



September 10, 2007

Ms. Lynn Jacobs
Director
California Department of Housing
and Community Development
1800 3rd Street
Sacramento, CA 95814

RE: Comments to HCD Proposed Guidelines for TOD Guidelines

Dear Ms. Jacobs:

Thank you for the opportunity to comment on the Draft Guidelines for the Prop 1C TOD Program. The Center for Creative Land Recycling (CCLR or "see clear") is the state's only organization solely dedicated to brownfield and infill development and we play an integral role in the revitalization of many sites around the state. Our work is accomplished through training, technical assistance, and small grants and loans for communities and community developers who are attempting to turn around vacant or environmentally distressed properties, including the TOD sites targeted by this new program.

Obviously a lot of work has gone into the proposed guidelines; however, CCLR has significant concerns with nearly every portion of these guidelines. One overarching concern is that the guidelines are structured not as a TOD assistance program, but as an affordable housing assistance program for affordable housing developments adjacent to transit. While we are fully supportive of affordable housing, the intent of the TOD program is to increase housing—at all income levels—around transit nodes. In addition to the Prop 1C mandate, there are a number of reasons why public support for transit-oriented developments as a whole is good policy. Large TOD projects have the ability to transform communities and create a ripple effect of positive development in a community by providing much needed mixed-income housing, close to job centers and transportation. Other considerations:

- **These projects are by nature public/private partnerships.** Large TOD projects already leverage local funding sources and must garner local support to get through the entitlement process. SB46 requires the project applicant to demonstrate local support.
- **Almost all large TOD projects have some form of a community benefits agreement (CBA) which add non-revenue-generating costs to the project.** CBAs are agreements negotiated between the developer, local government, and the community that spell out a set of community benefits that the developer commits to provide as part of the development project. CBAs often include:
 - living-wage jobs (often formal Project Labor Agreements)
 - affordable housing requirements
 - funding for parks and open spaces
 - space for community services
 - transportation amenities (parking structures, transit stations, bicycle paths)
 - programs for first-source hiring of local residents

These are all excellent enhancements to large TOD projects; however, they add significant costs to the project, often creating large funding gaps in the overall project cost. For these reasons, it should be considered good public policy for state funds to provide grant funding for these projects.

- **Public funding for private development is not new state policy.** Currently, private, for-profit developers can apply for funding, for projects that demonstrate significant public benefits, from the state's Multi Family Housing Program, California's Low Income Housing Tax Credit program, tax-exempt state bonds, as well as local redevelopment funds.

Some of our more specific concerns with the guidelines follow.

1. **Structure of TOD Housing Program [Section 105]**

The draft guidelines rely on MHP regulations to determine the level of assistance for rental units. Assistance for for-sale units is to be provided in the form of grants to the locality, to be converted by the locality to a loan to qualified first-time homebuyers, in accordance with the guidelines of HCD's BEGIN program.

The program should be based upon transit oriented development elements, rather than existing affordability and buyer assistance programs. As previously noted, the intent of the TOD program is to increase housing—at all income levels—around transit nodes, and the bond language already provides for a threshold of 15% units to be affordable to low or very low income residents for 55 years. These guidelines tie the level of assistance directly to the level and depth of affordability, which is NOT the intent of the voter-approved bond and does not fully support transit-oriented development. As previously noted, due at least in part to their substantial community benefit packages, most large TOD projects contain substantial funding gaps beyond simply housing unit construction. HCD should have the flexibility required to fill the funding gaps in both the housing and non-housing components of large, transformative and catalytic TOD developments. Structuring the rental unit assistance on the MHP program will benefit single-building, smaller development projects, rather than the larger, catalytic, transit developments these funds were intended to support. Furthermore, using the BEGIN program to send money to the buyer does nothing to encourage development. Subsidy can flow from developer to buyer via reduced price but not the other way around.

RECOMMENDATIONS:

- a) **Disconnect the rental component of the program from the MHP Program allow HCD to directly address identified funding gaps in qualifying TOD projects.**
- b) **Disconnect the for-sale component of the program from the BEGIN Program and restructured to allow for support to flow directly to the developer.**

2. **Maximum Grant / Loan Amounts [Section 105 (a) and (b)]**

The draft guidelines limit assistance to \$12M / project for the housing development and \$5M / project for infrastructure, totaling \$17M / development.

As previously noted, the major mixed-income, mixed-use TOD housing projects this program is intended to support often contain substantial community benefit packages and corresponding funding gaps, especially in infrastructure needs. HCD should have the flexibility to direct support to filling the identified funding gaps that are preventing the projects from moving forward, whether or not they're directly related to housing unit construction.

RECOMMENDATIONS:

- a) **Increase the funding cap to \$25 million and allow full discretion over how much of the award goes to infrastructure grants versus housing development loans.**
- b) **Clarify that infrastructure grants to localities may be passed through to private or nonprofit development partners.**

3. Minimum Residential Units [Section 103 (a)(1)]

The draft guidelines require that eligible projects contain a minimum of 20 residential dwelling units.

The TOD Program will attain maximum effectiveness by focusing on the larger, catalytic transit-oriented developments that have the potential to spur the creation of economically vibrant and sustainable transit communities. A significantly higher unit minimum will ensure that such keystone projects get the support required to move forward to completion.

RECOMMENDATION: Increase the minimum number of residential dwelling units to 250.

4. 9% and “other HCD programs” Exclusion [Section 103 (a)(2)]

The draft guidelines exclude from funding eligibility (both for housing loans and infrastructure grants) housing developments that receive 9% low income housing tax credits or money from any other HCD program, except for the Predevelopment Loan Program and the IC infill grant program.

This criteria is based on perspective that this \$ should only go to maximizing affordable units, but that’s not full intent of program. The program already contains a statutorily mandated 15% affordability requirement, which cannot be met by most projects without the availability of resources such as the 9% tax credit program. However, a TOD project whose affordable component is covered by 9% may still have funding gaps in other places, like workforce housing, transit linkages, and other on-site infrastructure. The TOD program must therefore work in tandem with, and NOT in place of, HCD’s affordable housing moneys if the program’s effectiveness is to be maximized.

It is important to note that this exclusion as it exists knocks out some very worthy TODs, such as the MacArthur BART project in Oakland.

RECOMMENDATION: Remove Section 104 (a)(2).

5. Maximum Parking Ratios [Section 103 (a)(5)]

The draft guidelines set a maximum level of parking allowed for eligible projects, based on a combination of bedrooms per unit and proximity to the urban core. Residential limits range from 1 space/unit for 1-bedroom units “downtown” to 2 spaces/unit for 2+ bedroom units outside the urban center. Parking for retail ranges from 0.75 – 2 spaces/1000 sf.

This criteria sets a standard that is extraordinarily difficult to achieve for the majority of the state’s TOD projects and does not reflect the need for mixed-use and mixed-income projects to be feasible from a marketability perspective prior to getting off the ground. As local marketplaces (and individual cities) demand different parking ratios in different parts of the state, there is no single standard statewide for what should be considered “overbuilding” parking. In addition, the tight restrictions create a program bias against under-served or economically disadvantaged communities

where projects often need substantial parking to overcome resistance from retailers and market-rate buyers. Finally, these restrictions may also conflict with local minimum-parking ordinances.

It is important to note that this exclusion as it exists knocks out some very worthy TODs, such as the Grand Avenue TOD and the Chinatown Blossom TOD, both in Los Angeles.

RECOMMENDATION: Remove maximum parking ratios from Section 103 (a)(5).

6. Minimum Density Thresholds [Section 103 (a)(5)]

The draft guidelines require that the eligible project's density be equal to or greater than both average residential density w/in ¼ mile of transit station and proscribed densities based on proximity to urban core.

The guideline's density requirements are extremely aggressive, exceeding even HCD's own BEGIN Program guidelines. Density requirements in excess of 30 units/acre make it difficult to accommodate family-oriented units, parking, tot lots, and other non-residential components included in the community benefits agreements of most larger TOD projects. The Mullin densities located in Housing Element law are widely seen as appropriate density objectives for urban developments and are relied on as a threshold criteria within the Prop. 1C Infill Incentive Grant Program.

RECOMMENDATION: Replace the density requirements of Section 103 (a)(5) with the requirement that the eligible project meet Mullin density requirements, as established under subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code.

7. Quality of Transit Threshold [Section 103 (a)(3)(B)]

The draft guidelines establish a number of threshold criteria that the transit service associated with the housing development must pass in order for the development to receive funding. These criteria include minimum on-time performance of 95% for rail service and 85% for bus service; peak weekday commute times of no more than 150% comparable highway corridor; evening and weekend service; and either peak headways of 15 minutes or timed transfers.

This criteria limits the program to an ideal scenario that is out of synch with the on-the-ground realities of transit systems in the majority of the state, **disqualifying, for example, the vast majority of the Bay Area's transit systems, including BART, MUNI, and CalTrain.** Furthermore, this criteria sets a bar that is unrealistic for many urban core areas that rely on bus service, thus creating a program bias against inner-city projects. Projects that encourage transit ridership should not be penalized because the transit has room for improvement, a factor over which the developer has no control. On the contrary, increasing the diversity and breadth of the transit riding community via TODs can be a very effective means of encouraging transit systems to improve their performance.

In addition, there already exists sufficient statutory guidance on what constitutes a transit station, including minimum route headway requirements for bus hubs. (See Government Code Sec. 65460)

RECOMMENDATION: Remove Section 103 (a)(3)(B).

8. Transit Ridership Ranking Criteria [Section 108 (a)]

The draft guidelines establish a ranking criteria based on a combination of the density of the project's neighborhood and the type of transit service, under the premise that these factors are the leading indicators of the projects prospects for success in getting people out of cars and onto transit.

Projects should not be penalized for catalyzing dense, walkable communities. **This criteria, combined with the transit-supported land use criteria, creates a program bias against blighted areas that are in most need** of the community and economic benefits that a TOD development can provide, and instead sets up the program to most benefit the more affluent urban communities that have already achieved desired levels of density and diversity. This criteria establishes an additional bias against urban downtown areas that are jobs rich and housing poor.

RECOMMENDATION: Remove Section 108 (a).

9. Transit-supported Land Use Ranking Criteria [Section 108 (d)]

The draft guidelines establish a ranking criteria under premise similar to that of the transit ridership ranking criteria, awarding projects for being surrounded by transit-supportive land uses and penalizes projects for being surrounded by auto-dependent land uses.

Projects should not be penalized for catalyzing dense, walkable communities. **This criteria, combined with the transit ridership criteria, creates a program bias against blighted areas that are in most need** of the community and economic benefits that a TOD development can provide, and instead sets up the program to most benefit the more affluent urban communities that have already achieved desired levels of density and diversity. The uses listed as auto-dependent are unfortunately the reality in many areas around existing and planned transit stations in underserved and inner city neighborhoods. The goal of the TOD program should be to redevelop auto dependent land uses with transit supportive uses in these neighborhoods, not to redline them from TOD investment. Furthermore, there is no consideration of the transit-supported land uses that will be developed as part of the TOD project applying for funding.

RECOMMENDATIONS:

- a) **Remove Section 108 (d).**
- b) **Alternative: Remove the auto-dependent land use component of Section 108 (d) and explicitly allow for consideration of transit-supported land uses that will be developed as part of the TOD project applying for funding.**

10. Funding Disbursement Requirements [Section 105 (e)(6)]

The draft guidelines require, as a condition of funds disbursement, receipt of all required public agency entitlements and funding commitments for at least 50% of total residential units

Most large-scale TOD projects are multi-phase endeavors with the housing and infrastructure built in separate phases. Entitlements and funding, likewise, are achieved in phases. For such projects, it is infeasible to require all discretionary approvals and 50% of the funding commitments for the housing portions of the project to be in place before an infrastructure grant is disbursed.

RECOMMENDATION: Replace Section 105 (e)(6) with the following language:

Conditions precedent to the first disbursement of Program funds shall include:

- (A) A demonstration that the project or area development can complete environmental review and secure necessary entitlements from the local jurisdiction within a reasonable period of time following the submittal of a grant application.
- (B) A demonstration that the eligible applicant can secure sufficient funding commitments derived from sources other than this part for the timely development of a qualifying TOD project.
- (C) A demonstration that the TOD project has sufficient local support to achieve the proposed improvement.

11. Project Readiness Ranking Criteria [Section 108 (g)]

The draft guidelines establish a ranking criteria which awards points based on various indications of project readiness.

As with the funding disbursement requirements discussed in the previous comment, this ranking criteria does not sufficiently take into consideration the practical challenges and processes for more complicated, multi-phase projects, thus putting at a competitive disadvantage the larger, transformative TOD projects that this program is intended to support.

RECOMMENDATION: Replace Section 108 (g) with the following language:

Points will be awarded for each of the following:

- (A) A demonstration that the project or area development can complete environmental review and secure necessary entitlements from the local jurisdiction within a reasonable period of time following the submittal of a grant application.
- (B) A demonstration that the eligible applicant can secure sufficient funding commitments derived from sources other than this part for the timely development of a qualifying TOD project.
- (C) A demonstration that the TOD project has sufficient local support to achieve the proposed improvement.

12. Walkable Corridors [Sections 103 (a)(3)(D) and 108 (e)]

The draft guidelines require that an eligible housing development can have a walkable route of no greater than ½ mile between “the transit station’s fare machines and the entrance of the housing unit furthest from the transit station fare machines.” The criteria’s description of “walkable route” includes being free of “noisy tunnels.” In addition, a ranking criteria awards points based on the extent to which the project incorporates walkable corridor features.

The ½ mile walkable route requirement is overly-proscriptive and unworkable on many projects where the developer may not know at time of application exactly where the furthest residential unit or the walking route may be. It is also unclear how this criteria would be evaluated in the context of vertical developments, and could potentially disqualify an otherwise worthy TOD project due to a 200 foot elevator shaft. In addition, noisy tunnels, lack of buffer from vehicular traffic, and city blocks greater than 500 feet in length are part of the landscape of many urbanized environments, and are a fact of life in many downtown areas. These elements do not in-and-of-themselves preclude transit use, pedestrian activity, or transit oriented development.

RECOMMENDATIONS:

- a) **Remove Section 103 (a)(3)(D).**
- b) **Remove items (1) and (3) from section 108 (e).**

13. Future Transit Stations [Section 102 (v)]

The draft guideline's definition of "Transit Station" only allows for existing stations and stations scheduled to be completed prior to the scheduled completion and occupancy of the housing development seeking funding.

Program exclusion of projects completed prior to completion of the transit station is another example of short-term vision. Projects designed and developed specifically geared towards transit stations that are "on the books" to be developed in the near future should be considered for funding. The possibility that a pre-existing resident may be unwilling or unable to fairly evaluate the benefits of newly established transit service is not just cause for disqualifying a TOD project that will be serving the transit station for many years to come.

It is important to note that this exclusion as it exists knocks out some very worthy TODs, such as the Taylor Yards project in LA

RECOMMENDATION: Remove Section 102 (v).

14. Affordable Housing Ranking Criteria [Section 108 (c)]

The draft guidelines provide a maximum of 60 points to projects , based on level and depth of affordability.

Again, the Prop. 1C TOD language already establishes a 15% affordability minimum threshold, and the intent of the TOD Program is to support residential and mixed-use TOD projects that contain the required level of affordability. Ranking points for additional affordable housing places too great an emphasis on affordability and neglects other critical elements that support transit oriented uses and increased ridership.

RECOMMENDATION: Remove Section 108 (c).

15. Public/Private Investment Ranking Criteria [Section 108 (b)(2)]

The draft guidelines award points to projects in areas that have received both public and private investment in the previous three years.

The three year time period for public investment in transit does not acknowledge the fact that many older transit stations are just now beginning the process of being developed as TODs. Furthermore, any type of award to projects in areas with existing private investment will put at a disadvantage "first-in" developments intended to spur local economic development in under-served communities. Such projects should be rewarded, not penalized, for catalyzing private sector investment.

RECOMMENDATION: Remove Section 108 (b)(2).

16. Restriction against projects that have already commenced [Section 107 (a)(4)]

The draft guidelines disqualify from eligibility housing developments that have already commenced construction.

This restriction does not accommodate multi-phase projects, where the phase that has commenced development is not the phase seeking funding.

RECOMMENDATION: Add language clarifying that this restriction applies only to the project phase seeking funding.

Thank you again for providing this opportunity to comment on the draft TOD Program Guidelines. We appreciate your effort and the efforts of HCD to encourage transit-oriented development in California.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Shakofsky', with a large, sweeping flourish at the end.

Stephanie Shakofsky
Executive Director

CC:

Senate President Pro Tempore Don Perata

Senator Alan Lowenthal, Chair, Senate Transportation and Housing Committee

Assembly Speaker Fabian Nuñez

Dale Bonner, Secretary of Business, Transportation and Housing Agency

Dan Dunmoyer, Cabinet Secretary, Office of the Governor

Regina Evans, Deputy Cabinet Secretary, Office of the Governor