Tools for Mixed-Income TOD

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The Center for Transit-Oriented Development (CTOD) was launched in 2003 to help bring transit-oriented development (TOD) to scale as a nationally recognized real estate product. It is a partnership of Center for Neighborhood Technology, Reconnecting America, and Strategic Economics.

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Introduction

The purpose of this paper is to evaluate and disseminate examples of tools and strategies from around the country that are being used to create mixed-income and affordable housing near transit. Through this report, we hope to encourage more communities, regional agencies, state and federal government, and developers to adopt and improve upon the successful strategies, and to spur ideas for other tools that do not yet exist.

The first half of the paper explains the general areas and ways in which the tools are used, as well as any limitations that currently exist, and the second half provides best practices and an actual example of the strategy or tool in a transit-oriented development.

Tools and Strategies

The tools and strategies for creating mixed-income TOD described in this paper are described within the following three categories in this order:

- Zoning and Planning
- Financing
- Joint Development and Partnerships.

ZONING AND PLANNING

Zoning and planning are essential to achieving mixed-use and mixed-income TOD. In a 2005 evaluation of a number of HOPE VI projects, Valerie Piper and Mindy Turbov concluded that the successful mixed-income projects demonstrated that "strong design and master planning matters." Cities and housing authorities that planned for amenities, safe or "defensible" public space and a "pleasant, positive, and useful environment," for contemporary families and seniors, and which were "firmly grounded in assessments of market trends" were successful redevelopments. [1] These findings hold the same truths for mixed-income, mixed-use, and mixed race transit-oriented neighborhoods.

Zoning and planning can help TOD in many ways, especially via special zoning for station areas, "transit district" or "transit village", or specific site plans, through incentive-based zoning. Public agencies should consider its zoning powers as a form of value capture when considering how to encourage more diverse mixed-income and mixed-use TOD. The public agency responsible for planning and setting the zoning code should develop any transit-specific zoning jointly with the transit agencies, both bus and rail, that have facilities and routes within the area. This ensures the actual properties and rights-of-way will also be addressed in development.

To promote good TOD, cities need to develop conceptual land use plans and a development scheme, streetscape and design guidelines, priority infrastructure investments, and a financial plan. Plans should also be expanded to include housing types and affordability, commercial uses, and business attraction and mixes, and job location. In this way, developers will know what's expected and employers will have guidance on site selection. However, design guidelines should be flexible enough to allow for variations in buildings allowing for creativity, originality, and affordability. Guidelines that are overly prescriptive may be cost prohibitive, thereby stalling development.[2]

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[1] Mindy Turbov and Valerie Piper. "Hope VI Mixed-Finance Redevelopments: A Catalyst for Neighborhood Renewal", A Discussion Paper prepared for The Brookings Institution Metropolitan Policy Program, September 2005.

[2] In a study on TOD for the Transit Cooperative Research Board, Cervero and others showed by survey that while transit operators, planners and agencies thought financial incentives were what is most important, developers and investors focused almost exclusive on "time is money" and the need for regulatory certainty and streamlining. *Transit Oriented Development in America: Experiences, Challenges, and Prospects.* Washington, D.C.: Transit Cooperative Research Program, Report 102, 2004; with G. Arrington, J. Smith-Heimer, R. Dunphy, and others.

Station Area Planning and Transit District Zoning

Station area plans refer to conceptual or specific plans for an area around a transit station or corridor. There is some variation in what these plans contain, but they should lay out basic elements like zoning, design standards, parking requirements and information about transit access and bike and pedestrian circulation. The most effective plans have a clear timeframe and strategy for implementation, such as an investment or infrastructure improvement plan with clearly identified funding sources. Plans can be paired with numerous other tools like tax increment financing to provide a cohesive strategy for implementation.

Station area plans work best for encouraging TOD when significant development opportunities exist, a result of, for example, large parking lots or other underutilized land. They are less useful for single buildings or projects of a more limited scope. Station area plans should be done early in the process to provide maximum benefit to all parties and be specific enough to create certainty for developers and community members alike. In some cases, plans are advanced enough to create "by-right" zoning possibilities that greatly expedite the time from project conception to start of construction.

Certain elements of the station area plan may be proscriptive, such as prohibitions on auto-oriented retail, or prescriptive, such as a provision that at least 50 percent of the ground floor space be devoted to retail. Other elements may be permissive, i.e., the developer has the option but is not required to provide a feature. The challenge lies in finding a balance between required and optional elements so that the development is truly transit-oriented but developers are not discouraged from building at all. Planners and policymakers should heed the admonition of not letting the perfect get in the way of the good.

Planned developments are additional element of a town's planning code that offer an opportunity to prescribe diversity requirements. Within requirements, governments can make funding contingent on not-only transit supportive designs but diversity targets from the developer.

In addition to plans that are custom-designed for specific stations, some government agencies have created "floating" zoning classifications for TOD. These "transit district" or "transit village" classifications are not limited to a specific location but instead can be applied more generally to ensure projects or plans near transit meet certain criteria like mixed use or pedestrian orientation, and less frequently, affordability. A floating TOD zone allows a city to apply a zoning overlay when the opportunity arises rather than pre-zoning a site before the market is ready—which can cause land speculation and higher costs, or difficulties for existing property owners.

Balance the performance of the system with each station

Instead of requiring that every station within the transit system meet the same requirements for parking or mixed-use development, transit agencies and governments can take a corridor approach. A corridor approach would allow them to identify some stations as park-and-ride commuter lots, others as high activity nodes and places and still others as something in between. For instance, the San Francisco Bay Area's Rapid Transit system (BART) has a new TOD policy that uses "performance-based station access strategies on a corridor or line segment basis rather than on a station basis." Using both the corridor approach and an evaluation of the ridership benefits of TOD will enable BART to adjust its 1:1 replacement parking standard when

converting a parking lot to a development.[3] Parking ratios can also be reduced as places become or already are less auto-oriented. At the BART Fruitvale station, for example, parking was reduced to allow for a higher density, mixed-use, and mixed-income transit village built by a local community group. Requiring less parking will typically reduce development costs, allowing a developer to price the units lower and still cover their costs.

Local government should have a parking management plan that is flexible and acknowledges differences in auto ownership by incomes as well as housing type and the transit system and walkability and mixed-uses of the area—the new Housing & Transportation Affordability Index[4], and the CTOD database on travel behavior and auto ownership in transit zones could help communities do this. The parking management plan can also figure out shared uses where parking spaces are used at night by residents and during the day for commercial and office workers.

Incentive-Based Zoning

Incentive-based zoning provides developers with rewards, like density or floor-area bonuses, for meeting certain housing objectives. Many localities and some states offer incentives as part of their joint development or TOD program activities. Incentive-based zoning can work over a very broad area such as a bus corridor. Incentives typically require less up-front planning work than a station area plan and they can be more effective in a political environment in which policymakers are apprehensive about or opposed to requiring either mixed-income or mixed-use.

To encourage mixed-income, the City of Chicago has chosen to use incentive-based zoning rather than a mandatory inclusionary housing program. The incentive, a density bonus, provides additional floor area ratio and height in exchange for providing either money or on-site affordable housing. For on-site units, developers receive a 4:1 bonus of additional square footage for each foot of affordable housing. If the developer opts to pay the fee, fees are deposited in a special fund, which to date has collected $12 million, a modest amount in comparison to the effects of a true inclusionary program. The affordable units are targeted either to renters earning 60 percent of AMI, or owner-households earning 100 percent of AMI. All must remain affordable for at least thirty years. Although the City's downtown affordable housing zoning bonus is not currently focused on TOD, Mayor Daley has recently proposed to expand the program beyond the downtown areas to neighborhoods well-served by transit.

Inclusionary Housing or Zoning

Inclusionary housing or zoning is probably the most widely used planning tool in the country to create mixed-income development, either within an individual building or within a project. Most inclusionary policies are set up as mandatory requirements whereby new developments are expected to reserve between 10 and 25 percent of the new homes as inclusionary units that carry with them specific income qualifications (typically arrived at by a financial feasibility analysis). Depending on the market, income targets may be different for rental or ownership housing. It is fairly common in high-cost markets to see the income goal of moderate or low-income targets for ownership housing and very-low or low-income for rental housing developments.

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[3] BART

[4] Developed by the Center for Neighborhood Technology and Center for Transit Oriented Development through the Brookings Institution Urban Markets Initiative, see http://www.brookings.edu/metro/umi/pubs/20060127_affindex.htm.

Inclusion of affordable units in new development can be achieved with no direct public agency financing, and it does not rely on land acquisition or assembly. Notwithstanding these strengths, however, local governments cannot expect inclusionary policies to address all of their affordable housing goals. And though such policies work well in communities in which significant development opportunities exist, they have not been widely used in soft real estate markets.

Keeping Affordable Units near Transit

Market-rate developers tend to be very concerned about the cost of providing inclusionary units in their developments, so many jurisdictions offer developers incentives and/or alternative methods for providing the required units. Some allow payment of in-lieu fees or off-site development. Some also provide incentives like density bonuses or zoning waivers—for example, reduced parking requirements, expedited permit processing, waivers or deferral of fees.

In order to create and maintain a mixed-income community around a transit hub or along a corridor, it is crucial that the inclusionary units be constructed within the pedestrian commute-shed for the transit service as lower-income households are less likely to own cars and more likely to use transit than higher-income households. Alternatives to on-site inclusionary units must be extremely well thought-out. For example, off-site development should only be allowed within the station area. In-lieu fees should probably not be allowed at all unless the local government has site control over a parcel for purchase in the transit area where it can develop affordable units.

A local government could also allow the developer to include some rental housing in fulfillment of her inclusionary requirement if she agrees to provide deeper affordability. By providing this option, local agencies enable developers to apply for low-income housing tax credits or tax-exempt bonding authority to help pay for the very-low income rental apartments. In these circumstances, for-profit developers often joint venture with non-profit developers that specialize in creating and managing affordable housing.

An intriguing concept for TOD is a form of inclusionary credit transfers that function like transfer of development rights. Carlsbad in southern California allows developers to trade inclusionary housing credits within a particular geographic area. In one instance, a group of market-rate developers pooled their requirements and collectively provided a non-profit with the gap financing for a 100 percent affordable development using low-income housing tax credits.

Parking Reductions

Generally speaking, localities govern parking through minimum parking requirements, which require a certain amount of parking based on number of bedrooms or units or per square feet. Parking reductions can either take the form of reduced minimum parking requirements or maximum parking requirements.

Parking reductions work to increase the feasibility of mixed-income and mixed-use TOD. From a design perspective, parking ratios largely determine if there is space for retail, child care or other non-residential uses. From a cost perspective, parking is both a driver of the initial development budget and a key factor in determining longer-term housing prices. According to a 1997 study for the San Francisco Planning Department (using 1996 data on housing prices), housing without

parking spaces was more affordable and sold faster than housing with a parking space.[5] While this does not guarantee that lower-income households will benefit from lower parking requirements, it greatly increases the odds.

Parking can dramatically inhibit a developer's ability to create housing or other uses in an affordable manner. Consider a simple one-acre parcel zoned for up to 100 units of residential development: A parking requirement of two spaces for every residential unit may dramatically limit the total number of residential units that will actually be developed because the parking alone will consume 320-350 square feet per space at a cost of $20,000 to $40,000 per space. By simply reducing the requirement to 1:1, the development can now address all of its parking requirements with a structured ground floor parking garage, saving the development as much as $2 million. By reducing the requirement to 0.75:1, the development now has enough ground floor space for a child care center and 10,000 square feet of retail.

There is some evidence to suggest that when parking is decoupled from a housing unit, there may be less demand for it. Agencies should consider reducing parking requirements in cases in which parking is "unbundled." Some communities have experimented with shuttle services or even shared parking districts in which multiple developers combine their parking units into one structure. Homeowners can "opt-in" to the parking, at a price. Such strategies can both reduce the cost of producing housing and encourage more efficient land uses. It may also address retailers' concerns about parking availability.

In the case of affordable housing, senior developments or developments that are intentionally developed to serve disabled people or the homeless, local governments can put in place deed restrictions or conditions of use that assure concerned neighbors that there will be long-time uses worthy of reduced parking standards. Because parking requirements can be a source of contention during the entitlement process, reduced parking requirements should be put in place as-of-right rather than forcing developers to request parking reductions on a project-by-project basis. For many developers, the cost of seeking such a reduction may not be worth it if it engenders significant community opposition.

Another key tool for addressing concerns about reducing parking requirements are a whole range of practices known collectively as Transportation Demand Management. One solution is pay-per-use car services or car sharing, of which there are many in major metropolitan areas across the country. In a few localities, the zoning code has actually been changed to reduce parking requirements for developments that include car sharing facilities. The transit agency or local government could also help lower the need for parking by providing spaces for car sharing in publicly-owned lots. BART is currently doing this in select locations in the San Francisco Bay Area. The City of Chicago's Department of Planning and Development is also interested in this approach, piggy-backing on a recent zoning code change creating "transportation zones" within

[5] On average, the value of an off-street parking space for a single family home was $46,391; for a condominium unit the value was $38,804. Interestingly enough, single-family units without parking sold five days faster and condominium units without parking sold 40 days faster than units with parking. SPUR, "Reducing Housing Costs by Reducing Parking Requirements," http://www.spur.org/documents/981101_report_01.shtm.

which minimum parking requirements within 600 feet of passenger rail stations can be significantly reduced.[6]

FINANCING

Diverse TOD incurs not only the usual costs associated with residential or commercial development, but also the costs of building, operating and maintaining a transit system that attracts riders, as well as the additional planning necessary to enable diverse, livable neighborhoods. Thus, funding for TOD often comes from a patchwork of sources, public and private, local and federal.

Some funding for creating diverse transit oriented communities can come from expected cost reductions in the future. Improving the health of all communities and providing adequate affordable housing in livable neighborhoods will help reduce some of the public costs for emergency rooms, unemployment, police protection, etc. These projected savings can be used to justify subsidy for housing and placemaking amenities in TOD plans.

Making diverse TOD a priority when allocating state funds can realign incentives and enable innovative development with no additional expenditures. The California treasurer has incorporated smart growth and community reinvestment into the investment criteria used by the California Infrastructure and Economic Development Bank. Massachusetts, through its Priority Development Fund, which is described in a case study in the following chapter, is also promoting affordable housing and TOD. In some states, Housing Finance Authorities, the agencies that administer Low Income Housing Tax Credits, are setting TOD criteria for the allocation of the tax credits, however many of these criteria still lack objective measures, e.g. what constitutes “near transit” or “near jobs”.[7]

The state and federal government should provide planning grants for communities undertaking diverse neighborhood development. The successful HOPE VI projects have shown that inclusive and comprehensive community planning that includes funds for sound market assessments and good design makes a difference.[8] Adequate public funding should also be allocated for these projects to ensure the additional needs of lower-income households, including public housing residents that may be relocating, are met.[9] Other funding programs should also be increased, including HUD’s CDBG and EDI funds, which are both flexible funding sources that can be used for community building.

Low Income Housing Tax Credit (LIHTC)

The Low Income Housing Tax Credit (LIHTC) is the largest federal funding program for the creation of affordable rental housing. To be eligible for the LIHTC, a project must be rental housing (although lease-to-own is an option in some states). For mixed-income housing, the developer must provide either 40 percent of the units at 60 percent AMI or 20 percent at 50 percent AMI. Credits are only available for the affordable units. Typically, mixed-income

[6] CTOD communication with the Commissioner of the Chicago Department of Planning & Development, April 2006.

[7] Turbov and Piper, 2005, p. 64.

[8] ibid, p. 59.

[9] Brophy, Paul and Rhonda Smith. 1997. Mixed Income Housing: Factors for Success. *Cityscape* 3(2).

projects also use tax-exempt bonds. In exchange for receiving LIHTCs, the developer agrees to set rents at affordable levels for at least 15 years, though some states require much longer affordability (California mandates 55-year affordability). The maximum rent levels are set based on AMI for the metropolitan area and adjusted annually based on income changes.

While very few affordable housing funding programs focus on TOD, many can be used for that purpose. In a similar fashion, many sources of affordable housing funding allow for mixed-income, but this is typically not their primary intent.

There are a number of ways that tax credit allocation agencies can facilitate mixed-income and mixed-use TOD. LIHTCs are distributed in each state on the basis of qualified allocation plans (QAPs) and an accompanying set of regulations and scoring criteria. According to Global Green USA, 28 states have rewards or requirements for transit access.[10] For example, Texas provides 4 additional points for developments located within 1 mile of public transportation. And in California, where transit is more abundant, there is an even more extensive set of options and incentives (see sidebar). Some allocating agencies also give additional consideration for mixed-income. In Illinois, the tax credit allocation process gives as many as 4 additional points for projects that include 20 percent market-rate housing.[11]

In terms of mixed-use, tax credit programs have tended to focus on *access* to services and retail, rather than actually requiring them to be located in LIHTC-funded projects. Many local governments have nonetheless encouraged tax credit projects to be mixed-use by providing additional funding for child care centers and other public purposes.

Housing Incentive Program: Putting it into Practice
Projects are only eligible for HIP if the net density is at least 30 units to the acre (slightly lower in the less transit-rich parts of the region). Grant amounts go up based on the density and affordability of the development; $1,000 per bedroom at 25 units per acre up to $2,000 per bedroom for 60 units per acre. The HIP program provides an additional $500 per bedroom for projects that are affordable.

Qualifying projects must be located within 1/3 mile of a bus stop or 1/2 mile of a rail station and service must be relatively frequent, with headways of 15 minutes during peak for most areas. In areas slated for transit expansion projects MTC has allowed housing projects to qualify for HIP funding with 30-minute headways. In essence, HIP funds serve as a sort of interim incentive zoning for the transit area. Funds are intended to be spent by local governments on "livability infrastructure" that can make the difference between a "transit-adjacent development" and a transit-oriented development. The eligible uses include: bicycle and pedestrian paths; pedestrian amenities; streetscaping; traffic calming; and transit stops.

Housing Incentive Program

In an attempt to overcome decision-making "silos," like those between transit operators and local government, some regions have begun experimenting with incentive-based programs aimed at encouraging TOD collaboration. Most of these efforts focus on providing planning dollars for a local community visioning process or station area planning.

The Metropolitan Transportation Commission (MTC) in the San Francisco Bay Area had been experimenting for over a decade with ways to encourage pedestrian, bike and transit-oriented development. Beginning in the mid-1990s with the Transportation for Livable Communities (TLC) planning and capital grants, MTC began partnering with local

[10] Global Green USA, "Making Affordable Housing Truly Affordable," www.globalgreenusa.org.

[11] Regional Housing Initiative: FAQ, www.metroplanning.org

governments and transit operators to create the conditions for more walkable, and potentially transit-oriented, development.[12] While TLC grants were not explicitly conditioned on TOD occurring, another program was — the Housing Incentive Program (HIP). Modeled on a county-level program in San Mateo County, HIP provides capital funding to local governments that enable transit-oriented development. The intent is to produce more housing at densities that support transit. In just a brief period of time, the program is credited with helping to add over 1,600 bedrooms near transit[13], 65 percent of which are affordable.

HIP funds give local elected officials — who often find it difficult to vote for developments that push the envelope in ways that some local citizens may initially fear or oppose — an extra reason to approve projects that have TOD characteristics with respect to density, size, design and location. The program also pays for public amenities that benefit both the residents and neighbors of the new development. But the program has had its challenges:

- First there is its timing. Put simply, what's the best time to affect local government and developer behavior? The program calls for projects to be eligible before their planning entitlements have been granted with the idea that this will help keep densities up and get projects approved.
- Second there is the flow of funds. Funding has come in fits and starts. This undoubtedly limits the program's effectiveness because no one can count on funding being available at the key moments in the decision-making process. In a more ideal funding environment, there would be a rolling application process so that more projects would fit into this narrow window.
- Third, there is the funding source. Because MTC uses federal funds, they have the challenge of ensuring that funding is obligated in a timely manner. Once approved, projects have two years to break ground on the housing and an additional year to obligate the transportation funds. And because federal dollars can only be administered by public agencies, the approval and design process can be slow and inefficient. Agencies that can find ways to program more flexible state or regional funding would be well-served to consider doing so.
- And lastly there is the funding amount. HIP has been criticized for not putting enough money on the table to really impact behavior or provide enough money per project to sway a truly recalcitrant city council.

Benefit Assessment Districts

Benefit Assessment Districts are special purpose districts that provide benefits—for example, water, parks, transit—to residents of a defined district. They are one way in which developers and land owners can invest in transit infrastructure with the expectation that it will increase the value of their properties. Typically these districts pay some of the up-front cost of the transit investment itself or provide funding for longer-term maintenance and capital expenditures.

The Pearl District in Portland is a good example of how a benefit assessment district can contribute to mixed-income mixed-use neighborhoods near transit. In the mid-1990s, a

[12] http://www.mtc.ca.gov.

[13] the funding is on a per bedroom basis

community plan was created by local community members and property owners in this formerly industrial section of the city. Property owners agreed to create an assessment district to build out a new streetcar line from downtown Portland. A subsequent urban renewal plan specified various public improvements that would complement the TOD projects, namely the removal of a prominent off-ramp, a new park and improved physical connections to the riverfront.[14]

While the assessments themselves were limited to helping build out the streetcar line, this action really enabled the use of zoning incentives and TIF to spur higher density development, income mixing and, ultimately, the achievement of affordable housing goals.[15] In order to achieve income mixing, the city used both TIF and zoning incentives as part of a master developer agreement with the largest property owner in the district. The agreement specified minimum zoning densities that grew upon completion of the streetcar line, as well as a neighborhood park. The agreement also included housing affordability goals stating that the developer had to provide 15 percent of the units for very-low income households and 20 percent for low-income households. Furthermore, 15 percent of all rental units and 10 percent of for-sale units had to be 700 square feet or smaller.[16]

Tax Increment Finance Districts

TIF funds are generated by the increase in property and/or sales taxes within a specific district. The TIF is calculated off of a baseline year and can be generated by both new development and the enhanced assessed value of existing properties as a result of improvements around them. In many states, the power to adopt a TIF zone is granted by the state to localities after meeting certain tests for addressing a stated public goal, such as eliminating blight or spurring economic development.

Typically, state governments provide guidance or regulation on how TIF funds can be spent. In most cases they are used for public works projects, land assembly or subsidies to encourage private development. The creation of TIF districts usually requires that the government agency first establish the reasons why the TIF district is needed, then create a long-term plan for the designated area that includes the future land uses and how TIF dollars will be spent. The specificity of such plans varies by state and project area.

For several reasons, TIF can be especially important to TOD. Because of the high cost of creating new infrastructure or, in some cases, to remediate environmental problems in areas along rail lines, TIF can provide critical financial support. This can be especially important in formerly industrial areas that are increasingly being redeveloped as large-scale TOD projects.[17]

Second, site assembly is especially important for infill TOD because many already urbanized areas have fractured land ownership in and around station areas. Many developers are unable to handle the holding costs of long- or even medium-term site assembly and entitlement. For a public agency, the power to assemble land can give the agency greater leverage over what type

[14] The River District Urban Renewal Plan, Portland Development Commission, September 25, 1998.

[15] River District Housing Implementation Strategy Update, Portland Development Commission, April 1999.

[16] Robert Cervero et al, Transit-Oriented Development in the United States: Experiences, Challenges, and Prospects, Washington, D.C.: National Research Board, 2004, p.372.

[17] See Mission Bay example under Station Area plans.

of development will actually occur around the transit corridor or station area. Public agencies can also provide TIF funds for land assembly instead of doing it themselves. By providing lower-cost financing, the public agency can demand both mixed-use and mixed-income TOD by specifying that land assembly funds are only available for those purposes.

TIF investment is also crucial to creating affordability. In some cases, the authority to create a TIF district is coupled with an obligation to create and/or preserve affordable housing. In California, for example, redevelopment agencies—the principal vehicle for TIF—are required to spend at least 20 percent of the tax increment in any project area on creating or preserving housing affordable to low- and moderate-income households. Furthermore, at least 15 percent of housing in the area overall must be affordable. Regions looking to promote TOD and affordability, and with access to TIF, should consider adopting the California redevelopment provision in their TIF guidelines. Illinois has also instituted changes in TIF law to protect school funding.

While TIF dollars and redevelopment powers are among the most important land assembly tools being used to further TOD goals, not all states allow the use of TIF and many states either do not favor redevelopment agencies or are considering limiting their powers based on concerns raised by the Kelo decision.[18]

JOINT DEVELOPMENT AND PARTNERSHIPS

Public agencies can not generally create transit oriented neighborhoods on their own. Joint development and public-private partnerships are important tools in the creation of TOD diversity that can be combined with the coordination, planning, and financing tools discussed above.

Joint Development

Using the "Policy on Transit Joint Development,"[19] transit agencies around the country have participated in developments on transit-agency owned land that resulted in additional revenue from long-term ground leases or proceeds from construction and future sales. These additional funds can then be used to support additional capital improvements to the system.

Joint development allows property interests held by the transit agency to be shared with private entities. Mixed-income joint development appears to be a relatively rare occurrence, notwithstanding some great examples from Portland and the San Francisco Bay Area. Also, in San Diego, the Metropolitan Transit Development Board accepted a below-market rate[20] project on its investment return in order to make a mixed-income project pencil out in the short term, and in the long term the development would provide housing to support a diverse passenger base.

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[18] By a 5-4 decision, the US Supreme Court reaffirmed the powers of local government to engage in eminent domain.

[19] The Policy on Transit Joint Development is a policy of the Federal Transit Administration established in 1997 that explains the parameters and permissible role of the transit agency in a joint development project in terms of using transit agency owned land for transit and non-transit purposes. FTA grantees may use FTA financial assistance for joint development projects that are physically or functionally related to transit or that increase transit ridership in a corridor. For more information, see http://www.fta.dot.gov/publications/reports/about_FTA_140.html

[20] Dittmar, Hank and Gloria Ohland (eds.), *The New Transit Town, Best Practices in Transit-Oriented Development*, Washington, DC: Island Press, 2004, page 9.

The key challenges to joint development are: 1) transit agency emphasis on revenue over ridership or affordable housing goals; 2) high costs associated with joint development parcels; 3) real estate challenges associated with local transit agency practices regarding sale or lease of transit agency-owned land; and 4) hesitation by many lenders to finance a project with a ground lease instead of ownership.[21]

One way to encourage developers to take on development features that initially cause apprehension is to share the risk and reward. For agencies that own land or can lend funds in a flexible fashion, this can be done through either lease agreements or loan terms. This is often the most practical way to resolve debates over the "value" of transit to the developer and can help resolve debates about the marketability of either retail space or residential units that the developer is uncomfortable about.

An agency may require only a modest base land rent payment with the provision that the developer pays more based on the success of their project, which can be measured in terms of cash flow for rental or commercial property, sales prices of units or some other metric. The key is that the developer reduces their initial risk, but the public agency does not get taken for a ride.

Another key issue for joint development is the disposition of land. Many transit agencies prefer to lease land rather than sell it outright. This distinction may seem unimportant to transit operators but for developers it can have a crucial impact on the cost of their financing—i.e., lenders and equity providers perceive more risk from deals in which the land is not permanently secured to their real estate improvement. The resulting increase in costs can make the difference between having a project "pencil out" or not. In the case of mixed-income housing, it may make a big difference on the number and price of the affordable units.

While historically there has been a legal question as to whether or not the FTA allows "fee simple" sale of land for joint development purposes that issue now appears to have been resolved.[22] As long as the transit operator contractually requires the developer to maintain the physical or programmatic connection to the transit service—this often takes the form of an easement agreement that ensures a physical link—the project is still functionally related to transit.

There is also the thorny question of replacement parking, which has killed the financial feasibility of many joint development projects. With the cost of structured parking between $20,000 and $40,000 per space in many markets, requiring the developer to replace a large surface parking lot with structured parking can quickly erode or eliminate the price that they are willing to pay for development rights on transit agency property.

Notwithstanding some incredibly successful TOD projects, BART in the San Francisco Bay Area has struggled with this issue for years. Two good examples of BART's success are the Fruitvale Transit Village in Oakland, CA and the Metrowalk project, described in the following case study chapter. Recently the agency adopted a more flexible set of guidelines that takes into account ridership from joint development activities as a potential way to offset lost parking.

[21] A further challenge is often public perception about its transit system "engaging in land speculation."

[22] FTA Policy on Transit Joint Development, March 14, 1997.

BART's new TOD policy calls for using "performance-based station access strategies on a corridor or line segment basis rather than on a station basis." Using both the corridor approach and evaluation of the ridership benefits of TOD will enable BART to adjust its1:1 replacement parking standard.

Public-Private Partnerships

Public-private partnerships can take many forms and can be more flexible than joint development arrangements. Local governments can help to acquire parcels, rezone them, and fund environmental remediation through EPA grants. A public-private partnership may leverage additional resources from the private sector through in-kind matches, or in lieu of fees contributions from the government.

Cities can help developers by assisting with the four risks of the development process—entitlement, construction, financing, and, marketability—by providing consistent review processes and land permits, reducing construction risk through good inspection and contractors, working with local banks to provide lower-cost mezzanine loans, helping to market the units, and providing reserves if necessary. Since predevelopment costs, like holding land for 3 years in a TOD project, zoning work, or architectural work, are hard to finance, local governments can help to fund these costs with early stage sources from "patient" capital. Potential sources of funds for these items include redevelopment funds, e.g. from TIF. Cities could also provide commercial parking and therefore become an equity partner. Value capture can be used to fund affordable housing and infrastructure and so can density bonuses.[23]

Foster private sector demand to stimulate local cooperation

As consumers and employers demand more convenience, accessibility and affordability, transit agencies are in a position to sell their value-added features to both developers and employers. Developers will realize they have the ability to leverage an attractive public asset without having to spend their own money and will hopefully include it in their marketing. The transit agency will benefit from developers' marketing and designing their projects as transit-served or transit-oriented, increasing the visibility of transit, which hopefully positively impacts ridership. The developer may also become an ally of the transit system and help to work for zoning changes and other necessary changes to allow transit-supportive development. Ultimately, employers would also be allies, as they may have more influence in a community when it comes to advocating for changes that would allow workforce housing near transit or mixed-use and commercial development in an area not currently zoned for it.

The transit agency could also help to market the transit aspect of a TOD project, similar to the way many agencies market the landmarks or other locations that are accessible by transit. For all projects, and particularly mixed-income projects, lenders want to be taken out as quickly as possible by a mortgage. If marketing transit access helps to sell the units more quickly, over time, transit access may help developers secure financing more quickly, lowering the costs at the end of the project, post-development. The cost savings can help to subsidize the below market rate units, or to pay for pedestrian amenities. A quicker take-out rate also benefits the transit agency by getting residents near the transit more quickly.

[23] Dittmar and Ohland, 2004, pp. 87-88.

Dallas Area Rapid Transit (DART) is a model example of using transit to market residential and mixed-use development. Their real estate department reaches out to developers, providing them with demographics, land ownership, characteristics of surrounding communities, and a basic market analysis. To foster diversity, a transit agency's market analysis, when it is acting as a real estate developer, should include a broader scope to include a wider range of incomes. Otherwise a station in a higher income area will continue to be built as high income based on the surrounding market. To change this automatic progression, transit agencies need to hire staff with real estate and development expertise or perhaps learn to partner with other entities that have these competencies; this is a potential role for sophisticated neighborhood developers.

Case Studies of Diverse TOD Tools

In the previous chapter we explained a number of tools that transit agencies and affordable housing developers can use to create mixed-income transit oriented developments. This chapter provides best practice or case study examples of some of these strategies from around the U.S.

ZONING AND PLANNING

Station Area Plan: Mission Bay, San Francisco

The Mission Bay development is a good example of how a station area plan was combined with TIF and a novel inclusionary housing strategy to create value for both the master developer and the broader community. In this case, the station area plan is, in fact, a redevelopment plan for an area with multiple transit providers, including CalTrain commuter rail service, electric buses and MUNI METRO light rail, , all of which co-terminate and share a common inter-modal facility.

Mission Bay is a 303-acre redevelopment project along San Francisco's waterfront, adjacent to both that facility and to SBC Park, which is the San Francisco Giants Baseball Stadium. At the start of the planning process, the area was owned almost entirely by Catellus, a real estate company spun off to shareholders in 1990 to develop property owned by Santa Fe Pacific Corporation. The project area will eventually include over 6,000 residential units, 5 million square feet of corporate offices and biotech space, a new campus for the University of California-San Francisco (UCSF), a hotel and conference center, 750,000 square feet of retail, and 49 acres of parks and open space. So far, nearly 40 percent of the housing is complete or under construction, along with much of the new UCSF campus.

As part of the development agreement with the San Francisco Redevelopment Agency (SFRA), Catellus agreed to dedicate 14 parcels to the SFRA for the purpose of developing affordable housing. The SFRA then competitively selected developers and provided both land and TIF funds to build mixed-use affordable housing complexes throughout the development. Catellus and the SFRA created a unique land dedication and funding strategy that enabled 28 percent of the housing— which will be created in both stand-alone affordable housing developments and as part of larger market-rate condo developments—to be affordable to very low-, low- and moderate- income households.

For example, Rich Sorro Commons is a 100-unit rental apartment development with a 40-child Head Start program and 10,000 square feet of ground floor retail. Around the corner, the SFRA provided land and TIF funds to Mercy Housing California to develop a 100-unit senior care community with a local library on the ground floor. These two developments are sandwiched among a half-dozen market-rate condominium developments that include a grocery store and thousands of square feet of local retail.

This strategy largely frees up the market-rate parcels to maximize their building envelope and profitability. In comparison, many of the affordable sites are zoned for 50 feet of height, allowing them to stay in context with less expensive wood-framed construction. Furthermore, in the 100 percent affordable complexes, the affordable housing can more efficiently use tax credits.

Due to the station area plan, parking minimums are relaxed greatly and a parking maximum of 1:1 is in place. Likewise, setbacks have been greatly reduced and the design guidelines encourage ground floor retail. Because a Master Environmental Impact Report (EIR)[24] was conducted for the project area, the approval process for individual buildings moves very quickly for those that meet the specifics of the redevelopment plan.

District Zoning: Massachusetts Smart Growth Zoning Overlay District

A recent example of an attempt to create both mixed-use and mixed-income transit-oriented zoning is the Smart Growth Zoning Overlay District (also called 40R) adopted by the State of Massachusetts in 2004. The act "encourages communities to create dense residential or mixed-use smart growth zoning districts, including a high percentage of affordable housing units, to be located near transit stations…" Upon state review and approval of a local overlay district, communities become eligible for payments from a Smart Growth Housing Trust Fund, as well as other financial incentives.

40R brings together a number of key tools, including inclusionary zoning, expedited permitting and financial incentives. In essence, a locality interested in receiving funding under the act applies to the Department of Housing and Community Development (DHCD) to have its district certified as meeting the requirements of the act, one of which is density provisions that require minimum allowable "as-of-right density" requirements. [25]

The local zoning and/or the accompanying Community Housing Plan ensures that at least 20 percent of homes in the Smart Growth district are affordable to people earning less than 80 percent of AMI. The requirement applies to all projects of more than 12 units and requires at least a 30-year affordability timeline. There are some peculiarities about the nature of zoning decisions in Massachusetts that make rapid adoption of 40R difficult. Nonetheless, the concept could easily be adapted to other states.

Incentive-Based Zoning: Incentive-based Inclusionary Housing: 40 B and Mount Laurel

There is an incentive-based zoning approach that is primarily associated with Massachusetts and New Jersey. In essence, both states provide developers with the opportunity to override local zoning restrictions if the proposed development has affordable housing. While neither policy was set up specifically to facilitate TOD, both can and have served that purpose. In fact, Massachusetts has recently adopted a transit-focused zoning and funding package (called 40R, this is summarized under the zoning section).

Massachusetts 40 B (also known as the Anti-Snob Zoning Act) encourages the development of affordable housing in communities that currently lack economic diversity. It functions in three ways: 1) by allowing developers to apply for an expedited permit review process; 2) by allowing for an appeal of a local government decision about permits; and 3) by allowing developers to build affordable housing at greater densities than is allowed under local zoning. To be eligible to use 40 B, the affordable homes in the development must be eligible for a state subsidy from

[24] An EIR is the state of California equivalent of the EIS in response to the California version of NEPA, the California Environmental Quality Act (or CEQA).

[25] At least 8 units per acre for single-family residential use; at least 12 units per acre for 2 and/or 3-family residential use; or at least 20 units per acre for multi-family.

either of two state housing agencies, which typically means that at least twenty-five percent of the units must be affordable to low- and moderate-income households.

Incentive-based Zoning: Expedited Permitting in Austin, Texas

Although technically not zoning, expedited permitting is akin to a zoning incentive in that it is a tool that accelerates a development through the entitlement process in return for meeting certain use or design considerations.

In Austin, Texas, the city has created a special program to promote affordable TOD. The SMART (Safe, Mixed-Income, Accessible, Reasonably-Priced, Transit-Oriented) Housing program provides development fee waivers and expedited permit reviews to projects with affordable homes. In this case, affordability is defined as affordable to households earning 80 percent or less of AMI. Since its inception in 2000, the program has produced over 4,000 single-family and multi-family units, including nearly 3,000 reasonably-priced units. Another 7,000 are in the pipeline.

If a builder makes a portion of its building reasonably-priced units:	The City of Austin provides fee waivers of:
10%	25%
20%	50%
30%	75%
40%	100%

The average completion time for SMART Housing reviews was approximately half the time of conventional reviews. The city has brought together many city departments to both fund the fee waivers as well as consider the impact of zoning and other regulatory processes on affordability. Among the fees waived include zoning, site plan, subdivision, building permit, construction inspection and capital recovery fees. During the first three fiscal years of the program, the City of Austin waived over $3.5 million in fees for SMART Housing developments. These waivers are done on a sliding scale (See sidebar)

Inclusionary Zoning: King Farm, Rockville, Montgomery County, Maryland

King Farm, which exemplifies the power of inclusionary policies taken to a large scale, includes 3,200 homes, of which 353 are affordable (known as Moderately-Priced Dwelling Units (MPDU)). The mixed-use development covers over 400 acres and includes over 3 million square feet of commercial space and retail. It is located adjacent to the Shady Grove Metro Station, and while shuttle bus service from the development to the station is currently available, the intent is to develop a light rail line.

Montgomery County requires developers to provide between 12.5 and 15 percent MPDUs in all new developments of twenty units or more. The actual percentage of units is determined by the county's planning board when it approves the project and varies based upon the density bonus achieved. The county allows the housing authority to fill a percentage of the inclusionary units with Section 8 voucher holders, which allows for much greater affordability than required, and addresses developer concerns about costs. Illinois and Massachusetts now have similar initiatives.

Parking Reductions: Gaia Complex, Downtown Berkeley

Panoramics Interests developed the seven-story Gaia complex in downtown Berkeley, less than a block from the Berkeley BART station and the University of California-Berkeley campus. A height bonus that allowed the developer to add an additional two stories was granted the project in exchange for providing a performance and arts space. The resulting density is an amazing 267 units to the acre. In addition to the cultural space, there is a cafe on the ground floor, a rooftop garden and a solarium as common areas. The 91-unit project has 42 spaces in parking lifts along with space for car sharing cars and bike storage facilities. Nineteen of the apartments are affordable, in keeping with the City of Berkeley's inclusionary housing ordinance.[26]

FINANCING

California LIHTC Transit Incentives:

- ***7 points**: The project is part of a transit-oriented development strategy where there is a transit station, rail station, commuter rail station, or bus station, or bus stop within 1/4 mile from the site with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m., and the project's density will exceed 25 units per acre.*
- ***6 points**: The site is within 1/4 mile of a transit station, rail station, commuter rail station or bus station, or bus stop with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m.*
- ***5 points**: The site is within 1/3 mile of a bus stop with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m.*
- ***4 points**: The site is located within 500 feet of a regular bus stop, or rapid transit system stop.*
- ***3 points**: The site is located within 1,500 feet of a regular bus stop or rapid transit system stop*

(http://www.treasurer.ca.gov/ctcac.)

Low Income Housing Tax Credit: Massachusetts' Priority Development Fund

Established in 2004 with a goal of creating 5,000 units of rental housing over three years, this fund supports projects that have at least 20 percent affordable housing, with priority given to projects that follow smart growth criteria. Of the $100 million pot, $22 million is intended for construction of mixed-income housing near transit, and another $3 million is available for community planning in localities trying to develop affordable housing according to the Commonwealth's Smart Growth principles.[27] Funding takes the form of low or no-interest loans of up to $75,000 per affordable unit (including deferred payment if needed) and comes from program revenue generated by MassHousing's lending programs.[28]

The Cordovan at Haverhill Station is a great example of a mixed-income mixed-use development that brings together many of the funding sources available to make TOD projects work. The project involves converting a mostly vacant historic property into 146 1- and 2-bedroom rental units, of which 85 are market rate and 61 are affordable. The development uses Priority Development Funds, LIHTC, HOME, Historic tax credits and project-based housing choice vouchers (Section 8).

[26] Berkeley instituted its inclusionary housing policy in 1986. Per the policy, any development of 5 units or more is required to provide 20% of the units as affordable housing. Interestingly for rental housing, Berkeley has a policy of requiring that the units serve households at 50% of median income when Section 8 vouchers are available, and 81% of median income if they aren't. Ownership units are targeted to moderate income homeowners (in this case, between 81% and 90% of AMI).

[27] http://www.chapa.org.

[28] http://www.masshousing.org.

The mixed-use component involves 15 duplexes that are designed as live/work space in which small business owners can operate their businesses on the ground floor and reside on the upper floor. The project is located directly adjacent to suburban Haverhill's downtown business and arts districts and within walking distance of the MBTA commuter rail station and a bus depot. The project benefited from expedited zoning process through what is known as a friendly 40B.

Housing Incentive Program: MetroWalk, (also known as The Richmond Transit Village)

Metrowalk is a mixed-use transit village development that combines 231 modestly-priced for-sale housing units, retail and cultural space. The project exemplifies some of the extraordinary hurdles of encouraging TOD in an area that has seen little market-rate investment in decades.

In 1998, in order to get the process jump-started, the East Bay city of Richmond and BART issued a developer solicitation and then selected a master developer, the Olson Company, to oversee the project. Before anything was actually developed, the city adopted a plan drafted by Calthorpe and Associates to provide the developer and the public agency partners with a clear road map for the effort. To date, the Olson Company has built and sold the first 132 for-sale homes with financial assistance from the Richmond Redevelopment Agency. More than one-half the units are designed as live-work units with a ground-floor office underneath a two-story home. In addition, the non-profit Bridge Housing has completed a mixed-income project (64 affordable rental units and 30 for-sale units), while the Martin Group has completed a sizable retail project (80,000 square feet).[29]

MTC awarded nearly $1 million in HIP funds to the project. In combination with a local match, HIP funds are being used to improve pedestrian access and build a new intermodal station that brings together Amtrak, BART and local bus service adjacent to the development. In truth, there are actually two transit facilities being built, one for the regional bus operator, AC Transit, which is already complete, and a new connection for Amtrak and BART, which have their most convenient physical link in the region at this site.

To complete the second phase of the project requires addressing a familiar demon, replacement parking for BART.[30] The city essentially has to replace the surface parking in a structured garage to make room for an additional 99 homes and retail space.

Tax Increment Financing: Twelve Centennial Park

In Atlanta, the Novare Group recently began construction on Twelve Centennial Park, a large mixed-use and mixed-income complex directly adjacent to the Civic Center MARTA station near Centennial Olympic Park. The development includes two 39-story residential towers with 1,034 condominium units, a 16-story 102-room boutique hotel, 12,500 square feet of office, a restaurant and retail shops.

TIF served as a key to moving the whole development forward, as well as the mixed-income component in particular. The Atlanta Development Authority provided the developer with $11million in TIF funds (known locally as a tax allocation district, or TAD), based on the

[29] Author correspondence with James Corless of the Metropolitan Transportation Commission.

[30] On July 27, 2005, BART adopted new rules that increased flexibility in considering replacement parking strategies as part of a broader approach to improving access to BART. See http://www.mtc.ca.gov/planning/smart_growth/tod/TOD_policy.pdf

anticipated property tax increment to be created through development on the site. The total project budget is approximately $120 million to construct Phase I (and over $220 million for both phases combined).[31]

The first phase of 517 condominium units, the hotel and most of the retail and office broke ground in fall 2005. It includes 104 affordable for-sale condominium units in Phase I (20%) at sales prices of $144K for 1BRs and $155K for 2BRs. Because of the funding from the Atlanta Development Authority, these units are targeted for households earning 80% of AMI or less, which is approximately $39,000 for an individual up to $54,000 for a family of four. The Atlanta Neighborhood Development Partnership participated as a financial partner in the development, providing $500,000 in return for the ability to market and sell the affordable condos.[32]

JOINT DEVELOPMENT AND PARTNERSHIPS

Joint Development: METRO TOD Implementation Program, Portland, Oregon.

The traditional way to think about joint development is for a transit operator to consider what to do with its existing assets, like parking lots. While this can work, it may not be enough for local agencies that really want to jump-start TOD and lack the land for it. A more entrepreneurial approach is the METRO TOD Implementation Program in Portland, Oregon.

Using federal transportation dollars, the TOD program is used to acquire, plan and then re-sell land to developers under the condition that TOD happen on site. It is also one of the best examples of a land assembly program that does not rely on TIF for its funding. Land is often written down based on a re-use appraisal that takes into account the specific limitations or extra demands placed on the site. For example, Metro may require structured parking and ground-floor retail, both of which have costs that a developer may not be willing to absorb based on market conditions. The Portland Development Commission (that city's redevelopment agency) also uses federal CMAQ funds to acquire sites within the city. In such cases, a "highest and best transit use" appraisal is used to establish the sale price.

Portland, OR: Center Commons

Portland seems to be leading the way in examples of mixed-income, mixed-use joint development. Although not traditional joint development, Center Commons was developed on a surplus Oregon DOT site near a light rail station and various bus routes. The site was purchased initially by the Portland Development Commission, which then selected Lennar Affordable Communities as the developer. As a condition of sale, PDC required at least 40 percent of the project's residential units to be affordable, which the developer exceeded by making 75 percent of the units below market-rate. In total the project included a small amount of retail and a day care center, as well 288 affordable rental apartments and 26 for-sale town homes. Not your typical joint development project, the land costs were reduced by 75 percent after TOD easements, covenants and restrictions were placed on the parcel to secure pedestrian access to the MAX station. This reduction was made possible through the Metro TOD Implementation Program.

[31] Author communication with John Aikin of Novare Group (4/17/06)

[32] Author communication with Marvin Greer of ANDPI (4/17/06).