

Memorandum

To: Jackie Keogh, Deputy Director, Proud Ground
From: Beth Sorce, Director of Capacity Building, Grounded Solutions Network; Sara Toering, Senior Fellow, Center for Community Progress
Date: July 15, 2019
RE: Land Banking for Long-Term Affordability and Community Benefit Along the Southwest Corridor and Beyond

I. Introduction and Background

In 2016, Oregon Metro¹ (“Metro”) was awarded an Equitable Development Strategy Grant to evaluate strategies for acquiring, holding and disposing of land for long-term affordability and community benefit at scale² along the proposed Southwest Corridor.³ Pursuant to this planning grant, Metro engaged Proud Ground, the region’s Community Land Trust, who in turn retained Grounded Solutions Network⁴ (“Grounded Solutions”) to evaluate the efficacy of establishing a land bank authority or land banking program⁵ to advance the equitable development goals identified in the SW Corridor Equitable Housing Strategy. With the support of the Center for Community Progress⁶ (“Community Progress”), Grounded Solutions provided particular land banking expertise to augment this resulting evaluation and memorandum.

The Oregon Land Bank Statute⁷ authorizes the creation of land bank *authorities* to acquire, hold and dispose of land subject to a range of restrictions, and appears to encourage a singular focus on land banking of brownfield sites. Conversely, at least one Oregon local government has created a land banking *program* for the purpose of acquiring and holding land for affordable housing, which operates entirely

¹ Metro Oregon describes their mission as “work[ing] with communities, businesses and residents in the Portland metropolitan area to chart a wise course for the future while protecting the things we love about this place.” Read more at: <https://www.oregonmetro.gov/regional-leadership/what-metro>.

² The SW Corridor Equitable Housing Strategy identifies a stretch goal of producing and preserving 2,300 affordable units along the corridor. See: <https://www.portlandoregon.gov/bps/article/675321> (last viewed June 7, 2019).

³ For more information about Metro’s planning efforts along the Corridor, visit: <https://www.oregonmetro.gov/public-projects/southwest-corridor-plan>.

⁴ Grounded Solutions Network’s mission is to cultivate communities — equitable, inclusive and rich in opportunity — by advancing affordable housing solutions that last for generations. Learn more at: <https://groundedsolutions.org/>.

⁵ Land banks and land banking programs are public entities and public programs that acquire, stabilize, maintain, and responsibly dispose of vacant, abandoned, and substandard properties, in accordance with community goals. See *Land Banks and Land Banking*, 2nd Ed. by Frank Alexander, available for download on the Community Progress website at: <https://www.communityprogress.net/filebin/LandBanksLandBankingVer2DigitalFinal.pdf>.

⁶ The Center for Community Progress’ mission is to foster strong, equitable communities where vacant, abandoned, and deteriorated properties are transformed into assets for neighbors and neighborhoods. Learn more at: <https://www.communityprogress.net/>.

⁷ ORS §§ 465.600 to 465.621.

independently of the Oregon Land Bank Statute and utilizes various powers authorized by the local government.

Between October 2018 and June 2019, Grounded Solutions and Community Progress reviewed existing Oregon state laws governing land banking, engaged various Portland Metro area government and affordable housing stakeholders that form the Southwest Equitable Development Strategy (“SWEDS”) Working Group, and surveyed stakeholders regarding key powers and capacities required to meet long-term affordability goals along the Southwest Corridor.

This memorandum collates and summarizes the research and analysis conducted by Grounded Solutions and Community Progress regarding land banking in Oregon, and offers observations and recommendations related to the larger equitable development and affordable housing goals sought by regional stakeholders. It is intended to provide Proud Ground, Metro, the SWEDS Working Group, and all stakeholders within the Southwest Corridor, a brief overview of the existing state land banking statute, and to outline opportunities and challenges for acquiring, holding and disposing of land for long-term affordability and community benefit going forward.

In concert with sister cities home to similar “hot” markets around the country, the Southwest Corridor stakeholders need a strategy to opportunistically acquire privately held parcels and assemble publicly held parcels along the corridor and hold them for a minimum of three to five years to allow for community-driven affordable housing development. Ideally, this strategy would **authorize and fund** a single program to **acquire and assemble** parcels at scale, and **hold those properties tax exempt** while community members engage in visioning and planning activities and nonprofit affordable housing development partners gather financing. Then, the program would **transfer the parcels to affordable housing partners** through an appropriately established process, rather than simply to the highest bidder, in accordance with community goals, including but not limited to, long-term affordability.⁸

It is important to note that the observations and recommendations contained in this report are offered from Grounded Solutions’ and Community Progress’ outside perspective, based on extensive work and experience throughout the country, and are subject to the review and guidance of local legal counsel.

The memorandum is divided into the following sections:

- An overview of current regional affordable housing initiatives to provide context for strategies already underway and working well and to begin to identify gaps that may need to be filled in the future;
- The case for a regional land banking program that will advance racial equity and long-term housing affordability along the Southwest Corridor and beyond;
- A brief national scan of land banking efforts across the country, a specific summary of the implications the Oregon Land Bank Statute has on local land banking efforts, and a brief case study on the Eugene Land Banking Program;
- Recommendations and considerations for moving forward with a land banking program that centers resident’s voice and oversight; and

⁸ Grounded Solutions describes “long-term” affordable housing as units that have an affordability compliance period of at least 30 years, secured by a legal instrument. Housing funders, developers and providers are encouraged, and many do, seek to preserve affordability well beyond the 30 years with the goal of in perpetuity.

- An appendix containing an aggregate summary of responses given by SWEDS Working Group members about their existing capacity to acquire, hold and dispose of land for long-term affordability and community benefit.

II. Overview of Regional Affordable Housing Initiatives

The Portland Metro region has already taken substantial steps toward creating a coordinated regional approach to opportunistic land acquisition, holding and disposition for community-led affordable housing development with lasting affordability.

A. Affordable Housing General Obligation Bond

In November 2018, voters passed a \$652.8 million general obligation bond for affordable housing. The Affordable Housing Bond Program, designed to support affordable housing efforts throughout the Portland Metro region, reflects widely held public consensus that the lack of affordable housing is a tremendous collective challenge that must be addressed. The emphasis on serving households at or below 30% of Area Median Income (“AMI”) reinforces a commitment to serve the most vulnerable households and the explicit reference to land acquisition as a permissible use of bond funds reiterates the need for a land acquisition and holding strategy for the Portland Metro region.⁹

The Metro Housing Bond Framework, which guides the implementation of bond resources, also shares many of the guiding principles and objectives that are described in the SW Corridor Equitable Housing Strategy including the core values of a) leading with racial equity, b) creating opportunity for those in need, c) creating opportunity throughout the region, and d) ensuring long-term benefits and good use of public dollars. The bond program is regional in nature and is governed, in part, by a community oversight board. Furthermore, Metro seeks to ensure that the investments made through the bond program are lasting—requiring a minimum of 60 years of affordability on most investments.¹⁰

B. Metro’s TOD program

Metro also has a specific regional transit-oriented development (“TOD”) program designed to acquire, own, dispose of and develop properties near transit investments for affordable housing and other community benefits. Like the bond program, Metro seeks to leverage this transit investment for maximum return in terms of community benefit requiring long-term affordability, for example, in their “infill and enhance” typology.¹¹

C. Limitations of existing programs

The new bond fund and equitable TOD programs are simply two examples of the ways that Portland Metro public agencies, in partnership with nonprofit organizations, are seeking to work regionally to advance affordable housing in connection to transit investments. But they are also limited. The affordable housing bond program is time limited, focused on the most vulnerable households and set to produce

⁹ See: <https://portlandhousingbond.com/> (last viewed May 27, 2019).

¹⁰ See: <https://www.oregonmetro.gov/sites/default/files/2018/11/07/Metro-COO-Housing-Bond-Framework-2018.pdf> (last viewed June 7, 2019).

¹¹ See: <https://www.oregonmetro.gov/tools-partners/grants-and-resources/transit-oriented-development-program> (last viewed June 7, 2019).

only 3,900 units (in a region home to well over two million people). The SW Corridor Equitable Housing Strategy identified a stretch goal of creating and preserving 2,300 affordable units along one transit line alone—some, but certainly not all, of which can be created using bond funding or through the scope of the existing TOD program.

III. The Need for A Regional Land Banking Program

While the affordable housing bond brings significant new resources to the Portland Metro region, in the long run, there needs to be a new approach to real estate development that can be more lasting and comprehensive and that can create and preserve affordable housing for residents who are heavily cost-burdened in order to approach the scale of the challenge.¹² In the near term, SWEDS Working Group members noted the urgency of directing more resources *now* to acquiring land along the Southwest Corridor to be used for affordable housing in the future—as the property market continues to heat in the wake of light rail planning.

In order to lay the groundwork for a long-term, scalable and regional approach to affordable housing production, and to begin acquiring properties now, stakeholders should consider establishing and funding a land banking program that can work regionally to opportunistically acquire privately and assemble publicly owned parcels along the corridor and hold them at a minimum of three to five years to allow for community-driven affordable housing development. There are specific capacities that any land banking program will need in order to achieve these goals. Grounded Solutions Network and Community Progress conducted a brief survey of SWEDS Working Group partners to learn more about their current capacities around acquiring, holding and disposing of land along the proposed line. Based on the survey results, it appears that that no single program is currently poised to fulfill all of the abilities described below. The survey did show that, under current conditions, public agencies with regional scope and the authority to hold land tax exempt may be better positioned to stretch into these areas than the nonprofit Working Group members. An aggregate summary of survey results is included as an appendix to this memorandum.

A. Acquire and assemble parcels at scale throughout multiple jurisdictions along the corridor.

A land banking program must have the power to acquire and hold parcels across multiple jurisdictions including the City of Portland, the City of Tigard and Washington County so that it can be an effective regional actor. This means that the program must be recognized and authorized to coordinate effectively with each municipal and county government.

In order to be successful, the land banking program must have quick access to significant capital for acquisitions on the open market. It should have a variety of acquisition tools in its toolbox to be able to act opportunistically and compete effectively with real estate speculators and developers in order to secure land (and possibly structures) for future affordable housing and community benefit. Ideally, the program should also be enabled to receive surplus publicly owned properties, receive “deposits” of land

¹² In terms of quantifying the scale of need, Metro estimates that the region needs about 48,000 more affordable homes and that about 40% of black families are paying more than half of their income on rent. To learn more about these statistics and to see others related to regional housing need, visit: <https://www.oregonmetro.gov/news/you-are-here-snapshot-greater-portlands-need-affordable-housing> (last viewed June 7, 2019).

from nonprofits that can later be “withdrawn,” as well as to receive property donations from individuals and others.

B. Hold properties tax exempt while community members engage in visioning and planning activities and affordable housing development partners gather financing.

Community-led development takes time as it requires an open, transparent, collaborative visioning and planning process with diverse stakeholders. The results of a community-led visioning process may be an end use of properties that requires complex financing structures, new development partnerships and limited subsidy. The land banking program should be positioned to hold properties—ideally tax exempt—for a minimum of three to five years so that community partners have adequate time for community-led engagement, visioning and financing activities. Holding a large portfolio of properties means that the program will need to have the capacity to maintain the properties including insuring the properties, managing tax exemption, and securing and maintaining vacant lots and structures (mowing lawns, shoring foundations, etc.).¹³

C. Transfer the parcels to affordable housing partners, rather than simply to the highest bidder, in accordance with community goals.

The land banking program must be able to dispose of properties flexibly in order to be effective. This means that the program must have the ability to sell at below-market rate prices, to select mission-oriented organizations and to require lasting affordability and other equitable development criteria in its decision making. Alternatively, the program (whether public or as part of a community land trust) could choose to hold the land rather than dispose of it and to issue long-term ground leases to community partners.¹⁴ The ground lease would include standard terms about the use of property such as the target market to be served and ongoing affordability expectations. Under a ground lease structure, the land banking program could be a co-developer of the property or could simply make the land available for a partner to develop and manage the improvements.

The SW Corridor Equitable Housing Strategy specifically names new, affordable homeownership units as a desired development outcome for advancing racial equity along the corridor. Matching that with the stated goal of making good use of public dollars, the program should require or prioritize resale restricted homeownership models¹⁵ on land made available through this process. With an emphasis on homeownership and long-term affordability periods, it is necessary to think about post-purchase monitoring, enforcement and stewardship. Providing long-term oversight and support to homeowners ensures that the units will remain affordable in perpetuity and that homeowners will be successful. There are many ways to structure this oversight function. The program could be responsible for monitoring and

¹³ While the program could consider acquiring occupied properties in order to preserve affordability or at the request of tenants, such activities require an entirely different skillset and set of capacities than acquiring and maintaining vacant land and should only be pursued after careful consideration.

¹⁴ See generally https://www.itsmarta.com/uploadedFiles/More/Transit_Oriented_Development/MARTA-TOD-Implementation-Policies-Adopted-Text-November-2010.pdf (last viewed June 7, 2019).

¹⁵ For more information about resale-restricted homeownership models and their performance over time, see the study, “Tracking Growth and Evaluating Performance of Shared Equity Homeownership Programs During Housing Market Fluctuations” by Ruoniu Wang and others on the Lincoln Institute of Land Policy website: <https://www.lincolninst.edu/publications/working-papers/tracking-growth-evaluating-performance-shared-equity-homeownership>.

enforcing restrictions and manage that function in-house. Or, the program could be responsible for monitoring and enforcing restrictions and partner with an experienced organization like Proud Ground for implementation. Finally, the program could decide not to be responsible for monitoring and enforcing restrictions and instead pass that responsibility and management function on to nonprofit partners.

IV. National Land Bank Scan, the Oregon Land Bank Statute, and the Eugene Land Banking Program

In light of the thesis that a land banking program is needed in the region to create and preserve lasting housing affordability, SWEDS Working Group members questioned whether a land bank authority, created under Oregon law, might be an appropriate entity to meet their goals. A scan of national land banking statutes and programs, coupled with a review of the Oregon Land Bank Statute, demonstrates that a land bank *authority* created pursuant to the Oregon Land Bank enabling statute is likely not an appropriate or helpful tool to acquire and protect transit corridor parcels for future affordable housing. However, a land banking *program* created pursuant to existing local government powers may indeed be an appropriate next step.

A. Majority of land banks are created pursuant to state enabling legislation that authorizes special acquisition, holding and disposition powers.

Over 170 land banks and land banking programs¹⁶ have been created across the country pursuant to state-enabling legislation to address vacant, abandoned, and substandard properties. Land banks created under state-enabling legislation are public entities that acquire vacant, abandoned, and often tax delinquent properties, stabilize and maintain those properties, and then responsibly dispose of those properties in accordance with community goals. While the land banking concept sounds invitingly simple, the precise powers and resources necessary for an entity or program to effectively ‘land bank’ property must be carefully and methodically considered before a new land bank is formed. Without the specific powers and authority to act on the properties causing harm in a community, an entity will be impotent in the face of the community’s challenge no matter whether it has “land bank” in its title.

The vast majority of land banks around the country, while richly diverse in character and scale, share two common denominators. First, the majority of land banks are created pursuant to state-enabling legislation that authorize the creation of the land bank at the local level with specific powers to acquire, hold, and dispose of properties in a flexible fashion. Second, while land banks can certainly evolve to act on a variety of properties, the majority of land banks are designed (and statutorily authorized) to acquire, hold and dispose of the vacant, abandoned, and tax delinquent properties that are causing the most harm in a given community. While important goals like affordable housing are often served by land bank activities, land banks around the country are designed first to simply ensure that the most problematic vacant properties are placed into responsible and productive use. Historically and most commonly, land banks are specially authorized to focus on vacant properties that are tax delinquent, where back taxes owed are more than the fair market value of the property itself. Land banks generally have special powers

¹⁶ For a listing of land banks and land banking programs across the country, please visit Community Progress’ Land Bank Information Headquarters: <https://www.communityprogress.net/land-bank-headquarters-pages-446.php>.

to acquire such property at public auctions, and then to ultimately dispose of those formerly tax delinquent properties into productive use.¹⁷

B. Land banks authorized through state-enabling legislation are only as powerful and flexible as the statute that created them.

Special powers granted to land banks through state-enabling legislation include distinct acquisition, holding and disposition powers—all generally focused on returning vacant, abandoned and tax delinquent properties back to productive use. Land banks are often authorized to acquire property ahead of the private, speculative market in tax sales through credit or trump bids, and some have the authority to extinguish delinquent property taxes. Land banks created through state-enabling legislation have the authority to hold property tax exempt, and to dispose of property flexibly, for less than fair market value to appropriate end-users, in accordance with the land bank mission. Such flexible disposition authority sets land banks apart from most local governments which tend to be required to sell property for the highest value to the highest bidder.

The most successful land banks around the country enjoy funding streams specifically authorized by state statute including, for example, the imposition of fees to every delinquent property tax bill, which are directed to fund land banks. Many land banks are authorized to receive tax recaptures, whereby they are entitled for a period of years to some portion of any newly generated property taxes on those properties the land bank returns to productive use. Other land bank revenue sources include revenues from property sales, grants and philanthropic support, and in recent years major funding from the federal Neighborhood Stabilization Program.¹⁸

Without special powers granted by statute, an entity called a “land bank” only has powers granted by local government if it is an agency of local government, or only has powers available to other legal entities like nonprofits or LLCs depending on the form of its creation. So, if one creates a Land Bank LLC, then the Land Bank LLC will have no more, nor less powers than any other LLC when it comes to real property. If one creates a Land Bank Nonprofit Corporation, then the Land Bank Nonprofit Corporation will have no more nor less powers than any other nonprofit corporation in a given state when it comes to acquiring, holding or disposing of real property.

C. The Oregon Land Bank Statute limits the acquisition and disposition powers of Oregon land banks and appears to only authorize acquisition of brownfields.

Pursuant to the Oregon Land Bank Statute,¹⁹ Oregon municipalities may create local land banks, governed by an appointed board of directors that must include, for example, an elected official representing the creating local government and a school district representative.²⁰ It appears based on the language of the statute, that Oregon land banks are only authorized to acquire, hold, and dispose of

¹⁷ For a detailed review of land banks and land banking programs, see *Land Banks and Land Banking, 2nd Ed.* by Frank Alexander, Co-Founder of and Senior Legal and Policy Advisor at Community Progress. The report is available for download at:

http://action.communityprogress.net/p/salsa/web/common/public/signup?signup_page_KEY=8679.

¹⁸ See generally <https://www.hudexchange.info/programs/nsp/nsp-land-banking-toolkit/#program-setup> (last viewed May 16, 2019).

¹⁹ ORS §§ 465.600 to 465.621.

²⁰ See ORS §§ 465.603

“brownfields” which are defined as “real property where expansion or redevelopment is complicated by actual or perceived environmental contamination”²¹ or “[p]roperties undergoing removal or remedial action under the supervision or approval of the Department of Environmental Quality that are within the authority’s geographic jurisdiction”.²² Oregon land banks do not appear to have any ability to acquire property ahead of the private speculative market, or to issue trump or credit bids at any public sale. Oregon land banks *are* authorized to hold property tax exempt,²³ but the plain language of the statute does not appear to shield Oregon land banks from liability for land bank-owned properties—brownfields or otherwise. Oregon land banks may not dispose of property without a public comment period,²⁴ and additional research would be required to determine whether they may dispose of properties for less than fair market value. Finally, Oregon land banks do not appear to have any special powers to generate operating or other revenue beyond the ability to accept grants or gifts, or to issue revenue bonds.²⁵

D. Transit corridor properties are not suitable for land banking under the Oregon Land Bank Statute and must simply be acquired through the private market and held for future long -term affordable housing development and community benefit.

Based on available public data and resources gleaned from project stakeholders, it does not appear that the portfolio of properties along the transit corridor line match the conditions typically associated with land banks around the country. While there may be vacant parcels along the line, there is no evidence that a meaningful number of those parcels are abandoned or property tax delinquent or even causing significant harms to neighbors and neighborhoods. Moreover, there does not appear to be any meaningful inventory of existing publicly owned land along the corridor, nor of brownfields that might be appropriate targets for a land bank created under the Oregon Land Bank Statute. Finally, there does not appear to be evidence of parcels that may be available to a land bank or any other entity for less than market value. The bottom line is that properties along the transit line are generally owned by private parties, and in almost all cases the value of the properties is rapidly increasing. Neither the existing Oregon Land Bank Statute, nor any existing land bank legislation around the country authorizes a land bank to force a transfer of privately held property for less than fair market value. Thus, neither traditional land banking nor land banking specifically authorized in Oregon are an appropriate or necessary strategy for acquiring parcels on the transit corridor for future affordable housing development.

E. The City of Eugene land banking program does not operate under the Oregon Land Bank Statute but provides a good model for Portland affordable housing stakeholders.

The City of Eugene, Oregon, is home to a local government land banking *program* that is designed specifically to acquire and preserve properties for future affordable housing.²⁶ The Eugene program was launched years before the Oregon Land Bank Statute was passed, and despite the phrase “land bank” in its title, the Eugene program bears no relationship to the Oregon Land Bank Statute. Rather, the Eugene land banking program is simply a program of local government, housed in the community development department, and designed to use Community Development Block Grant and other funds to acquire

²¹ ORS § 285A.185.

²² ORS § 465.609.

²³ ORS § 465.615.

²⁴ ORS § 465.609.

²⁵ ORS § 465.609.

²⁶ See <https://www.eugene-or.gov/1042/Affordable-Housing-Development-Incentive> (last viewed May 27, 2019).

property for affordable housing development. Properties acquired are typically shovel ready, and are held and maintained by the City of Eugene until appropriate nonprofit developers are engaged through a standard RFP process. The entire program is managed by a .25 full time employee (FTE).²⁷

The Eugene land banking program, which does not rely on enabling land bank statute, may be an appropriate model for consideration by Portland stakeholders. If an appropriate existing government department or agency in the Portland Metro region were to create a land banking program like Eugene's program, in cooperation with multiple regional governments, that department or agency could presumably acquire land along the Southwest Corridor, hold that land tax exempt, and then dispose of the land to appropriate affordable housing developers over time and subject to any long-term affordability, community benefit or advisory entities deemed appropriate.

V. Programmatic Options and Recommendations

Based on the findings and analysis described above, Grounded Solutions and Community Progress recommend creating a regional, proactive land banking program guided by the Southwest Corridor Equity Coalition²⁸ (or a similar entity) that includes acquisition, holding and disposition functions. A land banking program, perhaps initially modeled on the Eugene land banking program, could potentially achieve the team's goals without the added burden of immediately creating and sustaining a new fully independent organization.

A. Recommendation 1: Evaluate different structures for how to advance an effective land banking program.

Because there is no clear existing home for a land banking program and its functions right now, there are at least four potential structures that should be considered—each with advantages and disadvantages. Moving forward with any of these options will require more political, financial and community support for land banking than exists in the Portland Metro region right now. Multiple forms of support will be needed both for starting a land banking program and ensuring its success over the long-term; this is not a short-term commitment.

Programmatic Option 1: Build upon the affordable housing bond program within Metro.

Metro is already building and demonstrating many of the capacities and functions needed for a successful land banking program through the affordable housing bond program. The lessons that Metro staff are learning are a leap into building the capacity needed to play this role long-term. Metro's regional charter, relationships with both local governments and nonprofit organizations, commitment to long-term affordability and leadership around the Southwest Corridor planning process are also a good fit for this initiative. Development of a program like the Eugene land banking program might be wisely located within Metro.

²⁷ Proud Ground interview with Eugene Land Banking Program director, May 17, 2019.

²⁸ The Southwest Corridor Equity Coalition is an aspirational body that is emerging out of the Southwest Corridor Equitable Strategy project oversight committee. It will be led by resident organizing groups and seek to increase the representation and participation among impacted residents and communities along the corridor. For more information, see: <https://www.oregonmetro.gov/public-projects/southwest-corridor-plan/project-committees> (last viewed July 15, 2019).

That said, the affordable housing bond program is just starting and must be successful. Metro is already growing capacity as quickly as possible and taking on new work in new arenas and may, therefore, not be feasible until the bond program is further along in development. To further analyze this option, stakeholders should review Metro’s charter, governing documents and disposition policies to see which legal and policy requirements, if any, would need to be fundamentally changed to take on a long-term land acquisition and stewardship role. Metro would then need a more formal business plan to help guide decision making around resources and staff capacity needed.

Programmatic Option 2: Expand upon the existing MOU between the City of Portland, the City of Tigard, Washington County, Metro and TriMet regarding the Southwest Corridor and affordable housing.

Many of the key public players along the Southwest Corridor have entered into a memorandum of understanding (MOU)²⁹ outlining shared values (such as agreeing that a “mix of land uses, housing types, business types and income levels make better station areas”) and responsibilities. This MOU states that parties will seek to allocate resources from the housing bond towards the corridor, identify new resources and prioritize affordable housing development along the corridor—including in the disposition of TriMet remnant properties³⁰ as is permitted by state and federal law. This type of cross-jurisdictional partnership could be expanded beyond the corridor to serve the region more broadly. In this option, each partner would be responsible for advancing acquisition, holding and disposition activities independently but in communication and coordination with the others.

One advantage of this model is that the structure already exists, and the partners have already agreed to work together. It also recognizes that public agencies are best positioned to play a leading role in making affordable housing happen along the line but it does not put all of the responsibility on public entities—they may partner with nonprofit and for-profit housing developers and community organizations to achieve their goals.

The MOU is written as an aspirational document and was signed in October 2018 so it does not have a long track record. To further analyze this option, stakeholders should review the MOU and each party’s acquisition, holding, disposition policies and capacities to better understand viability. The MOU would also need to be amended to include more explicit expectations around the end use of properties and commitment to long-term affordability in order to advance all of the land banking program’s goals. Finally, there are lots of variations that could also be evaluated and introduced. For example, the MOU could be amended to name a specific organization to act on behalf of the parties.

Programmatic Option 3: Form a new regional entity that focuses on acquiring, holding and disposing of property for long-term affordability and community benefit.

The third option is to form a new regional *entity* (as opposed to program) that is specifically charged with acquiring, holding and disposing of land for long-term affordability and community benefit throughout the Portland Metro region. This entity could be structured as a new public agency or as a new nonprofit agency depending on the functions assigned with special consideration to the relative

²⁹ See: <https://www.portlandoregon.gov/bps/article/700536> (last viewed June 7, 2019).

³⁰ Remnant properties are defined as parcels, acquired by TriMet, that are not needed for future transit purposes at the end of construction.

importance of tax exempt holding and the use of public powers (not typically available to nonprofit entities). Similarly, the entity could be charged with imposing and enforcing long-term affordability covenants on units produced or it could partner with nonprofit organizations to take on that work, maintaining its focus on land acquisition, holding and disposition. This entity could be formed to focus on the Southwest Corridor and then expand geographies or could serve the entire region from the start.

One advantage of forming a new regional entity is that the mission and governance structure can be designed from scratch and focus specifically on the goals and needs identified in this memorandum. However, it will likely require more time, resources and a political champion to form a new entity rather than to work within existing systems; the window for effective intervention along the Southwest Corridor might pass before the entity could even be incorporated. To further analyze this option, stakeholders should weigh the lift of creating a new entity versus adapting existing structures and, if positive, develop a full business plan that includes funding both start-up costs and, at minimum, the first five years of operation.

Programmatic Option 4: Pursue a pilot program housed within an existing organization that could be spun off at a later date.

Given the research around the timing of increases in land values around transit investments,³¹ there is urgency around acquiring properties along the Southwest Corridor as soon as possible. To this end, the fourth option for moving forward is to pursue a pilot land banking program, housed within an existing nonprofit or public agency, which could be spun off at a later date. As with the other options, this pilot program could and should partner with nonprofit partners to develop the affordable homes and ensure their ongoing affordability long-term. There are many advantages associated with pilot programs—they can be politically palatable, allow for quick action and embrace a culture of experimentation, learning and a willingness to fail.

On the other hand, there are several disadvantages to pilot programs as well. They can be a way to allow an initiative to begin without full political and financial support, can be sidelined as a “pet project” without full organizational support and ask the host organization to expand capacities too quickly in a way that jeopardizes their sustainability. To further analyze this option, stakeholders should have further discussions with SWEDS Working Group members who expressed interest into growing into land banking activities and see what kind of political, financial and other support they would need to take real steps in that direction. While a full business plan for a willing organization may not be necessary, a business plan for this particular program should be created so that there is an accurate idea of staffing, operational and the project costs required.

B. Recommendation 2: Aggressively pursue funding in the 2020 transportation investment measure and wherever else possible

Because it seems as though most land acquisitions must be made on the open market to protect affordability long-term along the Southwest corridor, a land banking program and its partners will need access to substantial acquisition capital. And, because land costs are high, the need for grant subsidy to

³¹ One such study is from the University of Minnesota and looks at the Green Line Light Rail expansion. They found that not only did property values along the line increase, the biggest jump was right after funding for the line was secured—well before construction began and the line opened. See the full report at: <http://www.cts.umn.edu/publications/catalyst/2017/june/light-rail> (last viewed June 7, 2019).

make the end use affordable is especially high. As significant as the affordable housing bond program is, Metro would need to set aside nearly all of the bond resources, capped at the current funding level, just to satisfy the stretch unit production goals along the Southwest corridor identified in the housing strategy. It is impossible to produce affordable housing—especially homeownership given funding use restrictions—and other community-oriented spaces at scale along the line with existing funding levels and financing products.

If possible, consideration should be made to include funding for land banking in Metro’s transportation investment measure going before voters in 2020.³² This will be a large funding request and could generate new funds for affordable housing development rather than reallocating existing funds away from other priorities. Stakeholders should also explore innovative, scalable, public/ private investment partnerships such as the Mile High Connects Fund³³ in Denver, CO and Opportunity Zone funding. Forming a Tax Increment Financing (TIF) district could also be impactful, though it is important to note that TIF district has not been designated yet and would require a few years to generate substantial revenue; there may be a timing mismatch between the need for acquisition financing and the availability of TIF revenue. Finally, for-profit speculation is likely already happening. Local jurisdictions could look at ways to leverage market forces and negotiate for community benefits, produced through market-rate developments, along the corridor.

When considering funding and financing options, it is important to specifically pursue grant funds that can serve as subsidy. According to our survey results from local nonprofit organizations, the lack of subsidy available for affordable housing projects is one of the main reasons why nonprofits are not already acquiring land along the corridor. Without a substantial, reliable, ongoing source of subsidy, it is too unpredictable to pursue real estate opportunities without a firm financing take-out plan. In addition, subsidy sources created should be available regionally and, like the affordable housing bond, require long-term affordability whenever appropriate to ensure that public dollars are used most effectively.

C. Support the Southwest Corridor Equity Coalition.

Regardless of which model is selected to house a land banking program, any individual, organization or entity working along the Southwest Corridor should actively and fully support the creative ways that the Southwest Corridor Equity Coalition (“Equity Coalition”) is and will be engaging communities. To further advance the racial equity goals identified in all visioning and strategic planning documents, directly impacted resident leaders should have a clear role in planning, decision making, overseeing and governing any land banking efforts. Without this coalition (or something like it as efforts evolve over time), any land banking program will run the risk of acting “for” communities rather than “with” communities.

The role of the Equity Coalition will, of course, differ based on the model selected. The best way to ensure that resident voices are centered in the land banking program is to provide residents with the opportunity to represent themselves on the governing board. That may be difficult if the land banking program resides within an existing public entity with a broad mission and established governing structure such as Metro. Alternatively, an advisory board or oversight committee could be considered but stakeholders should fully consider and discuss the power dynamics associated with these types of bodies

³² See: <https://www.oregonmetro.gov/public-projects/2020-transportation-investment-measure> (last viewed June 7, 2019).

³³ See: <http://milehighconnects.org/about-us/> (last viewed June 7, 2019).

and decide if residents are truly granted oversight and decision-making authority or if they are, rather, being asked for input for consideration by others who are more empowered.

D. Create a pathway for nonprofits to “deposit” properties for holding within a public agency.

According to our survey results, nonprofits, generally speaking, are only acquiring properties when they have a full financing package together. The Portland Metro region needs to enable more “speculation for good” among nonprofit partners so that they can start purchasing as much land as possible for community benefit. To do this, nonprofits need a place to park their properties, tax free, while determining the full contours of a development deal. A depository program like this could be a core capacity of any new land banking program.

VI. Conclusion

Portland, Tigard and the entire metro region are not alone in the urgent regional need for affordable housing of all types serving people at all income levels now and for generations to come. The ongoing massive infrastructure investment along the Southwest Corridor will certainly exasperate this community need and it also provides an opportunity to make thoughtful, lasting investments into the region’s housing stock. A land bank authority created under the Oregon Land Bank Statute would likely not be useful for the Southwest Corridor targeted equitable development outcomes. However, a proactive land banking program that includes acquisition, holding and disposition functions prioritizing long-term affordability and community benefit, perhaps initially modeled on the Eugene land banking program, implemented regionally and overseen by the Equity Coalition could potentially achieve the team’s goals without the added burden of immediately creating and sustaining a new fully independent organization.

Appendix: SWEDS Working Group Survey Aggregated Responses

Grounded Solutions and Community Progress issued a survey to SWEDS Working Group members and other stakeholders to assess the overlap between current organizational capacities and those needed for a successful land banking program. In total, ten (10) individuals responded representing eight (8) public agencies and two (2) nonprofit organizations. Below are the aggregated responses to each of the questions.

1. Assessing the current Portfolio of Properties

The survey asked respondents to state whether they currently own residential, commercial and/or mixed use properties along the Southwest Corridor. The results show that respondents, collectively, do not currently own a significant number of properties along the Corridor. One nonprofit respondent reported owning six residential properties and two public agencies reported ownership: one owns a residential property and the other owns both a commercial property and a mixed-use property.

2. What funding and financing sources do you use to acquire properties?

Public respondents identified having access to more resources for acquisition than nonprofit respondents. Public respondents listed Metro TOD and housing bond funds, Federal Transit Administration Section 5309 funds, a \$20 million acquisition line of credit, tax increment funding, general funding and other public sources. Nonprofit partners stated that they use their own organizational resources, pre-development loans and land donated from jurisdictions to fund and finance acquisition activities. Both public and nonprofit respondents stated that they are able to access financing from the Network for Affordable Housing.

3. What would your organization need in order to scale up your acquisition efforts in service of lasting affordability and community benefits?

Whether public or nonprofit, respondents overwhelmingly reported a need for more—and more predictable—grant funding as well as low-cost, flexible and patient financing for development activities. Respondents, especially public respondents, also reported needing more political support for land banking and affordable housing development.

4. What type of funding and financing sources do you use to cover the costs of holding properties for future development?

No respondent identified a unique funding source for covering the costs of holding properties. Both public and nonprofit respondents reported using general operating funds, pre-development loan funds or other program administration funds on current or previous projects.

5. What would your organization need in order to scale up your holding efforts in service of lasting affordability and community benefits?

Respondents stated that, in order to scale up holding efforts, they would need more financial resources to cover the costs associated with holding land and increased staff capacity. Some respondents noted that holding the land is not the current limiting factor in scaling production compared to the lack of financing options for acquisition and the lack of grant subsidy for development.

6. What process do you follow to dispose of properties? Who decides how to dispose of properties, to whom and for how much?

Only the public respondents answered this question and all had some version of a guiding plan, strategy or policy that dictated disposition practices. Most public agencies dispose of land through a request for qualifications (RFQ), request for proposals (RFP), notice of funding availability (NOFA) or other competitive process. It is important to note that some public respondents stated that they rarely dispose of land but rather retain almost all that they acquire for their core mission and activities.

7. What would your organization need in order to scale up your disposition efforts in service of lasting affordability and community benefits?

Again, only public respondents answered this question and there was no significant common theme in the responses. Public agencies reported needing more community support and outreach channels, staff capacity, properties in general and new ways to ensure community benefit in the disposition of public land.

8. Whether your organization currently has these capacities or not, would you be interested in taking on any of the following roles in service of lasting affordability and community benefits along the SW Corridor light rail line?

While the first survey question about current portfolios of properties demonstrated that survey respondents do not currently own a significant number of properties along the Southwest Corridor, this question demonstrated that all respondents are interested in growing their capacities to play a larger role in land acquisition, holding and disposition for community benefit. If resources were made available, there are strong indicators that survey respondents would be willing to explore ways that they could take on new types of work and partnerships.