



Newport Partners L.L.C.

**Transportation II – Strategies for
Expanding Affordable Housing Near Transit**

Paper on Barriers and Incentives

May 2010

EXECUTIVE SUMMARY

The analysis and recommendations offered in this paper on barriers and incentives to expand the supply of affordable housing near transit are in response to Congressional intent to have the U.S. Department of Housing and Urban Development and the Federal Transit Administration coordinate their efforts to attend to the significant regulatory, policy, and financial issues that must be addressed in order to meet the demand for affordable housing near transit. In 2008, HUD and FTA issued a report outlining strategies for how they could work together to better coordinate housing and transportation programs to promote affordable housing near transit. This paper fulfills one of the proposed actions offered as strategies in the HUD / FTA report.

With the high cost of land in and around transit nodes resulting in expensive rent levels, lower-income households have retreated to locations with limited access to employment, entertainment, and retail centers. Cheaper land costs in these locations allow for a more affordable rent, but at the expense of higher transportation cost. As a result, many Americans are now facing housing and transportation costs that account for over fifty percent of their total household income.

How can the burden be reduced? With gas prices that are likely to remain under upward pressure from increasing worldwide demand, the logical solution is to utilize existing or planned public transit systems by expanding the supply of affordable housing near their current or proposed station areas. The specific intent of this paper is to evaluate a broad range of programs and policies enacted by federal agencies, such as HUD, FTA, and EPA that result in either barriers or incentives to including affordable housing in transit oriented development.

With most housing and transportation program funds distributed to states and localities by formula, there is limited opportunity for the federal government to build in incentives for those funds to be used for affordable housing near transit. A number of states and localities have, however, used those federal programs, as well as their own resources, to create incentives.

Several provisions in federal programs and regulations were identified as representing barriers or disincentives to efforts to include affordable housing near transit. These include restrictions on land acquisition under CDBG and FTA requirements for joint development, although recent revisions of the joint development regulations should make that less constraining.

If eligible households are chosen randomly from waiting lists for the limited supply of assisted affordable units near transit, the effect on ridership is reduced and those with the greatest need for transit access would not benefit. Strategies for matching housing near transit with riders deserve consideration.

Properties receiving low income housing tax credits already are required to accept tenants with vouchers. A similar requirement could be established for properties in joint development arrangements or receiving other benefits.

The paper's section on FTA begins with a discussion of the New Starts / Small Starts evaluation model, including its use of a cost-effectiveness index to decide which proposed projects receive funding. The index, as currently calculated, is found to discourage the acquisition of excess rights of way when planning transit corridors. The acquisition of additional land in planned transit corridors is noted to be important because it presents the transit agency with an opportunity for joint development of affordable housing. The section concludes with a discussion of how revised regulations have allowed transit agencies more discretion in how to use federally financed land for development around transit stations.

The HUD section discusses the potential for many private, for-profit owners of project-based assisted units to opt out of their agreements to restrict occupancy to eligible households when these agreements reach expiration. A significant number of agreements are set to expire in the short term with many of these projects being located proximate to public transit. This section goes on to discuss the implications of placing an upper limit on the amount of out-of-pocket rent a household is allowed to pay, under the Housing Choice Voucher program, even if they could save more in transportation cost by living near transit.

Lastly, the section on EPA details opportunities to add incentives into several of the Brownfields programs. The Brownfields programs are noted to be awarded on a competitive basis, with little consideration for affordable housing near transit in its evaluation model. This section also includes a discussion of federal air quality standards and the Clean and Drinking Water Revolving Loan funds.

A review of some of the many state and local programs and policies demonstrate the active and creative role state and local agencies have played and illustrate some creative approaches as well as the opportunities for federal support.

Transit agencies, which are noted to be in a unique position to contribute to the creation of affordable housing near transit, tend to lack the capacity or motivation to realize their full potential to meet the demand for such housing.

The analysis of the various programs emanating from HUD, FTA, and EPA led to several conclusions. While there is a small assortment of incentives resulting from the programs discussed, there was never found to be any incentives that were a result of coordination between programs or agencies. Furthermore, aspects of certain programs were found to be barriers to the production of affordable housing near transit.

Barriers and Incentives

This is the first of three papers to consider issues and policies connected with promoting affordable housing near transit. These analyses follow up on the August 2008 report to Congress by the Department of Transportation's Federal Transit Administration (FTA) and the Department of Housing and Urban Development (HUD), *Better Coordination of Transportation and Housing Programs to Promote Affordable Housing Near Transit*, as well as the June 16, 2009 launching of the Partnership for Sustainable Communities by HUD Secretary Shaun Donovan, FTA Secretary Ray LaHood, and Environmental Protection Agency (EPA) Administrator Lisa Jackson.

This first paper discusses incentives and disincentives coming from HUD, DOT, and EPA programs and regulations with potential to influence whether local agencies and private developers incorporate affordable housing in transit-oriented development (TOD), as well as whether affordable housing located near new or existing transit facilities remains affordable. The paper also describes incentives and barriers created by local agencies, especially those involving federal funds. It first provides some background information regarding transit, housing, and affordability that have bearing on the policy issues covered in this analysis and its accompanying additional papers.

The second paper in the series will discuss the financing of affordable housing, including the involvement of other parts of the federal government. It will give particular attention to the low-income housing tax credit (LIHTC) program and tax-exempt bond financing, directed by the Department of the Treasury and administered by state agencies. In addition to tax incentives, the federal government affects the availability of debt and equity from private sources through financial regulations and credit enhancements, including Federal Housing Administration (FHA) mortgage insurance. Government-sponsored entities—Fannie Mae, Freddie Mac, and Federal Home Loan Banks—are important sources of financing. It will also describe devices used by state and local governments, especially value-capture methods such as tax-increment financing.

The third paper will discuss planning. The August 2008 FTA-HUD report to Congress noted the limited coordination of planning reports that FTA and HUD require. The third paper will analyze the relationship among the planning requirements of the three agencies: HUD, FTA, and EPA.

In addition, it will review data and planning tools that could be provided to local agencies in support of planning activities related to affordable housing near transit.

BACKGROUND

Several aspects of the interaction between transit and affordable housing, and of the interaction between the federal government and local government agencies, frame the consideration of incentives and barriers. Before considering policy options, it is worthwhile to review the nature of fixed guideway transit system operations, affordable housing, the land needed for both, the concept of incentives, and the role of the marketplace in matching up transit with riders.

Transit and Development

Most of the issues concerning land value inflation and the difficulties in creating and retaining affordable housing near transit arise in the context of rail systems. Bus stations, even with specially constructed buildings and express service, do not typically serve as anchors for development; nor do they have significant impacts on property values [Dittmar and Poticha, in Dittmar and Ohland 2004, p37], partly because they do not represent long-term irreversible investment commitments. Nor does this analysis include commuter rail service, which operates at relatively restricted times, mainly during rush hours.

Even major rail investments are uncertain stimulants for development in the absence of strong growth in employment and population. Transit nodes may serve as magnets to concentrate and shape development, but probably do not generate development in addition to what would not have taken place somewhere in the metropolitan area anyway¹ [Handy 2005, p157; Cervero et al 2002, p3; Hess and Lombardi 2004]. Moreover, where local actors place transit facilities based on such factors as the availability of cheap land, existing rights of way, and paths of least resistance—rather than in attractive, convenient locations — may have limited effects on both transit ridership and development [Loukaitou-Sideris 2008; Hess and Lombardi 2004].

This report focuses on devices to support the inclusion of affordable housing near rail transit, but readers should keep in mind that bus services—either as feeders to rail stops or as a

¹ Theoretically, improvements in transportation could make a metropolitan area more competitive with other areas, stimulating in-migration of jobs and population. Other types of transportation investments, such as canals, railroads, interstate highways, and airports, have had demonstrable effects on metropolitan area growth, but evidence of similar effects from transit has been elusive.

primary transportation mode—are extremely important to low-income households and other transit-dependent populations. Thus, convenient, reliable feeder bus service may prove to be an acceptable and less-costly alternative to having affordable housing immediately adjacent to rail stations. The combination of affordable housing and transit must be considered in terms of broad transit corridors and networks, rather than narrowly, as areas in the immediate neighborhood of transit stations. It has generally been found that rail and bus services are mutually supportive. In some cases, however, reduced bus service has accompanied the introduction of rail service and the reorientation of bus service to feed rail rather than provide direct service has adversely affected some riders [Richmond 2001]. Planners should be alert to possible unintended consequences when introducing rail service, and avoid causing a net loss in mobility for residents of affordable housing near bus service.²

Among the 25 largest metropolitan areas, all except Detroit and Riverside (CA) have some type of rail transit³ but, in many cases, only a small share of the population lives near rail transit, so that rail accounts for a small share of travel. Among metropolitan areas outside the top 25 or so—with populations of less than 2 million—rail transit is rare. Of the 75 largest metropolitan areas, 45 have no rail or bus rapid transit, and ten have only a single fixed-guideway line.

The New York City metropolitan area accounts for about one-third of all 1,800 heavy and light rail transit stations in the United States and for nearly two-thirds of the country's 13 million weekday trips on rail transit.⁴ While issues about planning, gentrification, and affordable housing around transit are still relevant and evolving in metropolitan New York, the attention in recent years has turned to the rest of the country.

At one time transit services were largely provided by private firms, but transit services are now generally run by state-chartered public transit agencies or supervised by elected or appointed

² A bias in favor of rail relative to bus transit has been widely noted [Kain 1988, 1999; Richmond 2001; Altshuler and Luberoff 2003; Chen 2007]. This attitude has been justified based on effects on automobile congestion, etc. [Litman 2007] but may disadvantage lower-income households.

³ Riverside does have commuter rail, and Detroit has a three-mile "people mover."

⁴ These numbers are based on 2007 information from FTA's National Transit Database (<http://www.ntdprogram.gov/ntdprogram/>) and exclude commuter rail service.

officials [Simon and Simon et al 2002]. The motivations, incentives, and constraints of transit agencies are central to consideration of their role in the development of affordable housing.

If affordable housing contributes to ridership and fare revenues, it produces an inherent incentive for transit agencies to support such housing. At this point, however, only limited empirical evidence exists for determining the impact of specific types of development on ridership. In general, the presence of employment centers and other destinations appears to have a bigger impact on ridership than housing [Arrington and Cervero 2008, pp. 3,13,16; Gomez-Ibanez 2009, pp. 40,45] , but the two elements work together—there is a need for both riders and places to go. Living near transit offers little value to low-income households if they cannot reach jobs and services. The hub-and-spoke orientation of most transit systems may serve professional workers better than those in lower-skilled jobs that are widely dispersed.

Fare collections can cover only a fraction of transit costs. Federal grants often provide funds for investment, but state and local taxpayers absorb most of the operating expense. That means that transit agencies must generally play the supplicant rather than the benefactor role. It also means that they have strong incentives to gain and maintain public approval. In some communities affordable housing helps build such approval, but the popularity of affordable housing is often less than palpable among everyone other than the residents of the affordable housing. In any event, creating incentives for transit agencies to join the effort to create affordable housing around transit stations may depend more on its implications for subsidies than what it means for fare revenues.

Despite their typically shallow pockets, the majority of the roughly two dozen transit agencies with more than token rail service have participated in TOD affordable housing projects. At least nine have written policies that include affordable housing in joint development. Some transit agencies have given direct assistance by providing loans to finance projects or by providing TOD design grants. [Kniech and Pollack 2010].

The recent economic slump has reduced transit agency revenue, and the continuing fiscal burdens of state and local governments, which tend to lag movements in the overall economy, have led to reduced funding for transit. As a result, a majority of public transit agencies are facing fare increases and service cut backs, further limiting the modest transit agency capacity

to support affordable housing has been further weakened. [American Public Transportation Association 2010].

Affordable Housing

The standard measure of rental housing affordability has been gross rent (rent + utilities) that does not exceed 30 percent of household income.⁵ Measuring housing cost and affordability for homeowners is more complicated, but is often reported based on out-of-pocket expenses for



Chicago has recognized the need to provide affordable housing near rapid transit. The picture above shows affordable housing on Prairie Avenue in Chicago near the 43rd Street Station on the Green Line. The 43rd Street station is on the south side of the city. The units are a combination of market rate and affordable workforce housing. Photo courtesy of Kimley-Horn and Associates.

mortgage payments, real estate taxes, insurance, homeowner association fees, and utilities.⁶

Affordability based on the ratio of housing cost to income depends on household composition and numbers so the characterization of housing as affordable requires reference to some standard level of income, such as 80 percent of the local area family median income (AMI). HUD

characterizes four-person households as "low income" if they fall below 80 percent of

median, adjusting the threshold according to household size. HUD uses further categories of "very low income" for those below 50 percent of median and "extremely low income" for those below 30 percent of median. Table 1 includes information on the number of rental households assisted under HUD programs and/or the low-income housing tax credit (LIHTC) program.

⁵ The 30 percent standard was set by the 1981 Omnibus Budget Reconciliation Act for federal subsidy programs and has since been used by HUD and others as a measure of affordability for unassisted housing as well. Previously, under the 1968 Brooke Amendment, a standard of 25 percent was used.

⁶ This measure, shown in reports from the American Housing Survey, depends on mortgage debt and fails to account for maintenance, changes in value, tax savings, or foregone investment income.

Table 1

Housing Cost Burden by Percent of Local Area Median Family Income - 2005

	0-30%	31-50%	51-80%	81-120%	121%+	All	0-50%	0-80%
RENTER								
Total Households	9,729	6,342	7,488	5,449	4,943	33,951	16,071	23,559
Rent Burden >50% of Income	5,999	1,361	321	147	61	7,891	7,360	7,681
Rent Burden 30–50% of Income	1,535	2,934	2,091	452	226	7,238	4,469	6,560
Over 50%	61.7%	21.5%	4.3%	2.7%	1.2%	23.2%	45.8%	32.6%
Over 30%	77.4%	67.7%	32.2%	11.0%	5.8%	44.6%	73.6%	60.4%
UNASSISTED RENTER								
Total Households	6,440	5,081	6,496	4,894	4,492	27,404	11,521	18,017
Rent Burden 50%+ of Income	4,545	1,184	295	134	56	6,214	5,729	6,024
<i>Rent above FMR</i>	1,454	829	290	134	56	2,763	2,283	2,573
Rent Burden 30–50% of Income	833	2,375	1,836	397	216	5,657	3,208	5,044
Over 50%	70.6%	23.3%	4.5%	2.7%	1.2%	22.7%	49.7%	33.4%
Over 30%	83.5%	70.0%	32.8%	10.9%	6.1%	43.3%	77.6%	61.4%
ASSISTED RENTER								
Total Households	3,289	1,261	992	555	451	6,547	4,550	5,542
Rent Burden 50%+ of Income	1,454	177	26	13	5	1,677	1,631	1,657
Rent Burden 30–50% of Income	702	559	255	55	10	1,581	1,261	1,516
Over 50%	44.2%	14.0%	2.6%	2.3%	1.1%	25.6%	35.8%	29.9%
Over 30%	65.6%	58.4%	28.3%	12.3%	3.3%	49.8%	63.6%	57.3%
OWNER								
Total Households	7,473	7,614	11,820	15,230	32,812	74,950	15,087	26,907
Cost Burden >50% of Income	4,360	1,744	1,347	685	405	8,542	6,104	7,451
Cost Burden 30–50% of Income	1,508	1,919	3,099	2,876	2,378	11,780	3,427	6,526
Over 50%	58.3%	22.9%	11.4%	4.5%	1.2%	11.4%	40.5%	27.7%
Over 30%	78.5%	48.1%	37.6%	23.4%	8.5%	27.1%	63.2%	51.9%

National totals; number of households in thousands

Source: *Affordable Housing Needs 2005: Report to Congress* (HUD May 2007)

Tables A-1a, A-1b, A-3

<http://www.huduser.org/portal/publications/affhsg/affHsgNeeds.html>

In 2005, about 69 percent of renters and 36 percent of homeowners were low-income, as Table 1 shows. Among low-income households (i.e., 0 to 80 percent of area median, adjusted for household size), housing costs reached more than 30 percent of income for 60 percent of renters and nearly 52 percent of home owners.

Unlike other federal programs that assist low-income households or other specific needy populations, such as food stamps or Medicaid, housing assistance is not an "entitlement" provided to all who qualify. In fact, most eligible households do not receive housing assistance. In general, HUD has only limited involvement in, or influence over, unassisted housing, but the effort to locate affordable housing near public transportation has generally been defined to include both assisted and unassisted housing.

The table illustrates several features of the affordability problem and of housing assistance programs that are relevant to this analysis.

- Even among extremely low-income renters, only a fraction of eligible households obtain housing assistance.
- Only half (50.2%) of assisted households are not in the extremely low-income category.
- Many households (49.8 percent) receiving housing assistance pay more than 30 percent of their incomes for housing.
- The majority (74.6 percent) of low-income renter households paying 30 percent or less of their incomes for rent are not assisted.

Housing is usually the largest expense in household budgets, but transportation also comprises a very substantial share. To some extent, households trade-off between housing cost and transportation cost, moving to distant suburbs to find cheaper housing but then facing higher transportation costs [Lipman 2006, CTOD/CNT 2006]. In recognition of the link between housing costs and transportation costs, some analysts have begun to measure the combined cost of housing and transportation. Private organizations have developed the initial estimates of housing plus transportation (H+T) affordability, but HUD is moving to adopt and refine those measures. The announcement of the 2009 HUD-DOT-EPA partnership noted that "Although transportation costs now approach or exceed housing costs for many working families, federal definitions of housing affordability do not recognize the strain of soaring transportation costs on homeowners and renters who live in areas isolated from work opportunities and transportation choices." Once more comprehensive affordability measures are created; however, it is unclear how they would be used in federal housing or transportation programs, other than to "provide consumers with enhanced information to help them make housing decisions."⁷ Perhaps the H+T measure will be used in awarding competitive grants under the new Sustainable Communities Programs.

Policy makers could use the H+T measure in state and local decisions, such as LIHTC allocations and land use regulations.

FEDERAL INCENTIVES

⁷ "HUD, DOT and EPA Partnership: Sustainable Communities" June 16,2009 factsheet downloaded from www.hud.gov/content/releases/pr2009-06-16factsheet.pdf

The federal government has a limited capacity to provide incentives for affordable housing near transit.

If incentives are interpreted to mean bribes to motivate activities that states and localities would not otherwise pursue, such incentives are likely to be unnecessary in the communities likely to seek support. Local governments, as well as nonprofit and for-profit developers in many communities, have been way ahead of the federal government in seeking to create affordable housing around transit. They need *tools* and *support*, and the elimination of barriers to achieve that goal.

In communities disinclined to create affordable housing around transit, incentives are likely to be ineffective. Many communities are content to forgo offers of federal support for affordable housing [Medford 2004], or for transit, and are even less likely to welcome both in combination.

As noted above, assisted housing makes up but a fraction of affordable housing supply. The tools available to federal agencies to offer incentives for unassisted affordable housing are especially limited.

The capacity of the federal government to provide incentives is also limited by the fact that a large proportion of federal outlays on housing and transportation are distributed to state and local agencies based on formulas, which further limits the capacity of the federal government to provide incentives. Further, Congress has deliberately restricted the authority of the federal agencies to dictate priorities. Local governments may use formula grants to create incentives for private developers to provide affordable housing, but that is a local choice. While federal discretion to set priorities remains constrained, some provisions attached to formula grant programs by federal statutes or regulations may act as barriers to local efforts to use those grants to provide incentives.

A fuller discussion of programs under which the federal agencies in the partnership have discretion to allocate funds follows. In terms of current and potential power for the federal government to offer incentives, the FTA's discretionary New Starts and Small Starts Program (Section 5309) particularly stands out. Competition is intense for New Starts funding, with over 100 projects in the pipeline seeking the roughly \$1.8 billion in annual funding, which is

distributed in relatively large amounts. The direct nexus between New Starts activity and TOD makes this program a logical focus.

Among HUD programs, the new Sustainable Community competitive grants represent an incentive, although the funds involved are limited and largely focused on regional planning not implementation of TOD. Other potential incentives largely involve financing, including FHA mortgage insurance. A forthcoming paper will further analyze finance issues.

Transit Use

The use of public transportation is generally higher among lower-income households. Table 2 shows some preliminary tabulations from the 2009 National Household Travel Survey (NHTS) for people living in metropolitan areas with populations of 1 million or more where rail transit exists. Among those with annual household incomes of less than \$20,000, more than 22 percent reported using public transportation more than 4 times in the preceding month, compared to 16 percent of households overall. Moreover, on the single day studied in-depth as part of the NHTS, 17 percent of households in the lowest income group used public transportation, almost twice the proportion of households overall (9 percent).

Table 2

National Household Travel Survey 2009
Transit use of persons by household income
In MSAs with rail transit and population > 1 million

	Less than \$20,000	\$20,000- \$39,999	\$40,000- \$74,999	\$75,000- \$99,999	\$100,000 and up	NA	All Incomes
Number of times used public transportation in last month							
0	5,547,299	6,891,598	9,050,165	5,412,587	9,465,431	2,646,378	39,013,458
1~4	1,976,479	1,277,099	1,870,791	1,413,568	3,094,334	639,205	10,271,476
5~10	963,713	619,838	778,836	450,726	1,194,003	223,177	4,230,293
11 or more	2,358,799	1,972,346	1,956,408	1,094,653	2,156,396	396,832	9,935,433
NA	<u>4,149,062</u>	<u>4,749,175</u>	<u>5,500,538</u>	<u>4,290,314</u>	<u>7,778,075</u>	<u>1,323,597</u>	<u>27,790,760</u>
Total	14,995,352	15,510,057	19,156,737	12,661,847	23,688,241	5,229,188	91,241,422
Percent of population in household income category							
0	37.0%	44.4%	47.2%	42.7%	40.0%	50.6%	42.8%
1~4	13.2%	8.2%	9.8%	11.2%	13.1%	12.2%	11.3%
5~10	6.4%	4.0%	4.1%	3.6%	5.0%	4.3%	4.6%
11 or more	15.7%	12.7%	10.2%	8.6%	9.1%	7.6%	10.9%
NA	<u>27.7%</u>	<u>30.6%</u>	<u>28.7%</u>	<u>33.9%</u>	<u>32.8%</u>	<u>25.3%</u>	<u>30.5%</u>
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Used public transportation on travel day							
Yes	2,495,477	1,865,386	1,359,396	664,536	1,376,149	335,777	8,096,721
No	9,023,914	10,628,366	14,854,016	10,080,684	18,781,526	3,640,508	67,009,014
NA	<u>3,475,961</u>	<u>3,016,305</u>	<u>2,943,325</u>	<u>1,916,627</u>	<u>3,530,566</u>	<u>1,252,903</u>	<u>16,135,687</u>
Total	14,995,352	15,510,057	19,156,737	12,661,847	23,688,241	5,229,188	91,241,422
Percent of population in household income category							
Yes	16.6%	12.0%	7.1%	5.2%	5.8%	6.4%	8.9%
No	60.2%	68.5%	77.5%	79.6%	79.3%	69.6%	73.4%
NA	<u>23.2%</u>	<u>19.4%</u>	<u>15.4%</u>	<u>15.1%</u>	<u>14.9%</u>	<u>24.0%</u>	<u>17.7%</u>
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Data from 2009 National Household Travel Survey,
U.S. Department of Transportation, Federal Highway Administration
Tabulated by Newport Partners, LLC

Bus service is the most prevalent form of public transportation in virtually every community. This intensive use of bus service largely accounts for the higher use of public transportation by lower-income individuals and households. For heavy rail, however, the relationship between income and transit use is more complicated. Data from 2001 for urban areas indicate that 19.7 percent of trips on heavy rail were accounted for by the 17.5 percent of the population in households with incomes below \$20,000. The heaviest users of heavy rail, however, were those with incomes of \$100,000 or more, who represented 14.0 percent of the population and 27.2

percent of the heavy rail trips.⁸ Households in middle-income ranges tended to use heavy rail less than those at the top or bottom of the income distribution. [Pucher and Renne 2003]

Members of low-income households make fewer trips, on average, than those with higher incomes. So even though the average number of trips taken on rail was not as high for the low-income population as for those with the highest incomes, rail transit represents about the same share of total trips taken by the lowest- and highest-income households. Low-income households use rail and bus transit for shopping, visiting, medical appointments, and other non-work-related travel, while many high-income households typically only use transit for peak hour commuting and other work-related trips. With fewer cars and other resources, lower-income households are more commonly transit-dependent than are middle- and high-income households. Even so, public transportation of all types accounts for less than 5 percent of trips taken by low-income households, and a substantial majority of households with incomes under \$20,000 own cars.

The extent to which transit use by lower-income households in close proximity to transit differs from transit use by lower-income households located further away (or from use by higher-income households near transit, especially for non-work travel) deserves further study. The absence of better information about the relationship among affordable housing location, transit use, low-income household mobility, and job access comprises an impediment to effective policy, planning, and development.

Matching Transit with Riders

For market-rate housing, rents and house prices are usually higher in TOD [Duncan 2007, Arrington and Cervero 2008], although the presence or extent of the price premium depends on a variety of factors such as the quality of transit services, extensiveness of the system, and locations of employment and other destinations. Increased real estate values—a trend central to the current analysis—tends to restrict access for low- and moderate-income households. Among households with sufficient incomes, however, the marketplace determination of prices

⁸ This figure does not include commuter rail, where the high-income group accounted for an even greater share: 41.6 percent.

produces a beneficial allocation of resources. Households placing the greatest value on proximity to transit—and most likely to use the service—will choose to pay the premium price, while households with similar incomes, but with less desire or need for transit services, will locate elsewhere.

As noted earlier, lower-income households typically rely on transit more than do middle- and higher-income households. But under a system where a limited supply of assisted or reserved affordable housing is provided somewhat randomly to eligible low-income households, the marketplace allocation to those who place the greatest value on transit proximity will not operate.⁹

Affordable housing near transit is a scarce resource. Low-income households with little interest in transit use, perhaps with jobs that are not accessible by transit, may occupy affordable units near transit simply because they are less expensive than market-rate units elsewhere [Arrington and Cervero 2008, p27], while other low-income households who wish to be near transit and who would use it extensively, end up in assisted or market-rate housing in locations where transit access is problematic.

There may be mechanisms to allocate affordable housing near transit to households with a high probability of transit use, which would enhance the synergy between TOD affordable housing and ridership. Most of the potential devices for matching affordable housing near transit with low-income households that are transit-dependent or transit-supportive are in the hands of local officials. Limiting, or charging for, parking may be effective, although a family finally reaching the head of a waiting list will not readily refuse an offered unit because it does not include parking. Certain federal policies, such as a change in voucher rules suggested below, might be employed to match riders with housing near transit. Doing so would work to the benefit of households, transit systems, and the broader community.

⁹ To describe the placement of assisted households as random may be somewhat of an overstatement, but to the extent that the description is accurate, this placement pattern offers an opportunity to more effectively research the effect of transit-oriented development on travel. Several studies (e.g., Gomez-Ibanez 2009 p 36; Cao, Mokhtarian, and Handy 2009) have explicitly described random assignment as the ideal, but impossible, basis for studying how the built environment affects travel without the vexing complication of self-selection.

Land Acquisition and Eminent Domain

Fixed guideway transit and affordable housing both require land.

Land acquisition for transit and other public purposes often involves the use or threat of the power of eminent domain. State governments generally determine the authority of state and local agencies to invoke eminent domain, but their authority is subject to federal constitutional, statutory, and regulatory requirements. Although most land acquisition by public agencies does not involve eminent domain proceedings, the potential use of such authority is central to land acquisition in support of policy objectives. A thorough analysis of land acquisition and of the power of eminent domain is beyond the scope of this report, but several aspects of HUD, FTA, and EPA programs that affect local land acquisition deserve mention.

The mere announcement of possible future transit facilities may increase land values [Knaap 2001, Immergluck 2009]. Such increases, and the long lag between conception and completion of transit facilities, are among the key impediments to incorporating affordable housing in transit-oriented development.

Communities trying to support affordable housing near transit have sometimes been constrained by limitations on when public agencies can purchase land along a proposed corridor. Issues related to the National Environmental Policy Act (NEPA), which require a federal Record of Decision before additional right of way can be purchased, mean that speculators have many opportunities to purchase land while the corridor is being studied, ahead of when public governments and transit agencies can act. FTA is in the process of considering significant changes to the planning and project development process, including eliminating the Alternatives Analysis as a stand-alone New Starts requirement, instead applying the evaluation of alternatives already completed in the NEPA process.

Theoretically, land purchases by transit agencies are protected from price inflation engendered by anticipation of those purchases. The broad federal requirement to pay fair market value

stipulates that value should be determined net of any change caused by construction or anticipation of a transit project.¹⁰

Various "value capture" devices have been used or proposed to insulate affordable housing from this type of land cost surge. Probably none is as effective as including the acquisition of land for affordable housing along with acquisition for transit. Although such acquisition could be undertaken by other public entities, transit agencies are uniquely well-positioned to play this role. Transit agencies may not be authorized or inclined to acquire land for affordable housing. To the extent that they do wish to play that role, they often have been discouraged by the use of the cost effectiveness index in the federal policy guidance on New Starts. FTA rates proposed projects using a cost-benefit analysis. Buying land for eventual low-income use would appear as higher cost, but the benefit would be unknown and not counted.

In 2005 the Supreme Court's *Kelo* decision [545 U.S. 469] upheld the authority of a local government to acquire property through the power of eminent domain for private economic development, even in the absence of blight or intended public use. Following this decision, a number of states tightened their restrictions on the use of eminent domain powers. In addition, as part of an appropriations bill funding HUD, DOT, the Department of Justice, and Independent agencies, Congress placed new restrictions on the use of eminent domain by grantees of those agencies for non-public purposes [Pub. L. 109-115, div A, title vii, sec 726, 119 stat 2396 *et seq*]. The provision imposing those restrictions specifically designated transit among public purposes exempt from the restrictions. The HUD Community Development Block Grant (CDBG) program was not identified as exempt, however. Subsequent regulatory guidance [FR 71:136, July 17, 2006: 40634-40636] stated that land acquisition for low- and moderate-income housing using CDBG funds could involve eminent domain, if that was the sole purpose of the grant. But mixed use development—often an essential element of TOD—would "raise concerns" and "even those with a relatively small amount of retail or commercial space, will require careful evaluation."

¹⁰ Specifically, under 42 USC 4651 - Uniform policy on real property acquisition practices, " Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property." See also 49 CFR 24.

Although the initial CBDG legislation applied just to FY2006, Congress has incorporated similar language in subsequent appropriations. Unlike in the broadly applicable Uniform Relocation Assistance (URA) federal requirements, the restriction on CBDG use of eminent domain has no distinction between acquiring the home of a family or a small business and acquiring unused vacant or industrial land. The extent to which the restriction on land acquisition with CBDG has been an impediment to transit-oriented development is unclear, but some local officials have identified it as a barrier.

FTA Programs

FTA's New Starts/Small Starts program (also referred to as Section 5309) provides major grants to build public fixed guideway transit routes, including heavy rail, light rail, streetcar, urban circulators, bus rapid transit, and ferries. The program selects projects for funding based on specific project justification criteria, including mobility improvements, environmental benefits, cost effectiveness, and transit-supportive land use policies.

In January 2010, Secretary LaHood announced changes in the weighting of criteria for the selection of projects recommended for federal funding. DOT has also announced plans to further revise the New Starts/Small Starts ratings process and evaluate statutorily required criteria. New Starts selection criteria currently lacks explicit consideration of affordable housing, but federal statute provides the DOT Secretary with the authority to elevate project ratings for "other factors," which could include a bonus for demonstrated commitment to affordable housing within a proposed new transit corridor.

Projects are still scored using a cost-effectiveness index (CEI), a measure of travel time savings for transit users associated with the full project cost for the transit corridor. This creates a serious disincentive to purchase excess right of way that could be used for affordable housing and joint development. The recent policy change reduces the influence of CEI on determining which projects may advance.

The most important element of FTA and transit agency involvement in the creation of affordable housing around transit (other than providing the transit) has been the use of *joint development*. Joint development means that land acquired by transit agencies with federal support may be

made available for development surrounding and supporting transit locations. FTA sets conditions under which such land may be leased or sold without having to reimburse the federal government.

Traditionally, the prime motivation of transit agencies in joint development—reflecting criteria set by FTA—has been to generate maximum revenue through land sales or leases to support transit agency operations. Liberalization in 1997 [Federal Register 62:50, pp. 12266-12269] encouraged TOD, including some affordable housing [see e.g., Dumbaugh 2004], by permitting property to be sold or leased at less than maximum market value if the lower real estate revenue was justified by increased ridership. FTA designated this criterion as "highest and best transit use."

Revised regulations regarding joint development issued in 2007 by FTA [Federal Register 72:25, pp. 5788-5800] provided greater discretion for transit agencies to use FTA-financed land for development around stations. The newer rules allow the local agency to decide whether a joint development deal is appropriate, dropping the "highest and best transit use" construct. The revised guidance specifically indicates that parking spaces eliminated by joint development need not be replaced on a one-for-one basis, if the new development will generate as many trips as the parking would have. There are still some limitations or ambiguities in the rules for joint development, and still an emphasis on what the development will do for transit, rather than what TOD and affordable housing will do for the community. The current policy stance seems to hold that affordable housing is acceptable as part of a class of commercial and residential development related to public transportation, but does not particularly encourage it. Positive effects on mobility for transit-dependent populations, improved access to employment opportunities, reductions in combined costs for housing plus transportation, and similar virtues are not recognized in the criteria. In contrast, this perspective explicitly identifies economic development as worthy.

FTA may believe that the 2007 guidance provides a clear path for joint development of affordable housing, but many transit agencies and local FTA offices apparently perceived otherwise [GAO 2009].

HUD Programs

Most HUD program funds are allocated by formula and administered by local public agencies. HUD devotes the largest share of the its budget to subsidies for low-income renters.

HUD subsidizes rental housing for low-income households in two ways: project-based subsidies and tenant-based assistance. Project-based subsidies, including public housing and the HOME program, provide funds to property owners, in the form of loans with below-market interest rates, grants, or rent payments. In return, the property owners agree to restrict occupancy to eligible low-income households and to charge reduced rents to those households. This basic arrangement of restricting occupancy to eligible households paying limited rents also applies to non-HUD project-based assistance, including low-income housing tax credits and state and local programs, such as rental units under inclusionary zoning programs.

Tenant-based assistance can be provided through the HOME program or other HUD programs such as Housing Choice Vouchers, which allow households to choose where to live, provided that the housing meets certain quality standards. Local housing authorities, using HUD funds, pay the difference between 30 percent of the household's income and either the rent on the unit or a market-determined standard rent (whichever is less). The local housing authority has the option to assign some vouchers to specific units, making them effectively project-based.

Privately-owned project-based assisted units are, in the majority, owned by for-profit entities. Their agreements to restrict occupancy to eligible households and to charge limited rents are of limited duration, and many are due to expire in the next few years. There have been ongoing efforts to retain those units under project-based assistance, and most assistance agreements have been extended. Property owners have terminated some assistance agreements, however, particularly in strong markets where there is a prospect of converting to higher-rent unassisted housing or to nonresidential use. As several recent reports have noted, many of the properties due to expire are located near transit, and those properties may be especially vulnerable to owners "opting out" of the assistance regime. More than in other rental assistance programs, HUD private project-based assistance serves a transit-dependent population with mobility limitations. Two-thirds of the households receiving project-based assistance are elderly or disabled. In cases where project-based assistance contracts come to an end, local agencies usually provide tenants with vouchers that they may be able to use to stay where they are, or

use elsewhere. In seeking other housing, they may find units with comparable rents, but without equivalent access to transit. That outcome could require transit agencies to provide costly on-demand paratransit to serve those displaced tenants.

HUD Secretary Donovan has already indicated support for retaining assisted units near transit,¹¹ but the tools for identifying expiring contracts in those priority locations and for providing special incentives are not fully developed. There are various options for dealing with expiring assistance contracts [Achtenberg 2009, 2002; HUD 2009], and HUD has some discretion to pay rents in excess of the local Fair Market Rent to retain properties deemed to represent high priorities. No explicit consideration, however, is given to the relationship to tenant mobility and transportation costs. Most rent comparability assessments consider the value of transit indirectly, if at all, but that may not adequately reflect the particular importance of transit proximity to the assisted households.

Unlike other federally backed rental assistance, the private project-based rental agreements were established directly between HUD and private property owners, with little involvement by state or local agencies [Turner and Kingsley 2008]. Nonetheless, state and local governments have played a key role in efforts to retain properties with expiring assistance contracts, through LIHTC allocations and other means, and have often given weight to proximity to transit.

Transit proximity could be recognized in the Housing Choice Voucher Program, which allows assisted households, within limits, to choose their housing. Low-income households in that program have their rent subsidized by an amount equal to the difference between a "Payment Standard" rent level (based on a HUD-determined Fair Market Rent) and 30 percent of their incomes. If they live in a qualifying unit where the rent is less than the standard, they still pay 30 percent of their incomes. They may live in a unit where the rent is more than the standard and pay more than 30 percent of their incomes for rent, but at the time they initially receive benefits or, if they move, they are not allowed to pay more than 40 percent. They may subsequently end up paying more than 40 percent, however, due to rent increases or income declines, and about one-sixth of voucher holders do pay more [McClure 2005, Mast 2009].

¹¹ See testimony to Committee on Financial Services, House of Representatives, June 25, 2009.

The rules prohibiting initial rent expenses greater than 40 percent of income could be relaxed for new voucher recipients and movers who locate near transit. As noted earlier, researchers have extensively documented the trade-off between housing cost and transportation cost. It is reasonable to pay more for rent if it means reduced transportation cost. Moreover, such a policy would tend to ensure that assisted households near transit, like unassisted households near transit, will be likely to use the service.

With regards to vouchers, another issue is whether property owners accept them. Properties with low-income housing tax credits must accept voucher holders, but other private properties often do not.¹² TOD housing with other forms of federal government support, including joint development projects, could also be required to accept vouchers.

The new HUD Office of Sustainable Housing and Communities will provide competitive grants totaling \$100 million for a Sustainable Communities Planning Grant Program, and later a separate \$40 million Community Planning Challenge Grants Program. These grants are not limited to planning affordable housing or transit, but make up one of the most tangible examples of the partnership among HUD, DOT, and EPA.

EPA Programs

Within the EPA, several opportunities exist to weave incentives into existing programs or legislation, for example, within the agency's Brownfields program and in its administration of the Clean Air Act (CAA). In addition, the federally capitalized Clean and Drinking Water State Revolving Loan Funds offer the EPA the ability to provide guidance on the states' use of these funds.

Brownfields

The Brownfields Program includes three types of grants: assessment, revolving loan fund, and cleanup. All three categories of grant are awarded on a competitive basis, using criteria that

¹² Some states and localities prohibit discrimination based on source of income, including voucher use. In California, there is a state law prohibiting discrimination based on source of income, but that does not protect voucher use.

include an evaluation of community need, feasibility of project success, community engagement and partnerships, and the overall benefit provided by the project (which includes a subcategory of community sustainability).

The feasibility of project success generally receives the most significant weighting, but affordable housing could be recognized as a community need. The program could interpret affordable housing near public transit as community sustainability, although to date this factor does not appear to have been given much weight.

Federal assistance under one of the three Brownfields grant programs could be a significant incentive for affordable housing in TOD projects if the ranking criteria included a higher weighting for such projects.

Cleanup grants require a 20 percent local match. If projects with affordable housing could use a lower match requirement, it would represent a further incentive and would serve to reduce the recipient's perceived level of risk in the project.

Clean Air Act

A particularly relevant aspect of the CAA is that it can restrict federal funding for transportation projects in areas that fail to attain air quality standards. States with areas that do not meet national ambient air quality standards must submit a State Implementation Plan (SIP) to EPA. The SIP serves as the state's action plan to improve the air quality in non-attainment areas, which include most large cities with rail transit.

If the EPA were to recognize locating affordable housing near transit as a transportation control measure (TCM) under the clean air criteria, then this could act as an incentive for including affordable housing in TOD.

Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF)

The CWSRF and the DWSRF are both state-managed revolving loan funds that provide flexible financing for water quality protection projects (CW) and for the planning, design, or construction

of drinking water facilities (DW). While states maintain discretion over the rules of these funds, the funds provide an opportunity for the federal government to publish resources and best practices on how to link these critical federal dollars to livability and affordable housing goals. For example, states could prioritize the use of these funds for projects that support development in transit-served, infill locations that have been prioritized through a regional or local planning process as opportunity sites for mixed-income housing.

STATE, REGIONAL AND LOCAL INCENTIVES AND BARRIERS

A number of inherent barriers exist to developing mixed-income TOD projects; policies at the state, regional, and local level often create additional constraints. Local land use policies and building codes create frequent regulatory barriers to both affordable housing and TOD. Mixed-use development is illegal in many local zoning ordinances, particularly in suburban communities where zoning codes often fail to include adequate multi-family housing or other transit-supportive policies [Knaap, Meck, Moore, and Parker 2007; Ihlanfeldt 2004; Pendall 2000] .

Parking requirements may cause particular concern. For example, while researchers have proven both TOD and affordable housing to require fewer parking spaces than conventional development, many cities have blanket parking policies that require as many as 2.5 or more spaces per residential unit, regardless of the location. This drives up project costs and often makes it financially infeasible to provide affordable housing. Furthermore, from an urban design perspective, building too much parking space can inhibit the walkability and community character of a project. Similarly, land use laws in transit station areas often have not been updated to allow the levels of density or mixture of uses that will facilitate successful mixed-income developments.

In attempts to address these problems, many states, regions, and localities have developed policies and programs that lower barriers or provide incentives to building affordable housing near transit. The paragraphs that follow discuss these incentive policies with attention to how federal funding programs relate to these issues.

Transit Agencies

The role of transit agencies has been mentioned earlier. These public entities are, as noted, well placed to participate in the creation of affordable housing in transit-oriented development and, in many places, have made major contributions in that role. Their principal function, however, is to ensure effective, safe, and efficient provision of a transit service. Transit agencies are creatures of local and/or state government and their government sponsors will largely guide the extent of their involvement in development. Still, to the extent that TOD and affordable housing near transit demonstrably serve their primary function satisfactorily, providing steady patronage and revenue for the transit enterprise, transit agencies are more likely to actively support transit-related affordable housing.

Redevelopment Agencies



Pleasant Hill BART Station features a new parking garage and trail built as part of the redevelopment.

Redevelopment agencies are local agencies that are authorized through state charters and charged, in most cases, with addressing issues of "blight." Not all localities with transit have redevelopment agencies but, where they exist, they are often key players in the development of mixed-income housing projects near transit. Because of their ability to own and patiently hold land, collect tax-increment financing, and exercise eminent domain, redevelopment agencies can provide critical financing, land assembly, or infrastructure to make it financially feasible

for a project to include affordable units. In some cases, during the initial phases of a project, the redevelopment agency's role is limited to land assembly. In others they serve as equity partner with private for-profit or nonprofit developers, transit agencies, or local governments throughout the life of a project. For example, at the Pleasant Hill BART station in Contra Costa County, the redevelopment authority assembled land, financed infrastructure, and provided amenities in the station area. Due in large part to the redevelopment agency's ability to act as a patient land holder and to shepherd a complex deal involving a number of public and private partners, 20

percent of the housing units in the project are affordable and transit accounts for 40 percent of resident work trips.

San Francisco provides another example of a redevelopment agency playing a key role in building mixed-income transit-oriented development. Here a redevelopment plan guided the creation of the 303-acre Mission Bay project along the city waterfront, in a walkable neighborhood served by commuter rail, light rail, and electric bus. The fully built-out Mission Bay project will include 6,000 housing units, 5 million square feet of corporate offices and bio-tech space, a new university campus, a hotel and conference center, 750,000 square feet of retail, and 49 acres of park and open space. As part of the development agreement, the original private-sector master developer agreed to dedicate 14 parcels of land for affordable housing. The redevelopment agency competitively selected developers and provided land and tax increment financing to help build the affordable projects. The agency plans that 28 percent of the housing will be affordable to very-low-, low-, and moderate-income households. With parking minimums relaxed, the development has a parking maximum of one space per unit [CTOD 2009].

Inclusionary Housing Requirements and Incentives

Inclusionary housing policies—zoning rules that require that a percentage of all units built are affordable—are a tool for mixed-income development to provide affordable units without public funding, land acquisition, or land assembly. Inclusionary housing policies may, for example, require that 10 to 25 percent of units in a development be affordable to households at specified income levels. But if perceived as too burdensome and infeasible, specific requirements may create a barrier to development, including development of affordable housing. Often the local jurisdiction will negotiate with developers with regard to requirements, rather than rely on fixed standards.

Rather than mandating a specific affordable share, localities may offer a density bonus that allows a developer to build more units,¹³ and perhaps to increase the floor-area ratio or height

¹³ In general, local regulations impose maximum density restrictions, though urban areas and transit districts increasingly also include minimum density regulations.

of a project, in exchange for providing affordable housing or public amenities. Density bonuses may apply broadly or be specific to TOD programs. Because a density bonus is an incentive, it can be effective in a political environment where policymakers are not willing to require mixed-income housing. On the other hand, such an incentive-based policy is unlikely to produce as many units or in-lieu fees as a required inclusionary policy.

To encourage mixed-income housing, Chicago uses a density bonus incentive rather than a mandatory inclusionary housing program. The city's policy provides additional floor area ratio and height in exchange for providing affordable housing, either on-site as part of the project or through in-lieu fees. For on-site units, developers receive a 4:1 bonus of additional square footage for each foot of affordable housing [Shoemaker and CTOD 2006]. The units, which must remain affordable for 30 years, are targeted either to renters earning 60 percent of AMI or owner-households earning 100 percent of AMI.

Expedited Permitting

Developers have reported that expedited permitting is one of the most enticing incentives that local governments can provide to encourage TOD [Cervero et al 2004]. By extension, expedited permitting represents a tool for encouraging affordable housing. Not only does priority permitting reduce the delay (risk) of a project from the developer's perspective, it also allows a public agency to target limited staff resources toward projects that meet local goals regarding TOD and affordability. In Austin, TX, the Safe, Mixed-Income, Accessible, Reasonably-priced, Transit-Oriented Housing Program (SMART) offers expedited permit review and fee waivers to projects that provide certain levels of affordable housing and are transit-accessible. The SMART policy requires that the development includes at least 10 percent "reasonably-priced" housing units and offers a sliding scale for reduced fees for providing affordability at higher levels [City of Austin 2008].

At the state level, the California Department of Transportation Transit Village Development Planning Act states that a city or county establishing a transit district plan shall receive assistance from the state to help establish an expedited permit process for development projects that meet the goals of the transit plan. This state policy includes increased affordable housing goals within its definition of a transit district, though it does not include threshold requirements within these districts [CA State Code 3:65100 – 65763, Article 8.5].

Reduced Parking Requirements

Because providing for parking is expensive, reducing parking requirements increase the feasibility of mixed-income and mixed-use TOD. While many cities have adopted lower parking minimums or even parking maximums in transit zones, several cities that also have incentive policies that reward mixed-income TOD projects with reduced parking requirements. In Los Angeles, the Affordable Housing Incentive Program permits one parking space per affordable dwelling unit located within 1,500 feet of a transit station. Similarly, the Arlington County (VA) parking plan reduces the parking standards for developments that advance county affordable housing goals and, where possible, seeks to eliminate regulatory parking requirements for affordable or supportive housing near transit. Also, some cities without explicit parking policies use variances to allow individual mixed-income TOD projects to provide fewer parking spaces.

Preserving Existing Affordable Housing

Given that increased land values and development pressure can dramatically increase around transit, preserving existing assisted and unassisted affordable housing is a critical component of neighborhood stability. Efforts to minimize the displacement of existing low- and moderate-income residents often include the purchase and maintaining of existing units by a public agency, a tenant cooperative, or a Community Development Corporation or other nonprofit.

The anticipated expiration of project-based agreements with landlords requires action from both HUD and local governments to preserve existing affordable units with project-based assistance. As noted earlier, LIHTC allocations to rehab properties with expiring assistance, often provided to nonprofits or tenant organizations purchasing the properties, have helped the program retain some properties. Other cases have involved grants and other contributions, some with locally generated funds.

Denver has created a \$15 million TOD fund, dedicated to the preservation of affordable housing within one-half mile of existing and new rail service and within one-fourth mile of frequent bus routes. The fund will target three types of properties: existing federally assisted rental properties; existing unsubsidized rental properties that are currently affordable to households at or below 60 percent of area median income; and currently vacant or commercial

properties with desirable locations for the creation of new affordable housing. The TOD Fund is a partnership among the City and County of Denver, Enterprise, and the Urban Land Conservancy [Macarthur Foundation 2010].

For unassisted affordable units, localities have used regulations, including rent controls and restrictions on condo conversions, where gentrification related to transit and TOD has threatened displacement. In 1980 Washington DC enacted the Tenant Opportunity to Purchase Act, giving tenants of all rental housing the right to purchase their units or to assign that right to a third party when the rental property is put on the market. Tenants are given 120 days to negotiate the purchase and secure financing. Several large apartment complexes have been transferred to shared-equity ownership through this process. [CTOD 2009].

Subsidies/Grants

Another type of incentive that many states, regions and localities use to encourage mixed-income TOD is direct support through subsidies and grants. While the second paper of this series will discuss this topic more thoroughly, it is worth noting here that subsidies and grants can be directed either to the developer for building affordable units or to the locality for zoning or planning for them. It is common to award planning grants. For example, in Massachusetts, the state Housing and Smart Growth Incentive Law provides direct funding to municipalities that adopt transit village overlay zones that meet density requirements and provide at least 20 percent affordable units. Policies that institutionalize direct subsidies to developers are slightly less common. It is more common (and perhaps less problematic) for developer subsidies to take the form of amenities, infrastructure or other physical contributions to a project, or attractive loans or tax exemptions.

Tax Abatement

Tax abatement programs are commonly used to attract businesses and stimulate economic development, but have also been used as an incentive for affordable housing investment [Dalehite, Mikesell, and Zorn 2005]. Property tax represents an average of about 7 percent of the rent received by residential property owners [Institute of Real Estate Management 2009]. Local governments may offer temporary abatement of real estate tax for development or rehabilitation of affordable housing near transit. The exemption typically only applies to

improvement costs, not to land, but the resulting enhancement of returns for investment in construction or rehabilitation may make the land costs more palatable, and may enhance the attraction of investment in housing that includes an affordable component relative to other uses.

The city of Portland (OR) has a program of tax abatement for housing within one-fourth mile of a light-rail station. To be eligible, developers must include a specified share of affordable units, and the site must include other public benefits such as childcare, community meeting rooms, or other public amenities.

Most tax abatement programs for affordable housing, however, do not specifically target TOD or other locations in proximity to transit.

Infrastructure, Service, and Amenity Provision

In many infill locations, the capacity of the existing transportation, sewer, or water infrastructure limits project density. For this reason, to support mixed-income TOD projects, localities and regions have employed a form of public-private partnership where the public agency provides funding for infrastructure expansions in exchange for an agreement from a developer to build at certain densities or levels of affordability. In connection with infrastructure expansion, local agencies use flexible federal transportation funds for projects including street improvements, sidewalks, and lighting. Many of these redevelopment projects may be on existing Brownfield sites, making it possible for them to also take advantage of special cleanup funds.

The San Francisco Bay Area has established two regional programs run by its Metropolitan Planning Organization (MPO), the Metropolitan Transportation Commission (MTC). The Transportation for Livable Communities (TLC) Program provides planning capital grants through a competitive application process to projects that meet smart growth criteria. Grant funds can support station area and downtown plans, as well as capital projects like streetscapes, pedestrian and bicycle improvements. It is important to note that funding for TLC comes from the Federal Congestion Mitigation and Air Quality CMAQ Program (65 percent), Transportation Enhancements (31 percent), Surface Transportation Program STP funds (2 percent), and State transportation allocation (2 percent). HUD and DOT could draw attention to creative use of programs like this that give mixed-income TOD projects priority in local decisions regarding the use of federal funds.



Charlotte's Scaleybark station is surrounded by large industrial and commercial sites, making it well-suited for a catalytic project that is pedestrian-oriented, mixed-use, and mixed-income. From Mixed Income Housing Near Transit, CTOD 2009.

Land Acquisition Funds

Although more of a strategy than an incentive, land acquisition funds are being established in a growing number of communities. In one example, Charlotte (NC) established an Affordable Housing Trust Fund to provide public funding to private developers in exchange for affordable units. The city can make either loans or grants for land acquisition or construction. By 2007, the fund had enabled the construction or rehabilitation of more than 2,800 units, more than half of

which were for households earning below 30 percent of AMI. The average subsidy per unit was less than \$14,000 [CTOD 2009].

CONCLUSIONS AND RECOMMENDATIONS

This analysis, and the further examination to be discussed in subsequent papers, has led to findings in five key areas. First, current HUD, DOT, and EPA programs offer few direct incentives for affordable housing near transit and do not appear to be well coordinated. HUD's HOME and CDBG programs and DOT's CMAQ and other federal-aid highway funding programs are all examples of federal funding streams that have, on a limited basis and at the discretion of local governments or regional agencies, been used to incentivize or build affordable housing near transit. But this is not commonly applied or widely understood by practitioners. Also, although transit agencies and local governments are uniquely positioned to contribute to the creation of affordable housing opportunities near transit, both entities often lack the capacity and expertise needed to be fully effective. Some areas of policy are in particular need of expanded research and development: for example, while most affordable housing for low-income households does not receive federal subsidies, there are few model policies for preserving these critical units.

Second, current federal programs impose some barriers to the production or retention of affordable housing near transit. Several of those barriers, such as those related to the New Starts Program and Joint Development, are in the process of being reduced or eliminated. Others discussed above, including issues related to land acquisition and local match requirements, could be addressed as priorities of the Interagency Task Force on Sustainable Communities.

Third, where affordable housing is included in transit-oriented development, there is no mechanism for prioritizing tenants for those units who are most likely to use transit. If affordable housing near transit is allocated randomly, the potential benefit to assisted households, to the transit system, and to the community will not be realized.

Fourth, transit agencies are uniquely positioned to contribute to the creation of affordable housing opportunities near transit. There have been numerous instances of transit agencies assisting in efforts to create affordable housing, but transit agencies often lack the capacity and motivation needed to be fully effective.

Fifth, residents of housing with project-based assistance, who are predominantly elderly and/or disabled, may not be intensive users of transit, but are transit-dependent. If they are displaced as assistance contracts expire, it may translate into increased need for costly on-demand paratransit services.

These finding and the contributions of the expert panel have led the research team to present the following recommendations for consideration by the HUD/FTA Working Group:

- Clarify that affordable housing near transit is an appropriate focus for joint development and a transit-supportive land use.
- Adapt transportation and housing policies that facilitate, rather than impede the acquisition and reservation of land around transit facilities for affordable housing
- Implement the expressed intention to give priority to preservation of assisted housing near transit.
- Publicize best practices of programs and policies that have, under existing rules, used federal funds to support the development of affordable transit-oriented development. Similarly, provide technical assistance on how these funding programs can be applied to reach this goal.
- Adapt existing programs to encourage their application toward TOD affordable housing projects and to remove barriers. This may involve adapting the formulas used to distribute such funds to favor localities with policies in place that support affordable housing near transit, addressing conflicts that prohibit HUD and FTA funds to be used in a coordinated manor, or creating new incentives where none presently exist.
- Continue to engage regularly with practitioners in the affordable housing, transit and community development fields, particularly those who have applied for and used federal funds and can provide valuable insight.
- In order for low-income households to benefit from transit to the fullest extent possible, encourage a system-wide approach to planning for both transit and affordable housing: one which considers the location of relevant jobs and services, integrates rail and bus services, and promotes walkability and local destinations where possible.

- As transit is planned and funded, an expansive view of the social, economic, and environmental impacts should be considered, rather than only direct costs and traffic impacts.
- Although not specifically addressed in this paper, central to the creation of affordable TOD is the need to improve and preserve existing transit service. The financial challenges faced by transit providers in nearly every U.S. state could mean that the number of opportunity sites for successful new TOD projects will shrink, rather than expand, in coming years.

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