

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ENDORSING)	RESOLUTION NO. 92-1680
TRI-MET'S FINANCING PLAN FOR THE)	
WESTSIDE LIGHT RAIL PROJECT)	Introduced by
WHICH INCLUDES ADVANCING THE)	Councilor Richard Devlin
REGION'S HILLSBORO EXTENSION)	
ALLOCATED FUNDS TO THE 185TH)	
PROJECT)	

WHEREAS, By Resolution No. 89-1035, an overall funding approach for the Westside Corridor Light Rail project (Project) was established based upon 75 percent federal share and one-half the local match from the region and one-half from the state; and

WHEREAS, By Resolution No. 90-1300, the region's share of local match was identified through Tri-Met General Obligation bonds and Regional Compact funds; and

WHEREAS, By Resolution No. 92-1646, the region committed \$15 million of Tri-Met's General Obligation bond proceeds allocated for the Portland/Clackamas extension for use as CAPRA for the Project; and

WHEREAS, The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 provided a \$515 million commitment toward a Full-Funding Grant Agreement (FFGA) during the next six-year period; and

WHEREAS, By Resolution No. 92-1598, an overall funding approach for the Hillsboro Extension was established based upon one-third federal Section 3 share, one-third state/regional share, and one-third federal Surface Transportation funds ("flexible funds") and Section 9 funds share; and

WHEREAS, Federal appropriations may not be available to meet the construction schedule of the Project; and

WHEREAS, The Federal Transit Administration (FTA) requires Tri-Met to demonstrate its ability to build the Project in the event federal appropriations are forthcoming at a rate slower than needed to meet the Project construction schedule; and

WHEREAS, Tri-Met developed a financing plan to meet FTA requirements which requires all local and state funds currently allocated for the Hillsboro and Portland/Clackamas extensions including flexible funds to be advanced to the Project, used as CAPRA or used for interim borrowing support for the Project; and

WHEREAS, FTA will sign an FFGA pledging \$516 million (a 75 percent share) for the Westside project to 185th Avenue, said FFGA including a provision to amend its terms to include the extension of the Project to downtown Hillsboro; and

WHEREAS, The FFGA recognizes that, to the extent that flexible funds are committed to the Project due to slower federal funds appropriation than set forth in the FFGA, the Section 3 federal assistance contemplated in the FFGA may be used for any federally eligible transit project in the then adopted Transportation Improvement Program (TIP), including the Hillsboro Extension; and

WHEREAS, It is necessary to finalize the Westside Light Rail financing plan in order to receive federal funds under the FFGA between Tri-Met and FTA; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District:

1. Endorses the financing plan submitted by Tri-Met that provides that flexible funds allocated for the Hillsboro Extension by Resolution No. 92-1598 will be advanced to the Westside project in the event that reduced annual federal

appropriations of Section 3 funds warrant their use. The specific funds committed will be as follows:

- . \$22 million from Regional flexible funds;
- . \$22 million from ODOT flexible funds; and
- . \$22 million from Tri-Met Section 9 funds.

2. That, in the event Tri-Met is required to use flexible funds and Section 9 funds because the appropriation of federal Section 3 funds falls short of those contemplated in the FFGA, when said Section 3 funds are made available, they shall be used for any federally eligible transit project in the then adopted TIP and they shall be reserved for the Hillsboro Extension subject to completion of EIS requirements.

3. That the advance of flexible funds and Section 9 funds from the Hillsboro Extension to the Westside Project is subject to assurances from the Federal Transit Administration that the Hillsboro Extension remains eligible for the benefits provided by ISTEA subject to completion of EIS requirements.

4. Any advance of local and state non-federal funds for cash flow purposes, including the \$30 million from Tri-Met General Obligation bond proceeds currently allocated to the Hillsboro Extension, is subject to repayment with interest through future federal appropriations for the Project.

ADOPTED by the Council of the Metropolitan Service District
this 24th day of September, 1992.


Jim Gardner, Presiding Officer

AC:lmk
92-1680.RES
9-17-92

TRANSPORTATION AND PLANNING COMMITTEE REPORT C O R R E C T E D

CONSIDERATION OF RESOLUTION NO. 92-1680, FOR THE PURPOSE OF ENDORSING TRI-MET'S FINANCING PLAN FOR THE WESTSIDE LIGHT RAIL PROJECTS WHICH INCLUDES ADVANCING THE REGION'S HILLSBORO EXTENSION ALLOCATED FUNDS TO THE 185TH PROJECT

Date: September 24, 1992

Presented by: Councilor McLain

Committee Recommendation: At the September 22 meeting, the Transportation and Planning Committee voted unanimously to recommend Council adoption of Resolution No. 92-1680 with the condition that the response letter from the Federal Transit Administration to Senator Hatfield is received prior to the September 24 Council meeting and that the content of the letter is satisfactory to both the Joint Policy Advisory Committee on Transportation (JPACT) and the Metro Council. Voting in favor: Councilors Devlin, McLain, Buchanan, and Washington.

Committee Issues/Discussion: Dick Feeney, Director of Governmental Affairs, Tri-Met, presented the staff report. The Westside Light Rail Transit (LRT) to 185th is to be funded with \$516 million of federal funds, which is 75% of the total cost of the project. When discussing financing for the entire project, the region and Metro agreed to put two-thirds of the cost of the Hillsboro extension with moneys available from local general obligation bonds, State Lottery funds and Title I Formula funds provided for under the new Intermodal Surface Transportation Efficiency Act (ISTEA); the Surface Transportation Program (STP) flexible funds.

In doing so, the Hillsboro Extension was assured two-thirds funding. Then under ISTEA, it became eligible for an exemption from the new start criteria for expedited review of the project application. This considerably furthered the Hillsboro portion of the project.

In the course of conversations with the federal government regarding the base project, from downtown Portland to 185th, it became necessary to anticipate a shortfall in federal funding which may result from heavy competition for the annual allocation of money available under the Section 3 Capital Construction Account. Tri-Met was asked to provide evidence that the project would not be delayed or the scope of the project reduced if federal funds were delayed. The revision of the financing plan has been to address this situation.

Alternatives available include agreeing to build according to the federal appropriations schedule. If this is done, the region may face project delays which would increase projects costs significantly and indefinitely postpone completion. This might force the region to accept a "minimal operable segment" which would

keep the project on schedule while reducing the size of the project short of 185th - to Sunset or Highway 217 or southwest Murray Boulevard.

The decision was made to try to put together a financing plan to ensure meeting the project construction schedule and complete the desired terminus of 185th. To do this the money allocated for the Hillsboro extension must be loaned in advance for the base project and repaid as federal funds arrive. Then, the entire authorized bond amount was sold in one issuance, which included the money reserved for the Clackamas County project. The Oregon Department of Transportation (ODOT) was approached so that state monies could be released early for use in the base project. Now the formula Title I STP monies are needed to be released early.

The terms of the approved but unsigned contract state that the federal government is obligated to pay \$516 million to pay back all funds forwarded by the region. The money will be used to complete the Hillsboro segment. That is the purpose of this resolution.

Further complicating the matter is another situation discussed during the meeting of JPACT. The use of the federal STP money in the base project should not cancel the statutory exemptions and opportunities previously assured for the Hillsboro project. JPACT expressed concern that as permission was given to forward Hillsboro extension money into the base project, the "1/3, 1/3, 1/3" exemptions acquired for the Hillsboro project, including the FTA expedited review and exemption from the new start criteria, would be jeopardized. Tri-Met was asked by JPACT members to provide assurances.

To do so, Tri-Met identified a letter from Senator Mark Hatfield, a member of the Senate Appropriations Committee, to Brian Clymer, the head of the Federal Transportation Administration, requesting assurances that the exemptions from the new start criteria and expedited review be given. He requested "acknowledgement that the 1/3, 1/3, 1/3 concept for Hillsboro remains intact and can be reflected in the Environmental Impact Statement (EIS) and that the advancing of the monies is only a temporary alteration in the form of the financing plan, rather than its substance, in order to accommodate federal cash flow shortfalls." The Senator asked that the assurances contained in an earlier June 3rd letter be reconfirmed, that the referenced monies apply to the Hillsboro extension and that the Hillsboro extension proceed through the EIS process on the basis of the proposed financing plan.

Further, he asked for confirmation that future Section 3 appropriations provided by Congress as reimbursement for STP, Section 9 funds, as well as local funds, may be expended for the Hillsboro extension as well as other eligible transit projects in the region. Response from Mr. Clymer is expected within the next two days. Preliminary reports from Washington, D. C. about the response indicate that the content will be worded strong enough to satisfy both Senator Hatfield's and JPACT's concerns.

JPACT conditionally approved the resolution pending phone confirmation that a majority of JPACT members approved of the written response from Mr. Clymer to Senator Hatfield. Mr. Feeney believed JPACT will approve the letter before the Metro Council take final action on September 24, 1992. He stressed the importance of not delaying the proceeding. The agreement is within days of being signed, to delay longer may put the commitment into a season of hiatus for these type of projects until a new administration is able to act. This could significantly jeopardize the entire project. The financial and project management plans are now in the process of being signed off at the regional level. It is hoped that all pieces will be in place for the formal conclusion which will occur shortly.

No federal monies can be spent until formal conclusion. Tri-Met is currently expending over \$2 million of their own money each month on this project under a letter of "no prejudice".

The final complication is whether the assurances, once received, are enforceable. Mr. Clymer will be leaving the FTA in January, 1993, Congressman AuCoin will be leaving the House Appropriations Committee, there may be a new presidential administration, and there is no assurance that Senator Hatfield will seek or obtain re-election.

Councilor McLain expressed concerns about: enforcement of the letter; the differing definitions of what is enforceable; National Environmental Policy Act (NEPA) regulations; and the policy commitment based on the favorable response of two letters. Councilor McLain suggested forwarding the resolution to the Council without recommendation until the Council itself had read the Clymer response to the Hatfield letter. Mr. Feeney indicated he had no problem with this course of action but stressed the importance of having the resolution reach the Council this week, without delay.

Councilor Washington asked Mr. Feeney whether these types of difficulties and complications occurred during the Eastside MAX project. Mr. Feeney said yes, the Eastside project in most ways was more difficult because of the lack of experience of the region in dealing with the federal government.

Chairman Devlin explained that with receipt of an appropriate response letter, the region probably has the best possible agreement available to it. What needs to be recognized is that the federal government is the final word, not Metro and not Tri-Met. The only reason the region has this good an agreement is because of the efforts of Senator Hatfield and Congressman AuCoin. If the letter turns out to be unsatisfactory tomorrow, it may be necessary to continue this process of securing funding for a little longer. He suggested instead of forwarding the recommendation "without" recommendation, that the committee forward the resolution with a favorable recommendation, subject to the letter from the FTA being determined satisfactory by JPACT and the full Metro Council. If the letter is not determined to be satisfactory by either group, the resolution should be returned to JPACT for consideration.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1680 FOR THE PURPOSE OF ENDORSING TRI-MET'S FINANCING PLAN FOR THE WESTSIDE LIGHT RAIL PROJECT WHICH INCLUDES ADVANCING THE REGION'S HILLSBORO EXTENSION ALLOCATED FUNDS TO THE 185TH PROJECT

Date: September 24, 1992

Presented by: Andrew Cotugno

Proposed Action

1. Endorsement of Westside Corridor Project Financing Plan to include the potential advance of funding allocated to the Hillsboro extension, if needed, due to the lower-than-anticipated federal Section 3 appropriations.
2. This advance is subject to the return of these advanced funds to the Hillsboro extension with future Section 3 appropriations previously intended for the Westside Project and continued recognition of the current financing plan for the Hillsboro Project.

Factual Background and Analysis

The long awaited Westside Corridor Project Full-Funding Grant Agreement (FFGA) has been finalized and is ready for extension. Due to the uncertainty of future federal Section 3 appropriations, the FFGA includes a sequencing plan which involves possible interim termini at the Sunset Transit Station and/or Murray Blvd. In addition, for cash-flow purposes, it provides for the advance of flexible federal funds allocated to the Hillsboro extension for maintaining the schedule on the project to 185th. Under this circumstance, the FFGA provides assurance that future Section 3 appropriations will be provided to the region for use on the Hillsboro extension. The resolution endorses this approach, particularly with conditions that assume the Hillsboro extension will not be jeopardized.

In order to implement the Hillsboro extension, it remains necessary to complete the EIS requirements, secure a federal funding commitment for the remaining 1/3 of the project and amend the FFGA to include the Hillsboro extension. These actions are expected between now and 1994.

Executive Officer's Recommendation

The Executive Officer recommends adoption of Resolution No. 92-1680.

**METRO**2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: September 24, 1992

TO: JPACT Members

FROM: Andrew Cotugno, Planning Director *AC*

RE: Westside Corridor Project Financing Plan - Resolution No. 92-1680

Attached is a draft of the letter expected from Brian Clymer, FTA Administrator, to Senator Hatfield regarding outstanding issues related to the Hillsboro extension. It includes the commitments desired and, therefore, the Resolution as approved by JPACT will proceed. If there are any concerns about proceeding, please notify me as soon as possible. Final adoption of the Resolution is scheduled for consideration by the Metro Council Thursday evening (9/24/92).



U.S. Department
of Transportation
Federal Transit
Administration

DRAFT

The Honorable Mark O. Hatfield
United States Senate
Washington, D.C. 20510

Dear Senator Hatfield:

This is in response to your letter concerning the Full Funding Grant Agreement (FFGA) for the Westside Light Rail project in Portland, Oregon. I am pleased to confirm that discussions concerning the terms and conditions to be used in the FFGA have reached a successful conclusion. Announcements of the Administration's intent to award a grant for final design and construction of the Westside Light Rail project have already been made. Based on the initialed final FFGA draft prepared on September 3, 1992, we have a final document ready for signature.

As Tri-County Metropolitan Transportation District (Tri-Net) and Federal Transit Administration (FTA) staff reached closure on the many issues involved, I became aware of the concerns being voiced by officials in the Hillsboro area with respect to the eventual inclusion of the Hillsboro extension, now proceeding through alternatives analysis, in the scope of the Westside project. In order to provide for the inclusion of this extension in the FFGA, FTA and Tri-Net have drafted and included Section 7B, which clearly obligates the Government to amend the scope of the project and include the Hillsboro extension upon satisfaction of applicable Federal requirements, and the provision of the necessary funding by the Congress. This section is consistent with congressional direction contained in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Section 3035(b).

I have also become aware that Hillsboro officials, while recognizing the FFGA language in Section 7B, remain concerned that some delay may be experienced in securing FTA concurrence that all applicable Federal requirements have been met. You should know that the commitment to make available funds from the so-called 1/3, 1/3, 1/3 plan for financing the Hillsboro Extension to assure a smooth cash flow for construction from downtown Portland to 185th Street is recognized as a creative and flexible contribution to the project which demonstrates a commitment to the principles of ISTEA. We will expedite the FTA review process for the Hillsboro Extension so long as the flexible commitments the Portland area is making are ultimately funded by congressional appropriations and result in a Hillsboro financial plan in which the 1/3, 1/3, 1/3 formula is followed. The "front loading" of some of these funds to cover cash flow requirements should not impair the ultimate implementation of the Hillsboro plan, as originally represented to me.

DRAFT

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Additionally, I am aware that concerns remain about the possible application of FTA new starts criteria. When the funding package for the Hillsboro extension was initially prepared, it was developed to take advantage of section 3(i)(b)(A) of the Federal Transit Act, as amended, which provides an exemption from the application of the new starts criteria to projects where Section 3 funding is less than 1/3 of the total project cost. While the cash flow features of the agreements between FTA and Tri-Met on Westside project funding, as noted in Attachment 6 of the FGA, may result in some front loading of the funds, as noted above, this should not alter the final Hillsboro funding plan, and we will continue to regard the extension as exempt from the new starts criteria as long as the originally proposed funding program is ultimately achieved. Please note, however, it will be necessary to develop a cost-effectiveness index for the extension for inclusion in the Department's annual report to the Congress on funding levels and allocations of funds (the "3(j) Report"). Other applicable requirements, such as successful completion of the National Environmental Policy Act process, successful preparation of a final environmental document, selection of a locally preferred alternative, and preparation of a viable and acceptable financial plan for design, construction, and operation of the extension will have to be met. With respect to the financial plan, it should be prepared to reflect the 1/3, 1/3, 1/3 funding scenario expected.

As is recognized in Attachment 6 of the FGA, in the event that actual Section 3 funding provided for the project is appropriated at a rate slower than identified in Table 1 of Attachment 6 (copy enclosed), Tri-Met will utilize Surface Transportation Program and Section 3 funds available to the area for Westside funding. Should this occur, the agreement provides that Section 3 monies which are made available towards the end of the project funding cycle may then be used for any federally eligible project contained in the area's approved Transportation Improvement Program (TIP).

From a practical standpoint, there may be limitations on the use of such funds. If these monies come from the new starts portion of the Section 3 discretionary program, such funds may only be used on a new starts project. Moreover, if the use of these funds is further restricted by the Congress to the Westside project, and if the Hillsboro extension has by that time, having cleared all applicable requirements, been added to the scope of the Westside project, the only use of these funds will be for the project, including the Hillsboro extension. Should Section 3 funds made available to the Portland area late in the Westside project funding cycle not be so constrained, they could be used, as stated in the FGA, for any federally eligible transit project then contained in the approved TIP, including the Hillsboro extension, at local discretion.

DRAFT

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I trust I have satisfactorily answered the issues raised in your letter of September 14, 1992. I appreciate your personal involvement and support during this process and look forward to a successful project.

Sincerely,

Brian W. Clymer

Enclosure