

terior of homes built before 1978 be completed according to specified procedures by an EPA-certified contractor and that they be supervised by an EPA-certified renovator.

The letter pointed to several factors that the coalition said represent flaws, including insufficient training for renovators, inadequate lead test kits that produced many false positive results, ineffective consumer awareness programs, and “woeful” underestimates of LRRP compliance costs.

Duane Desiderio, vice president and counsel for the Real Estate Roundtable, one of the coalition’s members, told BNA April 29 that the possible extension of the LRRP to commercial properties is one of the Roundtable’s top regulatory concerns.

“We’ve seen no final regulations from EPA,” Desiderio said. “We haven’t yet even seen proposed regulations from EPA with regard to renovation and remodeling for commercial buildings. But the indications we have heard from EPA through its advance notice of proposed rulemaking (ANPR), through statements made at hearings of the Science Advisory Board (SAB) indicate that it is strongly considering to take what it has done in the residential sector and simply apply it to the commercial sector.”

Among the coalition’s most adamant complaints about the EPA’s initiative is that Congress’s grant of authority to the agency in regard to the LRRP is to issue guidelines for work practices, not to set out formal rules.

But an even more serious criticism of the agency relates to its apparent intention to proceed with a rulemaking that would involve commercial real estate properties without conducting what the coalition regards as mandatory research.

Under provisions of the Toxic Substances Control Act, the coalition letter said, “Congress directed EPA to first conduct a separate and independent study of lead paint hazards in public and commercial buildings before it can issue regulations for renovating and remodeling those structures.”

Desiderio said coalition members have been concerned about an approach that would call for what amounts to an automatic application of a rule for one property type to another property type. Regarding Congress’s intent to mandate a study before extending the rules, he said, “We view that requirement as specific to what the hazards in commercial buildings might be. We do not think EPA can take whatever data or studies it might have done in the residential context and simply use that as the basis for developing commercial building regulations.”

The lead-based paint proposal stems from a recent settlement with the Sierra Club, the Alliance for Healthy Homes, and the National Center for Healthy Housing, Desiderio said. As a result of that litigation, “pressure is now being put on EPA to consider lead-based paint hazards in commercial buildings,” he said.

Although the lead-based paint rules would have no impact on structures built since 1978, Desiderio gave examples of the kinds of headaches it could cause for those that would be affected.

“Considering the diverse nature of the commercial building stock in this country, any time a new tenant might move into an office building; any time there might be a new retail outlet in a mall, that might require

renovations, lead-based paint rules might be triggered as a result,” Desiderio said.

**Small Business Impact Review.** In the coming weeks, a review of the EPA’s initiative will be conducted under auspices of the Small Business Regulatory Enforcement Fairness Act (SBREFA). That may present an opportunity for real estate interests that could be affected by the lead paint proposal to air their concerns.

Also, Desiderio said he understands that the EPA may be considering a split in its proposal between rules affecting building exteriors and those affecting interiors. The first set of rules would relate to exteriors, which could delay the potentially more onerous rules on building interiors for possibly several months or even years.

The lead-based paint issue was one of the items mentioned in a report, *Assessing Regulator Impediments to Job Creation*, released Feb. 9 by the House Oversight panel. The report also highlighted industry worries about potential stormwater run-off regulations that EPA has taken initial steps to propose for existing commercial properties (3 REAL 413, 6/15/10).

Desiderio said the Roundtable and other industry groups are focusing on these high-priority concerns now, even though the possible effects would not unfold for some time. “We’re not expecting any regulations for EPA in the near future, but they are certainly laying the foundation to develop what could be a huge and bureaucratic regulatory framework for sure,” he said.

BY RICHARD COWDEN

## Urban Planning

### **Portland Maps Out Future TOD; Favors Market Rate Multi-Family, but Cars Still Vital**

**P**ortland, Ore., outperforms many American regions when it comes to connecting jobs to transit, fostering alternative modes of transportation beyond the car, and promoting successful new compact development. Even so, the city still struggles with the legacy of automotive sprawl, according to the Center for Transit-Oriented Development (CTOD).

The non-profit CTOD April 18 released the *Transit-Oriented Development Strategic Plan* created for the Metro TOD Program, an initiative of the regional government that provides financial incentives to private developers for building higher-density, mixed-use projects located near the city’s transit stations.

The Portland area needs to address a range of issues, the report said, including where, how, and whether different types of investment make sense in partnership with other regional stakeholders in TOD implementation.

The plan contains the following components:

- An evaluation of regional existing conditions in the region that influence the ability of TOD to achieve Metro’s 2040 Growth Concept goals;
- A typology framework that classifies station areas and corridors based on their “TOD readiness”;
- Guidelines for phasing of TOD Program activities; and
- Discussion of potential future activities for the program and funding strategies to support them.

Abby Thorne-Lyman, CTOD's project director, told BNA April 22 that Portland is a TOD leader in the United States. "They have some of the most innovative policies and programs and public agency support . . . a lot of other regions continue to look to Portland when it comes to . . . their own policies and programs."

**The Portland TOD Program.** The Portland Metro's TOD program, supported by a \$5 million biannual budget, takes a "unique and critical implementation-based" approach to guiding future investments. It focuses, through incentives to private developers, on building market-rate, higher-density, mixed-use projects located near the many light rail stops throughout the Portland metropolitan region. According to the CTOD statement, the program's strategies for maximizing TOD potential include:

- Contributing to local identity through multi-year investments in catalyst projects and place-making elements;
- Creating market comparables for higher-density mixed-use development near transit;
- Cultivating developers with expertise in higher-density and mixed-use development in suburban settings, and
- Building community acceptance of urban-style building types in suburban communities.

Thorne-Lyman said that doing the report brought up some important points for her organization. "I think the role that the metropolitan [and regional] planning organizations can play is the biggest lesson we have learned." The TOD Program budgets are small, she said, but the financial support is almost secondary "to the fact that they are backing the projects that attract developers to the program. [Metropolitan Planning Organizations] historically have a very transportation-oriented objective, and the fact that they are defining TOD as being part of the greater package of transportation activities is a big deal."

**Map Out Existing Urban Forms.** CTOD, she said, created this model to map out existing urban forms and find places that are really ready to support TOD, which she called a "great finding. We should be using that when we decide how we align our future transit infrastructure. We should be putting stations in the hottest TOD communities . . . they are talking now about maybe using it in that way [for] the people planning the next corridor." The state of Maryland, she said, is also mapping out places that can support this kind of development.

Thorne-Lyman said mapping and understanding the urban character of the area has almost no influence over where the investment is made in other regions across the country, and this urban model can be of great help. "There is no reason [that] spatial analysis and better mapping tools can't be a part of the way we make this."

**Property Values in Exurbia.** Many areas outside central Portland have not been able to generate momentum for higher-density development and more walkable neighborhoods. The Metro TOD Program fills some of this gap, but it will never be the only entity promoting this type of regional transformation, according to the report. "Although Portland has some incredible state policies and a wonderful greenbelt—the urban growth boundary—that has helped to manage growth, the car

still plays a very important role in most people's lives," Thorne-Lyman said.

Asked how TOD would impact property values in the outer suburbs, Thorne-Lyman said that depended "on a lot of variables outside of just TOD itself." She named proximity to job centers, schools, and other transportation infrastructure as major factors. "But . . . I think there is definitely an impression that TOD would increase property values in the suburbs and Portland is preparing for that."

**Workforce Housing.** Affordable new development near transit and amenity-rich walkable communities remain out of reach for many households, the report said, adding that lower- and middle-income families spend a disproportionate amount of income on transportation, and run up too many vehicle miles of travel (VMT) and greenhouse gas (GHG) emissions. Thorne-Lyman said this problem is being addressed to some extent. Workforce—and affordable—housing is becoming part of "the definition of TOD. In this work we were doing for Metro," she said, "workforce housing was a major objective of this particular TOD program."

**'The Money Flows to These Projects.'** TOD, economic development, and pedestrian/bicycle connections are likely to be weighed more heavily when evaluating future transit corridor investments, the report said, adding that there has been a clear shift in the understanding of how station design and placement play a role in maximizing development opportunities and walkability. A recent High Capacity Transit study has considered the integrated roles of land use and transportation in particular, and offers a data-driven, local foundation of knowledge upon which to build this new integrated transit planning process.

TOD financing in Portland is not as difficult to obtain as it is elsewhere, Thorne-Lyman said. There is, she said, a "community" of developers and even lenders that have lined up behind the TOD approach to development and understand its value. "The money flows to these projects that do innovative things." She attributed this to "acceptance of this as a tested development product type."

Thorne-Lyman listed the following building innovations that intrigue Portland lenders:

- Green buildings;
- Reduced parking;
- Smaller unit sizes, and
- Bicycle spaces.

A lot of the financing, however, is peculiar to Portland, Thorne-Lyman said. "[T]he same, exact firms that you see lining up behind TOD in Portland, don't line up behind TOD in other regions. [In] Los Angeles, for example," she said.

The Federal Transit Administration (FTA), in spring 2010, announced that the cost effectiveness criterion for building new lines will no longer be its first priority for funding allocations in the New Starts program, (described on the FTA website as "the federal government's primary financial resource for supporting locally-planned, implemented, and operated transit 'guideway' capital investments"). CTOD anticipates that changes to these criteria will result in funding to lines that are more supportive of transit-oriented development, according to the report.

**Will TOD Refashion the Suburbs?** The logical extension of this movement could be exurban TOD areas, clustering around their largest market town, and Thorne-Lyman said this possibility depends on the area and the market. She gave the Oregon examples of Hillsboro and Gresham, which “have existing walkable downtowns. The program is trying to invest in getting more intensive residential development to happen in these places,” she said, citing a March CTOD report called *Rails to Real Estate* as “the first time that we started to ask that question (4 REAL 261, 4/5/11). Does TOD concentrate on the core of the region or is it actually going to more outlying areas? What we found is you really need to be near a major activity area to have a strong enough market to support that city.” In some cases the strong market is there, she said, giving the example of the Hiawatha line in the Twin Cities, which travels through the cities to the Minneapolis-St. Paul Airport and the Mall of America. “There are some jobs out there,” she said.

What TOD ultimately signifies, Thorne-Lyman said, is a reshaping of America around its urban cores. She cited an April 4 National Association of Realtors survey that showed “demographics line up behind this preference for the urban core.”

**What About Parking?** Traditional automobile-based resistance to TOD continues apace, she said, and it “really varies depending on the community that you are in whether the policymakers are supportive or not.” There is a “huge concern” about lack of parking, and rightly so, she said. “There are concerns that density cannot be beautiful . . . but it varies from community to community.”

**Demand for More Multi-Family.** All of this points to a demand for more multi-family housing construction and development over the next couple of decades, Thorne-Lyman said. “We have done a forecast of the demand for TOD specifically. In 2000, 6 million people lived near fixed transit, and we [have] actually forecast that by 2030 over 15 million households will [need transit service.]”

BY KEVIN LAMBERT

*The CTOD report can be viewed at <http://ctod.org/portal/PortlandTOD-Issues-and-Opportunities>.*

*The NAR report can be found at <http://www.builderonline.com/mixed-use-development/nar-study-finds-americans-prefer-smart-growth-communities.aspx>.*

*Rails to Real Estate is located at <http://ctod.org/portal/node/2302>.*