

US EPA ARCHIVE DOCUMENT

Developing a Policy Toolbox for the Post-Proposition 207 Environment

Transit Oriented Development in Metropolitan Phoenix



Transit-Oriented Development in Phoenix and Mesa: Developing a Policy Toolbox for the Post-Proposition 207 Environment

I. Introduction – Transit-Oriented Development (TOD) Policies and Property Values

The enactment of Proposition 207 raised an important question: *Will its compensation requirements create a barrier to transit-oriented development policies?* There are two main reasons why the answer to this question is most likely “no.” First, TOD programs are typically built upon incentives that make developing properties more enticing, many times resulting in the enhancement of property values. Second, several studies including Reconnecting America’s “Capturing the Value of Transit” have quantified the value that public rail investments add to nearby properties. Therefore, in the few cases where land use regulations do reduce the economic value of a property, it could be possible to design the incentives associated with a TOD program to outweigh any potential losses in property value. A formal process could be established to evaluate such claims and exempt properties that can prove a significant loss in property value that cannot be offset by incentives.

Quantifying the impact of specific TOD policies is a complex task. For example, some policies reduce developer costs or enable a project to include more developable square footage. Such incentives can be worth a few thousand dollars or several million, depending on the nature of the site and current real estate market conditions. Other TOD policies may directly restrict certain types of new development (e.g., car washes or self storage) around a station. However, this restriction would diminish property value only if there are no transit-compatible alternatives (e.g., an office, retail, or residential project) that would generate as much or more revenue than restricted uses. Yet, the value of TOD is realized at a regional level. When governments and taxpayers invest billions of dollars to build a transit system, it is an imperative of fiscal responsibility to support the investment in transit with land uses that bolster ridership. Essentially, the public good is weighed against the benefits to individual property owners. Some aspects of this approach may be problematic in the Proposition 207 environment, but TOD-supportive policies are still a viable option for the Phoenix area.

This complexity raises strategic questions about how TOD policies relate to Proposition 207:

1. What is the scope of Proposition 207 related to provisions typically included in TOD programs?
2. Can a set of TOD policies be bundled to ensure that the property value created by the transit investment and policy incentives outweigh any diminished value associated with restrictions on land use?
3. How would various approaches to limiting compensation claims affect the rating of planned system extensions under the federal transit New Starts Program?

The three sections that follow address the questions in order. While a cut-and-dried set of answers is not possible, several key insights emerge from exploring each issue.

- Many effective TOD policies are not land use laws (e.g., support for station area planning, financial incentives, and infrastructure provision) and thus are exempt from Proposition 207.
- Other common components of transit overlay zones are, by definition, incentives that add value (e.g., density bonuses, more flexible parking standards) and would not trigger a compensation claim.
- The most problematic component of typical TOD overlay zone regulations, as far as Proposition 207 is concerned, is the restriction of uses, but even its potential for generating successful claims under Proposition 207 is unclear. It is likely that potential claims would relate to health and safety concerns as well as transportation or traffic control. (Use restrictions could be unbundled from the other overlay zone provisions for this reason. These restrictions could be adopted separately so that a challenge to them would not affect implementation.)
- The design standards (e.g., retail frontage, sidewalk width, and shade requirements) in overlay zones do impose additional development costs, which could arguably reduce property values, but they are relatively modest and easily offset by incentives and the increased value that the design standards may bring to the property. In most cases, good urban design that focuses on pedestrian-supportive environments provides additional value to the site and its users.
- While future transit-oriented development plans are not counted toward ridership forecasts that determine cost effectiveness, a qualitative assessment of transit-supportive land use policies still comprises half of the New Starts rating system. For information about New Starts, see Appendix A.
- As METRO proposes expanding the light rail system into areas with less transit-supportive land use patterns, policies aimed at transforming land use around station areas should become even more important to a favorable overall land use rating for the New Starts criteria.

II. Proposition 207 as a Constraint on TOD Policies

Although Proposition 207 is a fairly broad statute with significant implications, it does contain specific language limiting its reach. Table 1 summarizes the key provisions relevant to TOD policies and provides a quick assessment of their potential implications. On one hand, the statute requires compensation for most land use laws that diminish property value. Under a narrow list of conditions, land use laws are protected from compensation claims (ARS § 12-1134, B: 1, 3, 6, 7), but the burden of proof is on local governments to make the case for an exemption (ARS § 12-1134, C). On the other hand, land use laws are defined in a way that places many of the policies associated with TOD programs beyond the scope of the statute (ARS § 12-1136, 3). Finally, it also excludes claims when a property is not directly subject to a newly enacted land use law (ARS § 12-1134, B: 6, 7). This policy ensures that claims cannot be made retroactively to address previous land use changes.

These aspects of the statutory language allow TOD policies to be sorted according to the degree to which Proposition 207 may limit their application. At one end of the spectrum are incentive-based tools that are exempt because they are not land use laws: support for station area or corridor planning, financial subsidies, and upgrades to public infrastructure. Specific exemptions are also included in the law that could, depending on how they are interpreted by the courts, protect provisions of TOD overlay zones from compensation claims. For example, design requirements or access management standards in overlay zones, if primarily designed to protect pedestrian and bicyclist safety, would likely be exempt (ARS § 12-1134, B: 1) even if they affect property values.

Elements of an overlay zone that serve a “transportation or traffic control purpose” might also qualify for an exemption (*ibid*). If this were interpreted broadly, use restrictions would be exempt due to their transportation and traffic control purpose of ensuring an adequate ridership base for the light rail. Uses that generate a lot of automobile traffic near the transit stop would certainly have the potential to be a safety and traffic control issue. Similarly, parking caps could be justified by the need to control traffic around station areas. Furthermore, ridership levels are affected by the range of land uses. Office and residential uses generate riders for transit and customers for businesses in the station area, while some businesses, such as self-storage facilities, do not.

Exhibit 1 – Key Provisions of Proposition 207: The Private Property Protection Act

Specific Language ¹	Implication
(ARS § 12-1134, A) Applies only to <i>land use laws</i> that reduce <i>the right to use, divide, sell, or possess</i>	
“...If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law...” “owner is entitled to just compensation”	What does the right to use and possess imply? For example, when something is currently a conditional use (e.g., a drive-through fast food restaurant) rather than a unique land use category, does it have existing “use rights”? This issue relates specifically to the land use and not the form of a structure. Building form issues are considered the section entitled <i>Form-Based Codes as an Alternative Strategy</i> .
(ARS § 12-1136, 3) Specific definition of a land use law	
“any statute, rule, ordinance, resolution or law enacted by the state or a political subdivision that regulates the use of / division of land, or any interest in land...”	Does “any interest in land” mean that policies such as parking caps, which do not regulate the use or subdivision of parcels, could still be subject to compensation claims? If parking is considered a land use, parking caps would affect the amount of that use.
(ARS § 12-1136, 1) <i>Fair market value</i> defined as the benchmark for compensation	
“Fair market value means the most likely price...which the land would bring if exposed for sale in the open market.”	This provision might rule out a claim for revenue lost due to a prohibited use unless the property owner can prove it negatively affects the price they would get for the land if they put it on the market. Also, there is no clear language on the burden of proof regarding impacts on fair market value.
(ARS § 12-1134, I) Waiver agreements allowed under the statute	
“Nothing in this section prohibits the state or any political subdivision from reaching an agreement with a private property owner to waive a claim for diminution in value.”	This provision explicitly protects any opt-in / waiver-based approach to overlay zones.

¹ Title 12, Chapter 8 Arizona Revised Statutes § 12-1134, B: 1, 3, 6, 7 (Private Property Rights Protection Act)

(ARS § 12-1134, B: 1, 3, 6, 7) Potential exemptions to the compensation requirement	
1) "Protection of the Public's Health and Safety, including... Transportation or Traffic Control...and Pollution Control"	<p>Any overlay zone requirements intended to enhance pedestrian / cyclist safety and improve traffic flow around station areas could be exempt. Other exemptions would include those for developments that make a direct positive impact upon local air quality as well as reduce greenhouse gases as part of a strategy for addressing global warming and climate change. These actions will improve public health, safety, and pollution control.</p> <p>For example, access management standards in an overlay district that limit driveway access onto an arterial where rail stations are located will minimize instances where pedestrians and automobiles will be in the same space leading to a safer pedestrian environment.</p>
3) "Required by Federal Law"	If a court ruled that the Transit Supportive Land Use Criteria in the New Starts Program amounted to a federal requirement, use restrictions might be permitted without compensation for any diminished property value.
6) "Do not directly regulate an owner's land"	<p>This definition rules out challenges by neighbors claiming that TOD development policies will negatively affect their property values.</p> <p>For example, density bonuses or flexible parking standards could not be challenged by neighboring properties based on a claim that such policies would reduce the neighboring property's value.</p>
7) "Were enacted before the effective date of this section"	Existing overlay zone policies in Phoenix, Mesa, and Tempe are protected against challenges under Proposition 207. Proposition 207 was adopted in November 2006.
(ARS § 12-1134, C) The burden of proving a land use law is exempt falls on the government	
State or political subdivision "that enacted the land use law has the burden of demonstrating that the land use law is exempt pursuant to subsection B."	Essentially, relying upon any of these exemptions to avoid compensation claims against a TOD land use law requires that the connection to the exempt purpose be direct and clearly provable in court.

III. Options for Mitigating Proposition 207's Impact on TOD Programs

This examination of the statutory language suggests a framework for considering TOD policy tools and their vulnerability to claims under Proposition 207. Three general groupings seem most sensible:

- 1) Policies susceptible to claims for compensation;
 - Parking caps
 - Use restrictions in overlay zones
- 2) Policies where claims are possible, but would be unlikely to show any reduction in property value; and
 - Density bonuses
 - Design guidelines
 - Expedited development review
 - Relaxed parking restrictions
- 3) Policies that are outside the scope of the statute.
 - Buying available parcels in the open market
 - Capital funding for infrastructure
 - Financial assistance for land assembly (without use of eminent domain)
 - Funding for station area planning and market studies
 - Tax abatement
 - Tax exempt bonds
 - Underwriting development land costs

This framework could translate into a number of approaches to mitigating the impact of Proposition 207 on TOD policies.

- The most conservative approach would be to move forward only with policies that are strictly incentive based.
- A more ambitious approach could implement a “balanced package” of incentives aimed at offsetting any negative property value impacts of overlay zone use restrictions. (see the following section for more explanation of this concept) The potential risk of this approach is that incentives, in many cases, are susceptible to market conditions. There may be times when the housing market is strong enough to need only a small subsidy or incentive to cover the difference in development costs and other times when the difference could be much bigger.
- Another alternative could be to use enforcement waivers² when a reduction in property value can be demonstrated. This approach would create the flexibility needed to move forward with an overlay zone, even if there is a potential for compensation claims. A

² See The League of Arizona Cities and Towns “Sample Proposition 207 Waiver Form and Claims Checklist” for additional information about enforcement waivers.

www.azleague.org/doc/resources/prop207_sample_waiver_form_checklist.doc

formal arbitration process for property owners would limit the potential for lawsuits by creating another way to resolve disputes about property values.

- A hybrid approach could implement the use restrictions through an opt-in mechanism or a more flexible standard such as form-based codes. However, each of these hybrid approaches has drawbacks.
 - The opt-in approach runs the risk of creating ineffective overlay zones where too few property owners choose to be part of the zone.
 - Form-based codes could ensure that auto-oriented uses do not hinder walkability and access around light rail stations but would not be able to ensure development that generates higher levels of ridership on the system.
- Another approach would require that all policies link directly to impacts upon health, safety, and pollution control. When implemented, developed land that makes walking easier and safer and minimizes driving will be preferred.

Creating a Balanced Package of Incentives

The primary challenge of this approach lies in quantifying the value of key incentives, such as density bonuses, reductions in required parking, access to tax-exempt bonding authority, and streamlined review. The value of these policy tools depends on several factors, including the characteristics of the developer, the site conditions, and overall market conditions. Although it is not possible to make precise net impact calculations for all the parcels that would be covered by new overlay districts, it would be possible to evaluate the combination of policies that is *most likely to result in a net positive impact on property value* for some of the parcels in the proposed phase II alignment. This estimate would only be a snapshot in time, but it is worth considering. The value also depends upon the existing zoning for the properties, the future TOD zoning, the station area typology, and the market conditions at each station.

It should be noted that this balanced package of incentives has been developed as a separate stand-alone document that is part of this project called “Strategic Package of Tools to Promote Transit Oriented Development in Metropolitan Phoenix”. The following discussion in this section provides the framework and rationale for the Strategic Package of Tools.

Conducting a detailed financial analysis of TOD tools is both technically complex and resource intensive. Therefore, Phoenix and Mesa could develop a short list of key tools to be evaluated in more detail by focusing on policies that have been most effective in other regions. Exhibit 2 summarizes the results of a 2004 national survey of transit agencies³ on which policy incentives these agencies view as most effective. Exhibit 2 shows how agencies rated various policy tools (from least effective, 3.9 on a 7-point scale, to most effective, 5.6) and how frequently the policy was applied.

- For rail systems, support for planning, relaxed parking standards, density bonuses, capital funding (infrastructure), and land assembly were the most common TOD policy tools.
- Nine of the ten most effective policies create very little risk of compensation claims:
 - a) capital funding;
 - b) tax-exempt bonds;

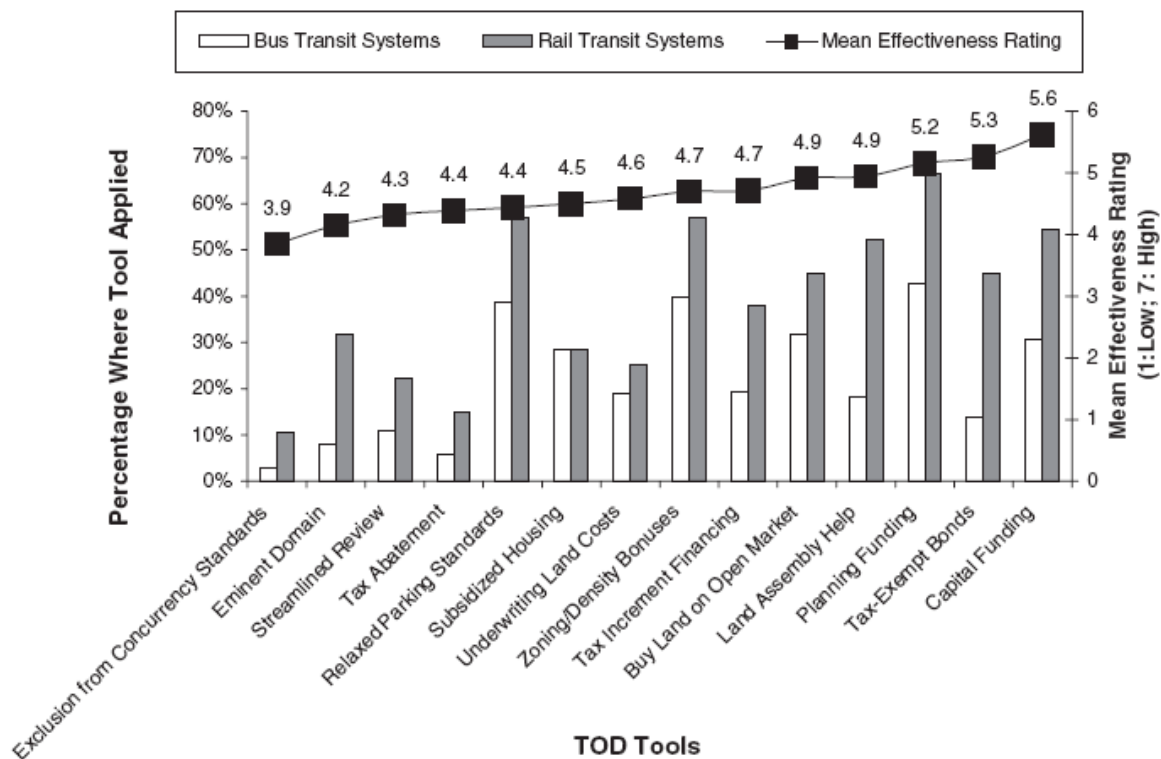
³ Cervero, R. et al. TCRP Report 102, *Transit-Oriented Development in the United States: Experiences, Challenges and Prospects*, Transportation Research Board. 2004. Figure 4.4, p. 72.

- c) planning funding;
- d) land assembly help;
- e) buying key parcels when they come on the market;
- f) density bonuses;
- g) underwriting land costs;
- h) incentives for subsidized housing; and
- i) relaxed parking standards.

The most effective use of these policies is to group them together so that multiple inputs achieve the same net result.

- The remaining policies are either not permitted in Arizona, not currently in place in Arizona, or would create clear issues relative to Proposition 207.

Exhibit 2 – Application of Transit-Oriented Development Tools⁴

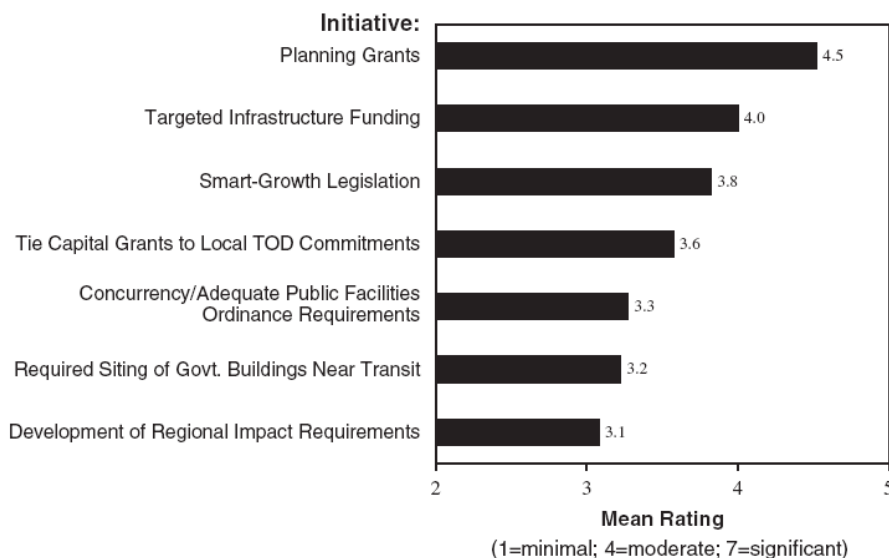


State and regional agencies could also be critical partners in providing incentives. The national survey of TOD policies also asked transit agencies to rate the most effective forms of assistance they received from other levels of government. Four of the top seven state and regional policies—planning grants, targeted infrastructure funding, tying capital grants to TOD commitments, and locating government buildings near transit—would not pose any risk of a

⁴ Ibid.

challenge under Proposition 207. The remaining three might pose some risk but are not really applicable in Arizona due to policy priorities at the state level.

Exhibit 3 – State and Regional TOD Tools⁵



Not all of these TOD policy incentives have the same range of uncertainty surrounding their value. Some incentives can vary tremendously based on the characteristics of a site and the market conditions. Others are more straightforward, and their value can be more easily predicted. Given this variation, it is helpful to explore the potential value of specific policies through a few examples of their application. The key test relative to Proposition 207 is how such incentives translate into no decreases in the fair market value of property (ARS § 12-1136, 1). The following is a summary of key incentives that can be applied to Metropolitan Phoenix.

Flexible / Reduced Parking Requirements

Flexible parking standards for residential and commercial development near transit stations have been adopted in more than half of all rail-based TOD programs.⁶ There are two primary rationales for reducing the required amount of parking near transit stations: households living near stations own fewer cars, and more workers take transit to jobs located near stations.

For residential parking, Reconnecting America⁷ used Census data to examine auto ownership in transit zones (see Exhibit 4). Its study concluded that households near transit stations consistently own fewer cars. For example, households living near the stations in medium-sized rail systems own 1.2 cars on average, compared with a national average of 1.7 cars per

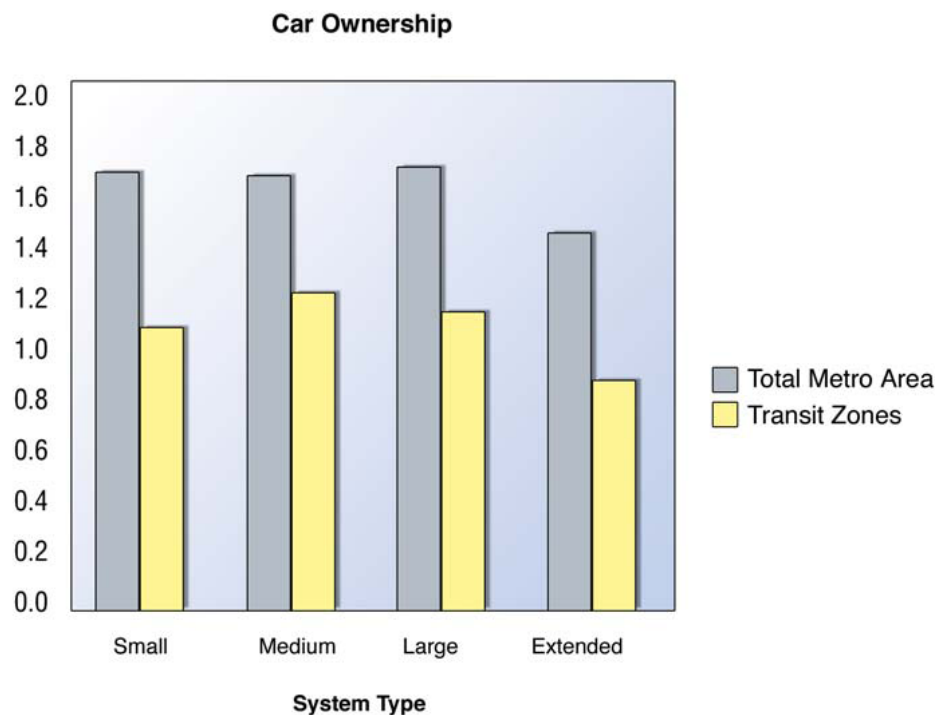
⁵ Cervero, R. et al. TCRP Report 102, *Transit-Oriented Development in the United States: Experiences, Challenges and Prospects*, Transportation Research Board. 2004. Figure 4.5 pg. 75.

⁶ Ibid.

⁷ Reconnecting America. *Hidden in Plain Sight: Capturing the Demand for Housing Near Transit*, Reconnecting America. November 2004. pp. 21.

household. Typical parking requirements for a multifamily residential project are two spaces per unit. Using such numbers as a benchmark, however, a TOD overlay zone could allow multifamily residences to provide only 120 parking spaces for every 100 units, a reduction of 80 spaces. For a building with surface parking, this could translate into \$160,000 to \$240,000 in reduced construction costs. If the building has a structured or underground parking garage, the reduced construction cost could be \$1.6 to \$2.4 million^{8 9} For the Phoenix market, the reduction of parking ratios would be successful primarily in the areas with the highest land costs, such as downtown and in the Washington Street corridor.

Exhibit 4 – Car Ownership in Transit Zones¹⁰



Density Bonuses

Density bonuses are another commonly used TOD incentive. However, there are two main sources of uncertainty to placing a dollar value on such a policy. First, there must be a market potential for any density beyond what is otherwise allowed. Second, if taking advantage of a density bonus implies changing the type of building (e.g., moving from a 2- or 3-story wood frame building to a 7-story concrete or steel structure), the bonus must allow enough of an increase in square footage to offset the higher construction costs.

⁸ U. S. Environmental Protection Agency. *Parking Spaces/Community Places: Finding the Balance through Smart Growth Solutions*. EPA 231-K-06-001. 2006, pp. 72-77. <http://www.epa.gov/smartgrowth/parking.htm>.

⁹ Surface parking spaces typically range from \$2,000 to \$3,000 per space, while structured parking ranges from \$20,000 to \$30,000 per space.

¹⁰ Reconnecting America. *Hidden in Plain Sight: Capturing the Demand for Housing Near Transit*, Reconnecting America. November 2004. pp. 21.

The cost figures from the analysis done for sites in the Tempe-Mesa corridor provide a benchmark to illustrate this point.¹¹ When the height of a multifamily residential building goes from 3 to 4 stories, the construction cost per square foot rise by 3 percent. Moving from 6 to 7 stories increases cost per square foot by 13 to 17 percent, depending on what kind of parking is provided. If the net value of the building per square foot does not increase by more than this amount, the density bonus has no value. For office buildings, the increase in density has a much smaller impact on construction costs, since the construction materials change less dramatically—there is only a 1 percent increase in cost per square foot when moving beyond 6 stories. Therefore, a density bonus has a much greater chance of generating increased value on properties suitable for office development.

Site and Station Area Planning

Spending public funds to support site design and station area plans can also be a valuable incentive. Such planning has benefits in the New Starts rating process and can also add financial value to parcels with redevelopment potential by reducing “entitlement risk” for developers. In particular, if such planning translates into changes to existing zoning—e.g., increased density, reduced parking requirements, and mixed-use development specifically permitted as a use category—then communities could benefit financially for these investments. For example, a study of the Westside light rail line in Portland concluded that the station area planning and implementation of TOD zoning tools increased the value of parcels in advance of the system’s opening.

Funding to support traffic impact studies, site design, or other permit reviews required for development approval can also potentially translate into increased land values. In effect, the more that is currently required of developers, the greater the potential opportunity to provide an incentive by defraying such costs for TOD projects.

Expedited Development Review

The value of expedited development review is largely tied to two factors: the carrying costs that a potential developer faces and the time an alternative process saves. In other words, if a developer owns a vacant parcel outright, the carrying costs are primarily tied to the monthly taxes he or she pays on the parcel. However, if a developer finances the acquisition of land with a bridge loan, the cost for each additional month it takes to navigate the approval process can be quite costly.

Investments for Project Viability

Capital funding for infrastructure improvements can also translate directly into increased property value. Many parcels along the light rail corridor may require additional investment to upgrade water, sewer, or electric utilities before they can be redeveloped. If such infrastructure upgrades are financed by connection fees, waiving these fees in TOD zones could be a valuable incentive. Alternatively, waiving fees lowers overall construction costs so that they can be covered by the market value of the unit. This is important for many of the station areas in the corridor where the key aspect will be revenue generation, not reduction of unit prices.

¹¹ Economic and Planning Systems. Memo to Phoenix and Mesa entitled Light Rail Station Area Development Feasibility Analysis and Implementation Recommendations, EPS #16027. May 2007. pp. 1-12.

Light Rail Investment and Land Value Premiums

The increased land values that results from the public investment in light rail should be considered in any claim of lost property value from a TOD policy such as use restrictions or design standards. Many studies, including Reconnecting America's *Hidden in Plain Sight*, have been conducted over the past 15 years evaluating the premium associated with properties near light rail stations. Although the results vary depending on the strength of the real estate market and the nature of the rail system serving the properties, the studies have found that land near light rail stations usually commands a premium. For example, one study found that commercial land value premiums near light rail stations were 30 percent along San Diego's North Line, 24 percent in San Jose, and 60 percent for some properties in downtown Denver.¹² A study in Dallas quantified the increase in property values for land near the light rail line against comparable properties. Land near the light rail stations increased in value 14 to 34 percent, while comparable properties' value increased by only 3 to 7 percent over a four-year period.¹³ The time period for consideration of diminished value is strictly the present time when the property is transferred. Values will generally accrue over time and are not always evident at the point when a developer might be ready to build a project.

An Opt-in Approach to Overlay Zones

Cities such as Phoenix and Mesa may also choose to implement new TOD overlay zones through an opt-in method as a more conservative approach to avoiding Proposition 207 claims. The entire TOD overlay zone could be implemented in this fashion, or simply the provisions most likely to produce compensation claims. For example, the use restrictions on auto-oriented businesses that potentially generate a lot of revenue, such as car washes and storage facilities, could be phased in. Furthermore, the opt-in method could also be place specific, where an argument can be made in terms of increased real estate value, public safety, traffic, etc. The use of this approach could also vary based on station typology.

This opt-in feature would need to be paired with incentives to ensure enough property owners participated to make a meaningful overlay zone. The opt-in system would be ineffective if it led to an incoherent patchwork district, such as incompatible uses that constrain values. An example of this would be a car wash adjacent to mixed-use development because it breaks up the pedestrian realm. One basic mechanism for implementation would presumably be an agreement signed by a property owner or developer waiving his or her right to pursue claims under Proposition 207. In return the owner would be entitled to incentives and tools tied to the TOD district similar to those described above. The cities would also have to be ready and able to offer whatever package of incentives they want to make available, including certain permit fee waivers. This isn't impossible, but it does present a political challenge in terms of getting all of the interests aligned.

Another option would be an automatic opt-in triggered by the sale of a property. The statute explicitly states that a property owner must own a property before a law is enacted to be entitled

¹² Cervero, R. et al. TCRP Report 102, *Transit-Oriented Development in the United States: Experiences, Challenges and Prospects*, Transportation Research Board. 2004. Ch.9

¹³ Ibid.

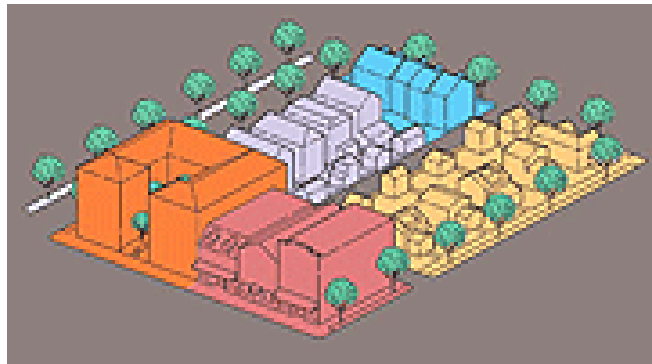
to make a claim (ARS § 12-1134, A). Therefore, a parcel could be opted-in to the TOD overlay zone since the new owner did not possess the property at the time the law was enacted. This in a sense “resets” the restrictions upon the parcel in question. This option would be in addition to the option of a current owner opting in. This would help to accelerate achieving a coherent district.

Form-Based Codes as an Alternative Strategy

Form-based codes might be an attractive alternative to the current approach to TOD overlay zones. In particular, they would help ensure that development around stations makes walking safe and pleasant and builds ridership without directly restricting uses. Although restricting auto-oriented uses is a more direct path to ensuring transit-supportive station area development, the potential that restriction creates for compensation claims might make form-based codes an attractive alternative. In fact, the current TOD overlay zones adopted in Phoenix include development standards consistent with the concept of form-based codes (see Table 2).

Traditional zoning regulates uses, setbacks, and intensities in a designated area. Form-based codes differ in two ways. First, they do not include use restrictions. Second, they set up a detailed block-level framework of standards for street frontage, the configuration of buildings, buildings’ size in relation to one another, the scale of streets, and block size. In other words, the form, scale, and character of development are the primary focus. The regulations are presented in both diagrams and words (see Exhibit 5). Unlike design guidelines or general statements of policy, they are mandatory rather than advisory.¹⁴

Exhibit 5: Visual Diagram of a Form-Based Code



Form-based codes would enable overlay zones to focus on placemaking rather than controlling uses and capping intensity in the zone. The most important factor for using form-based codes to promote transit-oriented development is how each building functions and contributes to a sense of community around the transit station.¹⁵ A car wash, car dealership, or self-storage facility could be located near a transit station but designed in a way that supports rather than detracts

¹⁴ Form-Based Code Institute. www.formbasedcodes.org. Accessed January 17, 2009.

¹⁵ Parolek, D. et al. *Form-Based Codes: A Guide for Planners, Urban Designers, Municipalities and Developers*. John Wiley and Sons, Inc.: New Jersey. 2008. pp. 12-17.

from a pedestrian-oriented environment. This approach would not achieve the ridership objectives of direct use restrictions, but it would at least protect the pedestrian environment and make it easy to walk to the station from other parcels, even with predominantly auto-oriented uses.

A form-based code can provide significant benefits to a TOD project. First, it provides a design-oriented framework best suited for organizing buildings to create public spaces and accommodating to transit usage. A TOD overlay zone based on a form-based code could also guide and encourage the land uses to meet the criteria in the New Starts rating system.¹⁶ Another feature of form-based codes is that it has either no or minimal setbacks, which allows buildings to frame the street and create a more comfortable walking environment. The aim is to encourage transit-supportive uses. Uses are not denied but need to be sited in a manner that contributes to the overall function of the station areas.

Another way to use a form-based code to encourage transit is to consider a graduated strategy that takes into account station typology and proximity to the station within the ½-mile radius station area. For the properties closest to the stations—perhaps 800 feet or 1/8 mile away—public safety, public health, protection of public investment, and market viability issues would be the strongest considerations. The encouragement of transit use depends on the how desirable an environment it is to use. For instance, transit stations that are in the middle of highway right-of-ways typically do not generate as many riders, especially pedestrians, as stations that are integrated into an urban fabric. Application of a form-based code can provide the amenities necessary to achieve the desired urban fabric. When development is focused on the building form versus the usage, amenities such as sidewalks, public open space are presented as part of a overall concept to promote walking and create a sense of place that can attract investors and users. Beyond this radius, the form-based code could be an opt-in strategy. The importance of use restrictions may be different for a station that is more focused on access to other modes (i.e., park and ride, bus transfer, regional rail) than for a station that is more of a destination. Form-based codes have been used to support TOD in several places, including Leander, Texas; Albuquerque, New Mexico; and Dallas, Texas.

¹⁶ *Supportive Zoning Regulations Near Transit Stations* - Land Use Criteria II. c. and *Tools to Implement Land Use Policies* - Land Use Criteria II. d. Table 3.

Exhibit 6 – Overview of Phoenix’s Current TOD Overlay Zone

<i>TOD 1 Overlay Zone</i>		<i>Property Value Impacts</i>
Use restrictions	<p>Prohibited uses including bulk retail, car washes, gas stations, and storage facilities.</p> <p>Conditional uses including drive-through facilities, fast-food establishments, and grocery stores with building footprints over 50,000 square feet.</p> <p>Existing uses shall not be prohibited until January 2014; then property owners within the district may seek Special Use Permit.</p> <p>Large retail (in excess of 80,000 square feet) shall not front the street with parking lots. Instead, liner buildings shall be required and front pedestrian-oriented streets.</p>	<p>Uses are organized to encourage businesses that attract pedestrians, provide a density that can provide a return on investment, and enable a high percentage of trips by transit. Impacts related to health, pollution, and transportation are considered.</p> <p>Conditions are general concepts versus specific thresholds; property owners may test limits of these requirements to preserve costs.</p> <p>Market conditions may slow the redevelopment of properties that will eventually be special uses (in 2014) to allowable uses.</p> <p>The intent is to eliminate over time uses that are prohibited under the TOD overlay. The Special Use Permit process is the same as rezoning and, while not insurmountable, the process is somewhat complicated and open to public comment. The city of Phoenix might approve Special Use Permits for most businesses who request them. Incentives would help outweigh the small pain of applying for the Special Use Permit.</p> <p>Starting in 2014, the requirement for the Special Use Permit may be changed to reflect new priorities.</p>

Development standards	<p>Maximum setback: 12 feet for non-residential and mixed-use 18 feet for residential</p> <p>Sidewalk width: 8 feet; 6 feet in residential areas with a density less than 12 units/acre</p> <p>Minimum building frontage: 75% if 0-500 feet from station 65% if 500-2,000 feet from station</p>	<p>These standards create the parameters for a pedestrian-oriented environment along the light rail corridor. Each element contributes to the creation of a distinct sense of place. This should raise property values. Wide sidewalks and density around the station and businesses encourage people to walk, which provides more customers for businesses.</p>
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<i>TOD 2 Overlay Zone</i>		<i>Property Value Impacts</i>
Use restrictions	<p>8 prohibited uses including car washes, drive-in businesses, and exterior display of goods.</p> <p>7 conditional uses subject to 5 conditions including drive-through facilities, fast-food establishments, and grocery stores with building footprints over 50,000 square feet.</p> <p>Other provisions are the same as TOD-1.</p>	<p>Storage facilities, gas stations, and truck stops become permitted uses in TOD-2. The list of allowable uses is the key difference between TOD-1 and TOD-2. The uses that are permitted in TOD-2 are not as pedestrian friendly as the uses in TOD-1. The development standards encourage a level of development consistent with TOD, but will the market deliver these uses or direct them to other locations?</p>
Development standards	Same standards as for TOD-1	Same analysis as in TOD-1.

IV. TOD Policies and the FTA New Starts Evaluation Process

Beyond creating better communities for residents, one of the most important reasons for undertaking the review of TOD tools is that promoting TOD improves the city's chances of receiving federal support to expand the light rail system. The New Starts Program is a highly competitive system for allocating major capital project grants for transit systems. Projects not receiving the highest rating under New Starts have little chance of getting federal funding. The rating system has changed over the past few years, shrinking from a system that rated projects across five criteria to one in which two rating categories, cost effectiveness and transit-supportive land use, are the fundamental rating criteria. Although future TOD near station areas is no longer counted toward the ridership projections underpinning cost effectiveness, TOD policies still play an important role in the rating criteria.

FTA guidance also emphasizes that ratings are an “on-going process”, meaning that the evaluation of future proposals may consider conditions associated with existing situations.¹⁷ Therefore, because Phoenix’s transit overlay districts were a prominent part of past proposals, FTA may be concerned about any substantial watering down of these provisions for future proposed extensions. “Existing land use” is a component of the rating criteria (see Exhibit 7), which is relevant because the system is planned to expand into northwestern Phoenix and eventually toward Glendale and downtown Mesa. Development in these areas is lower density and has more auto-oriented, single-use land use around stations. Therefore, it becomes even more important for the transit-supportive plans and policies to rate high to balance out the medium rating that the existing land use will probably receive.

V. Conclusion

This paper describes options communities in metropolitan Phoenix could use to promote transit-oriented development while taking into account impacts related to Proposition 207. Phoenix and the other communities along the light rail corridor are looking for policy options that meet multiple goals, including:

- Promoting and encouraging transit-supportive land uses at transit stops and along the corridor;
- Addressing FTA’s land use criteria through a complement of TOD-promoting tools and incentives; and
- Strengthening property values, in line with the goal of Proposition 207.

To achieve these goals, communities will have to creatively use available tools to promote TOD and incentives to that the type of development they want is fiscally viable. Success will come from providing the right tools for the right situation, but it will also depend on cities making significant, long-term investments to transform land use patterns to support current and future transit. Denser development along the corridor, done in a context-sensitive way, will help support transit and other community goals. Other documents in this report will further define how these goals and objectives could be achieved. These include Strategic Package of Tools: Transit Oriented Development in Metropolitan Phoenix, Encouraging Transit Oriented Development: Case Studies that Work, and Impact of Transit Oriented Development and Smart Growth Incentives on Development in Phoenix.

¹⁷ U. S. Department of Transportation. Federal Transit Administration. July 2007. *FY 2009 New Starts and Small Starts Evaluation and Rating Process* p. B-10 Annual Report on Funding Recommendations - FY 2009 New Starts and Small Starts Evaluation and Rating Process.

Exhibit 7 - Summary of the New Starts Land Use Rating System

I. EXISTING LAND USE	
a. Existing Land Use	<ul style="list-style-type: none"> Existing corridor and station-area development character Existing station-area pedestrian facilities, including access for persons with disabilities Existing corridor and station-area parking supply
II. TRANSIT-SUPPORTIVE PLANS AND POLICIES	
a. Growth Management	<ul style="list-style-type: none"> Concentration of development around established activity centers and regional transit Land conservation and management
b. Transit-Supportive Corridor Policies	<ul style="list-style-type: none"> Plans and policies to increase corridor and station-area development Plans and policies to enhance transit-friendly character of corridor and station-area development Plans to improve pedestrian facilities, including facilities for persons with disabilities Parking policies
c. Supportive Zoning Regulations Near Transit Stations	<ul style="list-style-type: none"> Zoning ordinances that support increased development density in transit station areas Zoning ordinances that enhance transit-oriented character of station-area development and pedestrian access Zoning allowances for reduced parking and traffic mitigation
d. Tools to Implement Land Use Policies	<ul style="list-style-type: none"> Outreach to government agencies and the community in support of land use planning Regulatory and financial incentives to promote transit-supportive development Efforts to engage the development community in station-area planning and transit-supportive development
III. PERFORMANCE AND IMPACTS OF POLICIES	
a. Performance of Land Use Policies	<ul style="list-style-type: none"> Demonstrated cases of development affected by transit-supportive policies Station-area development proposals and status
b. Potential Impact of Transit Investment on Regional Land Use	<ul style="list-style-type: none"> Adaptability of station-area land for development Corridor economic environment
IV. OTHER LAND USE CONSIDERATIONS (Optional)	
Exceptional Examples	<ul style="list-style-type: none"> Historic, environmental, community preservation, etc.

Appendix A

Detailed Scoring Tables for the New Starts Rating System¹⁸

I. EXISTING LAND USE		
<i>Existing Land Use</i>		
Phase of Project Development	Land Use Assessment Ratings	
Preliminary Engineering and Final Design	HIGH (5)	Current levels of population, employment, and other trip generators in station areas are sufficient to support a major transit investment. Most station areas are pedestrian friendly and fully accessible.
	MEDIUM (3)	Current levels of population, employment, and other trip generators in station areas marginally support a major transit investment. Some station areas are pedestrian friendly and accessible. Significant growth must be realized.
	LOW (1)	Current levels of population, employment, and other trip generators in station areas are inadequate to support a major transit investment. Station areas are not pedestrian friendly.
Ratings based on assessment of the following: <ul style="list-style-type: none"> • Existing corridor and station-area development; • Existing corridor and station-area development character; • Existing station-area pedestrian facilities, including access for persons with disabilities; and • Existing corridor and station-area parking supply. 		
II. TRANSIT-SUPPORTIVE PLANS AND POLICIES		
<i>Growth Management (DOES NOT APPLY TO SMALL STARTS)</i>		
Phase of Project Development	Land Use Assessment Ratings	
Preliminary Engineering and Final Design	HIGH (5)	Adopted and enforceable growth management and land conservation policies are in place throughout the region. Existing and planned densities, along with market trends in the region and corridor, are strongly compatible with transit.
	MEDIUM (3)	Significant progress has been made toward implementing growth management and land conservation policies. Strong policies may be adopted in some jurisdictions but not others, or only moderately enforceable policies (e.g., incentive-based) may be adopted regionwide. Existing and/or planned densities and market trends are moderately compatible with transit.
	LOW (1)	Limited consideration has been given to implementing growth management and land conservation policies; adopted policies may be weak and apply to only a limited area. Existing and/or planned densities and market trends are minimally or not supportive of transit.
Ratings based on assessment of the following: <ul style="list-style-type: none"> • Concentration of development around established activity centers and regional transit; and • Land conservation and management. 		

¹⁸ U. S. Department of Transportation. Federal Transit Administration. July 2007. *FY 2009 New Starts and Small Starts Evaluation and Rating Process*

II. TRANSIT-SUPPORTIVE PLANS AND POLICIES		
<i>Transit-Supportive Corridor Policies</i>		
Final Design	HIGH (5)	Conceptual plans for the corridor and station areas have been developed. Local jurisdictions have adopted or drafted revisions to comprehensive and/or small area plans in most or all station areas. Land use patterns proposed in conceptual plans and local and institutional plan revisions are strongly supportive of a major transit investment.
	MEDIUM (3)	Conceptual plans for the corridor and station areas have been developed. Local jurisdictions have initiated the process of revising comprehensive and/or small area plans. Land use patterns proposed in conceptual plans and local and institutional plan revisions are at least moderately supportive of a major transit investment.
	LOW (1)	Limited progress, to date, has been made toward developing station area conceptual plans or revising local comprehensive or small area plans. Existing station area land uses identified in local comprehensive plans are marginally or not transit supportive.
Preliminary Engineering	HIGH (5)	Conceptual plans for the corridor and station areas have been developed. Discussions have been undertaken with local jurisdictions about revising comprehensive plans. Land use patterns proposed in conceptual plans for station areas (or in existing comprehensive plans and institutional master plans throughout the corridor) are strongly supportive of a major transit investment.
	MEDIUM (3)	Conceptual plans for the corridor and station areas are being developed. Discussions have been undertaken with local jurisdictions about revising comprehensive plans. Land use patterns proposed in conceptual plans for station areas (or existing in local comprehensive plans and institutional master plans) are at least moderately supportive of a major transit investment.
	LOW (1)	Limited progress, to date, has been made toward developing station-area conceptual plans or working with local jurisdictions to revise comprehensive plans. Existing station-area land uses identified in local comprehensive plans are marginally or not transit supportive.
Ratings based on assessment of the following: <ul style="list-style-type: none"> • Plans and policies to increase corridor and station-area development; • Plans and policies to enhance transit-friendly character of corridor and station-area development; • Plans to improve pedestrian facilities, including facilities for persons with disabilities; and • Parking policies. 		

II. TRANSIT-SUPPORTIVE PLANS AND POLICIES		
<i>Supportive Zoning Regulations Near Transit Stations</i>		
Final Design	HIGH (5)	Local jurisdictions have adopted zoning changes that strongly support a major transit investment in most or all transit station areas.
	MEDIUM (3)	Local jurisdictions are in the process of adopting zoning changes that moderately or strongly support a major transit investment in most or all transit station areas. Alternatively: strongly transit-supportive zoning has been adopted in some station areas but not in others.
	LOW (1)	No more than initial efforts have begun to prepare station-area plans and related zoning. Existing station area zoning is marginally or not transit supportive.
Preliminary Engineering	HIGH (5)	A conceptual planning process is underway to recommend zoning changes for station areas. Conceptual plans and policies for station areas are recommending transit-supportive densities and design characteristics. Local jurisdictions have committed to examining and changing zoning regulations where necessary. Alternatively, a “high” rating can be assigned if existing zoning in most or all transit station areas is already strongly transit supportive.
	MEDIUM (3)	A conceptual planning process is underway to recommend zoning changes for station areas. Local jurisdictions are in the process of committing to examining and changing zoning regulations where necessary. Alternatively, a “medium” rating can be assigned if existing zoning in most or all transit station areas is already moderately transit supportive.
	LOW (1)	Limited consideration has been given to preparing station area plans and related zoning. Existing station area zoning is marginally or not transit supportive.
Ratings based on assessment of the following: <ul style="list-style-type: none"> • Zoning ordinances that support increased development density in transit station areas; • Zoning ordinances that enhance transit-oriented character of station-area development and pedestrian access; and • Zoning allowances for reduced parking and traffic mitigation. 		

II. TRANSIT-SUPPORTIVE PLANS AND POLICIES		
<i>Tools to Implement Land Use Policies</i>		
Final Design	HIGH (5)	Transit agencies and/or regional agencies are working proactively with local jurisdictions, developers, and the public to promote transit-supportive land use planning and station-area development. The transit agency has established a joint development program and identified development opportunities. Agencies have adopted effective regulatory and financial incentives to promote transit-oriented development. Public and private capital improvements are being programmed in the corridor and station areas which implement the local land use policies and which leverage the federal investment in the proposed corridor.
	MEDIUM (3)	Transit agencies and/or regional agencies have conducted some outreach to promote transit-supportive land use planning and station-area development. Regulatory and financial incentives to promote transit-oriented development are being developed or have been adopted but are only moderately effective. Capital improvements are being identified that support station-area land use plans and leverage the federal investment in the proposed major transit corridor.
	LOW (1)	Limited effort has been made to reach out to jurisdictions, developers, or the public to promote transit-supportive land use planning; to identify regulatory and financial incentives to promote development; or to identify capital improvements.
Preliminary Engineering	HIGH (5)	Transit agencies and/or regional agencies are working proactively with local jurisdictions, developers, and the public to promote transit-supportive land use planning and station-area development. Local agencies are making recommendations for effective regulatory and financial incentives to promote transit-oriented development. Capital improvement programs are being developed that support station-area land use plans and leverage the federal investment in the proposed major transit corridor.
	MEDIUM (3)	Transit agencies and/or regional agencies have conducted some outreach to promote transit-supportive land use planning and station area development. Agencies are investigating regulatory and financial incentives to promote transit-oriented development. Capital improvements are being identified that support station-area land use plans and leverage the federal investment in the proposed major transit corridor.
	LOW (1)	Limited effort has been made to reach out to jurisdictions, developers, or the public to promote transit-supportive land use planning; to identify regulatory and financial incentives to promote development; or to identify capital improvements.

II. TRANSIT-SUPPORTIVE PLANS AND POLICIES

Tools to Implement Land Use Policies (Continued)

Ratings based on assessment of the following:

- Outreach to government agencies and the community in support of land use planning;
- Regulatory and financial incentives to promote transit-supportive development; and
- Efforts to engage the development community in station-area planning and transit-supportive development.

III. PERFORMANCE AND IMPACTS OF LAND USE POLICIES

Performance of Land Use Policies

Final Design	HIGH (5)	A significant number of development proposals are being received for transit-supportive housing and employment in station areas. Significant amounts of transit-supportive development have occurred in other, existing transit corridors and station areas in the region.
	MEDIUM (3)	Some development proposals are being received for transit-supportive housing and employment in station areas. Moderate amounts of transit-supportive development have occurred in other existing transit corridors and station areas in the region.
	LOW (1)	A limited number of proposals for transit-supportive housing and employment development in the corridor are being received. Other existing transit corridors and station areas in the region lack significant examples of transit-supportive housing and employment development.
Preliminary Engineering	HIGH (5)	Transit-supportive housing and employment development is occurring in the corridor. Significant amounts of transit-supportive development have occurred in other, existing transit corridors and station areas in the region.
	MEDIUM (3)	Station locations have not been established with finality, and therefore development would not be expected. Moderate amounts of transit-supportive housing and employment development have occurred in other, existing transit corridors and station areas in the region.
	LOW (1)	Other existing transit corridors and station areas in the region lack significant examples of transit-supportive housing and employment development.

Ratings based on assessment of the following:

- Demonstrated cases of development affected by transit-oriented policies; and
- Station-area development proposals and status.

III. PERFORMANCE AND IMPACTS OF LAND USE POLICIES

Potential Impact of Transit Project on Regional Land Use

Preliminary Engineering and Final Design	HIGH (5)	A significant amount of land in station areas is available for new development or redevelopment at transit-supportive densities. Local plans, policies, and development programs, as well as real estate market conditions, strongly support such development.
	MEDIUM (3)	A moderate amount of land in station areas is available for new development or redevelopment at transit-supportive densities. Local plans, policies, and development programs, as well as real estate market conditions, moderately support such development.
	LOW (1)	Only a modest amount of land in station areas is available for new development or redevelopment. Local plans, policies, and development programs, as well as real estate market conditions, provide marginal support for new development in station areas.
Ratings based on assessment of the following: <ul style="list-style-type: none"> • Adaptability of station-area land for development; and • Corridor economic environment. 		