



November 7, 2016

**VIA EMAIL**

Mr. Nathaniel Smith  
Executive Committee Member, TransFormation Alliance  
Founder and Chief Equity Officer, Partnership for Southern Equity  
[nsmith@psequity.org](mailto:nsmith@psequity.org)

**Re: Use of MARTA Transit Sales Tax Revenues for Equitable Transit Oriented Development**

Dear Mr. Smith:

As you are aware, during the 2016 legislative session of the Georgia General Assembly, Senate Bill 369 was passed, giving the City of Atlanta the option of considering an additional ½ penny on the dollar in funding for MARTA expansion. The Atlanta City Council decided to include the MARTA referendum measure on the November ballot, and tomorrow voters will make their choice on the MARTA expansion.

The Turner Environmental Law Clinic at Emory Law School reviewed the extent of MARTA's authority to use a portion of the revenue generated to fund equitable transit oriented development ("eTOD") projects. Based on its preliminary legal analysis, the Clinic concludes that, assuming the referendum measure passes, **funds may be directed to eTOD projects provided such projects generate revenue for MARTA, increase MARTA ridership, and promote the comfort, safety, and convenience of MARTA passengers.**

This conclusion aligns with the language of MARTA's authorizing statute, a decision of the Georgia Supreme Court, and the shared vision of MARTA and the City of Atlanta for an equitable transit system.

1. MARTA's powers are broad. The MARTA Act grants MARTA "all powers necessary or convenient" to operate a rapid transit system. A rapid transit system, in turn, includes "[a]ll property, real or personal, useful for the public transportation of passengers for hire, including ... facilities necessary thereto and other facilities for the comfort, safety, and convenience of its passengers." The Georgia Supreme Court has interpreted these provisions broadly. In a landmark decision over a decade-and-a-half ago, the Court held that the use of MARTA funds for a private real estate development project fell within MARTA's authority because the project would enhance revenue and ridership. *Garden Hills Civic Ass'n v. MARTA*, 273 Ga. 280 (2000). Following the longstanding reasoning of *Garden Hills*, eTOD projects that improve the utilization of MARTA stations (thereby increasing ridership and revenue, and promoting the comfort, safety, and convenience of MARTA passengers) may also fall within MARTA's broad powers.

2. Both MARTA and the City of Atlanta support integrating eTOD into transit planning. As stated in its Policies for Implementing MARTA's TOD Guidelines (adopted by the MARTA Board of Directors, November 2010), MARTA "believes that residential and mixed-use TOD projects should include a significant component of affordable housing." Similarly, in Resolution 16-R-4041 (adopted October 2016), the Atlanta City Council reaffirmed its "commitment to affordable housing for applicable TODs generated from the MARTA tax." Of course, eTOD projects align with these public proclamations.

Thus, to the extent it furthers MARTA's ability to operate a rapid transit system and promote the shared vision of equitable transit, MARTA may use tax revenue generated from tomorrow's referendum to fund eTOD projects.

Sincerely,

Mindy Goldstein, Director  
Faris Mohammed, Fiona O'Carroll, Bob Sherrier, and  
Jaryeneh Tarpeh, Student Attorneys