

The Designation of Transit Oriented Development Projects

Frequently Asked Questions

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Prepared by the Maryland Department of Transportation

1. What does the term transit-oriented development mean?

The term “transit-oriented development” or “TOD” generally refers to real estate development within walking distance of a transit station that is designed to increase transit ridership and reduce reliance on automobiles. To achieve these goals, TODs tend to be dense developments that include a mix of commercial, retail and housing uses assembled in a way that is pedestrian and bike friendly. By bringing mixed-uses together around transit stations, TOD enables citizens to live, work and play within an easy walk to transit. In sum, the development is “oriented” toward the transit station and transit ridership.

Finally, TOD is considered an important component of any “smart growth” strategy because it aims to reduce sprawl, environmental impact and car use.

2. Why is the State involved in TOD?

TODs are more difficult to develop than projects on greenfields and open space; TODs often have higher upfront infrastructure costs, often require the use of publicly-owned land and involve more complex community issues. The development process is often compared to a play with many “actors;” local governments, the community, developers, transit agencies and others. The TOD Designation program allows the State to be another actor, supporting the local vision for development around transit stations.

TOD is critical to Maryland’s future. Maryland is expected to grow by 1.1 million residents and 600,000 jobs in the next 20 years. Under current patterns of development, this growth will consume 590,000 acres of open space. Vehicle Miles Traveled – how much Marylanders drive each year – would likely continue to grow faster than we could build road capacity. People living within ½ mile of transit, however, are up to five times more likely to use it and drive 47% less than those living elsewhere. TOD leverages the billions of dollars of infrastructure investments in our existing transit systems to reduce car use and traffic congestion.

3. What does it mean to be a “designated” TOD in Maryland?

As part of its Smart, Green and Growing strategy, the O’Malley Administration sponsored legislation during the 2008 session to facilitate the creation of TOD. The

legislation, recorded at Section 7-101(m) of the Transportation Article, defines TOD to be a “transportation purpose”, thus authorizing the Maryland Department of Transportation (MDOT) to use departmental resources, including land, funds, and personnel, to support “designated” TOD projects (the 2008 TOD Law). The “designation” provides several potential tools that are described below to help projects advance.

Essentially, designated TOD Projects are deemed to be good examples of TOD that have strong local support and that can succeed with a reasonable amount of State assistance.

4. Why designate some TOD projects and not others? Should all TODs be designated?

It is important to note that there are many TOD projects that represent good sustainable development but that will not be “designated” under this program. State and local governments have limited resources to contribute to projects; therefore, not all good TOD projects will receive the TOD designation. Instead, the State and local government will prioritize projects that cannot succeed without their support, demonstrate strong partnerships among the parties, have many attributes of TOD and represent a good return on the public investment.

5. What are the benefits that designation brings to a TOD project?

Designated projects could benefit from several potential tools, depending on the needs of the particular project at the particular stage of development. Among the benefits are prioritization for funds and resources, financing assistance, prioritization for tax credits, prioritization for the location of State offices and support from the State agencies to address station access and related infrastructure needs. A more detailed description of the toolbox follows:

- **Prioritization** - The designation represents a clear statement of support from the State and the local governments for the project. It means that the State and local governments will commit staff, resources and political will toward achievement of the development. The project is vetted and branded as a good example of TOD and sustainable development.
- **Funding/resources** – MDOT may provide funding for predevelopment costs, including planning, environmental studies, appraisals, financial analysis, and legal support. MDOT land near the station for the development may also be made available. MDOT will also prioritize capital projects that support designated TODs, identified by local governments during MDOT’s Annual Transportation Tour.

- **Financing** – MDOT will partner with the Maryland Economic Development Corporation (MEDCO), to support TOD projects. MEDCO works with MDOT to create advantageous ownership and financial structures for infrastructure projects, using non-recourse conduit financing. This provides opportunities for public financing without impacting local governments’ direct debt capacity. Pursuant to legislation sponsored by the O’Malley Administration during the 2009 session, the designation also provides local governments with greater flexibility to use tax increment financing and special taxing districts together in a way that supports the construction, operations and maintenance of public infrastructure at the project. Please see *Question 10* for more details.
- **State office sites** - Designated TODs are given priority for the location of new State facilities in accordance with Executive Order 01.01.2009.12 signed by Governor O’Malley in September 2009. More specifically, when the State issues a request for proposals for office or laboratory space for State occupation, the scoring system used to rate and select proposals will include a weight in favor of: (1) any location within one-half mile of a transit station; and (2) even greater weight if the location is part of a designated TOD.
- **Access issues** - Utilizing urban and context-sensitive design, the State Highway Administration (SHA) will work with developers and local governments on pedestrian, bicycle and vehicular access issues from State roads that provide direct access to transit stations. While the SHA does not give any greater weight to TOD projects, it will evaluate Designated TODs for ADA-compliant sidewalk improvements.

For more information please contact Lisa Choplin, SHA Office of Highway Design, at 410-545-8824 or LChoplin@sha.state.md.us

- **Sustainable Communities Tax Credit Program** - Under the *Sustainable Communities Act of 2010*, non-historic commercial *and* non-historic, income producing residential projects will be eligible to compete. Beginning July 1, 2012 existing non-historic structures within the State’s designated Transit Oriented Development (TOD’s) may be eligible for a 10% state tax credit for qualified commercial rehabilitation projects. Eligible historic structures across the State may receive a 20% State tax credit for commercial and residential rehabilitation projects. This would include eligible historic structures within Transit Oriented Developments (TODs).

For more information please contact Colin Ingraham, Program Administrator for Maryland Department of Planning at 410-514-7671 or by email: cingraham@mdp.state.md.us

- **Low Income Housing Tax Credit Program** - DHCD's Low Income Housing Tax Credits are awarded based on a competitive, point-based scoring process. A minimum score is required for consideration, and projects above the threshold score are rated based on total score. Projects in TOD designations receive additional points in this scoring system. TOD proposals that fit one or more of the following criteria may be awarded up to five (5) points in the Sustainable Development category: projects that exceed 25 units per acre, involve mixed use or are part of a larger mixed use undertaking, involve good non-motorized transport design (walkability), and a) are located within 0.5 miles of a mass or public transit or rail station, or b) are located within a quarter-mile of a bus depot or bus stop with scheduled service at intervals at most 30 minutes between the hours of 6:30 am and 7:00 pm. For more information, please contact Pat Sylvester, Director of Multifamily Housing at the Maryland Department of Housing and Community Development, at 410-514-7481 or Sylvester@mdhousing.org.
- **Smart Growth programs** – A TOD designation will also prioritize a project for support and coordination from other State agencies. Projects will be reviewed by the Smart Growth Subcabinet. Examples from the State toolbox include flexible funding for revitalization projects and gap financing for eligible small businesses through the Maryland Department of Housing and Community Development (DHCD). **For more information** on DHCD resources for TOD designations, please contact Kevin Baynes at (410) 209-5823 or Baynes@mdhousing.org or John Papagni at (410) 209-5807 or Papagni@mdhousing.org
- **Positioning projects for federal support** – Under the Obama Administration, new policies and funding programs are being developed to support sustainable development, recognizing the link between transportation, the environment and housing. A TOD designation demonstrates the alignment of projects with those goals, positioning projects to compete for federal assistance.

6. **What is the process for designating a TOD pursuant to Section 7-101(m)?**

Section 7-101(m) of the Transportation Article defines a TOD as dense, mixed-use, deliberately-planned development within a half-mile radius of transit stations that is designed to increase transit use and is “designated” by both the Maryland Secretary of

Transportation (after consultation with other State Executive Departments) and by the “Local Government or Multicounty Agency with Land Use and Planning Responsibility for the Relevant Area”.

The MDOT TOD designation process includes the following steps *for all nominations submitted in 2011 and beyond*:

- o The local government submits its proposed TOD project designations to MDOT in its priority funding letter in the spring/summer of each year, as part of the MDOT Secretary’s Annual Transportation Tour process*. ; MDOT will provide staff assistance to local governments with the nomination process. (*The local government could also propose designations at other times of the year if there are exigent circumstances).
- o MDOT reviews the local government’s proposed TOD project designations in consultation with the Governor’s Smart Growth Subcabinet based on a series of factors, including cost, feasibility, local commitment, and whether the project represents good transit oriented development pursuant to established principles.
- o After considering the recommendations of the Governor’s Smart Growth Subcabinet, MDOT meets with the local government about what commitments each will make toward potential projects as part of the designation.
- o After agreement is reached between the local government and MDOT on a particular designation, the MDOT Secretary submits a memorandum to the local government that describes the TOD project and expresses the Secretary’s designation of the project. A local government can then formalize this designation through a resolution of its elected council, or other formal agreement with the Department.

7. Do the State and local government designate a “project”, a zone, a planning effort or something else?

Specific projects or TOD zoned areas may be designated. Each designation will include specific information defining the area, project or initiative components and other elements known at the time of designation. The purposes and components of the designation will be described in the Secretary’s TOD designation memorandum and the local government’s designation resolution (see process description above). For example, the designation documents will define the site or area that is being designated, the project or initiative components, and other elements that are known at the time of the designation (e.g. perhaps a timeline, planning and development components, certain commitments or goals and a sunset provision stating when the designation would terminate).

8. Have any projects been designated TODs yet?

Yes. The State identified fourteen (14) TOD projects for designation in 2010 based on often long-standing coordination between state and local government agencies to begin the development, planning and implementation of key projects. A map of these projects and further details on the planning and development being pursued for them can be found at www.todmd.com. The State expects that additional projects will be proposed by local governments during spring and summer of 2011.

9. Is there a limit to the number of TOD designations that can be made?

The 2008 TOD Law does not set any limit on the number of TOD designations that can be made. However, given that resources available to the program will necessarily be limited, the TOD designation program will also need to be limited to the number of projects that it can reasonably impact. That number will evolve over time with the program.

10. What new financial tools did the 2009 TOD legislation grant to local governments for use solely at designated TODs?

The 2009 legislation expanded local governments' authority to use tax increment financing (TIF) and special taxing districts (other than Baltimore City which requires amendments to its charter to activate the new authority). Local governments already have enabling authority to use TIFs to finance public infrastructure and special taxing districts to provide security for repayment of TIFs and the provision of certain services within such a district. However, the new law enhanced these powers at designated TODs.

The new law in 2009 expanded a local government's TIF authority at designated TODs in the following ways:

- (1) The local government can use the Maryland Economic Development Corporation (MEDCO) to issue the TIF bonds (in other locations, the local government needs to be the bond issuer). Therefore, counties do not need to bear the cost or have the expertise required to issue TIF bonds at designated TODs; and
- (2) The local government can dedicate any local tax to the TIF and not just the local property tax (e.g. the local hotel, amusement, and income tax) to support the TIF bond thus increasing the potential size of the financing and the security for its repayment.

The new law in 2009 expanded a local government's Special Taxing District authority at designated TODs in the following ways:

- (1) The Special Taxing District can be used as security for repayment of a TIF bond that is used to finance public infrastructure that is not owned by the county/city. This enables TIF to be used to finance construction of a road, garage or other infrastructure that is owned by the State (including owned by MEDCO). In some cases, the local government does not want to own the infrastructure and this new authority allows this option;
- (2) The Special Taxing District funds can be paid directly into a fund to support: (a) the creation of public infrastructure rather than solely be used as security or funding for a bond; and (b) the operations and maintenance of public infrastructure in the Special Taxing District.

In these ways, designation gives the local government additional flexibility and authority to finance, operate, and maintain infrastructure at designated TODs.

11. What is tax increment financing (TIF)?

Tax Increment Financing is generally used as an economic development tool to finance improvements needed for a project to move forward. A TIF is a bond that is used to fund public improvements (e.g. roads, garages, parks) and that is repaid or paid out of the increased local real estate tax revenues (the "tax increment") generated by the creation of a project. For example, a State-owned parking lot generates zero real estate taxes for a local government. However, if ownership of the parking lot is transferred from the State to a developer through a sale or long-term lease of the property, then the property becomes taxable and generates a new stream of tax revenues (the "tax increment"). If the project is a large one with many new housing units and significant office and retail space, then it can generate a substantial new tax increment.

It is important to note that a TIF does not involve or utilize a new tax or a tax surcharge; it is simply the incremental increase in the existing taxes paid when a parcel is appraised at a higher value to account for the new project built on the site. In many cases, a project cannot proceed unless millions of dollars of infrastructure are first put into place. A TIF bond allows the local government to finance construction of the needed public infrastructure up front while using the new tax increment in the future to pay back the bond debt. It is a flexible tool that is beneficial to local governments because it is not credited toward the local government's direct debt cap and

it is not guaranteed by the local government. Therefore, a TIF does not directly affect the localities ability to borrow money for other projects and a default of a TIF bond does not require the local government to pay back the debt. The investor in a TIF bond bears the risk. Finally, TIFs are only used when a project would not proceed without it (this is called the “but for” test). Because TIFs are funded with a tax increment that would not have existed “but for” the TIF and the resulting project, they do not divert existing or even potential tax revenue from the locality’s general fund.

12. What is a Special Taxing District?

A special taxing district is an area defined by the local government where a new tax is assessed to businesses and perhaps other properties and the revenue generated by the new tax is dedicated to a particular use within the district. Special taxing districts can be used in several ways: (1) to fund directly capital construction of public infrastructure at a TOD; (2) to provide revenue or security for the repayment of a bond; and/or (3) fund operating and maintenance costs such as management contract costs, utilities, cleaning, snow removal, and security services within the defined district.

13. What is the Maryland Economic Development Corporation (MEDCO) and what role does it play in TOD?

MEDCO was created by the State statute and is both a corporation and an instrumentality of the State. Its mission includes promoting economic growth and development throughout the State as well as assisting other governmental entities in developing real estate. It has been granted a number of powers by statute, including the ability to issue both taxable and tax-exempt bonds to support the financing of projects.

MEDCO can provide “conduit” financing for projects, meaning that it does not provide its own funding toward the bonds that it issues and instead sells the bonds into the private investor market. MEDCO bonds can be structured to be repaid from various types of dedicated revenue sources, including parking fees, special taxing districts, project revenues and other sources. MEDCO can also issue TIF bonds, but only for a “designated” TOD project and in Baltimore City. Finally, MEDCO bonds are non-recourse, meaning that they are not guaranteed by the State, local government or other governmental entity. Therefore, they do not pose direct financial risk to governments or jurisdictions.

MEDCO has the potential to play an important role in TOD projects in Maryland. At the request of a State or local governmental entity, MEDCO will consider providing conduit financing for

projects. It can also own project components where that makes sense. For example, MEDCO can finance and own a garage at a TOD and then lease it either to a public or private operator.

It is worth noting that there are other public and private sources of bond or debt financing for TOD projects. For example, a range of local governments, State agencies, and authorities such as the Maryland Transportation Authority can issue certain types of bonds for particular projects and the private sector can provide private bond financing for projects as well. Therefore, MEDCO represents one financing option among several for any particular project.

14. Are there dedicated funds in the State budget for TODs?

The O'Malley Administration dedicated \$3 million toward the implementation of TOD projects in the MDOT capital program. These funds are allocated to predevelopment costs for several TOD projects that are in progress. These include costs for planning and design, financial and business analysis, environmental, engineering, and legal costs. MDOT will also give priority consideration for funding of transportation projects that support TOD and are identified by the local governments. Local governments may include both TOD designations and TOD funding requests in their priority funding letters that they provide to MDOT, as part of the Annual Transportation Tour.

15. What are the characteristics of a good candidate for TOD Designation?

Although it is difficult to anticipate all the characteristics of a good TOD candidate, the following are important:

- 1 Located within ½ mile of a transit station (this is required by the law);
- 2 Demonstrates the potential to significantly increase transit ridership and reduce car usage;
- 3 Includes a significant-sized parcel of developable land;
- 4 Has appropriate density for the locality and site;
- 5 Includes a mix of uses, including housing, retail and commercial office;
- 6 Is located and designed in such a way to improve access to the transit station and is pedestrian and bicycle friendly;
- 7 Incorporates substantial green design features;
- 8 Includes a State role that is important for the success of the project (including in some cases, the use of State property); and

- 9 Is feasible in the following ways:
- There is a market for rental or purchase of the development components (i.e. housing units, office space, and retail);
 - The project is financeable by the private markets without excessive subsidy by government;
 - There is committed local government support for the project;
 - There has been substantial local community input to the project or plan; and
 - There is a reasonable means for funding necessary infrastructure.

16. What types of transit stations make a TOD project eligible for designation?

TOD projects that are located or planned within ½ mile of the following types of transit stations are eligible for designation:

- 1 Existing transit stations on the following transit lines: Washington Metropolitan Area Transit Authority Metro Rail; MARC Camden, Brunswick, Frederick and Penn lines; Baltimore Metro; Baltimore Light Rail.
- 2 Planned transit stations on these same lines or on future lines (such as the Baltimore Red Line, the Purple Line, and the Corridor Cities Transitway) when there is sufficient certainty that a station will be created and there is a clear case that designation will assist in the achievement of a defined and agreed TOD outcome.
- 3 Projects near bus stations can be eligible for designation if there is a significant nexus of bus service at a particular location that is not likely to be terminated or relocated in the foreseeable future.

17. Is there any new State legislation that might help support TOD projects?

The Sustainable Communities Act of 2010 makes “designated” TOD projects eligible for the Sustainable Communities Tax Credit. (see Question 5)

18. How do Designated TODs relate to Smart Sites and other programs?

The State of Maryland has several programs that are focused on revitalizing communities, but have different policy goals, including the TOD designations, Smart Site, BRAC Zone and Main Street programs. Designated TODs have specific tools to promote mixed-use development around transit stations. Other programs have different goals and different tools to achieve them.

An area or project may utilize more than one Smart Growth program. In fact, under the Sustainable Communities Act of 2010, there will be a more holistic response to revitalization initiatives. The Smart Growth Subcabinet – which includes the key departments and agencies with programs to support revitalization – will now review designated TODs along with other Smart Growth efforts, providing opportunities to leverage different programs and provide the right assistance at the right time.

19. Whom do I contact to learn more about TOD and TOD Designations?

For Projects at MDOT-owned Stations

(MARC, Baltimore Metro, Baltimore Light Rail)

Mr. Christopher Patusky
Director, Office of Real Estate
Maryland Department of Transportation
410-865-1236; cpatusky@mdot.state.md.us

For Projects at WMATA-owned Transit Stations (e.g. METRO in Prince George's and Montgomery Counties)

Mr. Andrew Scott
Special Assistant to the Secretary for Economic Development
Maryland Department of Transportation
410-865-1095; ascott@mdot.state.md.us