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Utilizing Transit Oriented Development Funds to Finance Affordable Housing Near Transit Corridors

CASE STUDIES, FINDINGS, AND RECOMMENDATIONS

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Introduction

There is a housing affordability crisis in the United States. There are over 11.5 million households that are considered “rent burdened” where more than 50% of their income goes towards housing costs. Additionally, transportation costs are a significant and underappreciated factor when evaluating a household's costs. On average, Americans spend 52% of their income on housing and transportation (US Housing and Urban Development, 2008). A report by Harvard University finds that 11.4 million renter households are severely cost burdened, defined as those spending at least 50 percent of their household income on housing costs, and the researchers project that this number will increase 11 percent by 2025 (Cleveland Fed, 2016). To address this mismatch there have been efforts to build housing around transit stations or encourage “Transit Oriented Development” (TODs).

TODs have the potential to dramatically reduce transportation costs by providing public transportation mere steps from a person’s front door. Along with this reduction in transportation costs, affordable housing, or housing designated specifically for people below an Area Median Income (AMI) can allow residents to benefit from the reduction in costs associated with housing. This comes as there is some evidence that housing costs near transit stations are higher as more affluent residents desire to live in close proximity to transit (Belzer, et al, 2006). The challenges of affordability and transportation are clearly related and thus require simultaneous policy solutions.

Market forces will ultimately dictate the costs of housing near transit stations. The overriding policy question then becomes how stakeholders can deliver affordable housing options to low and moderate-income families who need it the most. This paper will argue in favor of equitable development around public transit stations known as Transit Oriented Development.

This purpose of this paper is to strongly argue in favor of the establishment of the financing mechanism known as Transit Oriented Development Funds, or “TOD Funds.” The funds are a path forward as cities and regions seek to address concerns about affordability and equitability, particularly as they relate to transit corridors. Programs in Denver, CO, Seattle, WA, and the Bay Area in Northern California will be evaluated as to their effectiveness. In addition, there will be a focus on what is permissible within the legal framework of the state of Georgia as the City of Atlanta and the Metro Atlanta Rapid Transit Authority (MARTA) attempt their own Transit Oriented Development program. Finally, other popular affordable housing programs such as the Low Income Housing Tax Credit (LIHTC) and New Market Tax Credits will be considered and contrasted with TOD Funds. Some of the criteria considered when evaluating a particular city/region’s programs will be based on:

1) Profitability -- Do these area’s programs allow the developers to not only cover costs, but also make money?
2) Regulatory -- Do these programs allow developers enough leeway to make the projects happen?
3) Zoning -- Is the surrounding zoning conducive to the program's success? Is rezoning an option that can occur in an expedited manner?
4) Government Support -- Is local, state, or federal support necessary for the program’s success?
5) Legality -- Is the program broad enough to be easily applied to other cities, counties, and states?

Chapter 1. History of TODs

The term "transit oriented development" (TOD) has been around since at least the early part of the 1980s. The term gained mass acceptance after an environmental sustainability student named Peter Calthorpe who was concerned with the ecology of communities, codified the concept for TODs (Carlton, 2007). It has generally been defined as, "a mixed-use community that encourages people to live near transit services and to decrease their dependence on driving." Later analysts further defined TODs as "developments [that] have the potential to provide residents with improved quality of life and reduced household transportation expense while providing the region with stable mixed-income neighborhoods that reduce environmental impacts and provide real alternatives to traffic congestion," (Ibid).

Since then, the concept of TODs has flourished throughout the country. As of 2010, Reconnecting America, an organization that advises civic and community leaders on community development issues, counts no less than 42 active TOD programs that take place at the state, regional, and local level (Reconnecting America, 2010). These projects have the potential to transform the transit corridors they sit along. The development potential is nearly endless and already tangible. It is estimated more than one in five households will desire housing in a TOD by 2025. The Urban Land Institute found 32% of Americans – and 39% of Millennials – listed convenient public transit as either a top or high priority in choosing where to live (Guthrie and Fan, 2016).

Given this increased public interest in living in close proximity to transit, there are several cities that have attempted to establish robust TOD programs over the past 10 – 15 years. The Denver region, Seattle region, and Bay Area have all invested heavily in TODs hoping to solve the spatial mismatch that low-to-moderate income households face between proximity to jobs and transportation options. The following chapters provide an evaluation to the programs of these areas and how they are performing.

Chapter 2. Transit Oriented Development Funds -- An Assessment

The following chapter will go into detail on case studies evaluated for this paper: Denver's Transit Oriented Development Fund, Seattle's Regional Equitable Development Initiative, and the Bay Area Transit Oriented Affordable Housing Fund. Each of these funds has the same broad, general concept that seeks to construct affordable housing along transit corridors. They differ in their particular region's politics. For example, Denver has a very robust transit plan over the next few decades (Nevitt, 2017) whereas Seattle has an unusually high level of community support for its affordable housing initiatives (Madden, 2017) and San Francisco has perhaps the worst rental market in the country for low to moderate-income households (Desjardins, 2016).

As a result of these differences, each region's program brings something different to the table and has provided a testing ground for the housing affordability challenges plaguing metropolitan areas across the United States. The following case studies provide a way forward as planners, stakeholders, and advocates seek to address this with new and innovative housing policies.

Denver Transit Oriented Development Fund

Denver, CO has been particularly aggressive in setting up a TOD Fund to deliver affordable housing options along its transit corridors. The Fund was set up specifically for acquiring and preserving land for workforce housing near existing or future light rail stops. As Brad Weinig, Deputy Director of Denver Programs with Enterprise Community Partners said, the idea for the [TOD] Fund began with FasTraks, the name for the Denver region's transit system. Enterprise took an interest in economic development, private investment, and quality infrastructure that would come with the development. Weinig said that somebody had to watch out for the little guy, so to speak, for fear they could be displaced. The expansion of transit was at the core of Denver's work, which served as incubator for a national interest in funding affordable housing along the transit corridors because transit systems provide access and opportunity (Weinig, 2017).

Profitability

Originally, the Fund was developed in part by the City and County of Denver and Enterprise Community Partners to finance development along transit corridors. This iterative process dates back to late 2000s when the national philanthropic MacArthur Foundation took interest in it by putting up some money in the form of grant and investment capital with favorable terms to dangle in front of other financial lenders. This challenged the city of Denver to take the risk inherent in developing a TOD Fund by taking first loss, meaning in the event a development does not produce the cash flows predicted, it will be the public entities losing money, not the private lenders or philanthropic foundations. The entities involved utilizing the Fund were able raise an additional $10 million in private capital (Ibid). This aggressive acquisition financing was necessary to ensure that the land was used for affordable housing.

Following this initial round, the Urban Land Conservancy (ULC) gave an equity commitment and the Fund had $15 million to invest over 10 years; the stakeholders successfully deployed it within three years across seven sites and at that point proved the model could work. The only limit at the time was the Fund was limited geographically to city and county of Denver and not the region as a whole. Yet, the success of the initial round of investing led the same investors to recommit for another 10 years with $24 million. Financial institutions such as Wells Fargo, US Bank, and First Bank joined with the other advocates to make the financing possible (Ibid).

The large amount of financial actors involved in the Fund allowed Denver's TOD Fund to be structured in a way to offer favorable terms to developers showing the ability of the Fund to not only cover costs for developers but also actually makes a profit. The interest rate on developments is between 3.5% and 4.5% (Weinig, 2017) as it is purely a blend of everybody's capital, ranging from 0% (city) up to 6-6.5% (other Community Development Financial Institutions). A small service fee to administer the loans is added, as are acquisition fees borrowers pay for due diligence and underwriting, this is purely meant to break even. A Land-to-Value ratio of 90% was the level ULC was comfortable with and had to be better than traditional banks would offer to limit recourse and isolate potential risks. These regulatory factors provided the leeway that developers needed to get off the ground. The partnerships inherent in Denver's TOD Fund ensure that there are not substantial regulatory burdens that prevent the projects from occurring (Ibid).

ULC's interest in the Fund came naturally, as Debra Bustos, Vice President of Real Estate for ULC said, "The work ULC does likes to strengthen the community as most nonprofits do. Our mission is to acquire and preserve land for the benefit of the community. Affordable housing is the cornerstone of what we do," (Bustos, 2017). Thus, TODs were a natural fit with the housing side of ULC's mission, as housing is the "lynchpin" as Bustos calls it. When Denver's FasTraks expansion came in the mid-2000s, they wanted to be ahead of any potential gains for affordable housing. As Bustos put it, "As soon as developments starts to occur then neighborhoods start to gentrify and you can at least preserve some of the area for affordability and preserve the culture and history of the neighborhood," (Ibid).

From there ULC partnered with affordable housing developer Medici Communities LLC was awarded $1,045,505 in Low Income Housing Tax Credits (LIHTC.) The project will serve households with income ranging from 30% to 60% of AMI (Urban Land Conservancy, 2011). The ULC also acquired a two-acre parcel along Denver's FasTraks light rail corridor that will be developed to include the new west Denver library, a mixed-use workforce housing development, and commercial space. The land was acquired using Denver's TOD Fund set up specifically for acquiring land near existing or future light rail stops. The goal was to provide affordable homes next to Denver's expanding public transportation system. In 2010, ULC and the Denver TOD Fund completed the first loan facility with the acquisition of Dahlia Street Apartments, which preserved 36 affordable homes in the northeast Park Hill neighborhood of Denver.

Regulatory

Despite the success, getting the projects off the ground still presents challenges. In the case of Dahlia apartments, the City had to deal with the challenge that the federal government's Neighborhood Stabilization Program (NSP) brings stringent requirements in how the money is spent. After reflecting on what would've been done different, Debra Bustos said she would've accepted the federal dollars, but used them as part of the acquisition. The addition of the NSP funds allowed the TOD to leverage additional dollars from lenders and financial institutions.

Because of the addition of federal funds, $700,000 was leveraged with an additional $1 million, which preserved affordable units, improved livability, made housing more available (Bustos, 2016). When these funds came in, Denver had to use the money to preserve units at 50% of AMI. Leveraging is the critical piece to have the financing necessary to construct the units.

There are other lessons learned such as when you are the sole borrower who buys the land it can take months for the development process to come to fruition, sometimes even years. So those borrowers paying holding costs have to come up with 10% equity in an environment with limited finance mechanisms working with tax credits. As a result, borrowers can find they are working against themselves and with different development partners and have sites competing against each other. This can subsequently cause challenges because the 9% tax credit is very limited and very competitive and there is only one round per year (Ibid).

Zoning

In the case of Denver's TOD Fund, the zoning between the different entities was not a coordinated effort; it was in the words of Chris Nevitt, Denver's Citywide Manager for Transit Oriented Development, "All over the map." Denver completely rewrote their zoning code in 2010 and took the code from the more traditional Euclidean use based zoning to a more modern and hybrid form based zoning (Nevitt, 2017). In most form-based codes, is on the design of the spaces outside and between the buildings to create an authentic and desirable public realm, which attracts and retains businesses, young talent, and retiring boomers (Rangwala, 2012). Denver's new code still involved a lot of use descriptions, but became much more form based.

The Denver City Council had already done some station area planning and some members of council had actively re-zoned for the development, however, there was really no connection between the rezoning effort and the TOD. This task was left entirely to those who were accessing the Fund and doing the development (Nevitt, 2017). The Fund bought industrial, low density residential, as well as multi-family residential zoned parcels and the rezoning process looked and behaved as any other rezoning; while the Fund made some of these rezonings possible there was nothing expedited about it according to Nevitt. The City Council and stakeholders in the Fund did not have that level of coordination necessary for a more proactive rezoning. Nevitt himself, as a council member more interested in some of the planning issues that the Fund would address, took some of the rezonings on himself as a personal goal of the project, but this was not part of a larger coordinated effort (Ibid).

Example of Denver's Form Based Code

Article 5. Urban Neighborhood Context
Division 5.3 Design Standards

SECTION 5.3.3 PRIMARY BUILDING FORM STANDARDS

5.3.3.1 Applicability
All development, except detached accessory structures, in all the Urban Neighborhood Context zone districts

5.3.3.2 General Standards
Combining standards from different building forms for the same structure is prohibited, except where expressly allowed.

5.3.3.3 District Specific Standards:
The maximum number of structures per zone lot and building forms allowed by zone district is summarized below:

Urban (U-) Neighborhood Context Zone Districts		Max Number of Primary Structures per Zone Lot	Building Forms												
			Suburban House	Urban House	Detached Acc. Dwelling Unit	Duplex	Tandem House	Town House	Garden Court	Row House	Apartment	Drive Thru Services	Drive Thru Restaurant	General	Shopfront
RESIDENTIAL ZONE DISTRICTS															
Single Unit (SU)	U-SU-A, -B, -C, -E, -H	1*		■											
	U-SU-A1, B1, C1, E1, H1	1*		■	■										
	U-SU-A2, -B2, -C2	1*		■	□	□	□								
Two Unit (TU)	U-TU-B , -C	1*		■	■	■	■								
	U-TU-B2	1*		■	■	■	■			□					
Rowhouse (RH)	U-RH-2.5	no max		■	■	■	■		■	■					
	U-RH-3A	no max		■	■	■	■		■	■	□				
COMMERCIAL MIXED USE ZONE DISTRICTS															
Residential Mixed Use (RX)	U-RX-5	no max													■
Mixed Use (MX)	U-MX-2x	no max												■	
	U-MX-2, -3	no max										■	■	■	
Main Street (MS)	U-MS-2x	no max													■
	U-MS-2, -3, -5	no max										■	■		■

■ = Allowed □ = Allowed subject to limitations *See Section 1.2.3.5 for exceptions

Source: City of Denver, CO Department of Community Planning & Development

Government Support

Important in any large infrastructure projects are the support of the community and the engagement of local residents as stakeholders. The Denver TOD Fund enjoys a wide breadth of public support. As Brad Weinig notes, feedback for the Fund has itself has seen “very little bad, a lot of good as a way to leverage private capital from public good.” There exist the normal NIMBY (Not In My Backyard) types that are typically a challenge on any development project. Additionally, the City of Denver is used to shouldering the burden for affordable housing and city officials have become frustrated over the seemingly disproportionate amount of burden they have. The regional politics have gotten in the way of delivering more units to a wider area in the region. Part of this, Weinig notes, is due to the outdated image people have of what affordable housing looks like and the fact that no one area, in a region such as Denver, looks exactly the same. Therefore, it can be a challenge to take ideas that work in the City and apply them to a suburban town in the region. This is why the blended capital, public risk taking, philanthropic buy in, and traditional lending practices are so critical; they level the playing field within the region by combining the risk.

Legality

The legality of the Fund was never in question in Denver. The state of Colorado is unique in that it is one of only a handful of states that does not have a dedicated affordable housing fund (Bustos, 2017). As a result, the City of Denver mostly relied on tax credits and other funding sources that can be created by municipalities. As a western state, Colorado has skepticism of government overreach. This permeates down to the more progressive city and region of Denver. Thus, the city has a tendency to “undershoot and consequently shoot themselves in the foot” when it comes to affordable housing (Nevitt, 2017).

Previous leadership of Denver's light rail system focused less on the development side of transit oriented development and much more on the transit itself. New leadership under current GM Phil Washington has taken a different view by thinking more holistically about development partnerships. Washington created Transit Oriented Communities (TOC), which focused on re-positioning existing park and rides for redevelopment with a particular view towards affordable housing. Yet, to this point, no Fund money has been used on Denver's light rail system parking lots; the only lots that have been redeveloped happened with pure private development capital.

Further complicating Denver's efforts is a Colorado State Supreme Court decision that says inclusionary housing laws with respect to rent control are unconstitutional (Nevitt, 2017). The only way for rent control to be done legally in the state is through private contract, not as a matter of law or regulation. Conversely, there is inclusionary zoning for owner-occupied properties. In those developments, any project that includes more than 30 units must have 10% set aside at 80% AMI. Due to the difficult nature of arrangements such as this, the City of Denver is phasing out this requirement and transitioning to an impact fee on all development.

Image of Denver Fund development

Image via Denver FasTraks

Seattle Regional Equitable Development Initiative

The City of Seattle, WA has a long history of supporting affordable housing within its borders, having voter approved housing levies dating back to the 1980s (City of Seattle, 2017). In fact, since 1981, Seattle voters have approved one bond and five levies to create affordable housing. This has resulted in over 13,000 affordable apartments for seniors, low- and moderate-income workers, as well as formerly homeless individuals and families (Ibid). In August 2016, voters approved a new $290 million levy with over 70% of the vote. With all this capital, Seattle's Office of Housing has a two-decade long history. The aforementioned levies typically fund anywhere between 30% up to 80% AMI, but generally do not fund any construction above 60%.

Consequently, residents who make between 80% and 100% AMI have made up this "missing middle" population within the City. Seattle's Office of Housing takes care of the least fortunate and the private market takes care of those who can afford market rate and luxury units (King, 2017). When Enterprise Community Partners approached the city about an attempt to create a fund similar to what they helped created in Denver and the Bay Area, the city jumped at the chance. Much like those funds, the Seattle area would secure property and hold it with the understanding they would build affordable housing in markets where the price of the land is increasing so rapidly that nonprofits and housing advocacy organizations have been priced out of the market. Due to the existing robust affordable housing programs the city had, it took longer for Seattle to develop their own TOD Fund, which they named the Seattle Regional Equitable Development Initiative, or "REDI" (Ibid).

Profitability

Similar to Denver, CO, the City of Seattle has its own Fund aimed at ensuring long-term affordable housing. The program was first enacted in 1981 and since then the City has voted five times to preserve and construct affordable housing. Due to the levy, the program has now funded over 12,500 affordable units, provided loans to over 900 first time homebuyers, and provided emergency rental assistance to 6,500 households. The levy-funded housing provides affordable rents for 50 years or more.

Following the passage of Sound Transit 3 in November 2016, King County, WA has set up a Fund similar to the one in Denver, CO, also administered by Enterprise Community Partners. The $21 million revolving loan fund is called the Regional Equitable Development Initiative (REDI) Fund. Enterprise Community Loan Fund will administer it. The program offers loans of up to $5 million with a fixed interest rate of 3.89 percent for up to 48-84 months. Each property acquired using the Fund will be required to have a share of units affordable to households at or below 80 percent of area median income, or 20 percent below market rent (Daily Journal of Commerce, 2016.)

The Fund will be available for multifamily rental and owner-occupied housing, mixed-use projects with up to 20% non-residential space, and vacant and/or underutilized land. Projects financed by the REDI Fund must have a minimum of 10% of units affordable to households at or below 80% area median income (AMI) or 20% below the market rent for a comparable unit in the submarket of the acquired property. A covenant reflecting this requirement will be recorded at the acquisition closing. REDI will seek to fund projects that maximize affordability on acquired sites. While not a requirement per say, at the fund level, 25% of all units built on sites acquired with REDI must be at or below 50% AMI. The Fund has an additional goal to include at least 15 units at 30% AMI (Regional Equitable Development Initiative Fund, 2016).

Regulatory

Similar to the City of Denver's Fund, the REDI Fund seeks to blend risk with the available capital in order to assure the financial lenders of the salience of the investments. The City of Seattle, King County, A Regional Coalition for Housing (ARCH) and the Enterprise Community Loan Fund were the first funders. This commitment attracted investors to collaborate to create a fund designed to address the area's needs (Capital For Healthy Families and Communities, 2016). The initial round of investments made were as follows:

Entity	Investment Amount
Enterprise Community Loan Fund	$6.5 Million
Low Income Investment Fund	$4 Million
Living Cities Blended Catalyst Fund	$3.5 Million and Staff Time Support
State of Washington	$2.5 Million (Through Agreement with King County)
King County Housing Authority	$2 Million
City of Seattle	$1 Million
King County	$1 Million
ARCH	$500,000

The regulatory structure of the loan has similarities to other TOD Funds. It is established as a Syndicated Loan structure, which means the stakeholders who invested in the program work together to provide the blended capital as a single borrower (Seattle City Council, 2016). Much like the City of Denver, this gives the dollars invested into projects much more leverage and pull. The REDI Fund has three tiers of capital:

1) "Top Loss" Funds
2) Second loss and subordinate investors

3) Senior debt investors

These different tiers are tied to different investors. The public dollars (Cities and King County) are the top loss lenders. In the event of a loan going bad the public dollars carry the biggest risk. Nonprofits and housing advocacy organizations are on the second tier of capital. The banks and other financial institutions take the position as senior debt investors. These are the stakeholders with the least "skin in the game" so to speak, or the stakeholders who hold the least amount of risk. Due to the private nature of these institutions, they are the first ones or the "senior investors" to recover their capital in the event one of these deals does not work out.

Zoning

There was a lot of interest in the Seattle REDI Fund from the outset of the project though some sites though would require zoning changes (King, 2017). Fortunately, the City of Seattle is currently undergoing a large zoning rewrite. Accordingly, a number of these properties would require zoning changes to conform to the zoning rewrite regardless. At the moment, there is no expedited rezoning process for the sites, if a project funded through REDI had the financing and contract work done, there is the opportunity to a contract rezone where the developers and REDI investors, who own the land regardless, agree to a rezone (Ibid). This presents a level of coordination between the cities in the Fund such as Seattle, Bellevue, and Kirkland, King County, and the state of Washington that was not seen in Denver, and proves to be something of a "lesson learned" by Enterprise Community Partners and other stakeholders involved in REDI.

Government Support

According to Elsa King, Senior Multifamily Lender at City of Seattle Office of Housing, the City of Seattle is unique in that the public is very supportive of both affordable housing and the affordable housing levies used to fund it (King, 2017). While there are a few NIMBY (Not In

My Backyard) types here and there as you will find in any area, the public at large is in support of affordable housing options in the city, county, and even the state. Additionally, there has been a lot of interest from nonprofit and for profit developers in constructing affordable housing on the land acquired by REDI (Ibid). Thus in the opinion of King, a city has to have a perfect storm for a fund like this. A city has to be growing, a city in which the public is accepting of affordable housing where there is a lot of gentrification, timing is also key. In the original presentation by Enterprise to the city, it was cutting edge and at the forefront of this boom, so people were not readily accepting, but instead people were wondering if something like this was needed. For example, a city like Austin, TX would benefit greatly -- it is growing, accepting of affordable housing, but there are just so many obstacles to be crossed.

Others share similar opinions to King on the state of government support. James Madden, Senior Program Director at Enterprise Community Partners has recently come into working on Seattle's fund but says, "Seattle might be the best city in America for affordable housing on being open and welcoming to newcomers. The City Council is very supportive of required densities and Mayor [Ed] Murray is a huge proponent of affordable housing as are all the region's state representatives, state senators, Congressman, and Senators." (Madden, 2017). This is helped by the unusual civic engagement on the issue as Madden continued, "Voters are supportive on the balance and it's rather amazing. The voters approved to double property tax levy to fund affordable housing, which is amazing to do without income tax increase. The needs are real and there is a true homelessness crisis as well as displacement. So far voters have been engaged," (Ibid).

Due to the high level of community support, the Seattle region wanted to do something different than other areas of the country. In doing that, they had to evaluate the market and work with developers who would do that. Seattle thought about really gearing it towards those people and captures that for profit market and then seeks out developers who have great balance sheets, the capital to make projects happen, and their own leverage ability along with the public dollars to create higher density projects with a greater number of units. This is truly what this Fund is geared towards. As opposed to other affordable housing funding sources geared towards the nonprofit organizations and housing advocacy organizations, REDI is an “in-between” fund that fills this missing middle of affordable housing. The people who live in REDI funded units are people who have full time jobs but may be entry level positions or positions that make it more difficult to meet the market rate of housing, such as a barista or a blue collar worker (Ibid).

As far as making a TOD Fund work on a national level King believed that the right factors had to go into it saying, “A city like Los Angeles or New York City are too late for something like a TOD Fund, the land is already gone. Residents have been out priced; something other than a TOD Fund is needed. However, growing metro areas such as Phoenix, Las Vegas or Atlanta offer better comparisons for cities who are looking to establish their own funds,” (King, 2017).

Legality

On Seattle’s end, Elsa King said there were not any changes that needed to be made to city law; it was just a matter of obtaining council approval for the establishment of the Fund. There were no known barriers in regards to the state of Washington laws either. While there were some nuances that REDI wouldn’t be allowed to fund that had to be tweaked, such as making sure the Fund went directly to affordable housing and not anything that would only be tangentially related to the project, on the whole the legal framework of Washington even as a Dillon’s Rule state which means that only powers specifically granted by the state legislature are permissible to localities. As a result, more than any laws being changed to fit REDI, REDI had to be adjusted to exist in accordance with city and state law (King, 2017).

Image of REDI Funded development

Image via REDI

Bay Area Transit-Oriented Affordable Housing Fund

The Bay Area has some of the most expensive housing costs in the country and has some of the least affordable housing in the country – both in absolute terms, and in terms relative to income (Desjardins, 2016). As recently as mid-2016, it has been rated as the most expensive housing market in the country with the median price for a one bedroom costing $3,590, more expensive than even New York City (O'Brien, 2016). This came despite a modest rent growth of 0.8% this May for one-bedroom units. Two bedrooms similarly rose 0.4% over the period.

Yearly rent appreciation has been low compared to previous years, up only 2.6% for both bedroom types since last May. Despite this, rent prices in San Francisco still reign as the most expensive in the United States (Ibid). This puts enormous pressure on working families in the

Bay Area; half of all Bay Area households spend more than 30% of their income on housing costs, compared to ⅓ nationally. This puts a heavy strain on those households making between $20,000 and $50,000 per year as they spend 63% of their income on housing and transportation combined, the highest percentage in the country (Bay Area TOAH Fund).

There are a number of reasons for the extremely high cost of housing. As Fischer argues, prices have increased by 6.6% each year since 1960s, the time when the City of San Francisco ran out of vacant land. This problem is exacerbated in the region due to the political resistance towards building new housing and tough development laws that make constructing new housing without changing existing laws nearly impossible (Doughtery, 2016).

In the face of this challenge, the Bay Area Transit Oriented Affordable Housing Fund or "TOAH" was established in 2011. The mission of the Fund is to "promote equitable transit-oriented development (TOD) across the nine-county Bay Area by catalyzing the development of affordable housing, community services, fresh foods markets and other neighborhood assets," (Bay Area TOD). The Fund is a $50 million collaborative public-private initiative created to encourage inclusive transit oriented development in the Bay Area. The initial effort mirrored what occurred in both Denver and Seattle, partners were able to utilize a local investment of $10 million from the region's MPO, the Metropolitan Transportation Commission and leveraged an additional $40 million in private capital from six local community development financial institutions, banking institutions, and local and national foundations (Northern California Community Loan Fund).

However, the Bay Area has a Fund that is quite older than the funds in both Denver and Seattle. As Adelman contends, the non-profit organization the Great Communities Collaborative (GCC) was the instrumental in coming up with the concept for TOAH as they were experts in affordable housing in proximity to transit service (Adelman, 2016). Prior to the Great Recession, TODs were popular and something of a household name, yet their gentrifying and displacing power was apparent. GCC was particularly cognizant of the opportunities, benefits, and challenges in the Bay Area given the cost of living (Ibid).

Profitability

The TOAH Fund offers a range of products with flexible uses for developers with the goal of making loans to high-quality TOD projects that will deliver the maximum number of affordable housing units. The target for the Fund is a borrower who has experience and track records of developing affordable rental housing. TOAH offers the developers predevelopment loans, acquisition loans, construction bridge loans, construction-to-mini-permanent loans, and leveraged loans. The Fund has proven attractive enough to developers that multiple projects have been constructed utilizing the financing.

Image 2. Bay Area Developments Utilizing TOAH

Eddy & Taylor Family Housing

Location: San Francisco, CA
TOAH Fund Financing: $7.2 million
Housing Units: 153
Retail Space: 12,000 square feet

The Tenderloin Neighborhood Development Corp. is developing a parking lot into a 14-story building with affordable housing and retail space planned to attract a grocery store to this underserved community. The site is located just two blocks from the Powell Street BART station, a major transit hub in San Francisco.

Leigh Avenue Senior Apartments

Location: San Jose, CA
TOAH Fund Financing: $2.9 million
Housing Units: 64
Retail Space: 7,000 square feet

First Community Housing, a pioneer of green building in the Bay Area, will build a mixed-use, affordable, green, senior housing development in San Jose. All 64 units will be affordable, senior housing and 35% will be dedicated to residents needing in-home services. The commercial space will house dental offices. The development is located near a VTA Light Rail station and the developer plans to provide free transit passes for all residents.

West Grand Development

Location: Oakland, CA
TOAH Fund Financing: $1.8 million
Housing Units: 117
Retail Space: 20,000 square feet

The East Bay Asian Local Development Corporation will build a mixed-use affordable housing and commercial development in the San Pablo Avenue Corridor, a major rapid transit corridor connecting West Oakland to several cities in Alameda County. The West Grand Development will include 117 units of affordable housing, along with a ground-floor community space and childcare center. The site has access to AC Transit bus lines and BART.

5th & Howard

Location: San Francisco, CA
TOAH Fund Financing: $4.0 million
Housing Units: 172
Retail Space: 9,000 square feet

The Tenderloin Neighborhood Development Corporation will build a 172-unit, mixed-income rental housing development with 35% of the units reserved for low income families. The building will also feature ground floor retail and commercial space. The site is located in the South of Market neighborhood near several major bus lines and the Powell BART station.

Source: Bayareatod.com

These four developments have been financed with nearly $16 million of TOAH financing leading to more than 500 affordable units and nearly 50,000 square feet of retail. The Fund has been successful enough to developers that in June 2015 the Metropolitan Transportation Commission unanimously approved an additional $10 million investment into TOAH that came days after California announced a program to significantly increase resources available to develop affordable housing near transit. The new investment from MTC is projected to expand TOAH to a total of $90 million (Targeted News Service, 2015).

Regulatory

What will likely differentiate the TOAH Fund going forward is the actual structure of the Fund. As previously discussed, most of the TOD funds are structured as what is called "Closed End Funds." This means that it is a top loss on down model built several years ago and designed to operate in an environment where capital is much more competitive and there is a need for much better financing sources to better facilitate opportunities (Adelman, 2016). The other side to that are those with the resources -- banks and foundations -- have a lot of strings attached to their capital, even when they do not take on the position of top loss investor.

These institutions do have a centralized loan underwriting process that is more expensive and takes longer to complete than may be preferable (Ibid). However, as the country has recovered from the Great Recession and capital became more accessible, TOAH has become less and less necessary in its current form because borrowers had other options and those options may have been more expensive but were nimbler and ultimately more preferable to developers.

As a result, TOAH is in the process of restructuring into what's known as a "Structured Participation" model. This means the risk to investors gets much flatter, as opposed to the top down form of the Top Loss structure. Under Structured Participation when CDFIs have more capital to draw on they can leverage that capital through their own existing process and draw on credit directly for loans, this means the project can move faster. This works in a world where capital is low cost and flexible and can empower CDFIs. This is likely to become the more common model in the coming years (Ibid). The challenge of rising interest rate necessitated this new structure, as even with the blended capital there are fewer firms willing to take on the same interest rate risk under the closed end structure.

Zoning

BART has a robust TOD program that proactively supports burgeoning TOD projects and it updated its guidelines in June of 2016. The official policy seeks to proactively support local jurisdictions in creating station area plans and land use policies that: encourage transit-supportive, mixed-use development on and around station properties, enhance the value of BART land, and enhance the performance of the BART system as a whole (BART, 2016). This focus on mixed-use development and proactive rezoning has the potential to better facilitate TOD Fund projects into the future. Similar to other areas, there has been very little coordination.

Government Support

The support of the government has been mixed and difficult to cipher in the Bay Area. Despite the politically progressive lean of the city, existing zoning and development laws make it difficult to construct new housing. There are groups who oppose almost every new development except for those reserved for subsidized affordable housing. However, many young professionals are too wealthy to qualify for affordable housing, but not rich enough to afford $5,000 per month rents (Doughtery, 2016). This interested political environment was summed up by Tim Cohen, executive director of the San Francisco Housing Action Coalition, “We have liberal Democrats, and very liberal Democrats, and yet we are as polarized as the rest of the country,” (Ibid).

Adelman argues that support from regional governing entities is fundamental and crucial for the TOAH to continue to operate. That includes the transit agency Bay Area Rapid Transit (BART) as they are the “juice that makes these things run” (Adelman, 2016). What makes this difficult is there are over 100 jurisdictions in the Bay Area, thus stakeholders have to look for specific TOD opportunities and work with those jurisdictions to garner support while continuing to work with BART and MTC who may own pieces of the necessary land and can bring people to the table to negotiate.

Legality

There were no known legal barriers to setting up the TOAH Fund, the Bay Area has famously restrictive zoning when it comes to new developments, but as BART’s zoning procedures discussed above note, this is not something that the TOAH Fund has had to struggle with. There are those who argue that new laws will be necessary to allow developers to bypass local cities and regulations to construct affordable housing (Collins, 2016). For now, the legal framework of the Bay Area and the state of California will allow the TOAH to move forward without any new laws expressly authorizing it.

Chapter 3. Legal Context in Georgia

It is important to note that every state and every region has different rules and regulations governing development. These differences have been highlighted by the circumstances of the TOD Funds found in Denver, Seattle, and the Bay Area. The scope of this paper considers financing affordable housing around Transit Oriented Development projects in the Atlanta region, and so the legal environment within which this construction will take place needs to be evaluated.

Georgia, like many states, is a home rule state. This means that counties have a great deal of latitude when it comes to setting local policies such as planning and zoning. The state only specifically prohibits counties from particular activities; all else is under the discretion of the County (Tucker, 2008). The Georgia General Assembly still has the ability to grant tools to local governments such as Tax Increment Financing (known as Tax Allocation Districts in Georgia).

The Georgia Department of Community Affairs suggest that local governments can facilitate TOD by amending codes, ordinances, and other land use policies to encourage more compact, mixed-use development near transit stops or corridors. Amending the local zoning is critical to support, but that decision, as a home rule state, rests with the local governing entity. It is also critical in Georgia for localities to adopt new regulations and use the traditional planning process for draft preparation, public hearings and comment, and adopting of final documentation to encourage TODs (DCA Small Areas Tool Kit).

There is no law against MARTA partnering with a developer to achieve TOD goals and they have in fact done just that while pursuing their TOD program, in the process becoming the nation's first transit agency to partner with a developer when it decided to pursue a mixed-use development for agency-owned lands surrounding its Lindbergh station. Further, even when the transit agency does not own certain parcels of land, it still can take the lead to ensure that TOD principles govern development or redevelopment of those parcels (Hess and Lombardi, 2012).

The agency has done this by establishing its own guidelines regarding TODs that defines itself as one of three things:

- Sponsor for "joint development"—that is, for projects built on MARTA property or connected physically or functionally to MARTA stations
- Stakeholder, for any development that occurs within the "zone of influence" of current or future stations
- Advocate, for sustainable land use decisions along all of Metro Atlanta's transit corridors, whether undertaken by MARTA or by others, as the regional transit network expands into the future (MARTA, 2010).

MARTA has stated that affordable housing is a goal of its TOD program. To that end, there is a policy goal of 20% affordability, on average. Joint development projects with 10 or more units will be subject to specific requirements and this percentage will reflect market conditions, zoning, and the availability of incentives from federal, state, and local sources (MARTA, 2010). MARTA has great leeway from the state of Georgia to aggressively pursue its TOD program and by allowing the agency to enter into public-private partnership it makes it more likely MARTA will follow through with its stated goals.

Fortunately, the TOD funds described in the preceding sections should prove to be attractive to a state such as Georgia, a state that has a proud history of supporting of what is good for business. Additionally, the Georgia Department of Community Affairs does have a loan Fund for affordable housing to which they provide additional points in their qualified allocation plan (QAP) for TOD suggesting a framework that TOD Funds can work within (Estes, 2016). There is also an existing BeltLine Affordable Housing Trust Fund (BAHF), but this Fund is reserved for the BeltLine Overlay and is not available for all TODs. The BeltLine Affordable Housing Trust Fund was created to provide funding for affordable housing around the BeltLine, capitalizing on 15% of the net proceeds from the BeltLine Tax Allocation District (TAD). Although MARTA does not provide these funding mechanisms, MARTA does achieve the criterion for a density incentive for developers (Ibid).

By allowing MARTA to enter into public-private partnership agreements, the state allows the creation of a TOD Fund to acquire land in close proximity to transit stations. MARTA has the legal authority to partner with municipal agencies, lending institutions, and philanthropic foundations to solicit capital for this. This policy goal of 20% affordability on average has the potential to become a reality.

Chapter 4. Alternatives to TOD Funds

Up to this point, the discussion has been how multiple cities and regions have utilized TOD Funds to provide affordable housing along transit corridors. However, there are other financing tools at the disposal of regional governing entities to provide affordable housing near transit. These alternatives can also be used in conjunction with the structure of TOD Funds to provide additional financing to a project. The following discussion will focus on two financing mechanisms: New Market Tax Credits and the Low Income Housing Tax Credit. The focus of this chapter will be put on how these credits can work in conjunction with TOD Funds. Additionally, an explanation as to why these tax credits alone are not enough to face the affordability challenges described in the preceding sections.

New Market Tax Credits

The New Market Tax Credits Programs (NMTC) incentivizes community development and economic growth through the use of tax credits that attract private investment to distressed communities (CDFI Fund). As of 2015, the program has generated $8 of private investment for every $1 of federal funding and created 164 million square feet of manufacturing, office, and retail space as well as financed nearly 5,000 businesses. According to the CDFI Fund, the NMTC works by allocating tax credit authority to Community Development Entities (CDEs) through a competitive application process. The CDEs act as intermediaries through which private capital can go from an investor to a business located in a low-income community. CDEs then use their authority to offer tax credits to investors in exchange for equity in the CDE. Once they have this capital in hand, the CDEs can make loans and investments to businesses operating in low-income communities on better rates and terms (Ibid).

According to Dale Royal Head of New Market Tax Credits for Invest Atlanta, this is different from other federally funded tax credits that are generally appropriated to states that then dole out the money (Royal, 2017). Additionally, the NMTC have to demonstrate a form of "community impact" such as providing jobs for local residents, either directly or indirectly. NMTC's also focused on the most distressed census tracts, generally seeking out 20% poverty rates and unemployment that is at least 1.5 times the national average at the given moment. This means that roughly 39% of all census tracts in the United States are eligible, representing about 36% of the population (Ibid).

This same principle can be applied to TODs because while the NMTC program is not exclusively limited to TOD neighborhoods, TOD sites in low-income neighborhoods can benefit from the tax credits as supplementary financing for needed development (Los Angeles Metro, 2016). The only limiting factor towards utilizing NMTC for TOD projects is that in order to obtain the financing for the construction or rehabilitation the project needs to located in a qualified census tract (LIIF, 2017). Additionally, NMTC's cannot be used exclusively for residential properties; however, they can be used for mixed-use commercial residential properties (US Bank, 2017) as they're intended to promote economic development through commercial and retail investment.

NMTCs have the ability to be used as gap financing, in an example given by Royal, if a developer has equity equaling roughly around $7.5 million for a $10 million project, such as equity from a TOD Fund, a NMTC can provide that gap financing, especially if you have lenders that are more skeptical about providing a loan in a lower income census tract. However, as Royal stated, NMTCs have the drawback of being rather complicated to put together as the image below demonstrates. There are a lot of steps involved and each one of those steps can be an expensive transaction that has attorneys and fees associated with the stage of development (Ibid.)

Thus, while NMTC's have a demonstrated ability to deliver capital to lower income areas, when it comes to Funding affordable housing along transit corridors, TOD Funds by themselves are a superior option as you have access to the capital you already need and can avoid federal funding that can lead to more complications and delays in a project.

New Market Tax Credit Flow Chart

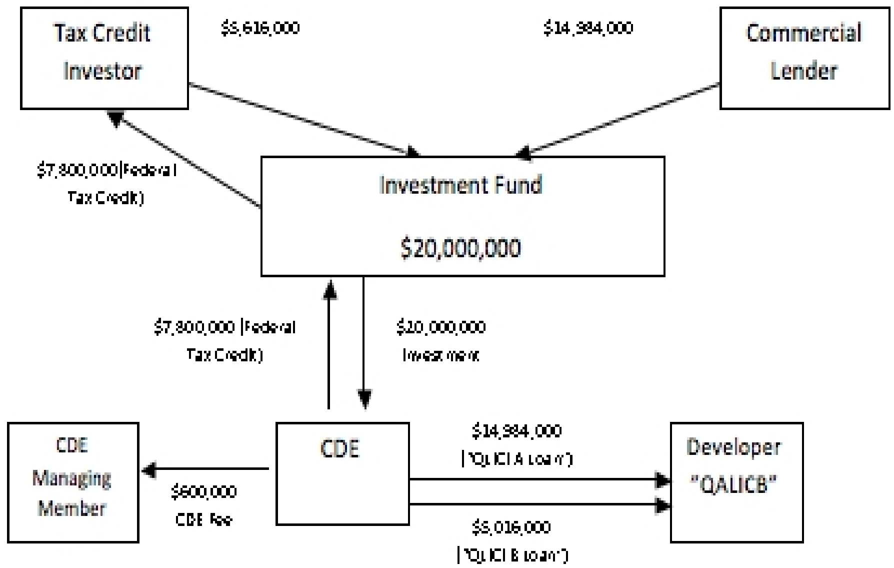

Image via REJournals.com, "New Market Tax Credits: Separating Fact From Fiction

Low-Income Housing Tax Credit

The Low-Income Housing Tax Credit (LIHTC) is the single largest subsidy for low-income rental housing (Schwartz, 2006). Through 2006, the tax credit has helped fund the development of more than 1.6 million housing units. The credit works by allowing investors to reduce their federal income taxes by $1 for every dollar of tax credit received, developments have to remain affordable for at least 15 years. The size of the tax credit is based on the housing development's cost and the proportion of units occupied by low-income households (Ibid). LIHTC also has the advantage of providing a "basis boost" to developments located in a "difficult development area" which is defined as a census tract in which at least half of all households must have income at or below 60% of median family income for their metropolitan area, or a poverty rate of at least 25%.

LIHTC also has the advantage of flexibility in how it is deployed. The tax credits can be converted to equity within a project, as Schwartz argues, housing developers seldom use the

LIHTC themselves. Instead, they “sell” the credit to private investors and use the proceeds to help cover acquisition, construction, and other development costs. This has been used in conjunction with TOD Funds already, as seen in Denver where a nearly 1 acre property was buttressed by a recently awarded $1,045,505 in annual low income housing tax credits (LIHTC) from Colorado Housing and Finance Authority (CHFA) for the project. The Urban Land Conservancy partnered with affordable housing developer Medici Communities LLC who contributed to the project (Smith, 2011). This is an example of utilizing an existing federal program and complementing it the TOD Fund.

Yet, the main weakness of LIHTC comes in the form of its fifteen-year expiration for affordable properties. After this time, the owners of the properties were allowed to charge any rent to tenants of any income, unless the property was subject to additional affordability restrictions (Schwartz, 2016). Congress addressed this problem only a few years after the passage of LIHTC by passing two laws that granted qualified nonprofit groups, tenant organizations, and public agencies rights of first refusal to acquire tax-credit properties at below market rates. This can be made more difficult if the owner wants to sell the property and neither the owner nor the state housing finance agency is able to find a buyer willing to pay the required price, or if they cannot find a “qualified contract,” (Ibid). The flow chart below shows an example of how a typical LIHTC credit is issued and processed.

LIHTC Flow Chart

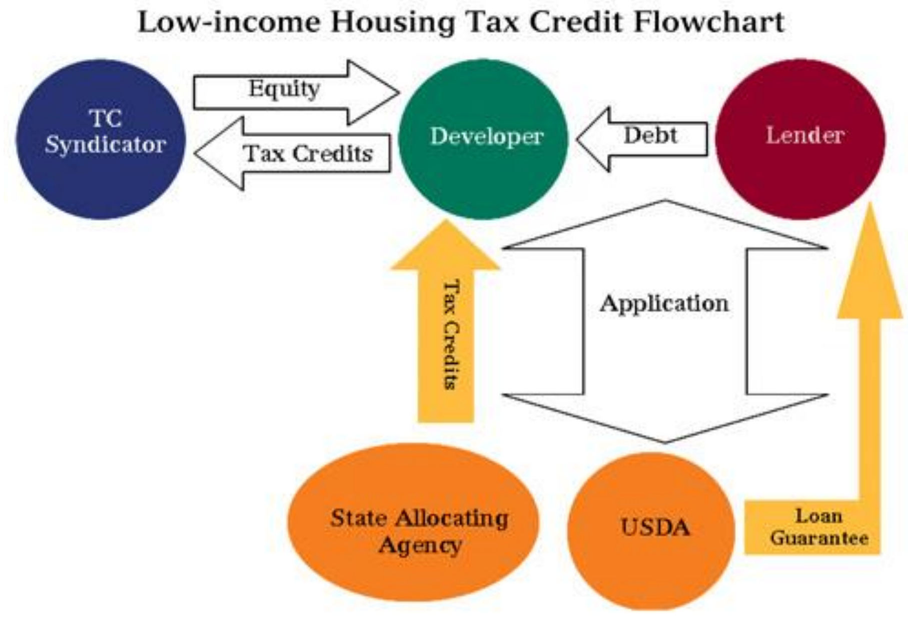

Image via Lancaster Pollard

Chapter 5. Recommendations and Conclusions

To this point we have explored the history of TODs, the affordability challenges facing many metropolitan areas in the United States, and several examples of how regions are employing TOD Funds to alleviate this distress. We have also examined the legal context for Georgia, as well as evaluated financing alternatives. The question now becomes, "What next?" To that end, there are several lessons that regions can utilize when trying to build their own TOD Fund program along transit corridors. Each region has different circumstances and political coalitions that present unique challenges for constructing affordable housing along transit corridors, yet this still presents a legitimate and exciting possibility for more equitable development. In their TOD report, Enterprise Community Partners, led by Melinda Pollock identified several of their own lessons when it comes to financing TODs in general:

1) Scale, complexity and land assembly issues are challenging to overcome.

2) Mixing uses is difficult in practice.
3) Developers need capital that is more risk tolerant.
4) Infrastructure and remediation financing sources are difficult to identify.
5) Reliance on exceptional gap funding makes projects difficult and prohibits scale.
6) If they build it, will market rate renters come?
7) Sources of permanent financing are limited and highly competitive, making it difficult to achieve scale.

Pollock and Enterprise Community Partners offer their own potential solutions to some of these problems they encountered. However, when it comes to establishing successful TOD Funds, several solutions stand out to some of the most common problems.

1) **Spread the risk**

If TOD Funds are going to work, local governing entities need to spend an inordinate amount of time and effort seeking out stakeholders who are willing to fund the project. The more spread the risk, the better, especially when it is coupled with a substantial senior debt investment by governing entities. This encourages lending institutions, nonprofit entities, and philanthropic organizations to make their own investments into the funds knowing their investments will be protected. This has the dual upside of providing for better interest rates, even as we approach an era of increased interest rate after years of depressed rates in the aftermath of the Great Recession (Cohen, 2017).

2) Leverage funds, but avoid federal money

As Debra Bustos with ULC said, “Leveraging is the critical piece to this all to have the financing necessary to construct the units [in TODs], (Bustos, 2017). In other words, once you have some money, use that to get more money. So many of these developments do not get constructed because capital they have get exhausted and there is no political will to keep them going. There is a caveat to this leveraging piece though: avoid federal dollars as they come with strings attached. As Debra Bustos described it, she has to essentially duplicate all her paperwork just for the federal money attached to the project, federal money comes with a lot of strings attached as to what you can and cannot do with it. Thus, while it can be attractive for the sheer amount of capital it can provide, it can hamstring projects and get away from the local needs of an area.

3) Seek elected support first, momentum will follow

One of the most important factors going into making TOD Funds work is support from elected officials. Not only do they have governmental resources at their disposal, but they have the ability to draw press attention and build political momentum behind these projects. This support can aid developments as they try to scale up operations. For example, Denver had robust support from its elected officials in city proper yet ran into more difficulties as the Fund took on a more regional scope. The NIMBY pushback, while inevitable, is easier to weather if you have the support from your council. Seattle is a great example of this as they have a progressive state to support them. The support runs up and down all levels of government, but it does not happen overnight. Seattle once rejected Federal money for a rail system for fear of the “the people” it would bring, building a durable coalition takes time and should not be taken lightly.

4) Proactively rezone the areas targeted

One of the more striking things discovered through research was the lack of coordination on projects. Given the high level of involvement between various stakeholders, it stands to reason that government entities have the power to proactively rezone properties that will make the developments more successful. The only TOD Fund that had any sort of proactive rezoning was in Denver where Chris Nevitt, then on the City Council, took it upon himself because he was a planner by trade and had an inherent interest in zoning and land use regulations. If governmental entities rezone areas prior to the developments being proposed, it would go a long way towards delivering the units faster and with fewer overheads costs, potentially reserving the capital for more affordable units.

5) Show results, more results will follow

One of the most fascinating revelations from this research has been the ability of the Funds to replenish at higher levels than the initial round of financing. Each region exhausted the capital that Enterprise Community Partners first helped set up and then all the investors came back again, sometimes at double the amount. While Enterprise’s “Lessons Learned” report reveals issues that have to be overcome, the eagerness of investors to have skin in the game time and again has been proven.

Conclusion

The housing affordability crisis in the United States has no easy answer. The more than 11.5 million households considered "rent burdened" have affordability challenges they will continue to face. However, TODs can address this mismatch and planners, community stakeholders, and local business owners throughout the Atlanta region and the country can address this mismatch by investing in TOD Funds. As has been argued, TOD Funds, when properly implemented and backed with proper regulatory and political channels that allow entities to make a profit, have shown the ability to deliver affordable units that Metro areas throughout the country so desperately need. These developments along transit corridors have the potential to both reduce transportation costs and provide one important element of an affordable housing policy package.

As argued at the beginning of this paper, market forces will ultimately dictate the costs of housing near transit stations. The overriding policy question then becomes how stakeholders can deliver affordable housing options to low and moderate-income families who need it the most. The funding mechanism of TOD Funds has shown its ability to deliver these units. By utilizing the lessons learned and the above recommendations, planners and other community stakeholders can ensure that equity along transit corridors is maintained and the affordability challenges plaguing housing in the United States can begin to be remediated.

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