiring development sites, easements on projects and providing some site improvements (non roads) to help offset the added costs of mixed-use and higher density projects that have measurable public benefits. TODs in light rail station areas and high frequency bus corridors will be measured by cost per induced transit rider and increase in walking and bike trips. Urban centers will have separate criteria that will include: 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) other public partners, 5) distance job to home reduced or reduction in regional vehicles miles traveled (VMT), 6) increase in walk, bike and transit trips, 7) floor area ratio (FAR) goal of 1 to 1.

The enclosed revisions to the Work Plan reflect the changes in the MTIP approved grants and also provide some housekeeping to reflect organizational changes at Metro. The revisions also provide for a loan or equity position in a project when the land value is insufficient to offset the cost premiums. In addition TOD projects are being submitted for energy tax credits (BETC). Proceeds from these credits will be used to initiate a "green buildings" program to be used in eligible project areas.

ANALYSIS/INFORMATION

1. **Known Opposition:** The amendments to the Work Plan are a result of approval of MTIP funds for the TOD and Urban Centers Program. This process involved numerous presentations and public hearings. In addition the Work Plan amendments were reviewed and approved by the TOD Steering Committee. There is no known opposition to the Work Plan amendment, although various groups and individuals in the region oppose transit-oriented development and public-private partnerships.
2. **Legal Antecedents:** 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. 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. TriMet's authority for joint development is established under ORS 267.200, (4), (7) and (11).

The Metro Council authorized an Intergovernmental Agreement (IGA) between TriMet and Metro regarding Transit-Oriented Development (TOD) activities and improving the quality of transit service on November 22, 1999 by Resolution No. 99-2858 For the Purpose of Authorizing a Revenue Neutral Intergovernmental Agreement With Tri-Met Concerning Transit-Oriented Development and Increasing the Level of Transit Service (APF 1596) and amended the IGA on November 8, 2001, by Resolution No. 01-3114A For the Purpose of Authorizing an Amendment to an Intergovernmental Agreement With Tri-Met Concerning Transit-Oriented Development and Increasing the Level of Transit Service and also May 15, 2003, by Resolution No. 03-3314 For the Purpose of Authorizing an Amendment to an Intergovernmental Agreement With TriMet Concerning Transit-Oriented Development and Increasing the Level of Transit Service.

3. **Anticipated Effects:** The Work Plan amendment will allow the TOD program to be expanded in accordance to its approved MTIP program budget
4. **Budget Impacts:** There are no budget impacts to the Metro General Fund as a result of the amendment since federal transportation funds are used for the program.

In the 2005 Metro Budget .5 FTE has been adopted which will use Metro General Funds.

RECOMMENDED ACTION

Metro Council approval of Metro Resolution No. 04-3479.