

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
201969

Resolution:
☒ Yes ☐ No

TITLE:

Update to Metro's Joint Development Policies

PRESENTATION SUMMARY:

Staff will present for Board approval updates to WMATA's joint development policies, which were last updated in 2013.

PURPOSE:

- Request Board approval of updates to Metro's Joint Development Policies and approval to remove the requirement to direct all joint development revenue to the Capital Improvement Program (CIP).

DESCRIPTION:

Metro has one of the nation's most active joint development programs. More than 30 joint development projects have been completed since 1975. The policies for joint development were established in 1980 and have subsequently been updated multiple times with the last update approved by the Board in 2013. Staff is proposing to update the joint development policies to streamline Metro's joint development process, as well as clarify several policies that are currently unaddressed or vague.

Metro, through its joint development program, can contribute to increasing demand in transit services and creation of non-fare revenue through delivery of transit-oriented development on Metro-owned land. Joint development is a form of public-private partnership, where real estate developers co-locate private real estate development with transit services, as well as pay Metro for use of its land. The development itself also generates ridership for Metro, which is why Metro has a vested interest in what the real estate development program is and how well the design of the project promotes transit use and safe access.

While Metro has enjoyed many successes, the joint development program continually evolves and should keep up with private market trends and practices. To continue to attract quality developers, staff recommends updating Metro's joint development policies to achieve the following goals: (i) clarify and streamline the Board's approvals, and (ii) state Metro's policies on replacement facilities. In addition, staff desires to add public

policies about transit demand management, environmental sustainability and affordable housing.

Lastly, staff recommends removing an existing limitation on the use of joint development revenue for the CIP only for flexibility in determining the best use of joint development revenue based on the financial needs of the Authority at the time.

Key Highlights:

- Staff proposes an update to Metro's joint development policies to increase flexibility in how Metro manages the joint development program.
- Policy updates include streamlined Board approvals, flexibility for the use of revenues from joint development, and new policies on asset management, guidance for replacement transit facilities and inclusion of public policy goals.

Background and History:

Among the more than 30 joint development projects since 1975 are: 3 Metro Center in Bethesda; Clarendon Connection; the redevelopment around Gallery Place; the Ellington, Union Row and Langston Lofts at U St; Rhode Island Row; and Dunn Loring.

Metro established its first set of joint development policies in 1980, which have been updated periodically (every two to six years) since. The last update to the "Joint Development Policies and Guidelines" was in 2013.

Discussion:

Metro's joint development program is subject to the Federal Transit Administration's (FTA) guidelines on joint development and Metro's policies shall be updated accordingly. The first update to the existing "Joint Development Policies and Guidelines" document is a structural one. The current version of the document is a mix of Board policies, internal standard operating procedures, and external guidance to interested developers. The effect of having all of these components in a single document is that: (i) any change to the document requires Board approval, many of which are not Board-worthy changes; and (ii) the document itself is confusing to internal and external audiences, respectively, because it is neither written at the right level of specificity for internal staff, nor with the right focus for external parties.

The proposed solution is to split the existing document into a set of Board policies, hereby called the "Joint Development Policies", and for the Board to delegate to the General Manager/Chief Executive Officer (GM/CEO) the authority to publish externally-facing, "Joint Development Program Guidelines", which

serves to inform the local jurisdictions and prospective developers how to work with Metro and advance joint development projects.

In the "Joint Development Policies", the following policy updates are recommended:

(1) Reduce the number of Board approvals, specifically eliminate Board approval of non-binding term sheets, as well as qualify Board approvals for amendments to joint development agreements, to increase developer certainty in transactions. The proposed policies also specify the criteria by which the Board will evaluate joint development projects and the information that staff is required to present to the Board for its evaluation of a joint development project. These changes should result in better information for the Board's consideration of a joint development project, as well as a more streamlined process for the developers who engage with Metro in joint development.

(2) Clarify Metro's asset management priorities and responsibilities, which put transit use, transit access and transit operations and maintenance as the primary purposes for Metro's ownership of property. If Metro determines that its property is best used for both transit and private real estate development, then Metro should seek to maximize revenue and reduce risk for itself.

(3) Add a new policy on replacement transit facilities when joint development may change or affect existing transit facilities, such as bus loops, parking, and other. Rather than requiring a ratio of replacement or new transit facilities when engaging in joint development, the proposed policy stipulates that replacement facilities must accommodate at least the same number of transit riders that the station has historically served, plus new transit riders expected to result from TOD at and around the station. This proposed change guides staff to evaluate replacement transit facilities according to how to best accommodate transit ridership, rather than focusing on a replacement infrastructure ratio. For example, the FTA used to require one-for-one replacement parking when joint development occurred. FTA changed its policy more than 10 years ago, but the myth of a one-for-one replacement parking policy persists to this day. To increase interest in Metro's joint development projects, it is recommended that the Board clarify Metro's approach to evaluating replacement transit facilities.

(4) Include public policies such as Transportation Demand Management (TDM). Given that transit-oriented development has multiple public benefits, such as traffic reduction, environmental benefits, more affordable living, Metro's joint development projects should include TDM plans, achieve a recognized standard for green building and sustainable development, and promote the local jurisdictions' policies on affordable housing.

(5) Allow joint development revenue to be used in either operating or capital budgets. The FTA permits joint development revenue to be applied to either

budget, provided that the use of funds supports transit operations, however, Board Resolution 2015-05 pledges all joint development revenue to the capital budget. Staff requests the flexibility to structure and use joint development revenue to best meet the financial needs of the Authority.

FUNDING IMPACT:

This is a policy document without immediate capital or operating funding impacts.	
Project Manager:	Nina Albert
Project Department/Office:	CFO/LAND

TIMELINE:

Previous Actions	1980 - Board establishes policies for joint development Joint development policy updates in: 1986, 1988, 1995, 1996, 2002, 2008, and 2014
Anticipated actions after presentation	June 2018 - Metro to publish updated, externally-facing "Joint Development Program Guidelines"

RECOMMENDATION:

- Board approval of updates to WMATA's Joint Development Policies and approval to remove the requirement to direct all joint development revenue to the CIP.

SUBJECT: WMATA JOINT DEVELOPMENT POLICIES

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, The Washington Metropolitan Area Transit Authority (WMATA) Board of Directors has previously established Joint Development Policies and Guidelines that require the Board's approval of substantive changes thereto; and

WHEREAS, Resolution 2015-05 requires that all future revenue from existing and new joint development projects be directed to the Capital Improvement Program (CIP); and

WHEREAS, The Board of Directors desires to amend and restate its policies and guidelines for joint development; NOW, THEREFORE, be it

RESOLVED, That the Board of Directors have set forth its policies and guidelines for joint development in Attachment A; and be it further

RESOLVED, That this Resolution supersedes Resolution 2014-32 and other prior Resolutions establishing, adopting or amending Joint Development Policies and Guidelines; and be it further

RESOLVED, That this Resolution amends Attachment B (Non-Procurement Activities Requiring Board Approvals) of Resolution 2011-30 by striking the second bullet under the Real Estate column; and be it further

RESOLVED, That this Resolution amends Resolution 2015-05 by striking the requirement to "redirect to the CIP all future revenue from existing and new joint development projects"; and be it finally

RESOLVED, That this Resolution shall be effective 30 days after adoption in accordance with Section 8(b) of the WMATA Compact.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
General Counsel

WMATA File Structure Nos.:
4.2.3. Budget Reprogramming
21.9.5. Joint Development Policy

PROPOSED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY'S JOINT DEVELOPMENT POLICIES

The Washington Metropolitan Area Transit Authority ("WMATA" or "Metro") encourages transit-oriented development ("TOD") around its stations (whether on Metro-owned property or property owned by others) to increase transit ridership, thereby furthering Metro's mission, and augment fare revenue. WMATA also manages a Joint Development program that applies transit-oriented development goals to some (but not all) real property that Metro owns and controls and is implemented to increase transit ridership and revenue to WMATA in accordance with the Federal Transit Administration's ("FTA") guidance on Joint Development.

This document outlines the policies that guide Metro's Joint Development program. Together with the companion *Joint Development Program Guidelines* and *Station Area Planning Guide*, the three documents together serve to provide the objectives, policies and processes that govern the Joint Development program.

1.0 JOINT DEVELOPMENT POLICIES

1.1 Definition. "Joint Development" is a project located on Metro-owned property, requires the coordinated development of public transportation facilities with non-transit development, and complies with FTA Guidelines.

1.2 Compliance with FTA Guidelines. The FTA's joint development program provides WMATA with an opportunity to develop its real property acquired with federal funding. The FTA's guidelines and other policies related to joint development, as updated from time to time ("FTA Guidelines"), provide the eligibility requirements for a project to qualify as joint development. WMATA's Joint Development program and *Joint Development Program Guidelines* shall be updated, as needed, to reflect the most current version of the FTA Guidelines.

1.3 Integrity, Business Ethics and Conflicts of Interest. The *Joint Development Program Guidelines* and all Joint Development solicitations shall include WMATA's integrity and business ethics requirements.

1.4 Transit Prioritization. Real property owned or used by WMATA as part of its mission to provide transit services for the metropolitan Washington region shall be preserved for the primary purpose of safely operating and maintaining transit facilities. WMATA may undertake Joint Development to increase transit ridership and generate non-fare revenue for Metro, provided that Joint Development does not compromise Metro's transit mission and related services.

1.5 Maximizing Value. Maximizing value of Joint Development is part of WMATA's asset management goals and responsibilities. As such, staff should aim to: (a) maximize compensation to Metro as a result of the real estate transaction; (b) participate in any/all

monetization opportunities which may be afforded by the Joint Development project; (c) maximize ridership generated by the Joint Development project; (d) actively identify and implement value-creation strategies (such as, rezoning of property, site and infrastructure planning and design, development risk reduction strategies, etc.); and (e) build momentum and interest for Joint Development by actively marketing available sites and pursuing interim uses at these sites.

1.6 Manage Financial Risk. Joint Development projects should include aggressive management of financial risk to WMATA. As such, staff and WMATA's selected Joint Development developers should seek creative sources of financing to pay for project infrastructure (e.g. road network, site-serving utilities, replacement WMATA facilities, parks and open space). WMATA should not deduct from a Joint Development project's proceeds or consideration the cost of local jurisdictional public requirements, proffers, or other initiatives by an agency/organization other than WMATA.

1.7 Coordination with Jurisdictions. WMATA should work with the local jurisdictions to maximize the opportunities, mix of uses and densities that promote transit ridership, as well as to increase pedestrian and bicycle connections, around a Metro station and along major bus corridors.

1.8 Community Outreach. Joint Developments, like any private development, are subject to the land use policies and approval processes of the host jurisdiction. After selected, developers involved with WMATA's Joint Development projects are responsible for advancing and representing the project to the local jurisdiction and surrounding community. WMATA will participate in the developer's community meetings and public outreach, as appropriate.

1.9 Replacement of WMATA Facilities. When transit facilities are modified or replaced as part of a Joint Development project, WMATA will seek to right-size, modernize, and improve station access as part of such change. In evaluating the scope and size of replacement of transit facilities affected by Joint Development, the proposed Joint Development plan should take into account:

- The historic number of transit riders served by the station;
- The estimated number of new transit riders resulting from Joint Development;
- New TOD reasonably expected within the half-mile walkshed of a Metro station;
- Cost effective and life-cycle costs of Metro's facilities and its transit operations; and,
- Long-term asset management plan(s) for Metro's facilities.

Replacement transit facilities should reflect a pedestrian-friendly, transit-oriented community. Underutilized facilities may be reduced (e.g., parking) and new facilities provided (e.g., bike stations) based on projected changes in ridership and station access needs. Part of such an analysis must include maintaining appropriate access for buses (including local jurisdictional systems), pedestrians (including the Americans With Disabilities Act and state and local equivalents), bicycles, and parking. WMATA's *Station Area Planning Guide* provides standards and criteria for designing replacement transit facilities.

1.10 Design and Place-making. WMATA's Joint Development projects will pursue high quality design that enhances the surrounding community and creates inviting spaces and places around Metro transit facilities. WMATA's *Station Area Planning Guide* provides a framework for designing Joint Development projects.

1.11 Continuing Control. WMATA desires to use its property primarily to fulfill its transit mission and, consequently, WMATA often needs some level of continuing control and flexibility of use of its property. To satisfy its needs for continuing control, WMATA may choose to ground lease its property, apply conditions on the sale of its property (i.e. such as perpetual easements), or apply other solutions, whichever provides the greatest benefit (operational, financial and/or strategic) to WMATA.

1.12 Transportation Demand Management. WMATA requires Transportation Demand Management ("TDM") plans to be part of a selected developer's Joint Development project and implemented, with the goal of encouraging residents and employees tenanted Joint Development projects to ride transit, bicycles and walk. TDM plans may include the use of real-time transit screens and other transit information centers, commuter benefit programs, parking management strategies and/or the provision of bicycle parking.

1.13 Sustainability. Joint Development projects shall be designed and constructed to the locally-required green building or sustainability standard, if any, or to a nationally-recognized standard (in the appropriate category as determined by WMATA and the selected developer) if a local jurisdictional standard does not exist.

1.14 Affordable Housing. WMATA recognizes that each jurisdiction in the region has different policies for affordable housing. If the local jurisdiction identifies a specific affordable housing strategy for a Joint Development project, WMATA should work with the jurisdiction in advance of issuing a Joint Development solicitation to identify sources of local funding to accomplish the project's affordable housing goal.

2.0 BOARD OF DIRECTOR APPROVALS

2.1 Role of Board of Directors. The role of the Board of Directors on Joint Development projects is to: (1) establish WMATA's Joint Development policies; (2) review and approve Joint Development projects, as described in Section 2.2; and, (3) approve necessary modifications to WMATA's Mass Transit Plan.

2.2 Approval Criteria for Joint Development. WMATA's Joint Development projects shall be assessed by staff and evaluated by the Board according to the following criteria, which criteria shall serve as the basis for the Board's approvals in Section 2.3:

- A) Maintains or enhances transit ridership, safety and/or access;
- B) Maintains or enhances WMATA's ability to operate transit services and/or maintain the transit system;

- C) Has a positive net fiscal impact for WMATA, which fiscal impact analysis shall include key revenue and expense considerations, such as, but not limited to:
 - a. Estimated ridership revenue;
 - b. Estimated real estate revenue;
 - c. Parking revenue, if applicable;
 - d. Other revenue from Joint Development, if applicable;
 - e. Timing of the Joint Development solicitation;
 - f. Cost of WMATA replacement facilities; and,
 - g. Other costs.
- D) Is consistent with or enhances local land use and economic development plans; and,
- E) Complies with the FTA Guidelines.

Exceptions to the above criteria may be made, provided that those exceptions achieve other WMATA goals and are identified as soon as practicable in the approval process. For example, WMATA may decide to include a major capital investment as part of the Joint Development to satisfy a WMATA safety goal or capital program goal though it may alter the fiscal impacts.

2.3 Board Approvals

In approving a Joint Development project, the Board of Directors shall determine, following reasonable investigation, that the project meets the criteria provided in Section 2.2 and that the terms and conditions of a proposed Joint Development agreement are acceptable to WMATA. Staff is encouraged to streamline project delivery by seeking concurrent Board approvals when possible. Required Board approvals for Joint Development are as follows:

- A) Authorization to Issue a Joint Development Solicitation. For the Board's deliberation of the merits of offering a site for Joint Development, staff shall present information that addresses the criteria provided in Section 2.2, including station area plans (if any), preliminary fiscal impact analyses, and demonstrated consistency with and/or enhancement to local economic activity.
- B) Authorization to Hold a Compact Public Hearing. If the Joint Development project is expected to trigger the requirement for a public hearing under the WMATA Compact, staff shall seek Board approval to hold such public hearing, and subsequently seek Board approval of the Compact Public Hearing staff report and proposed changes to WMATA's Mass Transit Plan, if any.
- C) Authorization to Execute a Joint Development Agreement. Following the developer solicitation process, staff shall present to the Board the selected developer's proposed project, the project's merits against the criteria provided in Section 2.2 when the solicitation was approved by the Board, and compensation being offered to WMATA. If the project meets the criteria for Joint Development, the compensation is commercially reasonable and fair to WMATA, and the project is consistent with the Board's approval of the Joint

Development solicitation, the Board may authorize staff to execute a Joint Development agreement.

D) Approval of Amendments to the Joint Development Agreement. If an amendment to a Joint Development agreement results in a net reduction to the compensation approved or a substantial change to any terms that impact the criteria set forth in Section 2.2, such amendment shall require Board approval prior to staff executing such amendment.

3.0 IMPLEMENTATION

3.1 Joint Development Program Guidelines. To implement these Joint Development policies, WMATA shall publish and maintain *Joint Development Program Guidelines* to be shared with the region's jurisdictions, the general public and real estate development community. While the *Joint Development Program Guidelines* may be updated and published without Board approval, the *Joint Development Program Guidelines* must be consistent with these Joint Development policies, and staff shall deliver to the Board any updates to the *Joint Development Program Guidelines* no later than one month before the date the updated publication is scheduled to be posted.

3.2 Competitive Selection. Staff shall utilize a competitive selection process for Joint Development projects, subject to Section 3.3. The provisions of the WMATA Procurement Procedures Manual do not apply to Joint Development projects. The competitive process is managed by WMATA's Office of Real Estate and Parking and follows the procurement procedures in the *Real Estate Manual*.

3.3 Unsolicited Offers. WMATA may consider unsolicited offers in limited cases, as set forth in the *Joint Development Program Guidelines*, such as:

- A) Offers from an occupying ground lessee;
- B) Lease or purchase proposal from a jurisdictional partner; and,
- C) Land assemblage opportunities from adjacent property owners that would result in a higher density TOD and, therefore, higher ridership.