SB 217 White Paper – Housing and Transit Reinvestment Zone Act
Utah State Senate Bill 217
To be effective May 5, 2021
Chief Sponsor – Wayne Harper – Utah State Senate
House Sponsor – Stephen G. Handy – Utah House of Representatives

This white paper summarizes SB 217, the Housing and Transit Reinvestment Zone Act, with key provisions and required steps for implementation detailed herein. According to SB 217 "*establishes objectives and requirements for a municipality to create a housing and transit reinvestment zone to capture tax increment revenue within a defined area around certain public transit facilities.*"

Bill Summary and Key Objectives

SB 217 represents an "all-hands-on-deck" approach to helping mitigate the housing affordability crisis along the Wasatch Front, and to better utilize transit infrastructure and investment. The bill intends to encourage transit-oriented development (TOD) near UTA FrontRunner stations through tax increment financing and integral city and agency planning efforts.

Central **objectives** of SB 217 are identified to include the following:

- Promote greater utilization of public transit
- Increase the availability of attainable housing
- Encourage transformative mixed-use development and collaborative investment in transit and transportation in strategic areas
- Maximize available planning and economic development tools to strengthen and grow major transit corridors
- Increase access to employment and educational opportunities
- Improve water conservation and air quality resources through efficient land use and better utilization of transit opportunities

SB 217 allows for the creation of Housing and Transit Reinvestment Zones (HTRZ) within a 1/3-mile radius of a FrontRunner station. These areas are limited to a total of 125 acres and may apply to all of the current 15 FrontRunner station locations between Ogden and Provo (with a 16th station planned for Vineyard). Areas of FrontRunner expansion would also be available to utilize the tool once station infrastructure is in place. SB 217 also authorizes an HTRZ to be created in a specific location at the public transit hub in Summit County.

Key provisions and requirements identified in SB 217 include the following:

- SB 217 allows a municipality to submit a housing and transit reinvestment zone proposal to the Governor's Office of Economic Opportunity
- SB 217 requires the Governor's Office of Economic Opportunity to initiate an analysis of the feasibility, efficiency, and other aspects of the proposed housing and transit reinvestment zone

- SB 217 creates and defines membership of a committee to review the proposed housing and transit reinvestment zone and approve the HTRZ if certain criteria are met
- SB 217 requires participation from local taxing entities if the housing and transit reinvestment zone proposal meets the statutory requirements and is approved by the committee
- SB 217 defines permitted uses and administration of local tax increment revenue generated pursuant to the housing and transit reinvestment zone
- SB 217 requires a certain portion of state sales and use tax increment generated within a sales and use tax boundary that corresponds to the housing and transit reinvestment zone boundary to be deposited into the Transit and Transportation Investment Fund (held by UDOT)

Applicability and Requirements for an HTRZ

The HTRZ objectives, as outlined previously, attempt to accomplish numerous directives through the successful use of SB 217. Consideration is made within the bill for requirements that cities must take to qualify for an HTRZ designation. These provisions can be summarized into the following categories:

Land Area Requirements

SB 217 requires that a municipality may only propose a housing and transit reinvestment zone that does not exceed a 1/3-mile radius of a commuter rail station. This 1/3-mile area may not have a total area of more than 125 acres. The 125 acres are not required to be contiguous but must be within the 1/3-mile radius. However, if a parcel is bisected by the 1/3-mile radius, the full parcel may be included as part of the housing and transit reinvestment zone area and the portion outside the boundary will not count against the 125-acre limitation.

SB 217 requires the municipality to adopt zoning for the area that will accommodate the proposed HTRZ, prior to submitting the proposal to the Governor's Office of Economic Opportunity.

Housing and Use Requirements

The HTRZ bill requires that *at least* ten percent of the proposed housing units within the housing and transit reinvestment zone are affordable housing units. Affordable housing, as defined by 11-38-102 of Utah state code, is noted as "housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80 percent of the median gross income of the applicable municipal or county statistical area for households of the same size." If, however, a municipality meets the affordable housing guidelines of the United States Department of Housing and Urban Development (HUD) at 60 percent area median income, it is exempt from the requirement of ten percent affordable housing.

A dedication of *at least* 51 percent of the developable area within the housing and transit reinvestment zone is required for residential development with an *average* density of 50 multi-family dwelling units per acre or greater. This density requirement may include mixed-use residential development.

Tax Increment Financing Parameters

As indicated, SB 217 "requires participation from local taxing entities if the housing and transit reinvestment zone proposal meets the statutory requirements and is approved by the committee." This participation is outlined within SB 217 to include a maximum of 80 percent of each taxing entity's tax increment above the base year for a term of no more than 25 consecutive years on each parcel within a 45-year period, not to exceed the tax increment amount approved in a housing and transit reinvestment zone proposal.

The commencement of collection of tax increment within an HTRZ area (either within all or a portion of the area) is triggered by providing notice to the State Tax Commission, the State Board of Education, the State Auditor, the auditor of the county in which the HTRZ is located, each taxing entity affected by the collection of the tax increment, and the Governor's Office of Economic Opportunity. How the increment is used is outlined later herein.

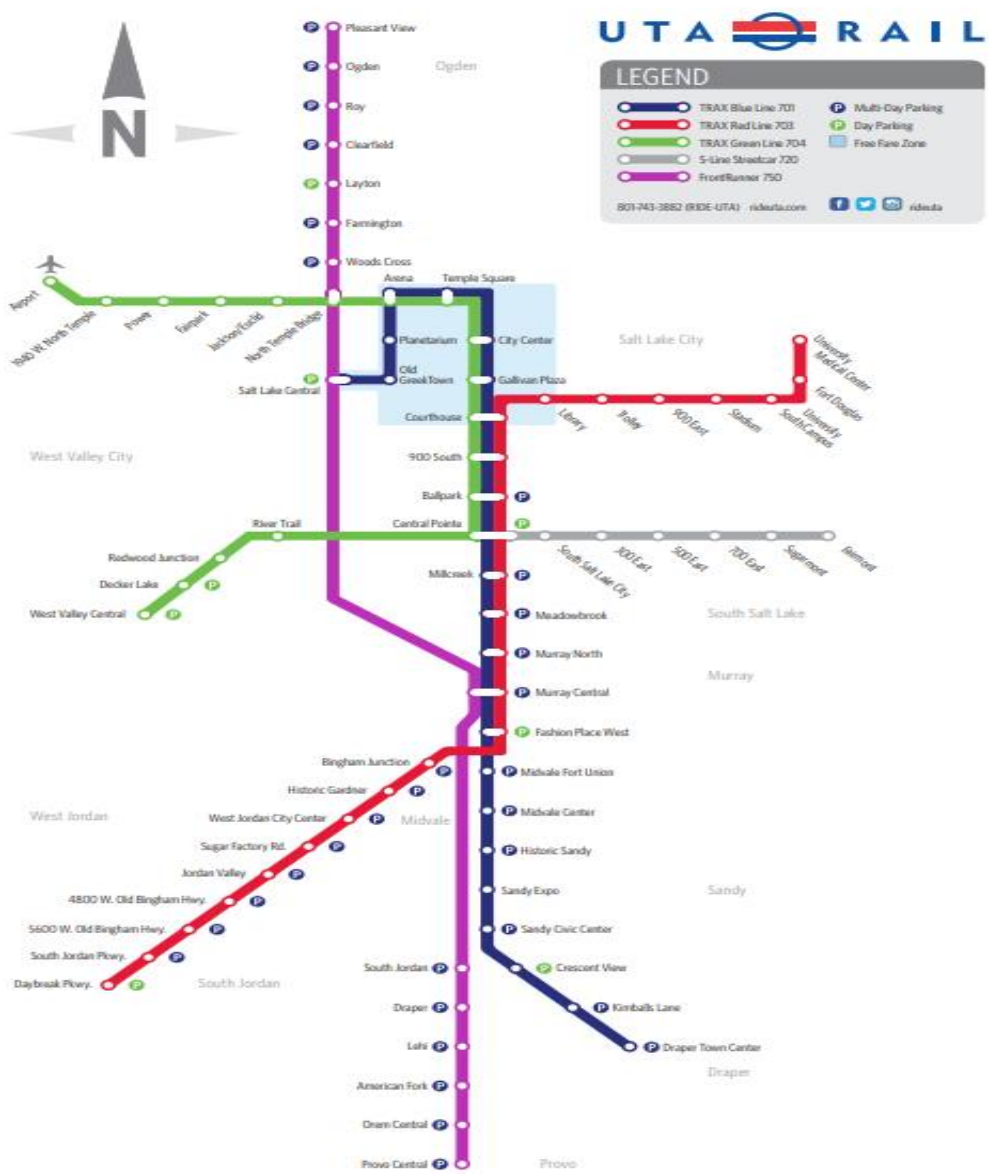
Comparison of HTRZ to Community Reinvestment Areas (CRA)

The HTRZ bill has notable similarities and differences to existing tax increment financing tools, particularly Community Reinvestment Areas (CRA). Differences between the two tools are highlighted below:

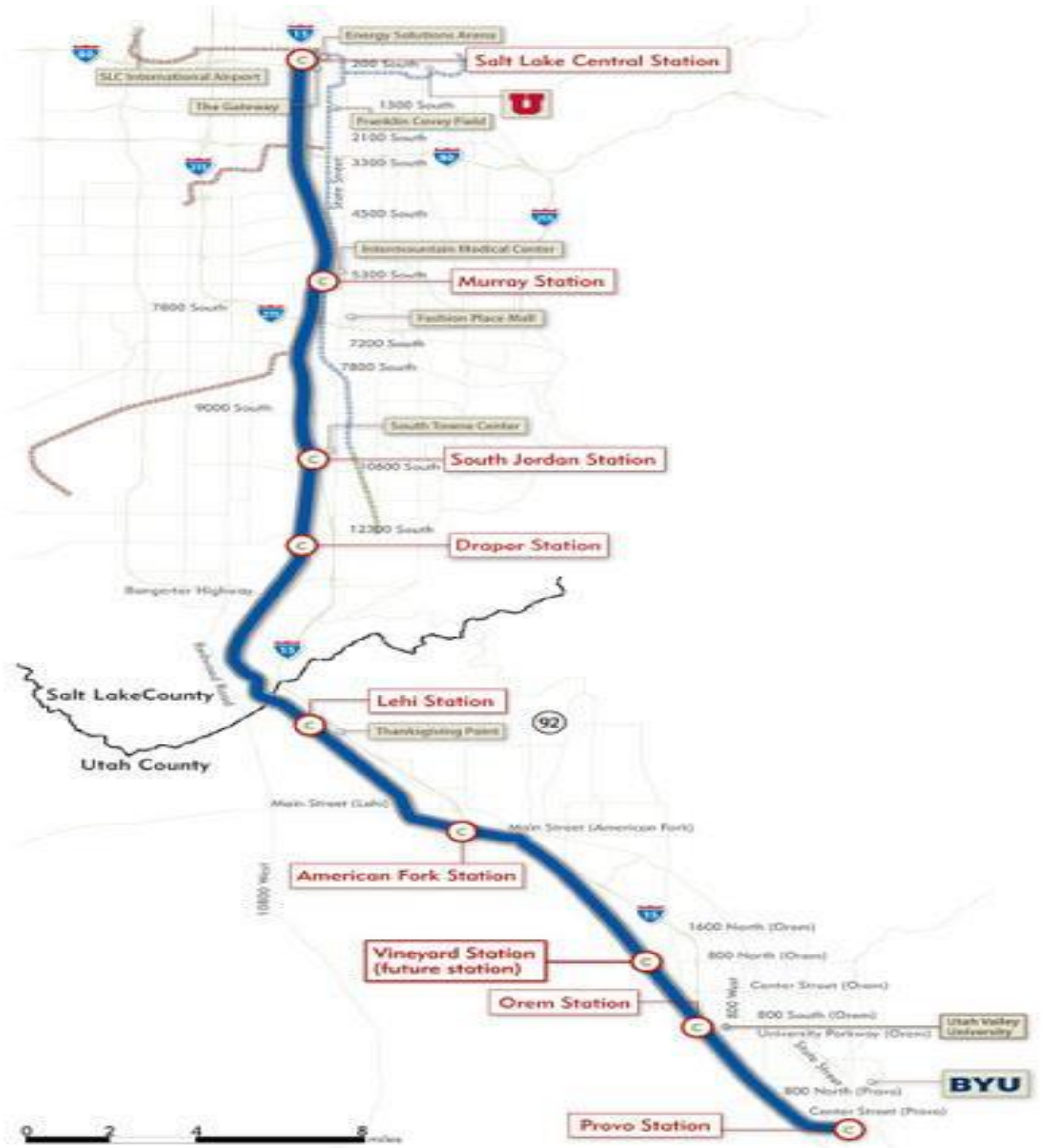
	CRA	HTRZ
Geographic Limitations	Limited to municipal boundaries	Limited to 125 acres and 1/3-mile radius from FrontRunner Station
Funding Mechanism	Tax Increment Financing	Tax Increment Financing
Taxing Entity Participation	Not required	Required up to 80 percent for 25 years within a 45-year period
State of Utah Participation	No	Participation through sales tax increment of 15 percent into the Transit and Transportation Investment Fund
Governing Body	Municipal Redevelopment Agency	Municipal Redevelopment Agency
Committee Formation Required	No	Yes – representatives from multiple agencies
State Approval Required	No (state does not approve boundaries or expenditures but does require documentation filing)	Yes – Governor's Office of Economic Opportunity to review required proposals
Area of Expenditure	Within defined boundaries or for improvements that benefit the area	Within defined boundaries or for improvements that benefit the area
Zoning and Use Requirements	No requirements	At least 51 percent of land in an HTRZ to be used for multi-family at minimum density of 50 units an acre
Affordable Housing Requirements	No requirements for direct development; ten percent affordable set-aside for CRAs generating more than $100,000 in increment annually	Requirement of ten percent of residential units to be made affordable to those making less than 80 percent of area median income
Can be used with other tools	Yes	Yes

Location of FrontRunner stations and potential HTRZs

SB 217 has applicability to all municipalities that currently have FrontRunner stations. The following maps highlight the location of FrontRunner throughout the Wasatch Front, stretching from Ogden to Provo.



Greater detail on the following map highlights stations within Salt Lake and Utah Counties.



Here is a link to an [interactive map](#) that shows the specific locations of FrontRunner stations, and the ⅓-mile radius.

Key Steps for Implementation and Required Proposals

For a municipality that considers the utilization of the HTRZ tool, a multi-step process is required. Key steps for a city include **preparing a proposal for the HRTZ zone that accomplishes the following**:

1. Demonstrates that the proposed housing and transit reinvestment zone will meet the objectives described within the bill (outlined on the initial page of this white paper)

2. Explains how the municipality will achieve the requirements of the bill, including the requirements for land area (maximum 1/3-mile radius, 125 acres), use (residential and mixed-use of at least 51 percent), density (minimum average of 50 dwelling units per acre), and affordability (minimum of ten percent of residential units to be affordable)
3. Defines the specific transportation infrastructure needs, if any, and proposed improvements (this will require cities to clearly understand how transit and transportation infrastructure can best serve the proposed area)
4. Defines the boundaries of the HTRZ area and sales and use tax boundaries
5. Identifies any development impediments that prevent the development from being a market-rate investment and proposed strategies for addressing each impediment. This particular requirement will require an in-depth understanding of market forces and conditions on an area, and essentially requires analysis of the "but for" argument that is necessary for utilization of tax increment financing, i.e., what development would not occur *but for* the proposed HTRZ. Examples may include impediments such as high construction material or labor costs for the proposed density, extraordinary infrastructure costs, design requirements that result in costs above market-accepted levels, parking requirements that result in expenses above market conditions, etc.
6. Describes the proposed development plan
7. Establishes a base year and collection period to calculate the tax increment within the HTRZ
8. Establishes a sales and use tax base year to calculate the sales and use tax increment within the HTRZ
9. Describes projected maximum revenues generated and the amount of tax increment capture from each taxing entity and proposed expenditures of revenue derived from the HTRZ. This requirement will entail an understanding of highest and best use for properties to be located with the 125-acre (maximum) HTRZ to adequately project possible future assessed values and the potential tax increment generation. Consequently, concerted efforts will be needed from the municipality and planning agencies to clearly understand developer and owner motivations and timelines, coupled with market conventions and possible financial gaps between market construction and HTRZ-preferred development
10. Analysis of other applicable or eligible incentives or grants, or sources of revenue that can be used to reduce the finance gap, if any. These may include, but are not limited to, special service districts, public infrastructure districts, opportunity zones, low-income housing tax credits, transferable development rights, etc.
11. Proposal of a finance schedule to align expected revenue with required financing costs and payments
12. Provide a pro-forma for planned development including the cost differential between surface parked multi-family development and enhanced development that satisfies the objectives of SB 217

The municipality must ensure that the proposed HTRZ area is zoned in such a manner to accommodate the requirements of the HTRZ and the potential development. This must occur prior to the city submitting the proposal.

The proposal is then submitted to the Governor's Office of Economic Opportunity. Once the proposal is received, the Governor's Office of Economic Opportunity will contract, at the expense of the petitioning municipality, with an independent entity to perform a ***gap analysis***. This analysis will include the following:

- A description of the planned development
- A market analysis relative to other comparable project developments included in or adjacent to the municipality or public transit county absent the proposed Housing and Transit Reinvestment Zone
- An evaluation of the proposal to and a determination of the adequacy and efficiency of the proposal
- An opinion, based on the market analysis and other findings, to the amount of potential public financing reasonably determined to be necessary to achieve the objectives outlined in SB 217

Once the results of the analysis are received by the Governor's Office of Economic Opportunity, the petitioning city of the HTRZ has the option to amend the proposal and to resubmit. A dedicated credit, up to $20,000, may be accepted by the Governor's Office of Economic Opportunity, from the municipality, to pay for the costs associated with the defined gap analysis.

Housing and Transit Reinvestment Zone Committee

The formation of an HTRZ requires the creation of an HTRZ committee. Each committee is to consist of the following members:

- One representative from the Governor's Office of Economic Opportunity
- One representative from each municipality that is party to the proposed HTRZ
- One representative from the Utah Department of Transportation
- One representative from a large public transit district, i.e., UTA, that serves the proposed HTRZ
- One representative of each relevant metropolitan planning organization, i.e., WFRC or MAG
- One member designated by the president of the Senate
- One member designated by the speaker of the House of Representatives
- One member designated by the chair of the State Board of Education
- One member designated by the chief executive officer of each county affected by the HTRZ
- One representative from the school district affected by the HTRZ
- One representative, representing the largest participating local taxing entity, after the municipality, county, and school district

The individual designated by the Governor's Office of Economic Opportunity is to serve as the chair of the HTRZ committee. Once the Governor's Office of Economic Opportunityhas received the results of the required proposal and gap analysis, each of the required committee entities shall be notified regarding the formation of the HTRZ committee. The chair of the committee convenes a public meeting to consider the proposal for creation of an HTRZ, with all meetings of the committee to be subject to the Open and Public Meetings Act. At the public meeting, the petitioning city shall present the HTRZ proposal. At that time, the HTRZ committee shall evaluate and verify whether the planned objectives of SB 217 have been met. The committee may request changes to the proposal, or vote to approve or deny the proposal.

If the committee determines a vote of approval, the HTRZ is established per the terms of the proposal. At that point, the affected local taxing entities are required to participate according to the terms of the HTRZ proposal. Within 30 days of approval of the HTRZ, the municipality is to record with the County Recorder a document containing a description of the land within the HTRZ, a statement that the HTRZ has been approved, and the date of adoption. The description of the land with the HTRZ and an accurate map or plat indicating the boundaries of the HTRZ is to be transmitted to the Utah Geospatial Resource Center (UGRC). Furthermore, the approved proposal and description of the land shall be sent to the auditor, recorder, attorney, surveyor, and assessor of the county in which the HTRZ is located. Similar documentation is required to be sent to the taxing entities, the Tax Commission, and the State Board of Education.

Use of Property Tax Increment Generated in a HTRZ

Similar to other tax increment financing tools (Community Reinvestment Areas), tax increment distributed to a municipality in accordance with the HTRZ is not considered to be revenue of the taxing entity or municipality. Tax increment paid to a municipality are HTRZ funds that shall be administered by an agency created by the municipality where the HTRZ is located. Before an agency may receive funds, the municipality and the agency shall enter into an interlocal agreement with terms that are consistent with the approval of the HTRZ committee and meet the objectives of SB 217.

SB 217 specifically notes that a municipality shall use housing and transit reinvestment zone funds within, or *for the direct benefit of*, the housing and transit reinvestment zone. If funds will be used outside of the HTRZ, there must be a finding within the approved proposal that the use of the HTRZ funds outside of the area will *directly benefit* the dedicated zone.

Funds may be used for the HTRZ to accomplish the objectives of SB 217, including for the following uses:

- Income targeted housing costs
- Structured parking within the HTRZ
- Enhanced development costs
- Horizontal construction costs
- Vertical construction costs
- Land purchase costs within the housing and transit reinvestment zone
- Costs of the municipality to create and administer the HTRZ, which may not exceed one percent of the total HTRZ funds, plus the costs to complete the gap analysis previously described

In addition, HTRZ funds may be paid to a participant if the agency and participant enter into a participation agreement which requires the participant to utilize the HTRZ funds as allowed under the uses outlined directly above.

The HTRZ funds may be used to pay all of the costs of bonds issued by the municipality in accordance with Title 17C, Chapter 1, Part 5, including the cost to issue and repay the bonds including interest. Municipalities may also create one or more public infrastructure districts within the HTRZ under Title 17B, Chapter 2a, Part 12, and may pledge and utilize the HTRZ funds to guarantee the payment of public infrastructure bonds issued by a public infrastructure district.

Use of Sales Tax Increment Generated in a HTRZ

With consultation with the State Tax Commission, an HTRZ proposal is to create a state sales and use tax boundary (following the same criteria as previously outlined: 1/3-mile radius from FrontRunner, maximum of 125 acres), and is to establish a state sales and use tax base year and collection period to calculate and transfer state sales and use tax increment within the HTRZ. The boundary is intended to follow as closely as possible the boundary of the HTRZ, and is based on state sales and use tax collection boundaries.

Beginning one year after the boundary is established, the Tax Commission shall, at least annually, transfer an amount equal to 15 percent of the state sales and use tax increment within the approved boundary, into the Transit Transportation Investment Fund (TTIF). The TTIF is an account held by the Utah Department of Transportation to fund approved transit capital projects. SB 217 modifies the prioritization process for TTIF, to require that priority considerations be given to projects that are within the boundaries of an HTRZ.

Applicability to an Existing Community Reinvestment Area

For an HTRZ that overlaps an existing Community Reinvestment Area (CRA) and is an inactive industrial site, the following provisions are included in SB 217:

- If the CRA captures less than 80 percent of the tax increment from a taxing entity, or, if a taxing entity is not participating in a CRA, the HTRZ may capture the difference between:
    - 80 percent; and
    - The percent of tax increment captured pursuant to the CRA
- If the CRA expires before the HTRZ, the housing and transit reinvestment zone may capture the tax increment allocated the CRA for any remaining portion of the term of the HTRZ

Areas of Potential Concern or Study for Additional Legislation

SB 217, as outlined herein, allows for the potential of tax increment financing areas that may ultimately accomplish multiple objectives that could increase transit ridership, create more affordable housing opportunities, and provide for increased quality of life characteristics, amongst other benefits. Potential areas of concern or nuances that may require clarification or additional legislation include the following:

- While taxing entities are required to participate up to a maximum of 80 percent, no minimum participation rate is set. Consequently, a taxing entity, currently utilizing policies that generally discourage participation in economic development tools, may decide to contribute a limited amount of tax that ultimately does not allow for notable development. Transformative development near the FrontRunner stations may be difficult to achieve if taxing entity participation rates are minimal
- The bill does not require the state sales and use tax increment to be spent within the specific HTRZ of generation. The allotment of 15 percent is to the Transit and Transportation Investment Fund, which can be used systemwide. Consequently, the direct benefit to the area from state participation is not guaranteed. It may be worth revisiting the targeting of incremental state sales tax funds generated within an HTRZ to be used to benefit that specific HTRZ

- Taxing entities will need to clearly see the vision of the area and have a desire to help facilitate the transformative development. This will likely require an analysis of both fiscal and secondary benefits that will be achieved in the proposed HTRZ. If the taxing entities feel that they are being required to participate against the guidelines of their internal policies, they may be less likely to participate in other tax increment (non HTRZ) areas within the various municipalities.

Hypothetical Example

A hypothetical example is shown for a possible HTRZ creation. In the scenario highlighted herein, it is assumed than a 125-acre area within a 1/3-mile radius of a FrontRunner station is largely available for near-term development. Consideration is made for the required residential density (50 units per acre minimum), and that 51 percent of land is utilized for residential and mixed-use residential development. State sales taxes are based on the assumption of some new retail in the area, coupled with the ability to capture retail from online sales from the planned residences. The state's participation of 15 percent to the Transit and Transportation Investment Fund is assumed.

Use Type	New Property Taxes/ Annual	80 Percent Participation/ Annual	Total 25-Year Taxes to HTRZ	State Sales Taxes to TTIF/ Annual	State Sales Taxes to TTIF – Total 25 years
Residential	$10,000,000	$8,000,000	$200,000,000	$270,000	$6,750,000
Office	$4,600,000	$3,680,000	$92,000,000	-	-
Retail	$680,000	$544,000	$13,600,000	$690,000	$17,250,000
TOTAL	**$15,280,000**	**$12,224,000**	**$305,600,000**	**$960,000**	**$24,000,000**