Los Angeles County
Metropolitan Transportation Authority

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February 18, 2015

TO: **BOARD OF DIRECTORS**

THROUGH: **ARTHUR T. LEAHY**
CHIEF EXECUTIVE OFFICER

FROM: **MARTHA WELBORNE**
CHIEF PLANNING OFFICER
COUNTYWIDE PLANNING AND DEVELOPMENT

SUBJECT: **ITEM 40 RESPONSE TO QUESTIONS**

ISSUE

Following the Board Staff briefing on Thursday February 12, staff received a series of questions from the office of Board Member Dubois regarding Item 40 of the February Board Meeting. Item 40 is a receive and file report with the subject: Response to Request for Information Regarding Affordable Housing and Metro Involvement (Attachment A). The following presents the language in the Board report, the questions from Director Dubois, and staff responses.

DISCUSSION

1. Page 3 – *Staff has considered amending the Joint Development policy to include a 30% portfolio-wide goal for units of affordable housing in Joint Development projects. Of Metro's Joint Development housing units created to date on Metro owned land, 33% have been affordable units (detailed analysis is included in Attachment C). A portfolio-wide goal rather than a requirement set on all projects provides...*

   Question: Should a transportation agency be setting housing development goals outside of community processes? A by-product of setting a goal is committing the funding to achieve it which is way outside of the agency's ability to effect considering the limited funding eligibility.

   Response: There is national precedent for a transit agency (MARTA) to set goals regarding affordable housing on joint development sites. The question asked is fundamentally a policy question to be addressed by the Board. To achieve such a goal will require partnerships and co-funding by public and non-profit partners.

2. *Page 3 – A 30% portfolio goal would allow the development of both market rate housing and affordable units in the most cost effective manner and consistent with local community goals.*

Question: Are all LA County communities okay with this goal or is it exclusive to LA, Inglewood, West Hollywood and Duarte?

Response: Metro staff did not poll all communities in Los Angeles County regarding Metro setting an affordability target for projects developed on Metro-owned property. The great majority of communities in the county do not have joint development sites located in their communities. The use of a portfolio goal of 30%, rather than a requirement for every project to achieve a specific percentage, allows Metro to respond to local needs and land use policies. Metro's current portfolio includes projects that range from 100% market rate to 100% affordable, with mixed income projects ranging from 10% to 20%. With this diversity of housing projects, Metro's current portfolio has achieved an overall affordability rate of over 30%.

3. *Page 4 - Federal guidance has evolved over time on the issue of the appropriate standard for Metro's return on private use of land acquired with Federal sources. Current guidance states that Joint Development "revenue criterion is satisfied by providing a fair share of revenue for public transportation that will be used for public transportation purposes."*

Question: The circular does not discuss housing as a transportation use. It emphasizes revenue return to be used for transit O&M not for affordable housing. FTA should opine on whether discounting land for housing is an acceptable "use of revenue." That assumes the land discounted for affordable housing could also generate revenue if another use were allowed. Several places in the circular emphasize fair market return on property – how does that work with discounting? Was FTA consulted?

Response: The circular addresses two situations. The first is where a Joint Development project is funded directly with an FTA grant. The second is where a property acquired with FTA funds for a transportation use is subsequently used for joint development purposes. The requirements for each are somewhat different with more stringent disposition requirements tied to an FTA grant funded Joint Development project. In February, Metro arranged for the local FTA office to conduct a seminar for Metro staff on the recent Joint Development guidance. Issues related to land discounting for purposes of supporting affordable housing development on Joint Development properties acquired with federal funds were specifically discussed. The guidance staff received was that where such projects are not funded directly with an FTA Joint Development grant, the disposition requirement is not necessarily a "fair market value" standard but a "reasonable share of revenue" standard. "Reasonable share of revenues" is met if the sum of the compensation received over time from the project to the Transit Agency is at least equal to the FTA cost of the original acquisition of the portion of the property used for the Joint Development activity. The FTA staff also said there may be an argument that provision of affordable housing should/could be considered in the same way as use of FTA acquired land for community uses such as community centers, in which case the fair share of revenues may not apply. Each project's unique requirements must be discussed with FTA and approval received before the property may be committed to Joint Development use.

4. *Page 6 - Staff review with the Office of Management and Budget (OMB) and Strategic and Financial Planning suggests that the only eligible source of direct funding is the General Fund money which is made up of revenues from Leasing (approximately $13,000,000-18,000,000 annually), Advertising (approximately $21,000,000 annually) and Farebox receipts. These funds are currently used for bus and rail operations. This portion of operations funding could be backfilled with money from other eligible funding sources.*

   Question: What are these "other eligible sources"?

   Response: These sources include high demand sources such as Proposition C 40% and the federal Regional Surface Transportation funds which are completely committed. We do not recommend use of Proposition C 40% since this source is already committed to support programs benefitting the region such as Access Services and the regional FAP distribution to the operators. Additionally, approximately one fourth of Proposition C 40% annual revenue is required to meet debt service commitments.

   Question: Clarify, reduction in service?

   Response: Should the Board direct that General Funds be used to fund a housing fund investment, for every approximately $2.5 million in such funds used, a reduction of 10 operating buses would be required. This assumes the second and third phase fare increases remain suspended by the Board. Also, Americans with Disability Act (ADA) and other operating costs are rising faster than the Short Range Transportation Plan (SRTP) forecasted. Under these under-funded circumstances, creating a housing program out of operating eligible funds will require transit service cuts or deferred maintenance.

   Question: Capital programs maintenance what would be impacted?

   Yes. Metro deferred maintenance backlog could again begin to rise if operating cuts were not made. We do not recommend that the Metro Board allow the deferred maintenance backlog to again climb because of the serious safety and other costs that are incurred as a direct result of such a path.

5. *Page 6 - For example, <u>certain funding sources</u> that currently cover the Call for Projects could be reprogramed for operations expenses (not all of the Call funding sources are eligible for operations), which would free up some General Fund money for a deposit into a Housing Fund. This would impact funding levels for a future Call. If the Board has an interest in pursuing a housing fund, staff will identify a potential funding approach and a reallocation of funds.*

Question: Again, what sources are those? Clearly you must have a color of money in mind to make this statement even halfway acceptable.

Response: There is one funding source in the Call for Projects, Regional Surface Transportation Program (RSTP) that is eligible for operating purposes. Given the circumstances described in the reduction in service question above, we believe those funds already need to be diverted from the Call for Projects to meet higher ADA costs. There are no operating eligible sources remaining in the Call for Projects process.

NEXT STEPS

The above addresses each of the questions received from the Director's office.

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ATTACHMENT A

EXECUTIVE MANAGEMENT COMMITTEE
FEBRUARY19, 2015

REVISED

SUBJECT: RESPONSE TO REQUEST FOR INFORMATION REGARDING AFFORDABLE HOUSING AND METRO INVOLVEMENT

ACTION: RECEIVE AND FILE

RECOMMENDATION

Receive and file the requested information regarding affordable housing and Metro involvement.

ISSUE

In November 2014, the Metro Board of Directors approved a motion (Attachment A with amendments) to "consider policy and program implementation that ensures MTA's success in affordable housing production continues." The motion outlined a number of topics on which staff was directed to report back, the analysis of which is contained herein. In addition, three amendments were made to the motion, which are considered in this report as well. Metro staff defines affordable housing in this context to be housing that is covenant-controlled, provided on an income-restricted basis to qualifying tenants at rents below the current private market, and subsidized by public or non-profit funding sources.

DISCUSSION

1. Inventory

- Completed Joint Development Sites: Metro has completed nine joint development projects that contain housing over the past decade. A detailed inventory of Metro Joint Development projects to date is attached (Attachment C). Altogether, these Joint Development projects have created ~~1,934~~ 2,077 units, 682 (33%)[1] of which are affordable units.
- Potential Future Affordable Housing Development Opportunities: Staff has compiled a preliminary list of development sites, Attachment D, that could potentially host transit-oriented affordable housing, as well as a list of Metro-

[1] Numbers exclude Del Mar and Sierra Madre sites which were sold to private parties.

owned sites that have been explored, but are deemed infeasible for affordable housing development at this time due to size, location or other constraints. The inventory excludes properties owned by Caltrans but managed by Metro, as Metro has no authority to develop these sites at this time. The Metro owned sites are ranked on a scale of 1-5, 5 being the most desirable and logical development sites. There are ~~20~~ 19 total potential sites, 10 of which received a score of 4 or 5. Additional analysis is necessary to determine the presence of barriers to development, contextual impacts that may suggest housing is an inappropriate use, etc. A map of these locations is ~~found~~ included in Attachment E.

2. Potential Memorandum of Understanding with Municipalities

Staff has considered that given the potential for Metro to contribute to affordable housing near transit ~~– traditionally a responsibility of local municipalities – that,~~ these municipalities should be prepared to contribute resources or other commitments in cooperation with Metro to meet this mutually beneficial goal. Staff invited several cities where Metro owns potential development sites to discuss the inclusion of potential topics to a memorandum of understanding (MOU). The cities of Duarte, Inglewood, Los Angeles and West Hollywood chose to attend. The topics discussed included:

- Prioritization of Metro Joint Development projects in City housing pipelines.
- Collaboration with Metro on applications for Cap and Trade funding
- Entitlement and permit fast tracking Metro Joint Development projects
- Consideration of using city-owned properties for affordable housing
- Zoning incentives for affordable housing (such as density bonuses or parking reductions) around transit
- Collaboration on preservation programs as well as production
- Co-investment by the local community.
- Reduction of parking requirement in exchange for transit passes for residents

Each of the communities expressed an interest in continuing discussions that could lead to MOU's to facilitate affordable housing on Metro owned property. Given the cities represented a good cross-section of community sizes and types in the County, it was clear that MOU's will need to be uniquely developed in each community. For example, the City of West Hollywood achieves affordable housing development through inclusionary housing regulations. The City of Los Angeles utilizes its limited Housing Trust Funds, has substantial land inventory for affordable housing, controls an allocation of housing tax credits and has begun to develop land use regulations that create incentives for affordable housing production. The City of Duarte has limited housing fund resources and a more suburban housing density form. The City of Inglewood has limited funds, and seeks to develop a broad mix of housing types.

Based on these discussions and additional research performed by staff, an MOU between Metro and a local jurisdiction may have the following components:

- Commitment by Metro to designate and reserve a particular Metro Joint Development site for affordable housing (include mixed income housing) for a designated period of time.
- Commitment by the municipality to take actions necessary to remove land use regulatory roadblocks and prioritize and accelerate the project approvals necessary for such a project to move forward.
- Within any competitive housing funding program operated and managed by the local community, to establish a priority for transit oriented sites.
- To the extent Metro accepts a monetary return on its property less than a fair market monetary return, a commitment from the local community to match the value of the Metro land discount contribution with direct housing cost cash subsidy or indirect subsidy through fee waivers, required infrastructure improvements, or other contributions.

Additionally, Metro may strategize on how housing investments could be leveraged to encourage mobility enhancements by local jurisdictions.

3. <u>Establishing a Portfolio-wide Goal for Affordable Housing Production</u>

Staff has considered amending the Joint Development policy to include a 30% portfolio-wide goal for units of affordable housing in Joint Development projects. Of Metro's Joint Development housing units created to date on Metro owned land, 33% have been affordable units (detailed analysis is included in Attachment C). A portfolio-wide goal rather than a requirement set on all projects provides:

- Flexibility in housing products
- Ability to respond to market conditions
- Ability to avoid locations where the subsidy requirement is so great as to make the financing of affordable housing extremely difficult

A 30% portfolio goal would allow the development of both market rate housing and affordable units in the most cost effective manner and consistent with local community goals. Accountability would be maintained by reporting the current and pipeline status of the target each time a property is brought to the Board for approval of an ENA.

4. <u>Proportional Discounting of the Value of Joint Development Land</u>

Currently, the Joint Development Policies and Procedures establish a goal to "generate value to LACMTA based on a fair market return on public investment." (Section II.B.4).
~~The Joint Development Policies and Procedures~~ <u>They also</u> include a statement that "Projects must demonstrate, at a minimum, fair market value to LACMTA." (Section

III.B.5.) Discounting of land would therefore require amending the Joint Development Policies and Procedures.

Federal guidance has evolved over time on the issue of the appropriate standard for Metro's return on private use of land acquired with Federal sources. Current guidance states that Joint Development "revenue criterion is satisfied by providing a fair share of revenue for public transportation that will be used for public transportation purposes." [2] <u>To the extent the compensation for the property is less than the original federal acquisition cost, additional review and approval by FTA will be required.</u>

County Counsel has advised that under state law, in order for transfers of public assets or funds to private or other public entities not to be a gift of public funds, the transfer must be for adequate consideration. Such consideration can include accomplishing or furthering the particular public purpose of the transferring governmental entity. Thus Metro can accept less money than the appraised fair market value for use of its real property if other consideration in form that promotes Metro's transportation agency purposes or obligations is required to assure that the overall consideration is adequate. The Board, with factual support, may find a nexus between the use of Metro land for affordable housing and a transportation purpose. Staff would suggest that in addition to a nexus, the actual amount of the discount should be demonstrated to be no more than that necessary to achieve the development desired.

One principal argument for the nexus is as follows:

- Approximately 80% Of Metro's riders are from households earning less than $50,000 annually [3].

- Studies have shown that persons of modest income living near transit are more likely to use public transit and use it more frequently than persons of higher income living near transit.[4]

- As the Metro Rail and Metro Rapid systems have grown, housing located proximate to transit lines has become increasingly desirable, which has likely been one of the factors of increased housing costs in certain neighborhoods served by transit.

- At the same time, local, federal and state resources devoted to increasing the supply of affordable housing has been substantially reduced, thereby reducing the rate by which the inventory of affordable housing is being produced.

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[2] Federal Transit Administration (FTA) Circular: Federal Transit Administration Guidance on Joint Development. August 25, 2014.

[3] Metro On-board Customer Satisfaction Survey March 2014

[4] Incentives to Encourage Equitable Development in Los Angeles County Transit Oriented Districts. July 2013.

- Should these conditions continue, transit dependent persons will find transit adjacent housing increasingly expensive and may be forced to locate further away from transit, thus reducing their use of the transit system, reducing ridership in the system and increasing dependency on the automobile.

The Board Motion suggested an approach to discounting land that was proportional and a contributor to the creation of affordable housing near transit. Staff agrees that a proportional approach is indicated for several reasons:

- Metro's Joint Development program generates approximately $3,000,000 in operating revenues to Metro annually, an amount which is growing as additional projects are moved forward. While not a major source of revenues to Metro, these funds are strategically important as they are locally generated and as such their use is extremely flexible. These funds are currently used for bus and rail operations.

- Limiting the monetary discount to a proportional discount equal to the percentage of the project that is devoted to affordable units provides that Metro will continue to receive ground rent income for its other purposes.

- Combining this monetary discount with the suggested local contribution can represent a meaningful contribution towards the funding of at least the land portion of the project.

- Limiting the monetary discount proportionally (not to exceed 30% of the fair market value of the property and not to exceed the value of the transit benefit) preserves some income generation for Metro and recognizes that while Metro can play a role in housing creation, if it serves a Metro purpose or obligation, the primary responsibility should remain with local, state and federal agencies as Metro concentrates on mobility.

5. <u>Transit Oriented Affordable Housing Loan Fund</u>

Staff brought together key experts in the local city, county and Community Development Funding Institutions (CDFIs) and the affordable housing finance community for input as to how to structure a fund that would best address areas of unmet need. They prepared a memo (Attachment F) which summarizes key elements of a pooled loan structure they recommend.

The fund would be targeted at:

- Jump Starting Developments – entitlements funding for tax credit projects

- Preservation of naturally occurring affordable housing

- Preservation of existing housing with income restrictions scheduled to expire in the near term

- Early Start Developments – low per-unit subsidy
- Mixed Income / Mixed Use projects – some affordable housing with deep subsides coupled with market rate housing not requiring subsidy

A key feature of the fund outline prepared by potential housing funders (Attachment F) is that the fund should be administered and allocated based on a set of criteria pre-approved by the funders, not on individual project approval by the governing boards of the funders, including Metro. Individual project approval would slow the approval process so much that it may render the fund ineffective for closing financing gaps. Preliminary guidance by County Counsel suggests that the Board could establish a set of criteria which the potential projects would need to meet, and could delegate individual approvals of projects to staff. Delegation to staff would mitigate this concern. Further analysis and discussion is necessary with County Counsel and potential funding partners on this issue if the Board desires to move forward with consideration of participation in such a fund.

Should the Board choose to contribute to such a fund, there are a limited number of funding sources that would be eligible. Most of Metro's funding sources are tied very specifically to particular expenditures. Staff has identified funding sources that could legally be used to finance such a fund.

Staff review with the Office of Management and Budget (OMB) and Capital Planning suggests that the only eligible source of direct funding is the General Fund money which is made up of revenues from Leasing (approximately $13,000,000 – 18,000,000 annually), Advertising (approximately $21,000,000 annually) and Farebox receipts. These funds are currently used for bus and rail operations. This portion of operations funding could be backfilled with money from other eligible funding sources. In that scenario, programs currently funded by those other funding sources would be impacted.

For example, certain funding sources that currently cover the Call for Projects could be reprogramed for operations expenses (not all of the Call funding sources are eligible for operations), which would free up some General Fund money for a deposit into a Housing Fund. This would impact funding levels for a future Call. If the Board has an interest in pursuing a housing fund, staff will identify a potential funding approach and a reallocation of funds.

6. <u>TAP Group Rate Program for Affordable Housing Joint Developments</u>

The Board directed that staff consider development of a group purchase program for developers of affordable housing projects on Metro-owned land modeled after the current employer annual pass program, "B-TAP." Under the B-TAP program, previous Board direction was that the program should be revenue neutral. That is achieved by requiring businesses to purchase annual TAP card passes for all eligible employees at a group rate. The group rate is based on a formula using average LA County transit ridership rates, so that Metro can maintain revenue neutrality and increase ridership.

Typically, lower income individuals are more likely to use public transit and thus are already paying for their fares at established rates including applicable discounts. To maintain revenue neutrality, the residential group rate discount offered would need to be relatively modest. Any such discount would be in lieu of other reduced fare programs, not added to them.

Options for the Board to consider would include the following:

- Create a "revenue neutral" residential program which would likely result in a smaller discount than the BTAP employer annual pass program.

- Create a program that gives the same discount that was given to the MacArthur Park Pilot project (77%), the only residential discount that has been made to date. This discount was based on the employer group rate program, B-TAP, without consideration of the greater propensity for lower income residents to use public transit more often. Therefore, the Pilot program would not meet the revenue neutrality guideline.

- Select a discount percentage that falls somewhere in-between complete revenue neutrality and the one Pilot project precedent~~,~~ that allows some advantage of the program to the tenants without straying as far from the revenue neutrality principle.

- Require that the developer pay for the TAP cards for any unit that desires a pass in the residential development. This would likely add $276 - $1,200 per year per pass to the operating costs of the development. Such increased operating expenses to the affordable housing project would increase the subsidy requirement. In order to get the group rate, a minimum of one pass per unit should be required.

~~It should be noted that Metro currently offers several discount programs: for seniors, disabled, students, and lower income riders. Those discounts are as follows:~~

- ~~Senior/Disabled 80%~~
- ~~Student K-12 76%~~
- ~~College Student/Vocational 57%~~
- ~~Rider Relief $10 off monthly. The Rider Relief program provides a $10 per month subsidy to transit patrons with household incomes below $28,550-$47,300 (depending on household size). It can be applied to a monthly pass, weekly pass, or series of One-ride passes.~~

Based upon Board direction as to the applicability of the revenue neutral guidance and whether the program would be made available to residents at current Affordable

Housing projects on Metro owned land or only future Metro joint development sites, staff can design a residential program for development on Metro-owned property and return to the Board for its consideration.

7. Options for Pursuing Cap & Trade Funding

The California State Assembly Bill 32 Cap and Trade system has now been partially implemented, and funds will become available early this year for both housing and transit projects. (The schedule has been delayed by a few months throughout the outreach process, and the availability of funds may be delayed as well.)

As the funding guidelines are currently written, Metro is identified as a potential lead applicant, and would therefore be able to apply for funding for Joint Development projects that meet the housing and mobility objectives of the Cap and Trade funding guidelines. It may be advantageous for Metro to discuss partnership opportunities with local jurisdictions in order to make applications more competitive. It may be valuable for Metro to couple Joint Development projects with First / Last Mile improvements to increase competitiveness by meeting multiple policy objectives.

For the first round of funding, Metro is discussion the potential of applying for funds for a proposed Joint Development project. Additional conversations will need to take place to advance partnership opportunities.

Cap and Trade partnerships provide an opportunity for coupling housing investments with mobility enhancements that require local partnerships.

Metro Active Transportation and Sustainability Staff, together with Government relations continue to be active participants in the State's development of the Cap and Trade guidelines.

NEXT STEPS

The board may select one or more of these topics for direction and advise staff how to proceed.

ATTACHMENTS

A. Motion 60 with Amendments
B. Joint Development Policies and Procedures
C. Inventory of completed and in progress JD sites that include housing
D. Inventory of potential Joint Development Sites
E. Map showing locations of completed and potential Joint Development sites.
F. Letter proposing outline of local Transit Oriented Affordable Housing Fund

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