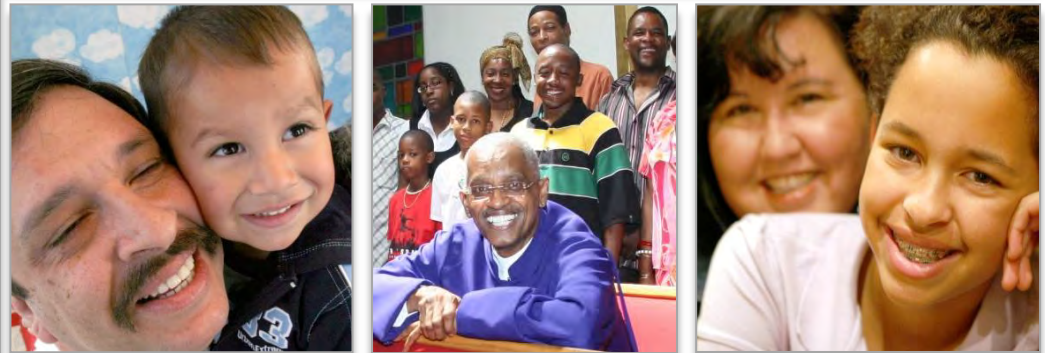


# Getting There Together: Tools to Advocate for Inclusive Development Near Transit

February 2012



Photos courtesy of the developer, East LA Community Corporation. Rendering of Boyle Hotel by Richard Barron Architects. The Boyle Hotel is a historic landmark located a few short steps away from the Gold Line in Los Angeles and is in the process of being renovated into 51 units of affordable rental housing.



**Community Development Project**

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*Made possible with the support of the  
California Community Foundation*

## Introduction

Imagine the Southern California of the future. Will it still have traffic-choked freeways, ever-increasing pollution, and neighborhoods divided by lines of wealth and poverty? Or will it have smog-busting transit and bike lanes, playgrounds and parks, and housing that everyone can afford?

**That’s the choice facing planners, community groups, elected officials, and land use attorneys today.** This guide is a tool for people who are working to create a future for Southern California that is cleaner, greener, and more prosperous for everyone who lives here.

Southern California is in the midst of a radical transformation driven by smart growth ideals and an influx of investment into new and existing public transit. The key question facing our communities is this: how can development happen so that everyone benefits, and nobody is left behind?

After years in which development patterns were characterized by sprawl and increased automobile dependency, the benefits of locating housing and amenities near public transit are receiving renewed interest from communities and local governments. Transit-oriented development—or “**TOD**”—is a smart growth planning and design concept that has become increasingly popular across the country as a strategy to improve our built environment while also reducing greenhouse gas emissions. TOD refers to the creation of compact, mixed-use, pedestrian-friendly communities located around public transit corridors. Proponents envision healthy communities where housing is located near jobs and public transportation, and schools, health care, groceries, and other essential services are within walking distance. For the past several years, lawmakers have been taking **notice of the concept’s potential to both improve** quality of life in our communities and help the environment.

The California legislature adopted Assembly Bill 32 in 2006—the **nation’s first comprehensive** program to achieve greenhouse gas reductions using market and regulatory mechanisms. As a

**means to achieve AB 32’s greenhouse gas** reductions goal, Senate Bill 375 was subsequently adopted in 2008. The law requires regional transportation planning to be

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coordinated with land use planning in order to stimulate housing production around transit, reduce reliance on cars, and, ultimately, reduce greenhouse gas emissions.

Measure R, passed by Los Angeles County voters in 2008, is projected to invest \$40 billion into the region's transportation infrastructure over 30 years; in the coming years, the Los Angeles County Metropolitan Transportation Authority (Metro) hopes to improve existing facilities and expand the region's rail network to over 150 stations covering nearly 185 miles.<sup>1</sup> As resources flow into the region, planners, developers, and politicians are eyeing rail stations as potential catalysts for development. City of Los Angeles policy has also started to focus on the development potential near transit by planning for dense, walkable, bikeable, mixed-use, and mixed-income neighborhoods near transit.

## **What Is the Choice Facing Southern California Communities?**

The combined forces of SB 375 and Measure R call for more compact, dense development and investment in transit nodes that may dramatically change the fabric of existing Southern California communities. Smart growth policies and transit-oriented development have the potential to provide great benefit to neighborhoods, serving as a mechanism for community revitalization. Documented benefits include: providing affordable housing for residents with low income around major transit stops; increasing community access to jobs, services, and amenities; reducing traffic congestion and greenhouse gas emissions by increasing public transportation ridership; and attracting public investment into communities and spurring economic activity.<sup>2</sup>

However, some of the greatest impacts of transit-oriented development and other smart growth policies also include increased housing prices, neighborhood gentrification, potential destruction of affordable homes, displacement of existing low-income households and small businesses in vulnerable neighborhoods,<sup>3</sup> and

fewer opportunities for affordable housing developers who are priced out of the market.<sup>4</sup>

How can community-based advocates capitalize on the opportunity that Measure R and SB 375 bring to ensure that transit-oriented development provides gains to current residents and existing neighborhoods? Will smart growth measures like SB 375 be implemented in a way that positively shape the landscape of our respective neighborhoods, help grow existing businesses, and open the opportunity of jobs, new homes and apartments, and improved services to current residents? Or will they drive out businesses and turn existing residents into faraway commuters to a gleaming city whose prosperity is further out of reach? As described in this guide, Los Angeles has income and housing characteristics that render its neighborhoods particularly vulnerable to forces of gentrification and displacement associated with smart growth and transit-oriented development.

## **What Does This Guide Do?**

This guide is intended to provide Southern California housing advocates with an understanding of certain opportunities and legal tools for influencing affordable housing and land use policies at four distinct phases of sustainable transit planning and development: the regional, local, neighborhood, and project-specific levels. To address some of the risks that are specific to the Southern California region, and to capitalize on some of the opportunities that come with transit-oriented development, this guide specifically focuses on laws affecting affordable housing and regional and local planning, zoning, and land disposition policies. Additionally, although this guide discusses tools available throughout Southern California, it also specifically identifies opportunities in the City and County of Los Angeles.<sup>5</sup>

This guide concludes with the need for meaningful community input at all levels of smart growth planning processes and transit development. With meaningful input and accountability, Southern California can realize a

smog-busting, transit-friendly vision and a healthy tomorrow that includes everyone. Without it, the benefits of transit investment in Southern California may be undercut by market

and regulatory forces that spur gentrification, displacement, and disruption of local communities.

### **Need for Affordable Housing in Los Angeles**

It is no secret that affordable housing is in short supply in the Los Angeles region. The City Housing Element (the local housing plan) forecasts a need for over 40,000 affordable units by 2014<sup>6</sup>—in 2010 the City reported it had only issued permits for a little over 4,300 of those units.<sup>7</sup> The County Housing Element forecasts a need for over 23,000 affordable units by 2014—in 2009 the County reported it had only issued permits for a little over 150 of those units.<sup>8</sup> On any given night in Los Angeles County, over 51,000 people are homeless.<sup>9</sup> As Los Angeles struggles to meet this massive need for affordable housing, market forces continue to drive the development of homes that are priced out of reach for most residents.<sup>10</sup> These developments occupy scarce available land that could otherwise be used for affordable housing or other community-serving purposes.

Los Angeles communities have already experienced higher rents associated with smart growth strategies. One report discusses gentrification and the risk of displacement in ethnic enclaves in Los Angeles—**stating that existing city growth strategies have “catered to the city’s higher income working professionals.”** **The report found that** low-income renters and families with children and seniors with limited incomes were most vulnerable to displacement.<sup>11</sup> Meanwhile, smart growth measures like the adaptive reuse ordinance in Los Angeles have produced mostly homes affordable to families making over \$90,000 per year.<sup>12</sup>

### **The Downside of Smart Growth: Higher Rents, More Cars, Less Public Transit Use?**

The 2010 Census reports that Los Angeles is among the most racially segregated cities in the nation. Unless advocates take steps now to deliberately incorporate measures to address housing inequity, smart growth policies and transit-oriented development may exacerbate the problem. Numerous studies have shown that transit development results in higher housing costs for properties located near transit.<sup>13</sup> According to a recent study by the Dukakis Center for Urban and Regional Policy, **“new transit stations can set in motion a cycle of unintended consequences in which core transit users are priced out in favor of higher-income, car-owning residents who are less likely to use public transit for commuting.”**<sup>14</sup> The study found

a “**stunningly high incidence**” of disproportionate rises in rents and housing values in transit-rich neighborhoods when compared to the wider metropolitan area. Along with higher housing cost burdens, the study also found an increase in household income, rising numbers of car-owning households, and reduced use of public transit for daily commuting.<sup>15</sup> Meanwhile, multiple studies have shown that people with low income, people of color, and renters are more likely to use transit and to live in households without vehicles than other Americans.<sup>16</sup>

A study by the Center for Transit-Oriented Development demonstrates that Los Angeles is susceptible to many of the same transit-related gentrification patterns noted in the Dukakis Center study. Namely, residents of existing transit-rich neighborhoods in Los Angeles are three times more likely to use transit, walk, or

bike to work, but also have lower household incomes than the rest of the region and are significantly more likely to be renters. These households typically make less than \$30,000 per year and are the groups most susceptible to

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*The challenge for advocates of both smart growth and housing affordability is to make sure the high demand for smart growth neighborhoods does not force out the people who can benefit most from them.*

*- Alex Goldschmidt,  
Smart Growth America*

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displacement when property values rise and trigger higher rents.<sup>17</sup> In Los Angeles, households with the lowest income (earning less than \$25,000 per year for a family of four) reside in the urban core, directly in the path of

existing and planned transit expansion.<sup>18</sup>

Since the benefits of transit-oriented development do not automatically flow to low-income communities and communities of color, what happens if these communities are pushed out of the urban core by the forces that come with transit investments? Communities can be fractured and jobs, homes, and social and economic networks destroyed. Also, commute times and transportation costs may increase as these households search for homes they can afford in far flung suburbs.<sup>19</sup>

There are ways to prevent the downside of smart growth—if advocates act fast to ensure **coordination** of affordable housing and land use policies with planned transit investments and smart growth strategies. This means protections for those at risk of being displaced, and new opportunities for accessible, affordable housing. In addition to addressing basic notions of equity, such policies will also be needed to preserve a thriving and well-utilized transit system in Los Angeles.

**Market Forces Left to Their Own Devices:  
The Downside of Smart Growth in Portland, Oregon**

Portland's Orenco Station development is located in an affluent, suburban neighborhood with few low-income residents or transit users. The project, which includes a town center, single-family units smaller than the city average, condominiums, and apartments, broke ground in 1996.

Most of the homeowners at Orenco Station are either retired, or young high tech employees who are single or married with no children. The community is ethnically homogenous, with 95% of residents self-identifying as white. The median household income ranges from \$6,500 to \$7,000 per month. Following the pattern of other higher-income TOD projects, as of 2007, the residents of Orenco Station report using public transit for occasional trips. In fact, 64% of residents drive to work in single occupancy vehicles, and only 15% use mass transit to get to work.<sup>20</sup> Considering the high cost of living in Orenco Station and the low wages provided by the retail establishments in the town center, employees of the commercial establishments are unable to afford to live in the community.<sup>21</sup>

## How Does SB 375 Change the Legal Landscape?

SB 375 operates at the regional level and is designed to encourage development near transit by aligning transportation planning with housing planning, offering expedited CEQA review for projects that meet certain standards, and, to some degree, making transportation funding contingent upon compliance with **the law's objectives**. However, the power to make land use and development decisions remains in the hands of local government, suggesting that municipal policy should not be lost as a focus for advocates.<sup>22</sup>

The impact that SB 375 will have in encouraging affordable housing around transit nodes remains to be seen. The current framework effectively requires regional planning for more dense development in existing urban areas. It also requires each metropolitan planning organization<sup>23</sup> to **plan** for regional housing needs by adopting a sustainable communities strategy. But, as with state housing element law, there are no requirements under the sustainable communities strategy to **build** affordable housing. The three major aspects of SB 375 are described below.

### A. Sustainable Communities Strategy

Each metropolitan planning organization must now include a “sustainable communities strategy” as part of its federally-required regional transportation plan.<sup>24</sup> The sustainable communities strategy is the land use blueprint by which the region will plan to achieve its greenhouse gas reduction target.<sup>25</sup> The sustainable communities strategy must identify areas within the region sufficient to accommodate projected housing needs, including the need for affordable housing for households with low income, and set forth a forecasted development pattern for the region, which, when integrated with transportation measures and policies, will reduce greenhouse gas emissions through a reduction in vehicle miles travelled.<sup>26</sup> To meet its targets, the sustainable communities strategy should encourage urban infill, projects mixing residential and commercial development, and new residential development near public transportation.<sup>27</sup>

Because federal law requires that projects with federal transportation funding be consistent with the regional transportation plan, and the regional transportation plan now requires a sustainable communities strategy, local government decisions must be consistent with the sustainable communities strategy in order to qualify for federal transportation funding.<sup>28</sup>

**Note, a loophole exists. If a region's sustainable communities strategy cannot show how its**

greenhouse gas reduction targets will be met, that region can instead adopt an “alternative planning strategy” which is not required to match current planning assumptions, and does not become part of the regional transportation

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*Transportation, housing, and energy policy have been viewed as separate spheres with little or no coordination on the federal, state, and local level for too long...*

*- Representative John Olver,  
House Appropriations Subcommittee on  
Transportation, Housing and Urban  
Development*

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plan.<sup>29</sup> (This loophole is not likely to apply in the Southern California region. As noted below, the Southern California Association of Governments will be adopting its sustainable communities strategy in April 2012 and expects to meet its reduction targets).<sup>30</sup>

**San Diego's metropolitan** planning organization adopted its sustainable communities strategy on October 28, 2011, making it the first agency in California to do so. The plan demonstrated that it would meet the emissions reduction target, but questions remain about whether it meaningfully encourages and preserves

affordable housing near transit, and whether it encourages urban infill development—in part because **most of the region’s transit funding was already committed to highways.**<sup>31</sup>

The sustainable communities strategy is discussed further in the section of this guide devoted to regional strategies.

## **B. Regional Housing Needs Assessment and Housing Element Changes**

Each city and county in California must create a general plan, the blueprint for development throughout the entire community. The general **plan must contain a “housing element,”** which identifies, analyzes, and plans for existing and projected housing needs for all economic segments of the community. Under the state-mandated regional housing needs assessment process, the metropolitan planning organization periodically allocates a **“fair share” of the region’s housing needs, by income level, to each local government.** The local governments, in turn, are required to plan to accommodate this allocation in their housing elements.<sup>32</sup>

Prior to the passage of SB 375, the regional housing needs assessment process was entirely separate from the regional transportation planning process. Beginning with the next regional transportation plan, these two processes will be synchronized to occur every eight years.<sup>33</sup> This alignment will enable each region to plan for land use and transportation development in accordance with its projected population growth and housing needs. Importantly, the regional housing needs

assessment must be consistent with the development pattern set forth in the sustainable communities strategy.<sup>34</sup> To that end, SB 375 requires the sustainable communities strategy to identify areas within the region that can provide sufficient housing for all economic segments of the region. Further, in developing the strategy, a metropolitan planning organization must consider overarching statewide housing principles: that early attainment of decent housing for every individual is a priority of the highest order; that provision of affordable housing requires government cooperation at all levels; and that local governments have the responsibility to make adequate provision for the housing needs of all economic segments of the community.<sup>35</sup> The regional housing needs assessment, including allocation to each municipality in the Southern California region, will be finalized in October 2012. Further changes to housing element law are described in the section of this guide discussing municipal strategies.

## **C. CEQA Incentives**

CEQA is a comprehensive California statute that requires cities to anticipate and to attempt to mitigate adverse environmental impacts of development projects. As a compliance-inducing incentive, SB 375 provides streamlined CEQA review (up to full exemptions in some cases) for residential and transit priority projects that are consistent with either the sustainable communities strategy or alternative planning strategy. This streamlined review process is described in the section of this guide discussing project-specific strategies.

## Strategies to Create and Preserve Affordable Housing Near Transit

Below is a selection of strategies to impact transit planning and affordable housing development and preservation at the regional, municipal, neighborhood, and project-specific levels:

### A. Regional Input Strategies

Planning and policy decisions that affect the dynamics of communities and the lives of residents with low income are increasingly being shifted to regional, rather than local, governance bodies. Metropolitan planning organizations are responsible for developing the regional transportation plans required by the federal government, and SB 375 has aligned regional transportation planning with local land use planning (which directly affects affordable housing). In response, advocates who have traditionally focused on local and neighborhood campaigns must find a way to bring that local voice into regional systems. This guide suggests two areas in which communities can engage at the regional level in order to help increase availability of affordable housing in neighborhoods near transit.

#### 1. *The Sustainable Communities Strategy*

Why is it important to impact the sustainable communities strategy given that final land use decisions are left to local governments under the SB 375 framework? SB 375 is a relatively new framework with evolving implementation measures. It remains to be seen how powerful the sustainable communities strategy will be in addressing equitable TOD. However, regional planning under the sustainable communities strategy may still offer a useful opportunity for advocacy. A sustainable communities strategy with strong affordable housing language could support the argument that a project *without* affordable housing is inconsistent with the regional transportation plan – and therefore ineligible for federal funding.<sup>36</sup> Likewise, projects consistent with the sustainable communities strategy will likely qualify for additional types of funding, as private funders and government agencies join the movement to support more smart growth initiatives.

SB 375 requires each metropolitan planning organization to create and adopt a public participation plan for development of the sustainable communities strategy or alternative planning strategy, including convening workshops at locations throughout the region and holding at least three public hearings on the draft strategy.<sup>37</sup>

The Southern California Association of Governments (SCAG) is the metropolitan planning organization for the greater Los Angeles area. SCAG is the nation's largest metropolitan planning organization, representing six counties, 191 cities, and more than 18 million residents. Demonstrating some of the challenges to impacting regional policy, SCAG is governed by a Regional Council of 83 members. Most governing districts within the SCAG region have one member on the Regional Council. However, Los Angeles County has two delegates and Los Angeles City, due to its population size, has its entire City Council of 15 members, and the Mayor as an at-large member.<sup>38</sup>

SCAG released its draft regional transportation plan and sustainable communities strategy in December 2011.<sup>39</sup> SCAG's final regional transportation plan and sustainable communities strategy will be released in April 2012.<sup>40</sup>

**Action Item:** Sign up to receive meeting notices from SCAG and support groups that are commenting on the need for the draft to incorporate meaningful programs to preserve and expand affordable housing around transit.<sup>41</sup> Often, jobs proximate to housing pay wages that are too low for workers to afford the housing, and reduced transportation costs do not make up the difference in increased housing costs. Strive for measures in the sustainable communities strategy that achieve a



**jobs/housing “fit”**—like performance measures and programs to help people afford to live where they work and commute shorter distances—that can help lead to a reduction in greenhouse gas emissions.

**Action Item:** Get involved in the *implementation* of the sustainable communities strategy when your municipality adopts its next housing element, as discussed in the section of this guide addressing municipal input strategies.

## **2. Land Disposition and Development Policies**

Regional transit agencies are public agencies that plan and operate public transportation service for a particular metropolitan area. In the Los Angeles region, Metro is responsible for operating bus and rail services. While the primary purpose of a regional transit agency is to provide public transportation services, these agencies also function as land owners, and in some cases, developers. Typically, when expanding and building out the transit system, a regional transportation agency will take ownership of land—either a right-of-way for a rail line or larger parcels needed for the construction of stations. In some cases, after construction of the rail line and station area, the agency will be left with surplus land. Due to Measure R and **Metro’s 30/10 plan, under which** Metro seeks to accelerate the Measure R timetable and build 12 mass transit projects in 10 years, Metro will likely acquire a large amount of property in the coming years—sites that may have potential for affordable housing development in the future.

Transit agencies dispose of land generally in one of two ways: a sale of surplus property or a joint development project.

### Sale of Surplus Property

State law requires a local agency, before disposing of surplus land, to send a written offer to sell or lease the land for the purpose of developing low- and moderate-income housing to the local governing body authorized to

develop affordable housing.<sup>42</sup> The local governing body is also expressly permitted to convey the land to a private or nonprofit developer to build affordable housing.<sup>43</sup> In Los Angeles, Metro has an internal policy on disposition of surplus land which grants a right of first offer to public agencies for affordable housing use. The internal policy requires Metro to sell the land for fair market value unless, after

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*Providing affordable housing choices that shorten travel distances to work is cost-effective for working families and beneficial to long term goals to reduce greenhouse gas emissions...*

*–Secretary Shaun Donovan,  
U.S. Department of Housing and  
Urban Development*

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approval from the CEO or Board, it is determined that it is in the best interest of Metro to sell for less than fair market value.<sup>44</sup> Property purchased with federal funds may also be subject to federal law and regulations.<sup>45</sup>

### Joint Development

A transit agency may also elect to partner directly with a public or private developer in order to develop a TOD site. This process, **referred to as “joint development,” may involve either the sale or lease of transit agency-owned property. Generally, a regional transit agency’s joint development policies are designed to maximize revenue by leveraging real estate assets for the most profitable use.**<sup>46</sup> A 2010 report by FRESC and Enterprise Community Partners also suggests that some transit agencies are becoming more inclined to sell or lease to affordable housing developers, or engage in joint development projects that include some affordable housing. The report discovered at

least nine transit agencies that currently have joint development policies that include affordable housing and noted the creation or planned development of nearly 5,000 affordable units through transit agency joint development.<sup>47</sup> Agencies with joint development affordable housing policies report benefits that help fulfill their primary transit mission. Specifically, agencies report that transit-adjacent affordable housing generates increased ridership, which induces higher fare revenue and increased competitiveness for federal grants.<sup>48</sup>

**Portland’s policy to encourage location efficient** housing demonstrates the potential to achieve affordable housing. The Portland-area transit agency purchased property adjacent to a transit stop and then sold the property to a local **community development corporation “at a discount price that reflects the public purpose mission to provide rental units at below-market rates.”** **The project, known as Patton Park** Apartments, includes 54 affordable units and ground-floor commercial space.<sup>49</sup>

**Metro’s own policy on joint development** encourages, but does not require, projects with a residential component to provide a range of housing types to meet the needs of a diversity of household incomes.<sup>50</sup> According to the FRESA/Enterprise report, 22% of the residential units created in Los Angeles County through **Metro’s joint development efforts are affordable** homes.<sup>51</sup> For example, Metro has included affordable housing in its joint development projects, such as the Westlake/MacArthur Park project on the Red Line, which will include over 100 units of affordable housing.<sup>52</sup>

The FRESA/Enterprise report notes that the majority of affordable homes produced through

transit agency efforts were financed with federal low-income housing tax credits<sup>53</sup> and that some agencies that produced housing did so in areas with land use policies, like inclusionary housing, that required it. This speaks to the importance of **coordinating** subsidy and affordable housing land use policy with transit agency joint development policy to achieve success.

**Action Item:** Identify surplus property owned by Metro or that might be acquired by Metro and later become surplus. This land presents a great opportunity for collaboration between public agencies and community-based organizations, whereby groups can help ensure that community input shapes the final disposition and development of those properties. Advocates may consider making the case that it is in the best interest of the regional transit agency to transfer surplus land to affordable housing developers in order to increase ridership.

**Action Items:** Work with transit agencies on internal policies regarding disposition of surplus property and joint development that identify subsidies for, and meaningfully encourage, affordable housing. In this time of diminishing public subsidies, the ability of public agencies to acquire land directly and hold it while financing is put together for affordable homes is also important.<sup>54</sup> If federal barriers are presented to the sale of such properties, advocates should seek long-term leases to effectuate the transfer, or consider policies that lower the land cost to the developer now and make up the difference in future fares from increased ridership due to the affordable units.<sup>55</sup> Finally, advocates can rely on data suggesting that affordable housing is needed to maintain and increase core ridership.

## Denver Regional Transportation District Affordable Housing Policy

In 2010, the Denver Regional Transportation District (RTD) amended its Strategic Plan for Transit-Oriented Development. Following targeted advocacy by a local group, the RTD Board voted to include an Affordable Housing Policy Statement in the TOD Strategic Plan, and include affordable housing goals in the RTD's Joint Development Policy. The TOD Strategic Plan states:

*“RTD will work with local governments to understand the affordable housing needs for their communities, and will encourage transit oriented development and/or joint development that addresses affordable goals of local communities and the region, working with all applicable legal limitations and parameters.”*

The RTD Joint Development Policy was amended to include a provision that requires the consideration of affordable housing in any residential joint development proposal. The policy states:

*“Prior to issuance of a RFP or entering into negotiations for a land transaction involving potential residential uses, RTD and the local governmental entity will collaborate to evaluate the subject parcel for a potential affordability goal.”*

If an affordable housing goal is established for any parcel, the Joint Development Policy requires that RFOs/RFPs must include the affordable or mixed income goals. Evaluation of the proposals will then allocate “additional points for projects in alignment with the affordability goal and demonstrated ability to execute.”<sup>56</sup>

### B. Municipal Input Strategies

Despite the SB 375 regional planning mandate, cities still have the ultimate power to approve development projects and dictate zoning that shapes the build out of a community.<sup>57</sup> For example, it is the city that makes the ultimate decision to approve a developer's application to develop housing near transit, or to convert rent-stabilized homes to luxury condominiums. In many ways, engagement at the municipal level is the most direct way to influence transit-oriented development.

#### 1. Local Policies and Ordinances.

The following are several smart growth municipal policies that could greatly improve the provision and protection of affordable housing in areas near transit:

##### Inclusionary Housing and Density Bonuses

Inclusionary housing (or inclusionary zoning) is a widely-used smart growth zoning tool

requiring developers to include a certain percentage of affordable housing units in new residential development. In return, developers receive density bonuses, zoning variances, and other assistance to reduce construction costs. By requiring affordable housing at the same time that market rate housing is built, it helps to ensure a mix of housing affordability levels. Although recent legal challenges in California may be viewed as barriers by cities who wish to implement this tool, there are in fact a number of viable alternative ways to achieve affordable housing in market-rate projects.<sup>58</sup> State density bonus law is another smart growth tool requiring municipalities to enact ordinances offering density and other development incentives when a developer volunteers to provide affordable housing in its project.<sup>59</sup> Inclusionary and density bonus policies that require or incentivize affordable housing are important because they generally work without public subsidy and, in concert with preservation measures, have great potential for increasing affordable housing in areas near transit where density and development are already planned. In

addition to supporting citywide inclusionary and density bonus measures, advocates can also push for these types of measures in overlay zones, station area and specific plans, and for statewide measures that clarify the ability of jurisdictions to mandate affordable rental housing in new development. These types of policies can get results.<sup>60</sup> A 2009 Lincoln Institute of Land Policy of four statewide smart growth programs showed that those smart growth programs generally resulted in an increase in the percentage of income spent on housing; however, the State of New Jersey, with its fair share housing inclusionary program, ranked *first* in a ranking of affordability factors—over other states without such programs.<sup>61</sup>

#### TOD Overlay Zones

**An overlay zone is part of a city’s general zoning code, but is superimposed on the existing zoning map, in effect modifying the underlying zoning classifications.** Cities can create TOD overlay zones around major transit stops and station areas, providing for a comprehensive package including density bonuses, reduced parking requirements, waived or reduced development fees, and affordable housing. An overlay zone may be an appealing policy choice for a city because it does not require revisions of the existing zoning code or significant changes to city development plans. For example, the Town of Corte Madera has used overlay zoning to create an affordable housing overlay zone

offering designated development standards to developers that build affordable housing.<sup>62</sup>

#### TOD Acquisition Fund

Acquisition funds can offer grants or low interest loans to nonprofit developers to acquire property for the development and preservation of affordable housing around transit. Advocating for such funds at all levels of government can help ensure access to below market financing needed by nonprofit developers at the project-specific level. TOD acquisition funds are discussed in greater detail in the project-specific section of this guide.

#### Coordinated Preservation Strategy

Cities should collect and organize data and maintain an early warning system to track affordable housing at risk of losing its affordability restrictions. In addition, cities should enforce the notice and purchase offer rights already enshrined in California state law with respect to affordable properties at risk of converting to market rate.<sup>63</sup> TOD acquisition funds should then be coordinated, allowing nonprofits to access funds to preserve existing affordable housing near transit. In cities like Los Angeles that maintain rent-stabilized homes near transit that house our workforce, policies are also needed to ensure transit investment and development do not spur increased demolition or conversion of these homes to luxury condominiums, and to protect renters from unjust evictions.<sup>64</sup>

### **Expiring Use Data – Los Angeles**

The need for proactive preservation strategies in Los Angeles is underscored by data regarding the number of units with current affordability restrictions that are set to expire in the near term. Of the **64,494 total such units identified in the City of LA’s current housing element, 14,594 (24%) units risk the loss of affordability between 2008 and 2013 due to the termination of rental subsidies or expiration of covenants, with an additional 6,983 (11%) at risk from 2013 to 2018.**<sup>65</sup> More than 50% of all federally-assisted units in Los Angeles are located within a quarter mile of a transit stop, and 82% of these transit-adjacent units benefit from affordability restrictions or subsidy contracts that are scheduled to expire by 2014.<sup>66</sup> Aggressive preservation efforts are needed to avoid considerable losses to **LA’s affordable housing stock.**

## 2. Housing Element

As discussed previously, state law requires every municipality to adopt a housing element as part of its general plan. Technically, because it is part of the general plan, a city must take actions consistent with its housing element.<sup>67</sup> Even before the changes to housing element law made by SB 375, the consistency requirement and other elements of the law were successfully used to obtain dedicated land and dollars for affordable housing. For example, local groups in Fillmore sued the City when it attempted to

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*[O]ur future prosperity as a nation will depend on the people and places that have been left behind...*

–PolicyLink

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approve an exclusive upper-income housing development on land that could have been used for affordable housing. Without a valid updated housing element, the local groups argued that the City could not make such an approval and the development was per se inconsistent. The settlement resulting from the lawsuit made available approximately 2.2 acres of City-owned land for very low-income farm worker housing and very low- or low-income housing, and obligated the City to provide funds for the development of affordable housing.<sup>68</sup>

With SB 375, each local government is required to adopt a new housing element within 18 months of the adoption of the regional transportation plan and sustainable communities strategy.<sup>69</sup> SB 375 also strengthens the requirements of housing element law in a number of ways. In addition to providing stiff penalties for failing to adopt within the required time, the housing element must now set forth a timeline to implement its required program of **actions “such that there will be beneficial impacts of the programs within the planning period.”**<sup>70</sup> Also, cities that fail to accommodate low-income housing by completing required

rezoning are subject to two enforcement mechanisms: **(1) a builder’s remedy and (2) a citywide remedy. Under the builder’s remedy, a developer of a project in which at least 49% of the units are affordable to low-income households is entitled to develop on any site proposed for rezoning in the housing element as if the site has already been rezoned (even if it has not).**<sup>71</sup> Under the citywide remedy, any interested person can sue to compel the local government to complete rezoning.<sup>72</sup> Because the **builder’s remedy is available only to developers** building at least 49% of units in their projects as affordable housing, it may be a helpful tool for nonprofits needing adequately zoned properties.

**Action Items:** Housing elements in Southern California are required to be adopted in 2013. Remember, both the regional sustainable communities strategy and the housing element have to address the state allocated regional housing need. Strong affordable housing programs in the housing element can therefore help ensure the sustainable communities strategy (adopted in 2012) is implemented in an equitable way in your city. Participate in your **local government’s housing element update** process to advocate for strong affordable housing provisions around transit, including financing and land use tools for preservation and production of affordable housing. Local governments must submit an annual report to the California Department of Housing and Community Development documenting progress in meeting regional housing needs. Monitor the **required annual report and local government’s** compliance with housing element law. Advocate for compliance with existing affordable housing **programs in a jurisdiction’s** housing element. Consider use of housing element remedies to compel compliance where cities fail to take actions required by housing element law.

## 3. Redevelopment

For many years, state redevelopment law has set forth a statutory scheme allowing municipalities to capture a portion of the property tax (known as tax increment) to revitalize blighted communities. Twenty percent of the tax

increment must generally be used for affordable housing through a “housing fund.”<sup>73</sup> This valuable resource has become the State of California’s largest source of affordable housing financing (second only to the federal low-income housing tax credit) and has helped produce over 78,000 affordable homes in California.<sup>74</sup> In many cities, including Los Angeles, current and proposed transit corridors cut directly through designated redevelopment project areas.

On December 29, 2011, the California Supreme Court issued an opinion in *California Redevelopment Association, et al. v. Matosantos*, Case No. S194861, which upholds recently adopted state legislation calling for the dissolution of California’s 400+ redevelopment agencies to help balance the state budget. The ruling also strikes down an associated piece of legislation allowing agencies to survive if they make certain payments to the state. Agencies dissolved February 1, 2012. ***At the publication date of this guide, no legislation had yet been passed to reverse the impacts of the decision.***

**Action Items:** Redevelopment has long provided a critical source of funding targeted at revitalizing low-income communities. Despite abuses by certain agencies, it has been a lifeline for poor, disinvested communities and residents who have benefited from the housing and jobs the funding has created.<sup>75</sup> Advocate for the affordable housing stream of dollars to continue to be dedicated to increasing and preserving the supply of affordable housing in redevelopment project areas as required by applicable law. Also, monitor disposition of real property and other assets by successor agencies to redevelopment agencies, and advocate for these assets to continue to be dedicated for affordable housing and community-serving purposes.

Likewise, monitor any tax increment legislation that is enacted to ensure it requires investment in low-income communities, production and preservation of affordable housing, no net loss, and the provision of relocation and replacement housing as part of any public financing package.

#### **4. Value Capture**

It is widely established that transit development brings with it increased property values near transit stations as a result of its associated economic, social, and environmental benefits. “Value capture” refers to efforts to tap into these rising property values in order to help fund public facilities and programs, including affordable housing.<sup>76</sup> For private actors, this means leveraging the increased value of property surrounding transit stations to create lucrative development opportunities—spurring land speculation and resulting in gentrification and displacement pressures on low-income residents and small local businesses. For municipalities, this means helping to fund public facilities and programs, including affordable housing, and can include strategies like inclusionary housing, tax assessment and tax increment, development fees, and public-private partnerships to develop community-serving TODs. With the demise of redevelopment tax increment financing in California, it is important to implement other forms of transit value capture *before* property values go up as a result of Measure R and other investments.

Under the recently enacted Senate Bill 310, a city may participate in a “transit priority project program” by passing an ordinance to so participate and by forming an infrastructure financing district.<sup>77</sup> The infrastructure financing district allows the use of tax increment to secure the issuance of bonds in order to fund the provision of facilities and services to the area.<sup>78</sup> Developments that qualify as transit priority projects within the infrastructure financing district will be permitted to be built at an increased height of a minimum of three stories.<sup>79</sup> To qualify as a transit priority development project, a development must meet a number of conditions, including proximity to transit, the payment of prevailing wages to construction workers, and at least 20% affordable housing units or the payment of an equivalent in-lieu fee.<sup>80</sup> A district may reimburse a developer of a project located within the district for permit costs and to offset the expenses incurred as a

result of developing the affordable housing.<sup>81</sup> The creation of an infrastructure finance district requires two-thirds approval by voters within the proposed district.<sup>82</sup>

Unlike redevelopment, SB 310 contains no requirement that any percentage of the tax increment proceeds from an infrastructure finance district be devoted to affordable housing. Also, current infrastructure finance district law prohibits the creation of districts in redevelopment project areas, which cut through many existing transit corridors.<sup>83</sup>

**Action Item:** Be aware of the strong possibility that increased transit investment will improve surrounding land values and spur speculative activity. Track and monitor subsidized housing that may be at an increased risk of conversion to market rate rents and rent-stabilized housing that is at risk of conversion to condominiums or demolition.

**Action Items:** Get involved in discussions about the future of tax increment financing in California. Organize and advocate for a system that ensures that increased value from transit investment is directed to low-income communities. Advocate for strong policies that mandate a significant portion of tax increment financing be allocated to the production and preservation of affordable housing for low-income households near transit, and for the provision of relocation and replacement housing as part of any tax increment proposal. Ensure that new tax increment laws do not exclude low-income communities in redevelopment project areas.

**Action Item:** Advocate for other forms of value capture, like development impact fees at the city level, and land use policies at the city and neighborhood levels, to help create needed affordable housing near transit.

## Displacement in San Francisco's Mission District

With San Francisco's Mission District sandwiched between two BART stations, located near the financial district, and with access to freeways leading to Silicon Valley, the neighborhood experienced an influx of new higher-income residents during the dot-com boom years of the late 1990s. During this time, rents and home values in the Mission District tripled as part of a citywide trend of displacement in which the out-migration of low-income households exceeded 9,800 residents per year while the number of higher income households grew. Proximity to transit was a significant factor in explaining displacement, with neighborhoods within a half-mile of major transit particularly at risk.

As the demand for housing in the Mission District outpaced supply, many landlords sought to rid themselves of current low-income tenants in order to charge higher rents. Landlords primarily used two mechanisms to evict tenants: Owner Move-In (a city ordinance which allowed eviction if an owner or close relative planned to occupy the unit) and the Ellis Act (which allows landlords to evict all tenants in order to “go out of business” and convert the rental units to condominiums). Tenants’ advocates also say that many families simply moved out when asked by their landlords—whether or not there was a legal basis for eviction.<sup>84</sup>

Displacement of low-income residents had a marked impact on the Mission District community. U.S. Census data show a discernable change in its ethnic make-up: between 1990 and 2010, the white population in the District increased while the Hispanic population decreased from 52% of the population to 41%.<sup>85</sup> The District was also impacted by commercial gentrification as per square foot rents increased 41% between 1997 and 1999, compared to an average of 15% across San Francisco, and over 50% of local businesses were sold.<sup>86</sup>

### C. Neighborhood Input Strategies

Zoning and land use plans that govern a particular neighborhood or community are important in impacting how a community is ultimately developed. There are many types of land use plans that a community might enact to help establish guidance for developers. Discussed below are specific plans, station area plans, and transit village plans. Advocates may note that many of the concepts discussed will apply to many types of land use plans—whether it is **the city's general plan** (made up of community plans in Los Angeles), specific plan, transit village plan, or station area plan. These plans may be critical points of entry because they afford the ability to address neighborhood-specific concerns and implement affordable housing strategies in a way that regional planning does not.

#### 1. Specific Plans

A specific plan “is just a step below the general plan in the land use approval hierarchy, and is used to systematically implement the general

plan in particular geographical areas.”<sup>87</sup> When adoption is by ordinance, the specific plan effectively becomes a set of zoning regulations that provide specific direction to the type and intensity of uses permitted in the area.<sup>88</sup> If such a plan exists in your neighborhood, the standards set forth in the plan will govern development in the neighborhood, meaning that development proposals will have to be consistent with the plan or they cannot be approved.<sup>89</sup> If the plan contains provisions for affordable housing, these provisions may help enable the preservation and development of affordable housing around transit. For example, the City of San Pablo's San Pablo Avenue Specific Plan explicitly incorporates programs from its recent housing element in recognition of the benefit of affordable housing close to transit. The plan includes Program H-2.1.6 to explore the feasibility of inclusionary housing requirements, noting “housing around transit stations or along major transit corridors is capable of supporting higher inclusionary housing requirements than other areas of a city” and that “transit areas [are] appropriate locations for affordable housing.”<sup>90</sup>



Metro recently awarded \$5 million to local municipalities to develop specific plans, overlay zones, and TOD design guidelines along upcoming transit corridors. The City of Los Angeles received over \$3 million for the Crenshaw Corridor, Century/Aviation, and Exposition Corridor specific plans. Other projects receiving funding are the Downtown Santa Monica Specific Plan, Duarte Gold Line Station Area Development Specific Plan, the Culver City TOD Overlay Zone, and the creation of TOD Overlay Zones and TOD design guidelines in the City of Inglewood.<sup>91</sup>

## **2. Station Area Plans and Transit Village Plans**

Local governments may prepare station area plans or transit village plans to specifically guide development within one half-mile of a transit station.<sup>92</sup> A transit village plan will generally provide for increased density near the station, and must also demonstrate public benefits beyond the increase in transit usage, such as affordable housing.<sup>93</sup> A station area plan is typically carried out in partnership with the local transit agency, and will include policies and guidelines for land use and public improvement decisions.<sup>94</sup> Station area plans and transit village plans can have both mandatory components and more voluntary guidelines.

**Action Items:** Advocate for the local government to adopt specific plans, transit village plans, or station area plans with strong affordable housing provisions—including inclusionary housing and density bonus policies, no net loss policies, requiring replacement of affordable homes destroyed as a result of development, and granting right of first refusal to nonprofits when subsidized buildings are sold. If the station area or other planning process in your area is delayed, consider advocating for interim guidelines. Finally, any station area plan or transit village plan should be **incorporated into the city’s general or specific plan.**

## **3. Community Education**

Collective community participation can help provide the basis for changes to land use plans that in turn help prevent (or mitigate) displacement and community disruption. In order for community members to engage fully, they need both resources and accessible opportunities for meaningful involvement, including language access.

**Action Items:** Advocate for resources for community organizations to educate and engage community residents at all levels of TOD and smart growth planning processes.

### **D. Project-Specific Input Strategies**

If there is a TOD project slated for your community—whether a single building or multi-stage complex development—the earlier advocates get involved the better.

#### **1. Neighborhood Nonprofit Ownership of Properties Located Near Transit**

Revitalization, job creation, affordable housing, resident organizing, and asset-building are common goals of community-based organizations. Empowering groups which have already invested significantly in your neighborhood to develop a TOD project can propel a sustained, healthy community responsive to the needs of local residents.<sup>95</sup>

The Southern California Land Opportunities Tracking System provides information and mapping programs that can help community groups track properties and identify infill opportunities near transit.<sup>96</sup> To develop projects with affordable housing near transit, community organizations need immediate access to below-market financing that will cover acquisition costs, allowing them to hold onto properties while seeking more permanent financing.<sup>97</sup> Despite the recession, local agencies and community partners are establishing acquisition and TOD funds to provide exactly this type of financing for the development of affordable

housing. In Minneapolis-St. Paul, a partnership of 12 local and national philanthropic **organizations are working to “leverage the transit investment to benefit the people and places along the line” by promoting affordable housing creation and preservation.** The group has created a fund through which they plan to invest \$20 million over ten years.<sup>98</sup>

Recently, California received its own large-scale TOD acquisition fund. The Bay Area Transit Oriented Development Revolving Loan Fund was established in 2011, with funding from the **Metropolitan Transportation Commission’s Livable Communities Program**, as well as institutional lenders, foundations, and several local community development financial institutions. The \$50 million fund will make loans to affordable housing developers to finance land acquisition near rail and bus lines throughout the region and is projected to help finance the development of 1,100 to 3,800 units of affordable housing near transit.<sup>99</sup> The first loan made by the fund will help a nonprofit development corporation develop a mixed-use project just two blocks from a BART station. This project will provide 150 affordable units (including 30 units for homeless families) and **the neighborhood’s first full-service grocery store.**<sup>100</sup>

**Action Items:** Support community-based developers who wish to develop affordable housing in your neighborhood. Be proactive in identifying potential sites for nonprofit acquisition and development of affordable housing. Monitor local agency requests for proposals for TOD projects and encourage local community-based corporations to be a part of any competitive bidding processes. As discussed above, be aware of and seek out opportunities to partner with regional transit agencies to develop affordable housing on agency owned land.

**Action Item:** Groups should sign up to be qualified purchasers under state notice law<sup>101</sup> so they can get notice and exercise rights to make

purchase offers for properties at risk of losing their affordability. The notice periods can provide time for tenant and community-based organizations to arrange financing to purchase properties near transit in order to preserve affordability.

**Action Items:** Encourage your local government to establish a TOD fund that finances projects meeting pre-established, meaningful equity criteria. Identify any existing TOD development funds and ensure local nonprofit affordable housing developers are aware of available opportunities.

## ***2. Community Benefits Agreements***

Community benefit agreements are contracts between developers and community coalitions that detail a series of commitments that the developer promises to attach to the project in exchange for public support. These agreements require a very time-intensive process and broad coalitions of stakeholders to secure multiple commitments, such as affordable housing, local source hiring provisions, living wages, job training, and childcare facilities.<sup>102</sup> Community benefits agreements can be attractive mechanisms for TOD projects because they can provide communities with benefits particular to the needs of local residents. On the other hand, a strong station area plan, specific plan, or other guidelines have the potential to achieve equitable TOD in a more far-reaching way—beyond the impact of individual projects—as well as to provide significant influence in negotiations for community benefits agreements.

**Action Items:** Identify and engage early on in the public participation process around a project. Identify sources of political, legal, and community leverage, and develop opportunities for community coalition building.

### **Community Benefits In South Los Angeles**

In February 2011, a coalition of local community-based organizations in South LA, effectively mobilized and educated local residents in negotiating a community benefits agreement with developer Geoffrey H. Palmer around a proposed luxury housing development located near a newly developed light rail line. The development site was formerly occupied by the Orthopaedic Hospital and zoned, in part, for medical, hospital, and educational uses. The campaign relied on **strong organizing, emphasizing the project's** location in the most medically underserved area in Los Angeles, as well as focused attention on the lack of affordable housing around new transit stations and the rising costs of gentrification and displacement.

Although there was no direct public subsidy going into the project, the coalition succeeded in negotiating a wide-range of benefits by combining the power of community organizing with a series of legal levers. The resulting community benefits agreement brings medical services to potentially 20,000 patients a year, an affordable housing trust fund, construction and permanent job programs for local residents, small business rental subsidies, a revolving loan fund for small businesses, and a fund to help implement community-based transit-oriented strategies in South LA. This agreement demonstrates that community residents, actively engaged in the planning process, can help shape developments that provide benefit to communities in which they are built.<sup>103</sup>

### **3. CEQA**

As previously discussed, SB 375 provides streamlined CEQA review (up to full exemptions) for residential projects and transit priority projects that are consistent with either the sustainable communities strategy or alternative planning strategy.

#### Residential Projects

Residential projects are defined as having at least 75% of total building square footage devoted to residential usage or 50% if the project also qualifies as a transit priority project, as described below.<sup>104</sup> If a residential project incorporates all feasible mitigation measures required by a previous applicable environmental impact report, as part of its environmental impact assessment it will not be required to reference, describe, or discuss (1) growth-inducing impacts, (2) project-specific or cumulative impacts from cars and light-duty truck trips on global warming or the regional transportation network, nor (3) reduced residential density alternatives to address the effects of car and light-duty truck trips generated by the project.<sup>105</sup>

#### Transit Priority Projects

Transit priority projects must include at least 50% residential uses, have at least 20 dwelling units per acre, and be located within a half mile of a major transit stop or high-quality transit corridor in the regional transportation plan.<sup>106</sup> Projects meeting these criteria can qualify for either a full CEQA exemption or a partial one.

Among the 16 requirements for the full CEQA exemption, the project must be no larger than eight acres or 200 residential units, must not result in any net loss of affordable housing units, must be 15% more energy efficient than required and incorporate landscaping designed to achieve 25% less water usage, and must provide **either** a minimum of five acres per 1,000 residents of open space **or** 20% moderate-income housing, 10% low-income housing, or 5% very low-income housing (or in-lieu fees sufficient to result in the development of an equivalent amount of units).<sup>107</sup>

#### Other CEQA Exemptions

California has enacted legislation, effective January 1, 2012, that offers additional CEQA streamlining to several categories of projects, **including “environmental leadership projects”** and certain infill development projects. An

environmental leadership project must be certified by the Governor and the Joint Legislative Budget Committee, and, if it is a residential, commercial, sports, cultural, entertainment, or recreational use project, be located on an infill site, be certified LEED Silver, achieve 10% greater transportation efficiency than comparable projects, and be consistent with the sustainable communities strategy or alternative planning strategy. The project must also result in an investment of at least \$100 million, create living wage jobs, and achieve zero net additional greenhouse gas emissions.

The legislation also permits CEQA streamlining for qualifying infill projects. In order to qualify, projects must meet a long list of requirements, including satisfying statewide standards for infill projects that will be developed by the Natural Resources Agency by January 1, 2013.<sup>108</sup>

**Action Items:** Determine if projects in your community are seeking streamlined CEQA review (or exemptions) and be prepared to advance arguments for affordable housing in compliance with the sustainable communities strategy or alternative planning strategy to take advantage of this incentive. In other cases, the CEQA public input process may be an available tool to advocate for mitigation measures that **help alleviate the project’s environmental impact**. Time periods for public comment on draft environmental impact reports can run as short as 30 days, so remain vigilant in monitoring proposed developments in your community. Also, monitor proposals to modify or reform CEQA and understand how any such changes to CEQA will also affect development around transit and affordable housing.

#### **4. Health Impact Assessments**

**A health impact assessment is a “combination of procedures, methods, and tools by which a policy or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population.”**<sup>109</sup> Health impact assessments are a proactive land use tool for advocates to ensure that government agencies, developers, and

planners thoroughly consider and study the public health implications of a proposed development, plan, or policy as part of the review process *before* proceeding with the project. For example, advocates in St. Paul, Minnesota recently completed a health impact assessment of a light rail line and proposed zone change in a high-poverty, ethnically diverse

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*[W]ithout a specific focus on preserving affordable housing in walkable neighborhoods, there is a danger that the objectives of both public health and smart growth will be compromised.*

*—Jeffrey Lubell,  
Center for Housing Policy*

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neighborhood. As a result of the assessment, the St. Paul City Council voted to study the **feasibility of two of the study’s key recommendations**: inclusionary zoning tied to indicators of improved housing market conditions around station areas and a density bonus program.<sup>110</sup>

Health impact assessments are a relatively new tool in the planning world, and there are no current regulations requiring them. However, they have great potential to demonstrate that affordable housing and other community-serving purposes must be included part and parcel with new development in order to build a healthy community for all residents.

**Action Item:** Educate advocates and other stakeholders about the need to assess public health in connection with development around transit and potential tools to do so, including health impact assessments. Determine whether a health impact assessment is appropriate for a particular project, or whether it can be incorporated into the local land use plan.

## Identify and Use Points of Leverage Associated With Federal and State Funding

The guide has outlined several tools to impact four distinct phases of transit-oriented development and smart growth planning: the regional, municipal, neighborhood, and project-specific levels. It is also important to note that there are many points of leverage associated with state and federal funding.<sup>111</sup> Advocates can use the types of hooks described below to help make their case on the ground for equitable, inclusive development.

### A. Impacting and Monitoring Federal and State Funding and Evaluation Criteria

Often, advocates hear about a development project or transit expansion project *after* it has already been funded. Impacting the process at the point at which public funds are disbursed may be a more systemic and effective way to guide transit expansion and development so that it is more responsive to community needs.

As an example, on January 26, 2012, a community and labor coalition succeeded in establishing a construction careers policy/project labor agreement applicable to any project funded by Metro (including federally-funded projects) with a life-of-project budget of \$2.5 million or more. All of the transit projects that fall under the construction careers policy are funded by Measure R. The policy requires all covered projects to complete 40% of work hours using individuals who live in areas of high poverty. Of that 40%, 10% of work hours must be performed by individuals who meet at least two of the policy's "**disadvantaged worker**" criteria, which will help establish jobs for those emancipated from foster care, single parents, recipients of public assistance, those with a history of involvement in the criminal justice system, and veterans, among others. The policy also contains anti-discrimination language affirming the obligation of Metro and its contractors to comply with both federal and state civil rights laws.<sup>112</sup>

The Federal Transit Administration (FTA) is also currently proposing to change the way it evaluates grant proposals for its major capital investment program, New Starts. Advocates

have already recognized this as a critical window of opportunity to help shape transit investments in a more inclusive way and have recommended that the evaluation criteria include incentives for applicants to preserve and expand affordable housing near transit stations. (Comments on the proposed rule are due March 26, 2012.<sup>113</sup>)

Monitoring of projects applying for funding is also important. For example, at the state level, Proposition 1C, the Housing and Emergency Trust Fund Act of 2006, included millions of dollars for mixed-income housing in TODs across California. In a 2009 Housing California report analyzing the first round, a concern was noted that projects might be funded that did not increase the supply of affordable housing. In one project, where a developer was awarded a TOD grant to rehabilitate former single-room occupancy apartments, Housing California found that prior to the application, the owner had emptied the building, closing 297 single-room occupancy apartments and resulting in a net loss of affordable units. The project was **located in downtown Los Angeles, a "prime area for gentrification despite the large number of people who are homeless."**<sup>114</sup> For advocates, cases such as this are a wake-up call to assess parameters for distribution of public funding and to monitor local projects that apply for public funding.

### B. Application of Selected Civil Rights Laws

Federal and state funds also come with civil rights levers. Although this guide does not attempt to summarize all relevant federal and state civil rights laws, below, it briefly highlights Title VI of the Civil Rights Act and the Federal

Fair Housing Act with examples of recent use by equity advocates.

### **1. Title VI and Compliance Reviews**

Title VI of the Civil Rights Act prohibits discrimination based on race, color, or national origin in any program or activity that receives federal funding.<sup>115</sup> California has a similar law prohibiting discrimination in state-funded activities.<sup>116</sup>

The Department of Transportation has further implemented Title VI through regulations, prohibiting discrimination based on race, color, or national origin in programs receiving transportation funding.<sup>117</sup> These regulations not only prohibit intentional discrimination, but also actions that have an impermissible discriminatory impact on communities of color.<sup>118</sup> Failure to comply could potentially result in a loss of funding.<sup>119</sup>

The regulations authorize the FTA to conduct a compliance review to determine whether a grant recipient is complying with its Title VI obligations.<sup>120</sup> The FTA may choose to engage in a compliance review for a number of reasons, including in response to an administrative complaint or lawsuit brought by an affected party.<sup>121</sup> After the review, the FTA will issue a report which may include specific corrective actions. If a grantee fails to take the necessary corrective actions, the FTA may suspend financial assistance or refer the matter to the Department of Justice.<sup>122</sup>

Advocates have used Title VI and the compliance review process to gain leverage in equity advocacy. In 2009, three community-based organizations filed an administrative complaint **challenging BART's** controversial Oakland Airport Connector project, alleging that BART violated Title VI, the regulations, and the FTA Title VI circular. In response, the FTA conducted a compliance review. The complaint ultimately resulted in the FTA pulling \$70 million in stimulus funds from the project—funds that

were recaptured by Bay Area transit agencies to maintain existing service.<sup>123</sup> More recently, advocates filed an administrative complaint against Metro, challenging its fare increases and service cuts.<sup>124</sup> The complaint resulted in an FTA compliance review, finding several critical **deficiencies in Metro's Title VI compliance.**<sup>125</sup> **The report brought publicity to Metro's** discriminatory practices and may prove to be a useful advocacy resource in the future.<sup>126</sup>

### **2. Environmental Justice Executive Order and the Equity Analysis**

Executive Order 12898, known as the Environmental Justice (EJ) Executive Order, **directs each federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations”**<sup>127</sup>—this is known as the “equity analysis.” **The EJ Executive Order** contains no enforcement mechanism. However, its scope is broader than Title VI in that it requires grantees to consider impacts on low-income populations.

The EJ Executive Order has long required an equity analysis on adoption of the federally-required regional transportation plan. Now, due to SB 375, this extends to the state-required sustainable communities strategy. The goal of such an analysis is typically to ensure that low-income communities and communities of color in the region share equitably in the **plan's** benefits without bearing a disproportionate share of the burdens. The Southern California Association of Governments is completing an equity analysis in connection with the sustainable communities strategy slated for adoption in April 2012. Advocates can review the equity analysis, provide comment, and use the impacts they observe in their communities on residents of color and low-income residents to help inform the analysis.

### **3. *The Obligation to Affirmatively Further Fair Housing***

The Department of Housing and Urban Development (HUD) requires each local government that receives HUD funding to certify that it is affirmatively furthering fair housing.<sup>128</sup> Many jurisdictions in Southern California, including the City and County of Los Angeles, receive HUD funding and are periodically required to complete analysis of impediments to fair housing every three to five years.<sup>129</sup> These jurisdictions must conduct an analysis of impediments to fair housing choice and take actions to overcome the effects of these impediments.<sup>130</sup> Failure to comply with these requirements may result in serious consequences, including a loss of HUD funding.

In 2009, a court in Westchester County found that the County had entirely failed to analyze race-based impediments to fair housing in its analysis of impediments.<sup>131</sup> The court case resulted in a settlement under which the County agreed to create hundreds of houses and apartments for moderate-income people in white communities and to aggressively market them to minorities.<sup>132</sup> Advocates should keep a look out for meeting notices in their jurisdiction, and ensure their jurisdiction adequately analyzes laws, regulations, and policies that have the effect of restricting housing choices on the basis of race, color, religion, sex, disability, familial status, or national origin. These effects may include, among others, zoning and inequitable distribution of infrastructure or public services.

## Conclusion

The time is now for Southern California to grow smarter. Measure R, SB 375, and transit-related investments and smart growth policies are primed to help the region do just that, by reducing greenhouse gas emissions and improving our built environment. Of course, growing smarter also means addressing the potential downsides of smart growth. This means recognizing the risk of increased housing costs, disruption of communities, and displacement of residents with low income—and enacting policies and spending public dollars in ways that are meaningfully informed by the community residents that are most impacted by transit forces. Smart growth policies and investments that are *coordinated* with affordable housing policies can help capitalize on the profound potential that these forces bring to the region for healthy, connected, and inclusive communities. In this time of declining government budgets, it is more important than ever that transit-oriented development policies deliberately incorporate equity principles to help meet the dire need in our region for homes that everyone can afford.

This guide outlines points of entry for advocates to provide input into planning and transit development at four distinct decision-making levels—regional, municipal, neighborhood, and project-specific. Federal and state levers also exist to help advocates make their case at the local and regional levels.

Meaningful community input in sustainable communities processes, using the tools outlined in this guide, serves a number of purposes. It can help ensure that the build out of our transit system is implemented in an equitable way that includes, rather than excludes, the needs of our existing residents and communities. And, it will help inform and establish policies that retain opportunities for low-income core transit riders to live near transit, thereby helping to achieve the hoped-for emissions reductions that have motivated the smart growth movement.

**Southern California’s future is riding on the choices we make today about development around transit. As we hurtle faster and faster toward becoming a more sustainable region, now is the time for growth strategies that leave no one behind.**



**APPENDIX: SELECTED STRATEGIES<sup>1</sup>**  
**TO CREATE AND PRESERVE AFFORDABLE HOUSING NEAR TRANSIT**

Page	Input Level	Strategy	Action Items
8-9	<b>REGIONAL</b>	<b>Sustainable Communities Strategy</b>	Support groups commenting on the sustainable communities strategy and the equity analysis in your region. Get involved in the next stage of SB 375 implementation – the housing element – at the municipal level.
		<b>Land Disposition and Development Policies</b>	Advocate for changes to transit agencies' disposition of surplus land and joint development policies that promote the preservation and expansion of affordable housing.
11-14	<b>MUNICIPAL</b>	<b>Local Policies and Ordinances</b>	Advocate for inclusionary housing, density bonuses, and TOD acquisition funds. Support TOD overlay zones that increase the availability of affordable housing with no displacement.
		<b>Housing Element</b>	Participate in the 2013 housing element update process, obtain annual reports, monitor compliance with housing element law, and use housing element remedies to compel compliance where cities fail to take actions required by law.
		<b>Redevelopment</b>	Advocate for the affordable housing stream of dollars to be dedicated to increasing and preserving the supply of affordable housing in redevelopment project areas. Advocate for disposition of assets by redevelopment successor agencies for community-serving purposes. Monitor any replacement tax increment legislation.
		<b>Value Capture</b>	Advocate for value capture systems that reinvest public dollars in low-income communities – and that <b>don't exclude redevelopment project areas. Ensure new public subsidy strategies require no net loss</b> , no displacement, relocation and replacement housing and an overall increase in the supply of affordable homes. Advocate for the use of development impact fees at the city level, and land use policies at the city and neighborhood levels, to help create and preserve affordable housing near transit. Track and monitor subsidized and rent-stabilized homes at risk.
16-17	<b>NEIGHBORHOOD</b>	<b>Specific Plans</b>	Advocate for adoption of specific plans (and community plans in Los Angeles) with strong affordable housing provisions.
		<b>Station Area Plans and Transit Village Plans</b>	Advocate for the adoption of station area plans and transit village plans with strong affordable housing provisions. For consistency, incorporate these plans into the local land use plan.
		<b>Community Education</b>	Advocate for resources for community organizations to educate and engage community residents at all levels of TOD and smart growth planning processes.
17-20	<b>PROJECT-SPECIFIC</b>	<b>Neighborhood Nonprofit Ownership</b>	Support neighborhood nonprofit acquisition of TOD projects. Sign up to get notice and exercise rights to make offers for at-risk properties. Coordinate land acquisition strategies with public agencies.
		<b>Community Benefits Agreements</b>	Engage in the public participation process around a project. Develop opportunities for community coalition building.
		<b>California Environmental Quality Act (CEQA)</b>	Comment on the environmental impacts of proposed projects and advocate for mitigation measures including affordable housing. Monitor proposals to change CEQA for their effect on transit and affordable housing.
		<b>Health Impact Assessments</b>	Determine whether a health impact assessment is appropriate for a particular project, or whether it should be incorporated into the local land use plan.

<sup>1</sup>For space considerations, this guide provides a brief overview of selected legal tools. It is not intended to be a comprehensive listing of all tools. Municipal, regional and project-specific strategies often involve application of state and federal law. Where applicable, a brief discussion of these laws has been included.

## Endnotes

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<sup>1</sup> Los Angeles County Metropolitan Transportation Authority, 2009 Long Range Transportation Plan, 22, 30. For a map of planned Measure R expansion projects in Los Angeles County, see Reconnecting America, *Los Angeles Equity Mapping: Los Angeles County Measure R Table Map* (2011), available at <http://www.reconnectingamerica.org/assets/Uploads/Los-Angeles-Equity-Large-Table-Map.pdf>.

<sup>2</sup> PolicyLink, *Equitable Development Toolkit: Building Regional Equity, Transit Oriented Development* (2008), 1.

<sup>3</sup> See generally Keith Wardrip, “Public Transit’s Impact on Housing Costs: A Review of the Literature,” *Center for Housing Policy: Insights From Housing Policy Research*, August 2011, 2-5 (reviewing various studies and reports that indicate that proximity to transit leads to higher home values and rents); Gen Fujioka, “Transit-Oriented Development and Communities of Color: A Field Report,” *Progressive Planning: The Magazine of Planners Network*, Winter 2011 (reporting a “wave of evictions” at a new transit station in the Boyle Heights neighborhood of Los Angeles); Gregory K. Ingram et al., *Smart Growth Policies: An Evaluation of Programs and Outcomes* (Cambridge, MA: Lincoln Institute of Land Policy, 2009) 85, 86, 142, 149 (examining four states with smart growth policies and finding that smart growth programs are likely to contribute to reduced affordability for renters and owners unless affordable housing is incorporated into the programs); Association of Bay Area Governments, *Development without Displacement Development with Diversity* (2009), 11-39 (reporting heightened levels of gentrification and displacement pressures in Bay Area transit areas, and finding that between 2005 and 2007 many low-income households migrated from transit areas to areas with poor or no transit service); Karen Chapple, *Mapping Susceptibility to Gentrification: The Early Warning Toolkit* (Center for Community Innovation at UC Berkeley, 2009), 5 (“[G]entrifying neighborhoods are nearly twice as likely to be located within one-half mile of transit than any other kind of neighborhood.”); Amanda Gehrke et al., *Creating Successful Transit Oriented Districts in Los Angeles: A Citywide Toolkit for Achieving Regional Goals* (Center for Transit-Oriented Development, February 2010), 21 (hereafter cited as *LA Toolkit*) (“The median income of transit zone residents [in Los Angeles] is significantly lower than the regional median income, despite the fact that household sizes tend to be similar. And, these lower income households are also significantly more likely to be renters, thus making households more susceptible to displacement if housing prices rise.”); Stephanie Pollack, Barry Bluestone, and Chase Billingham, *Maintaining Diversity in America’s Transit-Rich Neighborhoods: Tools for Equitable Neighborhood Change* (Boston: Dukakis Center for Urban and Regional Policy at Northeastern University, 2010), 25 (finding a “stunningly high incidence of disproportionately rising rents and housing values” in transit rich neighborhoods when compared to the metro area”).

<sup>4</sup> The Center for Transit-Oriented Development, *TOD 201: Mixed Income Housing Near Transit: Increasing Affordability with Location Efficiency* (Federal Transit Administration, 2009), 10.

<sup>5</sup> Los Angeles County makes up over 50% of the total population in Southern California. U.S. Census Bureau, 2010. California State & County Quickfacts, available at <http://quickfacts.census.gov/qfd/states/06000.html>. Here, “Southern California” refers to the six counties within the Southern California Association of Governments (SCAG) region. Public Counsel’s primary service area is Los Angeles County.

<sup>6</sup> Los Angeles Department of City Planning, *Housing Element of the General Plan 2006-2014* (Adopted January 14, 2009), 1-53.

<sup>7</sup> City of Los Angeles, *2010 Housing Element Annual Progress Report*, available by request from the California Department of Housing and Community Development or from the City of Los Angeles.

<sup>8</sup> Los Angeles County Department of Regional Planning, *Housing Element 2008* (Adopted August 5, 2008), 25; Los Angeles County Department of Regional Planning, *General Plan and Housing Element Progress Reports 2009/2010* (April 2011), 3-4.

<sup>9</sup> Los Angeles Homeless Services Authority, *2011 Greater Los Angeles Homeless Count Report* (August 2011), 11.

<sup>10</sup> Housing is generally affordable if a household spends no more than 30% of gross monthly income on housing costs. In the City of Los Angeles, more than 57% of renters and about half of all homeowners spend more than 30% on housing costs. American Community Survey 5-Year Estimates, 2005-2009. In the Los Angeles metropolitan area, 37% of working households experienced a severe housing cost burden in 2009 (paying more than 50% of household income on housing costs). This is the second highest rate in the country and significantly higher than the **22.8% rate for the nation as a whole**. Keith Wardrip, “Housing Landscape 2011: An Annual Look at the Housing Affordability Challenges of America’s Working Households,” *Center for Housing Policy: Housing Landscape 2011*, February 2011, 1-4.

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<sup>11</sup> Mary Apisakkul et al., *Gentrification and Equitable Development in Los Angeles Asian Pacific American Ethnic Enclaves* (Little Tokyo Service Center and A3PCON, 2006), 20, 38.

<sup>12</sup> **Livable Places, "Toward a Diverse & Healthy Downtown L.A.,"** available at [http://www.livableplaces.org/policy/documents/mixedincomedowntownfinal\\_001.pdf](http://www.livableplaces.org/policy/documents/mixedincomedowntownfinal_001.pdf). In the last housing element update process, advocates noted that adaptive reuse in downtown produced few affordable homes. In response, the **City of Los Angeles committed to "explore additional requirements in order to meet a broader spectrum of housing needs."** City of Los Angeles, *Housing Element of the General Plan 2006-2014* (2009), Policy 1.1.4, p 6-13.

<sup>13</sup> See Wardrip, "Public Transit's Impact on Housing Costs;" PolicyLink, *Equitable Development Toolkit* ("Properties within a five- to ten-minute walk to a transit stations already sell for 20 to 25 percent more than comparable properties farther away."). See also Ryan Sherriff, "An Affordable Beltline?," *Shelterforce*, Winter 2010, available at [http://www.shelterforce.org/article/2101/an\\_affordable\\_beltline/](http://www.shelterforce.org/article/2101/an_affordable_beltline/) (reporting that city and school property taxes on homes within an eighth-mile of the Atlanta Beltline light rail project's Tax Allocation District increased 68% after the announcement of the project.)

<sup>14</sup> Pollack, Bluestone, and Billingham, *Maintaining Diversity in America's Transit-Rich Neighborhoods*, 1, 22-26, 27-29.

<sup>15</sup> *Ibid.*, 22-26, 27-29.

<sup>16</sup> *Ibid.*, 12-15.

<sup>17</sup> See *LA Toolkit*, 21. Also, in determining whether a community is at risk of gentrification, indicators include high percentage of renter households paying more than 30% of their income for rent. Chapple, *Mapping Susceptibility to Gentrification*.

<sup>18</sup> See *Ibid.*, 52. See also Reconnecting America, "Los Angeles Equity Mapping: Los Angeles County 2009 Median Income," December 13, 2011, available at <http://www.reconnectingamerica.org/assets/Uploads/LA-Equity-2009-Median-Income.pdf>.

<sup>19</sup> For example, see Alex Goldschmidt, "Smart Can Be Affordable," *Shelterforce*, Fall 2011, available at [http://www.shelterforce.org/article/2490/smart\\_can\\_be\\_affordable](http://www.shelterforce.org/article/2490/smart_can_be_affordable).

<sup>20</sup> Bruce Podobnik, "Assessing the Social and Environmental Achievements of New Urbanism: Evidence from Portland, Oregon" (Draft of Paper Prepared for Annual Meeting of the American Sociological Association San Francisco, August 2009), 6, 12-14.

<sup>21</sup> Neo-Traditional Community Review, "Orenco Station: High Density Development," available at <http://www.demographia.com/db-nu-orenco.htm>.

<sup>22</sup> Cal. Gov. Code § 65080(b)(2)(K).

<sup>23</sup> A metropolitan planning organization is a federally mandated regional transportation planning and policy-making body. The 1962 Federal-Aid Highway Act requires a metropolitan planning organization be designated for each urbanized area with a population greater than 50,000. A metropolitan planning organization consists of representatives from local government and governmental transportation authorities. 23 U.S.C. § 134(d). Each metropolitan planning organization must produce a regional transportation plan in accordance with specific federal policies and procedures. 23 U.S.C. § 134(i). There are 18 metropolitan planning organizations in California. The Southern California Association of Governments is the metropolitan planning organization for the Los Angeles region and is the largest metropolitan planning organization in the country, representing over 18 million residents.

<sup>24</sup> Cal. Gov. Code § 65080(b)(2).

<sup>25</sup> Tom Adams, Amanda Eaken, and Ann Notthoff, *Communities Tackle Global Warming: A Guide to California's SB 375* (California: National Resources Defense Council, 2009), 14.

<sup>26</sup> Cal. Gov. Code § 65080(b)(2)(B).

<sup>27</sup> John Darakjian, "SB 375: Promise, Compromise and the New Urban Landscape," *UCLA Journal of Environmental Law and Policy* 27 (2009), 389.

<sup>28</sup> 23 U.S.C. § 134(j)(3)(C); Adams, Eaken, and Notthoff, *Communities Tackle Global Warming*, 18-19.

<sup>29</sup> Cal. Gov. Code § 65080(b)(2)(H).

<sup>30</sup> See Monica Altmaier et al., "Make It Work: Implementing Senate Bill 375" (Policy Brief by Center for Sustainable California, Institute of Urban and Regional Development, University of California, Berkeley, CA, 2009), 4.

<sup>31</sup> See generally Elliot Rose, Stuart Cohen, and Autumn Bernstein, *San Diego and SB 375: Lessons from California's First Sustainable Communities Strategy* (California: Climate Plan and Transform, 2011).

<sup>32</sup> See Cal. Gov. Code §§ 65300; 65583; 65584 *et seq.*

<sup>33</sup> Cal. Gov. Code § 65588(e); Darakjian, "SB 375: Promise, Compromise and the New Urban Landscape," 394-95.

<sup>34</sup> Cal. Gov. Code §§ 65080(b)(2)(B); 65584.04(i).

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<sup>35</sup> See Cal. Gov. Code §§ 65080 (b)(2)(B); 65580; 65581.

<sup>36</sup> Of course, this would not affect transportation projects that already have funding, for example, through local measures like Measure R.

<sup>37</sup> Cal. Gov. Code § 65080(b)(2)(F). The Southern California Association of Government's final public participation plan can be viewed at <http://www.scag.ca.gov/publicparticipationplan/index.htm>.

<sup>38</sup> Southern California Association of Governments, *Governing Structure*, available at <http://scag.ca.gov/structure.htm>.

<sup>39</sup> For a succinct overview of the Southern California Association of Government's draft sustainable communities strategy, including jobs/housing fit, see Move LA, "Talking Points on SCAG's Draft RTP/SCS Release" (2011), available at <http://www.moveLA.org/PDF/TalkingPointsRTP-SCS.pdf>.

<sup>40</sup> A copy of the draft sustainable communities strategy and regional transportation plan is available at <http://rtpscs.scag.ca.gov/Pages/Draft-2012-2035-RTP-SCS.aspx>.

<sup>41</sup> Join the mailing list at <http://www.scag.ca.gov/rtp2012/contactus.cfm> or call the main office at (213) 236-1800 for more information.

<sup>42</sup> Cal. Gov. Code § 54222(a).

<sup>43</sup> Cal. Gov. Code § 54224.

<sup>44</sup> The Disposition of Surplus Real Property Policy is available at [http://www.metro.net/about\\_us/library/images/Disposition%20of%20Surplus%20Real%20Property.pdf](http://www.metro.net/about_us/library/images/Disposition%20of%20Surplus%20Real%20Property.pdf).

<sup>45</sup> Federal regulations require recipients of funding from the Department of Transportation to request disposition instructions from the awarding agency when property purchased with those funds is no longer needed for authorized purposes. 49 C.F.R. § 18.31(c). However, current federal policy allows recipients to use property acquired with such funds for joint development projects. See FTA Policy on Transit Joint Development, 62 Fed. Reg. Vol. 12266 (Mar. 14, 1997). The definition of "joint development" expressly includes projects incorporating residential development. FTA Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, 72 Fed. Reg. 5788, 5791 (Feb. 7, 2007).

<sup>46</sup> Pollack, Bluestone, and Billingham, *Maintaining Diversity in America's Transit-Rich Neighborhoods*, 49.

<sup>47</sup> Robin Kniech and Melinda Pollack, *Making Affordable Housing at Transit a Reality: Best Practices in Transit Agency Joint Development* (Colorado: FRESC, Enterprise Community Partners, 2010), 1.

<sup>48</sup> Kniech and Pollack, *Making Affordable Housing at Transit a Reality*, 3.

<sup>49</sup> See Wendy Culverwell, "Housing project replaces motel on Interstate Avenue," *Portland Business Journal*, April 13, 2008.

<sup>50</sup> Los Angeles County Metropolitan Transit Authority, Joint Development Policies and Procedures, October 2009.

<sup>51</sup> Kniech and Pollack, *Making Affordable Housing at Transit a Reality*, 4.

<sup>52</sup> The project broke ground in April 2010. See <http://www.scanph.org/node/2211>.

<sup>53</sup> *Ibid.*, 6.

<sup>54</sup> Kniech and Pollack, *Making Affordable Housing at Transit a Reality*, 7.

<sup>55</sup> *Ibid.*, 5, 7.

<sup>56</sup> Robin Kniech, "Denver RTD Adopts Policy Statement on Affordable Housing," *Partnership for Working Families Newsletter*, 2008, available at <http://www.communitybenefits.org/article.php?id=1660>; Denver Regional Transportation District, Resolution No. 17 Revised Strategic Plan for Transit-Oriented Development (2010), available at [http://www.rtd-fastracks.com/media/uploads/main/TODStrategicPlan-final\\_090210.pdf](http://www.rtd-fastracks.com/media/uploads/main/TODStrategicPlan-final_090210.pdf).

<sup>57</sup> Cal. Gov. Code § 65080(b)(2)(K) ("Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region."). The "police power" gives California cities broad authority to regulate land use and development and adopt laws that are reasonably related to protecting the public's health, safety, and welfare. Cal. Const. art. XI, § 7; *Associated Home Builders, Inc. v. City of Livermore*, 18 Cal. 3d 582, 606-607 (1976).

<sup>58</sup> See California Affordable Housing Law Project of the Public Interest Law Project, *Inclusionary Zoning After Palmer and Patterson – Alive and Well in California* (Oakland, CA: Public Interest Law Project, 2010).

<sup>59</sup> Cal. Gov. Code § 65915.

<sup>60</sup> For a discussion on inclusionary zoning, see Vinit Mukhija et. al., "Can Inclusionary Zoning be an Effective and Efficient Housing Policy?" *Journal of Urban Affairs* 32 (May 2010), 229, 230; see e.g., City of Los Angeles, Housing Element of the General Plan 2006-2014, Appendix I: Evaluation of the 1998-2005 Housing Element, p I-36 ("P-66

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Evaluate Parking Reduction Incentive" notes that 2,396 affordable units were built during the planning period with the City's density bonus program.)

<sup>61</sup> Ingram et al., *Smart Growth Policies: An Evaluation of Programs and Outcomes* (2009), 142-143.

<sup>62</sup> Town of Corte Madera, California, Code § Sect 18.18 VII.

<sup>63</sup> Cal. Gov. Code §§ 65863.10, 65863.11, and 65863.13.

<sup>64</sup> For a discussion of past losses and future risk to rent-stabilized units in Los Angeles, see Public Counsel Law Center and Southern California Association of Non-Profit Housing, Letter to Gail Goldberg, Director, City of Los Angeles Department of Planning, Re: Los Angeles City Draft Housing Element, May 14, 2008 (on file with author). See also Gayle Pollard-Terry, "The Tenants," *Los Angeles Times*, Jan. 14, 2007, K1; and Southern California Association of Non-Profit Housing, "SCANPH Policy Advisor: Changes in Los Angeles Affordable Housing Stock: 2001-2006" (September 2006), available at [http://www.scanph.org/files/SCANPH\\_LAHousing06.pdf](http://www.scanph.org/files/SCANPH_LAHousing06.pdf).

<sup>65</sup> Los Angeles Department of City Planning, *Housing Element of the General Plan 2006-2014*, 1-42 – 1-43.

<sup>66</sup> Rodney Harrell, Alison Brooks, and Todd Nedwick, *Preserving Affordability and Access in Livable Communities: Subsidized Housing Opportunities Near Transit and the 50+ Population* (Washington, DC: American Association of Retired Persons 2009), 21; *LA Toolkit*, 21.

<sup>67</sup> Cecily Talbert Barclay, *Curtin's California Land Use and Planning Law*, 31<sup>st</sup> ed., (Point Arena: Solano Press Books, 2011), 534.

<sup>68</sup> For a more detailed discussion of housing element law and the gains that have been made by advocates using it, see Benjamin S. Beach, "Strategies and Lessons from the Los Angeles Community Benefits Experience," *Journal of Affordable Housing* 17 (Fall 2007/Winter 2008), 93-94.

<sup>69</sup> Cal. Gov. Code § 65588(e).

<sup>70</sup> Cal. Gov. Code § 65583(c).

<sup>71</sup> Cal. Gov. Code § 65583(g).

<sup>72</sup> Cal. Gov. Code § 65587(d).

<sup>73</sup> Cal. Health and Safety Code §§ 33334.2, 33334.3(a).

<sup>74</sup> California Redevelopment Association, *Frequently Asked Questions About Redevelopment in California*, 3.

<sup>75</sup> For more information on the Los Angeles Community Redevelopment Agency, see [www.crala.org](http://www.crala.org).

<sup>76</sup> Nadine Fogarty et. al., *Capturing the Value of Transit*, (Center for Transit-Oriented Development, 2008), 1.

<sup>77</sup> Cal. Gov. Code §65470(b)(1). An infrastructure financing district may be created pursuant to Cal. Gov. Code § 53395.10.

<sup>78</sup> Cal. Gov. Code § 53397.1.

<sup>79</sup> Cal. Gov. Code § 65470(c).

<sup>80</sup> Cal. Gov. Code § 65470(d).

<sup>81</sup> Cal. Gov. Code § 53395.3.5.

<sup>82</sup> Cal. Gov. Code § 53395.23.

<sup>83</sup> Cal. Gov. Code § 53395.4(a).

<sup>84</sup> Fujioka, "Transit-Oriented Development and Communities of Color," 13-14; Evelyn Nieves, "In Old Mission District, Changing Grit to Gold," *New York Times*, January 21, 1999. For more information on gentrification in the Bay Area and its relationship to TOD, see generally Chapple, *Mapping Susceptibility to Gentrification*.

<sup>85</sup> Katie Worth, "San Francisco neighborhoods have changed faces over two decades," *San Francisco Examiner*, March 20, 2011.

<sup>86</sup> Maureen Kennedy and Paul Leonard, "Dealing with Neighborhood Change: A Primer on Gentrification and Policy Choices," (A Discussion Paper Prepared for the Brookings Institution Center on Urban and Metropolitan Policy and PolicyLink, Washington, D.C., April 2001), 45.

<sup>87</sup> Barclay, *Curtin's California Land Use and Planning Law*, 39.

<sup>88</sup> California Environmental Resources Evaluation System, *The Planner's Guide to Specific Plans, Part IV: Adoption, Amendment, Repeal, Administration* (1998).

<sup>89</sup> Cal. Gov. Code §§ 65455, 65867.5.

<sup>90</sup> City of San Pablo, "San Pablo Avenue Specific Plan," (Public Review Draft, September 2011), 7-1 to 7-16; 7-9.

<sup>91</sup> Los Angeles County Metropolitan Transit Authority Planning and Policy Committee, Agenda for November 16, 2011, Meeting. A summary of the agenda item is available at [http://www.metro.net/board/Items/2011/11\\_November/20111116P&PIItem12.pdf](http://www.metro.net/board/Items/2011/11_November/20111116P&PIItem12.pdf); Ken Bernstein, "Reinventing Los Angeles: Seizing the Transit Opportunity," *The Planning Report*, February 2012.

<sup>92</sup> Cal. Gov. Code §§ 65460.2, 65460.4.

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<sup>93</sup> Cal. Gov. Code § 65460.2(f)(4).

<sup>94</sup> PolicyLink, *Equitable Development Toolkit*, 7.

<sup>95</sup> *Ibid.*, 9-10.

<sup>96</sup> Information on the tracking system program, which is operated by the Southern California Association of Governments and the Compass Blueprint Program, is available at <http://www.compassblueprint.org/toolbox/calots>.

<sup>97</sup> Harrell, Brooks, and Nedwick, *Preserving Affordability and Access in Livable Communities*, 39.

<sup>98</sup> Sujata Srivastava et al., *CDFIs and Transit-Oriented Development* (Center for Transit-Oriented Development, 2010), 15.

<sup>99</sup> Press Release, Metropolitan Transportation Commission, “MTC Contribution Keys New Affordable Housing Fund,” March 23, 2011, available at [http://www.mtc.ca.gov/news/press\\_releases/rel523.htm](http://www.mtc.ca.gov/news/press_releases/rel523.htm).

<sup>100</sup> Barbara Murray, “Bay Area Transportation Commission Creates Affordable Housing Fund,” *Multi-Housing News*, April 1, 2011; Bay Area TOAH Fund Website, List of Project, available at <http://bayareatod.com/projects>.

<sup>101</sup> Cal. Gov. Code § 65863.11.

<sup>102</sup> For a thorough discussion on the use of community benefit agreements, see Beach, “Strategies and Lessons from the Los Angeles Community Benefits Experience,” 17.

<sup>103</sup> For more information concerning the UNIDAD CBA with Palmer, see Diana Pei Wu “Los Angeles Coalition Wins Health Clinic and Jobs from Developer,” *Race, Poverty & the Environment* 18, no.1 (2011).

<sup>104</sup> Cal. Pub. Res. Code §§ 21159.28(d); 21155(b).

<sup>105</sup> Cal. Pub. Res. Code § 21159.28.

<sup>106</sup> Cal. Pub. Res. Code § 21155.

<sup>107</sup> Cal. Pub. Res. Code § 21155.1. A transit priority project that is unable to meet all of the requirements for full exemption may still be reviewed under a sustainable communities environmental assessment or a streamlined environmental impact report if it has incorporated all feasible mitigation measures, performance standards, or criteria from prior applicable environmental impact reports, and it has identified all significant or potentially significant impacts and has adequately addressed cumulative effects in prior environmental impact reports. Cal. Pub. Res. Code § 21155.2; see also Darakjian, “SB 375: Promise, Compromise and the New Urban Landscape,” 393.

<sup>108</sup> See S.B. 292 (Padilla), Stats. 2011, Ch. 353; A.B. 900 (Buchanan), Stats. 2011, Ch. 354; and S.B. 226 (Simitian), Stats. 2011, Ch. 469. For a detailed discussion of the bills, see Norman Carlin and David Farabee, “CEQA Streamlining Legislation: Some Small Steps Forward, but No Giant Leap,” (White Paper for Pillsbury Winthrop Shaw Pittman LLP, October 5, 2011).

<sup>109</sup> See World Health Organization, “Definition of health impact assessment (HIA),” available at <http://www.euro.who.int/en/what-we-do/health-topics/environment-and-health/health-impact-assessment/definition-of-health-impact-assessment-hia>; see also Centers for Disease Control and Prevention, “Health Impact Assessment,” available at <http://www.cdc.gov/healthyplaces/hia.htm>. For general information on health impact assessments, see the work of Human Impact Partners, an organization whose core mission is to advance the use of Health Impact Assessments, available at [www.humanimpact.org](http://www.humanimpact.org), or the UCLA Public Health Department’s Project on Health Impact Assessments, available at <http://www.ph.ucla.edu/hs/health-impact/>.

<sup>110</sup> Shireen Malekafzali and Danielle Bergstrom, *Healthy Corridor for All: A Community Health Impact Assessment of Transit-Oriented Development Policy in Saint Paul, Minnesota* (PolicyLink, 2011). The health impact assessment was a joint project of PolicyLink, ISAI AH, and Take Action Minnesota.

<sup>111</sup> Although beyond the scope of this guide, publicly funded projects that displace residents and businesses are also often subject to laws requiring payment of relocation assistance.

<sup>112</sup> Los Angeles County Metropolitan Transportation Authority, text of staff report of policy, available at [http://boardsecretary.metro.net/2012/01\\_January/20120118EMACItem40.pdf](http://boardsecretary.metro.net/2012/01_January/20120118EMACItem40.pdf).

<sup>113</sup> Major Capital Investment Projects, 77 Fed. Reg. 3848 (Jan. 25, 2012). The text of the proposed rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-01-25/pdf/2012-1198.pdf>. In April 2011, Enterprise and the National Housing Conference provided recommendations on an earlier version of the proposed rule. A copy of their letter is available at <http://www.enterprisecommunity.com/servlet/servlet.FileDownload?file=00P30000007ZtsNEAS>.

<sup>114</sup> Housing California, *Evaluation of First Round Awards Under California's Transit-Oriented Development (TOD) Housing and Infill Infrastructure Grant (IIG) Programs* (2009), 9-10.

<sup>115</sup> 42 U.S.C. § 2000d.

<sup>116</sup> California Government Code section 11135 operates to preclude discrimination in state funded or state run activities. Section 11135 is considered to be the California state law analogue to Title VI of the Civil Rights Act of 1964

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(codified at 42 U.S.C. § 2000d *et seq.*), except that section 11135 creates a private cause of action. See, e.g., *Darensburg v. Metropolitan Transportation Commission*, 611 F. Supp. 2d 994, 1041 (N.D. Cal. 2009).

<sup>117</sup> 49 C.F.R., Part 21. The regulations are based on 49 U.S.C. § 5332. In addition to the regulations, the FTA has issued a proposed circular which provides clarity to its grantees with regard to their obligations under Title VI. See “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” (FTA Proposed Circular 4702.1B). The Circular, which is still in draft form, circular will supersede “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” (FTA Circular 4702.1A, May 13, 2007).

<sup>118</sup> See 49 C.F.R. § 21.5(a); (b)(2).

<sup>119</sup> See 49 C.F.R. § 21.13.

<sup>120</sup> See 49 C.F.R. § 21.11 (a).

<sup>121</sup> 49 C.F.R. § 21.11; FTA Proposed Circular 4702.1B, Ch. VIII.

<sup>122</sup> 49 C.F.R. § 21.14; FTA Proposed Circular 4702.1B, Ch. VIII.

<sup>123</sup> Public Advocates, “BART/Oakland Airport Connector,” available at <http://www.publicadvocates.org/bartoakland-airport-connector-oac>.

<sup>124</sup> Richard Marcantonio, Public Advocates, “Bay Area Airport Connector Should Be Cautionary Tale For LA Metro,” *California Progress Report*, December 22, 2011, available at <http://www.californiaprogressreport.com/site/bay-area-airport-connector-should-be-cautionary-tale-la-metro>.

<sup>125</sup> U.S. Department of Transit, FTA Office of Civil Rights, “Title VI Compliance Review of the Los Angeles County Metropolitan Transportation Authority (Metro) Final Report” (December 2011).

<sup>126</sup> See, e.g., Ari Bloomekatz, “Metro board members lecture agency over civil rights violations,” *Los Angeles Times*, December 16, 2011.

<sup>127</sup> Executive Order 12898, February 11, 1994. The FTA has also recently released a draft circular on environmental justice, in order to provide clarity to grantees with regard to their obligations under the Executive Order. See *Environmental Justice Policy Guidance for Federal Transit Administration Recipients*, (FTA Proposed Circular 4703.1).

<sup>128</sup> 42 U.S.C. § 3608(e)(5) (establishing obligation of HUD to affirmatively further fair housing); 24 C.F.R. §§ 570.601(a)(2); 91.225(a) (extending obligation to grantees and requiring certification).

<sup>129</sup> U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, *Fair Housing Planning Guide* (1996), 2-6.

<sup>130</sup> 24 C.F.R. §§ 570.601(a)(2); 91.225(a).

<sup>131</sup> See *United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc., v. Westchester County*, 668 F. Supp.2d 548, 562 (S.D.N.Y. 2009).

<sup>132</sup> Sam Roberts, “Westchester Adds Housing to Desegregation Pact,” *New York Times*, August 10, 2009.

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## **Disclaimer**

Nothing herein is to be considered as rendering legal advice for specific cases or circumstances. This guide is not intended to be a comprehensive review of every transit-oriented development strategy or tool. For more detailed information, readers are encouraged to obtain legal advice from their own legal counsel or contact an attorney with Public Counsel's Community Development Project.

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