

RICHARD BARON,
PRESIDENT, MCCORMACK
BARON SALAZAR

Cathy Crenshaw
President
Sloss Development

TOM DARDEN, MANAGING
DIRECTOR, CHEROKEE
INVESTMENT PARTNERS

ROBERT DAVIS, PRESIDENT,
SEASIDE AND PARTNER,
ARCADIA LAND COMPANY

BERNIE GLIEBERMAN,
PRESIDENT, CROSSWINDS
COMMUNITIES

PRES KABACOFF, PRESIDENT,
HRI PROPERTIES

MICHAEL LANDER,
PRESIDENT, LANDER GROUP

CHRISTOPHER B.
LEINBERGER, PRESIDENT,
LOCUS AND PARTNER,
ARCADIA LAND COMPANY

ED LIPKIN, PRESIDENT,
EBL&S DEVELOPMENT

ALBERT RATNER, VICE CHAIR,
FOREST CITY ENTERPRISES

JONATHAN ROSE,
PRESIDENT, JONATHAN ROSE
COMPANIES

MARILYN TAYLOR, DEAN,
UNIVERSITY OF
PENNSYLVANIA SCHOOL OF
DESIGN

Brenna S. Walraven,
Managing Director, USAA
Real Estate Company

LOCUS

RESPONSIBLE REAL ESTATE DEVELOPERS AND INVESTORS

To: Hal Connolly and Amit Bose (Office of Senator Menendez)

CC: Peter Lehner (NRDC), Quentin Kelley (T4A), Nish Suvarnakar (LOCUS), Kate Rube (T4A); Deron Lovaas (NRDC)

From: Chris Leinberger

Date: July 30, 2009

Re: Proposed TOD Legislative Approaches and Environmental Community Engagement

Following our meeting on July 22, we have combined your ideas with ours on how to develop incentives for TOD and other walkable development as a part of the climate change bill currently under consideration in the Senate. In this memo, "TOD" will mean transit-oriented development, transit-ready places and suburban, small town and rural town redevelopment, all defined by ¼ mile distance from the center.

We have held discussions with one of the leading environmental organizations, Natural Resources Defense Council (NRDC), about how this could work with the House version of the bill. I have copied Peter Lehner, Executive Director, of NRDC on this memo. There is much work to do in figuring out the details of how the ideas set out below will work but there is basic agreement that there should be some means by which to incent transit-oriented development, assuming the pollution caps are not lifted and the basic mechanisms in the House bill are used. LOCUS and NRDC are both active partners in Transportation for America, we are both on the T4A executive committee and we have common board members, thus making this discussion easier.

As you will see below, there is more work to be done before we can finalize these concepts and develop legislative language. Please let us know your time schedule so we can be responsive to your needs.

There are three basic approaches LOCUS has been reviewing. I will discuss each below.

Grants and Regulation—This was brought up by you in our meeting and would provide financial assistance for pilot projects for sustainable, TOD projects, regional planning efforts and regulatory regimes which will ensure that more development takes place around transit stations. There are some very positive reasons to consider the use of grants and regulation. However, the initiatives underway in the transportation bill and the sustainable cities efforts at HUD are similar. It makes sense to coordinate with these efforts to be the most cost effective. At the very least, the climate bill should make reference to these efforts. In addition, local jurisdictions and real estate developers generally do not need more models of TOD, though this varies from state to state and from metro area to metro area.

It is important to note that we should take what is well known today about TOD to scale. The time to address climate change is too short, the lead times to effect change in the built development is

Locus

long and there are many well-known models, such as Portland, Arlington (VA), Denver, Dallas and, of course, Union City. *The time for creating models is past.* It makes most sense for the climate bill to recommend or even mandate that jurisdictions and metro areas coordinate their compliance with the climate change bill with their compliance with the transportation bill's and HUD's efforts that are complementary.

Some of the opportunities to include grant funding for TODs in the climate bill include: 1) adding TOD as an eligible use to the SEED accounts; 2) adding TOD as an eligible use under some of the energy efficiency provisions in the bill; 3) making it more explicit in CLEAN TEA that TOD incentives are an eligible use for this funding (by state or regional governments). There are also two other regulatory thoughts to consider adding into the GREEN Act section of the bill, which deals with location and energy efficiency buildings: 1) define location efficiency in this section or require EPA/HUD to come up with a definition; 2) add location efficiency as a criteria in existing HUD programs like the LIHTC and make bonus funding available for projects that meet 'location efficiency' criteria, which would include TOD.

2. **Loan Guarantees**—There are loan guarantee programs in the House bill for renewable fuel pipelines (Section 129), fleet vehicles (Section 130), and electric transmission manufacturing plants (Section 153). Providing an amendment to provide partial federal loan guarantees for TOD would be a minor change to the bill. I do not believe it would alter the basic framework of the House bill, but I want to hear back from NRDC on this point. Partial loan guarantees for TODs would make financing easier and may be the difference between obtaining construction financing at a reasonable rate or not. A loan guarantee program for TOD could also be structured similarly to the HUD Section 108 loan guarantee program, which is a provision in the Community Development Block Grant program that allows local governments to use a portion of their CDGB money to guarantee loans for redevelopment projects. Perhaps it would be possible to create something similar using the Energy Efficiency Block Grant funds, which States have the option of consolidating with SEED money.

3. **Upstream/downstream Joint Ventures**—As Peter Lehner and other NRDC staff have pointed out, the basic framework of the House climate bill focuses on pollution allowances for upstream companies (fuel refiners, power companies, manufactures, etc.). Reductions in GHG emissions and the credits earned from those reductions will be credited to these upstream companies. The cap at 400 ppm must be maintained, which I certainly agree; even that level of pollution is probably too high to avoid extreme climate change so a higher cap is completely unacceptable.

However, the House bill is completely “supply-side” focused, looking for efficiencies and technical solutions to the reduction of GHGs. There are few if any “demand-side” tools, like TODs, and the science has demonstrated that TODs are quite effective at lowering GHGs over conventional drivable suburban development patterns.

Locus

LOCUS is discussing with NRDC the possibility of the climate change bill allowing or even encouraging joint ventures between these upstream polluters and downstream TODs with the upstream polluters getting the credit for reduced GHG emissions from the developments. This would provide the incentive for the upstream polluters to invest in downstream TODs, making their development more likely. There is already a provision in the House bill that hints at this kind of joint venture in Sections 182-189 which reads:

promote the domestic development and deployment of clean energy technologies required for the 21st century through the establishment of a self-sustaining Clean Energy Deployment Administration that will provide for an attractive investment environment through partnership with and support of the private capital market in order to promote access to affordable financing for accelerated and widespread deployment of—[among other items]: **energy efficiency technologies in residential, commercial, and industrial applications, including end-use efficiency in buildings.**

There are also some modifications to Section 222, Green house gas emissions reductions through transportation efficiency, which might make TOD joint ventures easier.

LOCUS will be discussing this further with NRDC, our developer members and possible upstream firms, such as power companies which are the most likely joint venture partners. The devil is in the details on this, and since NRDC is much more versed in the House bill, Peter will be putting us together with specialists in their Climate Center to determine what might be able to work while respecting the basic framework of the House bill. I look forward to getting your response to these ideas and providing us with the time deadlines you are working under.