

Session #4

How Passenger Rail Can Help Address America's Mobility and Housing Crises



KAPLAN KIRSCH



How Passenger Rail Can Help Address America's Mobility and Housing Crisis



Moderator: **Hanna Gustafsson**, Associate, Kaplan Kirsch LLP

Panelists:

Chessy Brady, TOD Manager, Denver Regional Transportation District

Mike Heyer, Manager of Transit Oriented Development, NJ TRANSIT

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Casey Morris, Associate, Kaplan Kirsch LLP

*For more information,
a full list of PRLW sessions, and to register,
visit: CommuterRailCoalition.org*

This panel session will explore effective legal strategies for fostering partnerships between public agencies and private developers to facilitate development tackling two of the big issues facing communities: mobility and affordable housing.



PASSENGER RAIL LAW WORKSHOP WEBINAR 4 OF 6
Thursday, November 20, 2025 | 3:00 p.m. EST



A collaboration between Kaplan Kirsch LLP and the Commuter Rail Coalition

RTD and TOD

Chessy Brady

Transit-Oriented Development Manager



Who and Where is RTD?

- Denver Metro Region + beyond

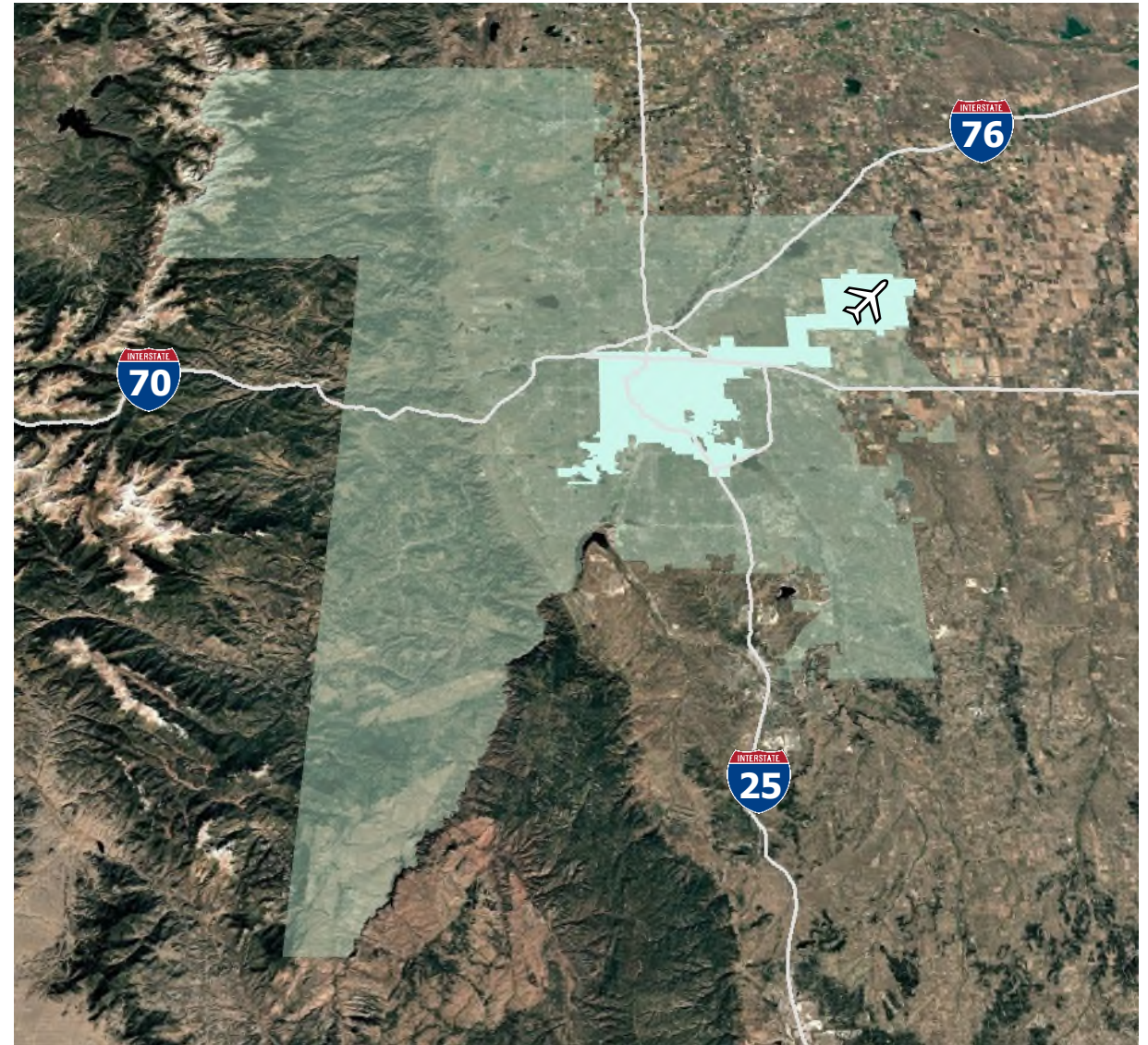


 City and County of Denver

RTD

Who and Where is RTD?

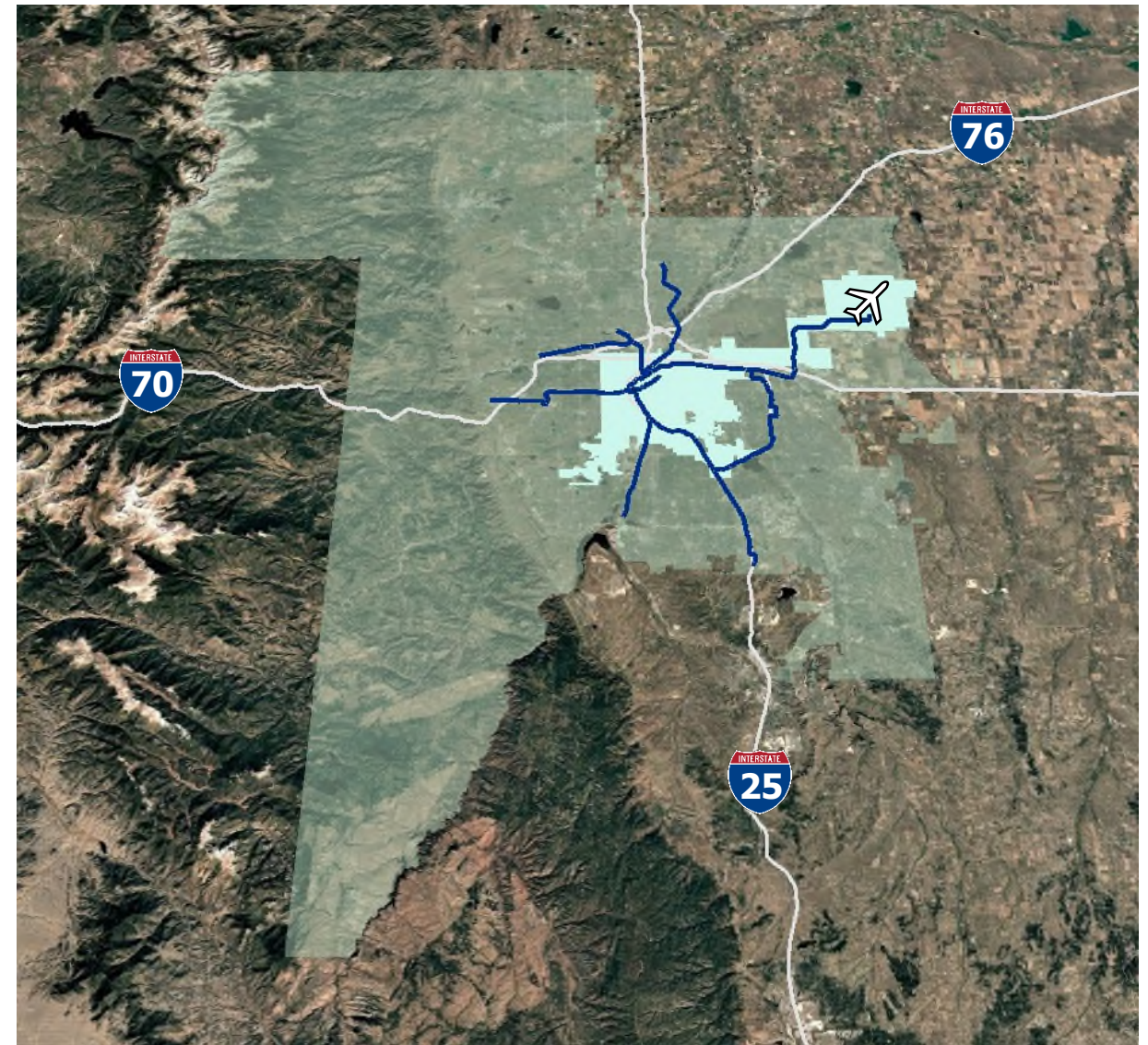
- 8 counties / 40+ municipalities
- 2,000+ sq mi
- 3M+ population



- City and County of Denver
- Transit Service Area

Who and Where is RTD?

- 8 counties / 40+ municipalities
- 2,000+ sq mi
- 3M+ population
- 4 commuter rail lines / 5 light rail lines / 100+ bus routes
- 65M annual boardings



- City and County of Denver
- Transit Service Area
- Rail

What is TOD?

- More **compact and dense** development within a 10-minute walk of high frequency transit facilities
- A **mix of uses**, usually including residential, retail and office
- High-quality, **pedestrian-oriented urban design** and streetscape



**Dense
development
doesn't work
everywhere**





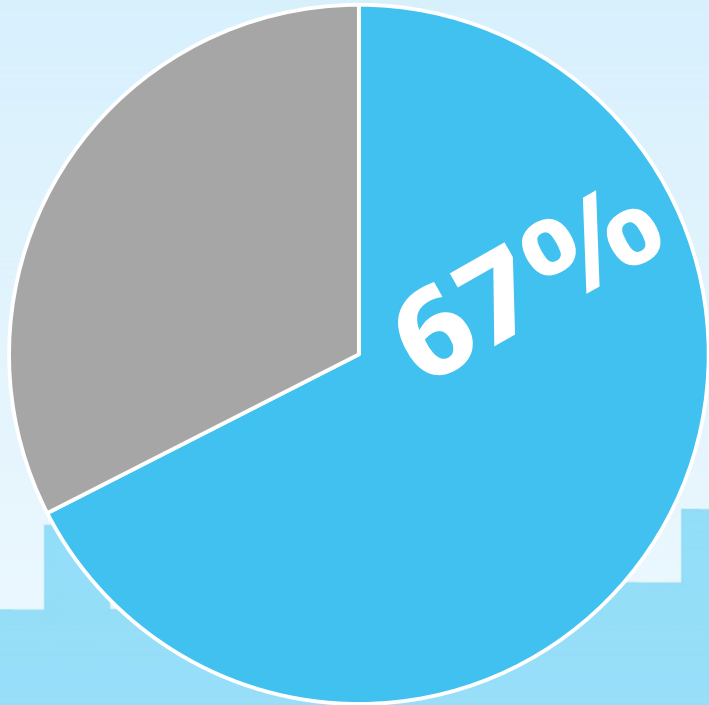
Potential for Joint Development



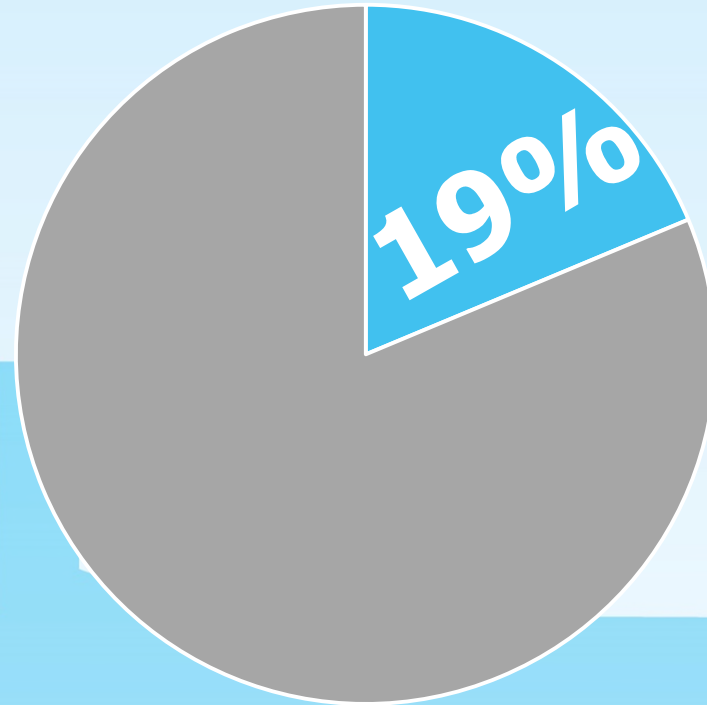
- 80+ Park-n-Rides
- 30,000+ spaces

Park-n-Rides aren't full

2019



2024



**Low-income folks ride more
and park less**



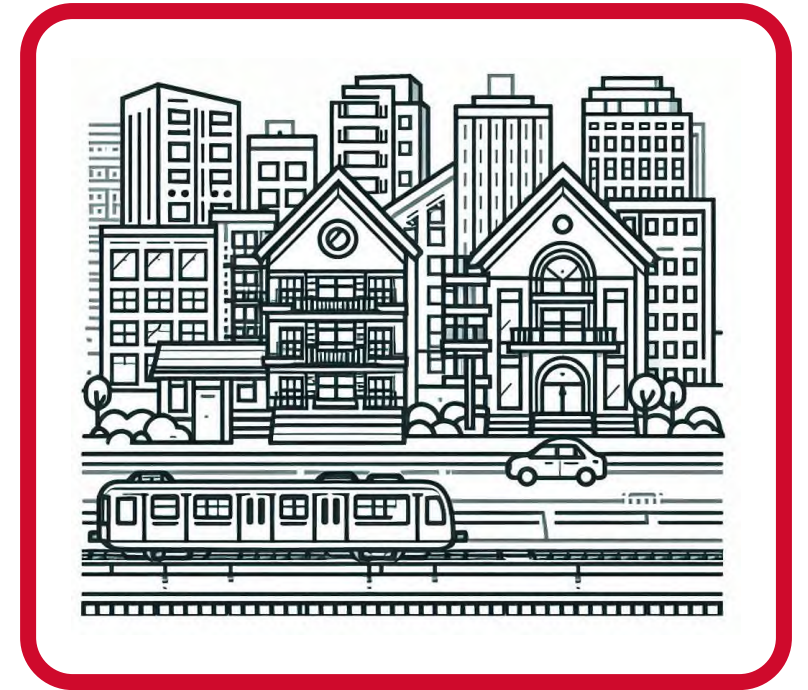
Unsolicited Proposal Procedure for Joint Development of Real Property

- Developer-initiated process
- Permits decisions about non-negotiables early and provides clarity to developers
- Protects time investment of both developers and staff



Equitable TOD Policy Basics

- Sets a Goal
 - Encourage affordable residential development on RTD property
 - By 2031, 35% of new units on RTD land to be affordable
- Permits flexibility in transit parking replacement and allows RTD to consider shared parking between transit and non-transit users
- Requires expedited administration
- Allows negotiated land price

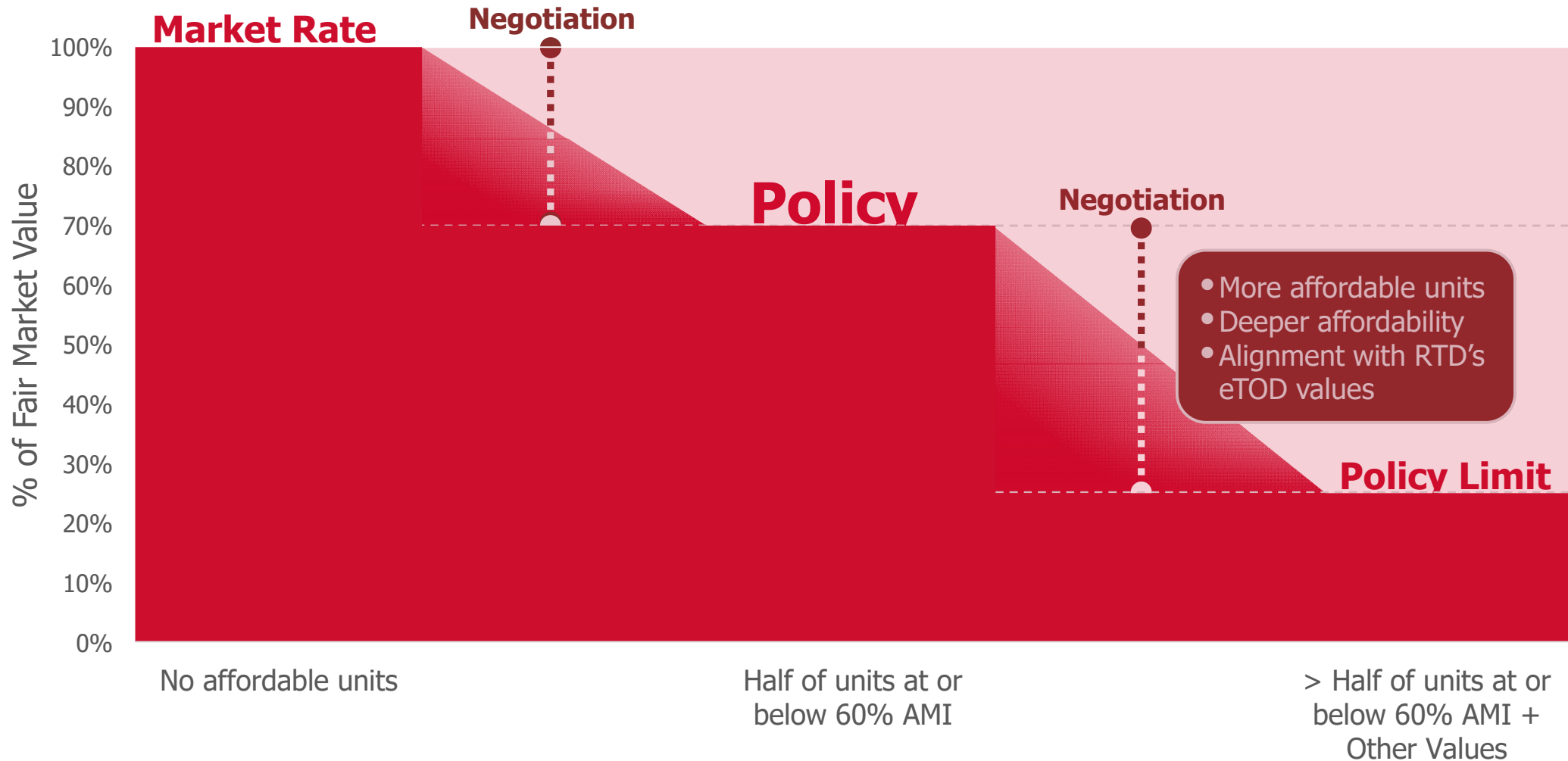


Land Price Reductions: Policy Language

“If Developers can demonstrate a financial gap, RTD will permit a 30% reduction in land price or rent if projects provide at least 50% of units to households making up to 60% of Area Median Income (AMI).

RTD may permit other discounts (either higher or lower) for projects with alternative affordability programs, as determined by RTD staff with input from local and/or state housing officials. However, no more than a 75% discount will be applied for any given project.”

Land Price Reductions: Illustration



Land Price Reductions: Overview

Policy Baseline

50% of units at up to 60% of Area Median Income (AMI) = 30% reduction in fair market rent as determined by appraisal

RTD eTOD Values

- Mixed income
- Deeply affordable units (30% AMI and below)
- Maximized allowable density
- Multi-bedroom (3- and 4-bedroom) units
- Lower residential parking ratios
- More ADA accessible units than required by law
- Affordable, small footprint retail prioritizing local businesses and entrepreneurs
- Emphasize priority groups identified by CHFA

Note: A strong combination of the stated eTOD values would be required to reach the full potential 75% reduction in land price. For guidance on parking ratios, developers should refer to the most recent RTD research on parking utilization within station areas.

Statutory Changes

13
14
15
16
17
18
19
20
21
22

**Minimum
Requirements
HB24**

Eliminate
requirement
development
state

(with

**Accessory
HB2**

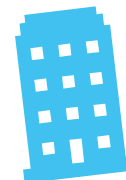
Allows for
minimal

**Transit-Oriented
Communities
HB24 –**

Requires high
capacity around
station

**Residential Stair
Modernization
HB25 – 1273**

Allows single-stair
construction up to five
stories



RTD's Role

1. Create certainty
2. Point to opportunities
3. Cooperate



Thank you
Chessy Brady, TOD Manager
Chessy.Brady@rtd-denver.com



NJ TRANSIT's **LAND** Plan: Leveraging **A**ssets for **N**on-farebox **D**ollars

Beyond the Farebox: A Roadmap to
Unlocking NJ TRANSIT's Revenue
Opportunities



The Opportunity

NJ TRANSIT has a unique opportunity to generate essential funding by leveraging part of its 8,000-acre real estate portfolio for development, as well as enhancing its Customer Experience with retail offerings and advertising.

This approach uses underutilized assets to deliver housing, jobs, and recurring non-fare revenue—while improving experience and reliability.



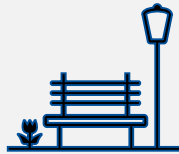
Key Benefits

30-year revenue from execution over the next 5-10 years



\$1.2B - \$1.9B

incremental revenue
to NJ TRANSIT



\$1.1B - \$1.6B

increase in municipal
revenues



30k – 50k

New Jersey jobs
created



\$10B - \$14B

in economic impact
to New Jersey



14k – 20k

new housing units,
including 2.6k – 4k
affordable units



Solar Power &
Wetland Restoration

New Jersey's Need

New Jersey is not only the most densely populated state in the U.S., but its population is growing faster than any other state in the Northeast.

This reflects the state's ability to create attractive and accessible places to live, but has also intensified New Jersey's housing crisis, which will require more than 150,000 additional housing units by 2035.

NJ TRANSIT has an opportunity to be part of the solution, by providing its land assets to support housing development.



Why Now?

Challenges v. Opportunities

The Challenges



Reduced post-covid fare revenue & ridership, and uncertain federal funding



New Jersey faces a critical shortage of housing statewide

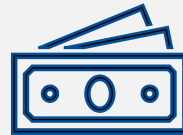


Nations densest state, limited opportunities for new development to drive growth

The Opportunities



NJ TRANSIT has underutilized assets suitable for development



NJ TRANSIT supports the delivery of housing, generating revenue to NJ TRANSIT and local governments.



Accelerating development can unlock revenue and positive community impacts

Actions Needed

Enhance the Transit Village Initiative & refine the Local Redevelopment and Housing Law.

Reform Transit-Oriented Development (TOD) policy and processes to enhance NJ TRANSIT's land use authority.

Streamline legal and regulatory processes for NJ TRANSIT to realize market-drive products and revenue



Scale of Opportunity

30-year revenue from execution over next 5-10 years

Transit Oriented Development

Walkable, mixed-use communities around transit hubs.

Revenue Potential: **\$780M - \$1.1B**

Housing Potential: **14-20k Units**

Industrial Hubs

Certain parcels ideal for warehousing and industrial uses.

Revenue Potential: **\$150M - \$300M**

Development Potential: 50 – 100 acres

Temporary Uses

Short-term activities, such as events, filming, and pop-ups.

Revenue Potential: **\$15M - \$30M**

Retail Concessions

Income from retail tenants in concession spaces in NJT facilities.

Revenue Potential: **\$80M - \$100M**

Advertising

Digital displays, within station facilities, on vehicles, & naming rights.

Revenue Potential: **\$40M - \$130M**

Parking Optimization

Parking fees collected at station lots.

Revenue Potential: **\$170M - \$230M**

Wetland Banking

Preserving suitable land for ecological credits with highest value contiguous with conservation & watershed areas.

Preserved Land: **150 – 170 acres**

Solar Power

Opportunities include surface parking canopies and rooftop installations.

Power Generation Potential: **5 MW**

Proposed Revenue Acceleration

To unlock the full potential of this opportunity within 5 to 10 years, NJ TRANSIT must build on proven models and recent successes, while accelerating its pace 10x.

Achieving this will require bold action from NJ TRANSIT, the Legislature, state agencies, and local governments. The proposed actions reinforce NJ TRANSIT's mobility mission and support community needs, drawing on ideas successfully implemented in other states.



Major Action 1

Enhance the Transit Village Initiative & refine Local Redevelopment & Housing Law

NJ TRANSIT & Partners

- Strengthen & enhance technical assistance provided by TVI Task Force and incentivize municipalities to appropriately develop land centered at transit facilities.
- Secure local community agreement to utilize context-sensitive station area typology standards to guide future development.

NJ Legislature

- Categorize NJ TRANSIT-owned parcels within walking distance of transportation facilities as areas in need of redevelopment.



Major Action 2

Reform TOD policy and processes to enhance NJ TRANSIT authority and capability

NJ TRANSIT

- Prioritize potential development initiatives.
- Strengthen internal governance and project delivery processes.
- Expand and modernize agency capabilities.

NJ Legislature

- Establish authority for NJ TRANSIT-supportive land use on its property and related financing tools in facilitation of its projects.
- Establish consistent, transit-supportive densities and parking standards for properties within walking distance of transit stations.



Major Action 3

Streamline legal & regulatory processes for NJ TRANSIT to realize products & revenue

NJ TRANSIT

- Digital advertising displays on stations and bus shelters as default build.
- Market-driven parking pricing at levels that still offer incentive for transit use.

NJ Legislature

- Allow NJ TRANSIT to create and run its own wetland bank.
- Streamline commercial and retail-related regulatory processes on NJ TRANSIT land.
- Digital advertising in bus shelters.



National Best Practices

Land Use Authority

- Empire State Development's longstanding land use powers provide it the discretion to implement TOD.
- Maryland's TOD Reform Act (2025) exempts state land use for transportation at transit stations from local zoning.

Zoning Reform

- Massachusetts Bay Transportation Authority Communities Law (2021) requires each MBTA-served municipality to create a zoning district that allows multifamily development near stations.
- Washington State HB 1491 (2025) bars cities from requiring off-street parking requirements for residential or mixed-use development within station areas.

Wetlands Banking

- Virginia, North Carolina, and Pennsylvania DOTs have authority to restore wetlands and produce compensatory mitigation credits.

National Best Practices

Parking Reform & Revenue Optimization

- Maryland TOD Reform Bill (2025) eliminates minimum parking requirements near rail stations.
- Washington State HB 1491 (2025) eliminates parking minimums in TOD zones.
- Washington Metropolitan Area Transit Authority's market-based parking fee structure adjusts parking rates based on location, and time spent parked, maximizing parking revenue.




Implementation Targets

Years 1 - 2

\$80M - \$150M 

\$700M - \$1.35B 

\$110 - \$230M 

- Implement actions in Major Action 2 to accelerate TOD housing units from 500 to 1,000 per year.
- Secure legislative authority for NJ TRANSIT land use decisions, financing powers, and designation of NJ TRANSIT parcels in need of redevelopment.
- Expand and enhance the Transit Village Initiative and partner with 10-15 local communities.




Implementation Targets

Years 3 - 5

\$210M - \$400M 

\$2B - \$3.5B 

\$310M - \$620M 

- Accelerate development of TOD housing units from 1,000 to 2,000 per year.
- Scale industrial hub development to 25-50 acres for warehousing/logistics.
- Optimize parking revenue through dynamic pricing across the entire portfolio.
- Working with partners, establish consistent, transit-supportive densities and parking standards near transit stations.
- Seek legislative authority to establish wetland banking.



Implementation Targets

Years 5 - 10

\$950M - \$1.35B



\$7.5B - \$9B



\$740M - \$760M



- By Year 10, additional TOD projects to total 14k – 20k new housing units.
- Generate \$20M in additional annual commercial revenue.





Thank you!

Visit <https://www.njtransit.com/tod>
for more information.



Adapting Euclidean Zoning
to support public transit.



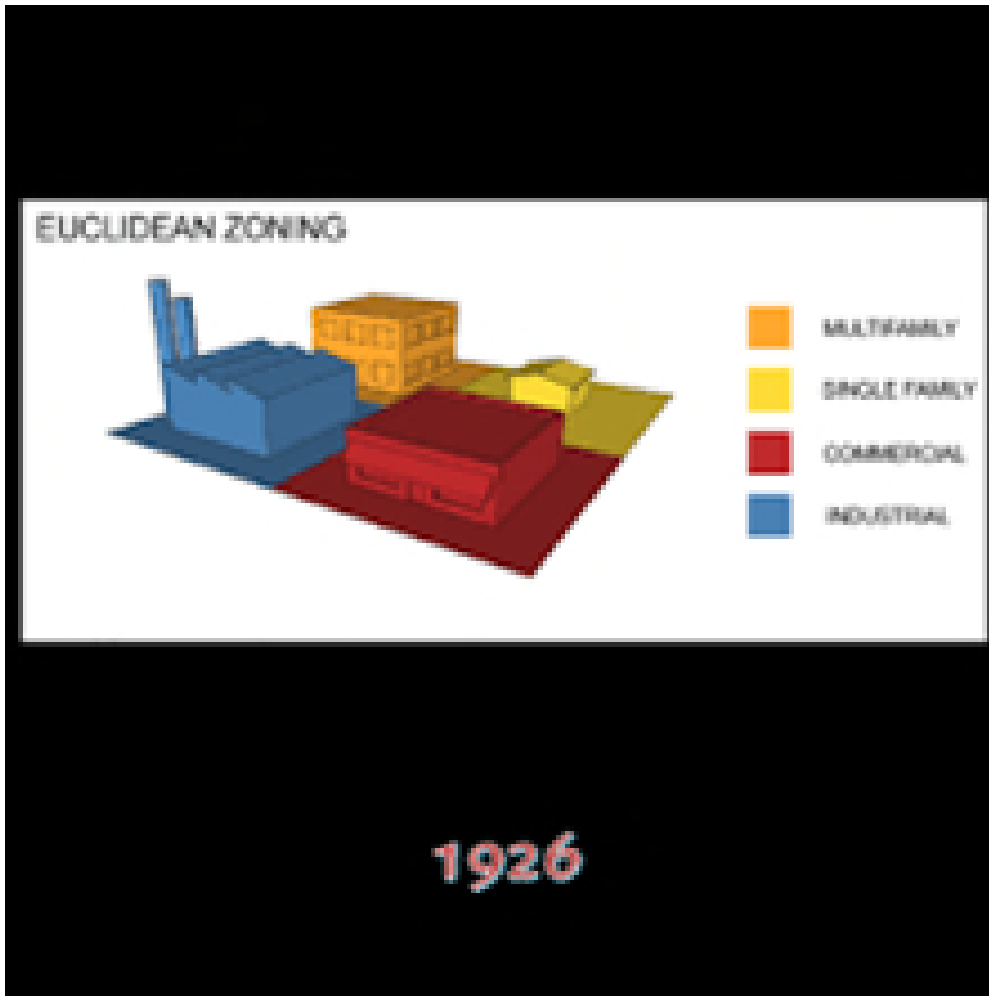
Overview

A Euclidean Zoning Problem

Hear the train a-comin

Hybrid Zoning Transit-Oriented Solutions

What is Euclidean Zoning?



Land use regulations that divides a city into districts based on allowed uses and related regulations.

Name is derived from *Village of Euclid v. Ambler Realty Co.*, 272 US 365 (1926) in which the Supreme Court establishes the constitutionality of zoning ordinances as a valid exercise of the police power.



*Monopoly or
Euclidean zoning?*

How many houses can you build on the railroad tracks in Monopoly?

- Zero
- Why?



The property is not zoned residential.

Project Connect

- CapMetro Rail & Express
- CapMetro Rapid Bus & Routes
- Park & Ride

Project Connect History and Timeline

2020 - voters of Austin approve a property tax rate of 8.75 cents of the operations and maintenance portion of the City's tax rate for Project Connect.

2020 - Austin Transit Partnership (ATP), a local government corporation is formed created by the City of Austin and CapMetro to design and construct Project Connect.

2023 - Austin City Council CapMetro, ATP, approve the implementation plan for Austin Light Rail including design, and construction of rail system.

2025 - ATP is developing preliminary design and engineering, environmental review, and steps to fulfill federal funding requirements.

2026- Designs specifications will be finalized, and necessary permits and land acquisition.

2027- 5 years of excavation, track installation, and stations construction.

2033- Initial service of 9.8 miles of light rail begins.



November 2023
Austin City Council passes
an ordinance to
**ELIMINATE MINIMUM
MOTOR VEHICLE PARKING
SPACE REQUIREMENTS
EXCEPT FOR ACCESSIBLE
SPACE PARKING**

ORDINANCE NO. 20231102-028

AN ORDINANCE AMENDING CITY CODE TITLE 25 TO ELIMINATE MINIMUM MOTOR VEHICLE PARKING SPACE REQUIREMENTS EXCEPT FOR ACCESSIBLE SPACE PARKING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-1-21 (*Definitions*) is amended to add a new definition of “Accessible Space” to read as follows and to renumber the remaining definitions accordingly:

§ 25-1-21 DEFINITIONS

- (1) ACCESSIBLE SPACE means a parking space for an individual with a disability that complies with the Americans with Disabilities Act (ADA) and Fair Housing Act Amendments (FHAA), as appropriate.

PART 2. City Code Section 25-2-91 (*Purposes of Commercial Districts Designations*) is amended to read as follows:

§ 25-2-91 PURPOSES OF COMMERCIAL DISTRICTS DESIGNATIONS

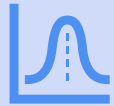
The purposes of the commercial district designations are to:

- (1) reserve areas for offices, retail stores, and service establishments that provide a broad range of goods and services to residents of Austin and the surrounding area;
- (2) promote the grouping of office and commercial uses that are convenient for the public and that benefit the uses in a district;
- (3) ensure adequate access and off-street ~~[parking and]~~ loading for office and commercial uses and minimize traffic congestion and other adverse effects on nearby land uses;
- (4) encourage high standards of site planning, architecture, and landscape design for office and commercial development in the City;

2023 - Question for Planning and Law Departments- how to rezone Austin to support rail and other transit-oriented uses?



Performance Zoning regulates land uses on properties through performance standards. Key elements of Performance Zoning include traffic level, lighting requirements, density or noise levels.



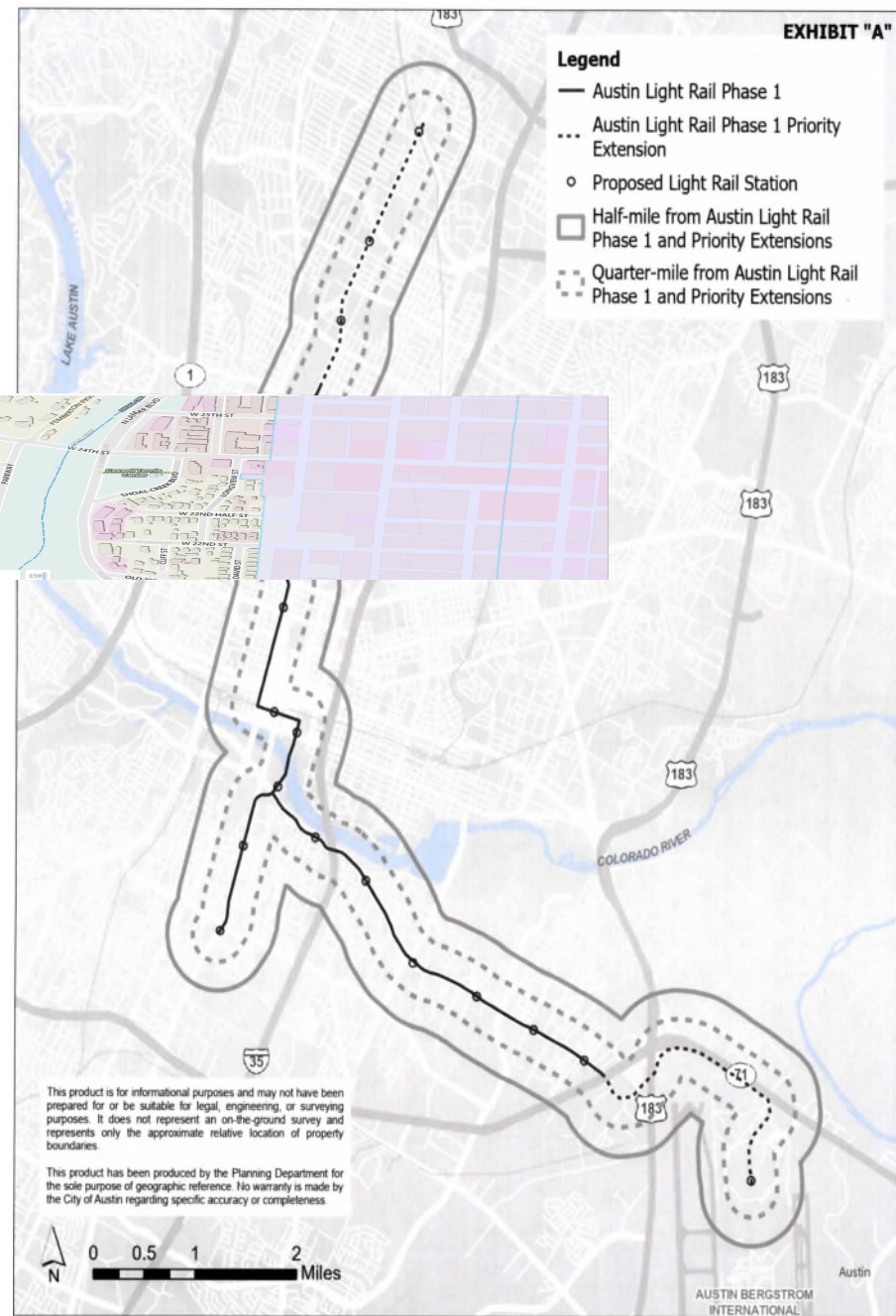
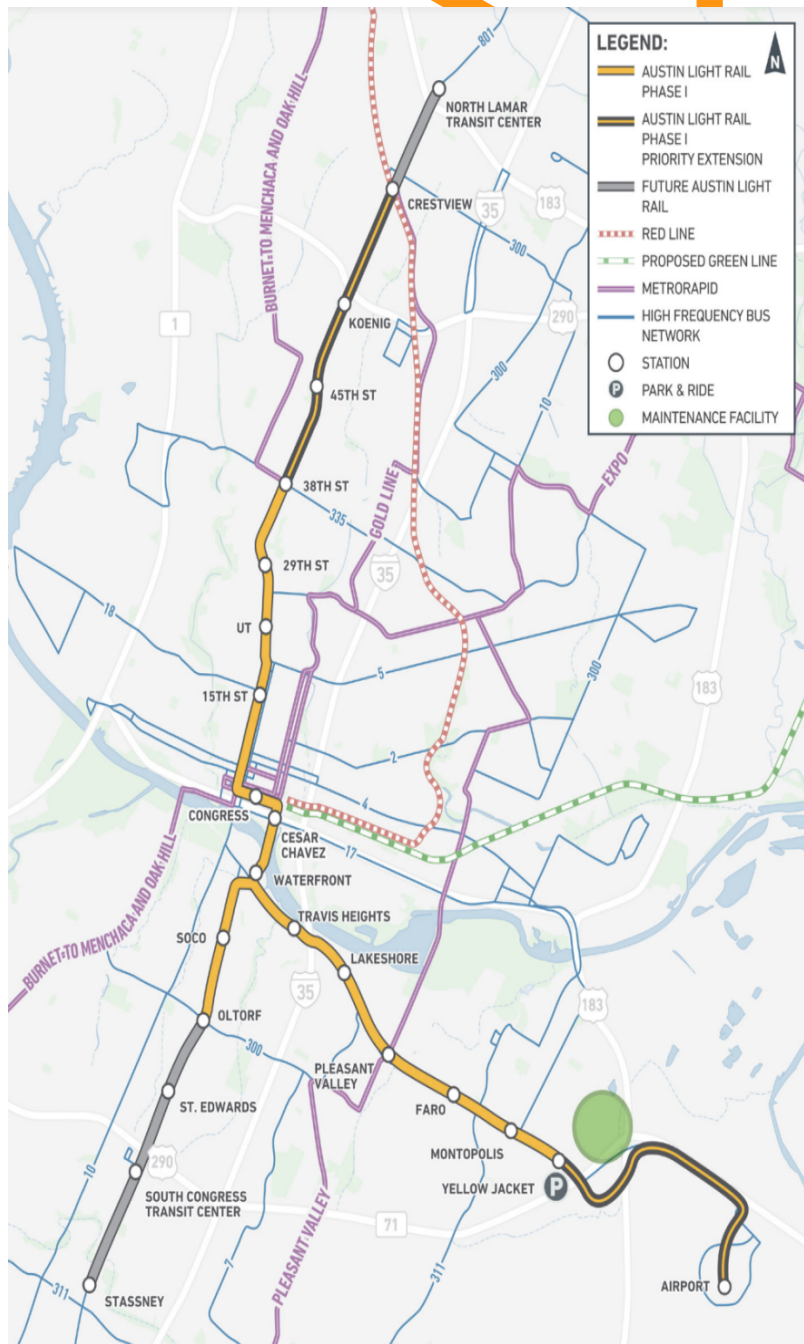
Incentive Zoning provide developers with incentives—such as fee waivers and density bonuses, to build and to set aside affordable rental and ownership housing for lower income households and provide other community benefits.

= *Hybrid Zoning*. Austin created ETOD and DBETOD combining districts

ETOD – May 2024

- The purpose of the **equitable transit-oriented development (ETOD)** combining district is to enhance transit-supportive uses, encourage more intentional and equitable land stewardship with increased bicycle, pedestrian, and transit connectivity, housing options and opportunities, public realm activation, and new economic opportunities near public transit.





ETOD Prohibited Uses

Amend allowed uses within the ETOD to promote public transit reliance.



Service Station

Auto Sales

Auto Repair

Auto Rentals

Vehicle Storage

Stables
Carriage Stable
Marina

COMMERCIAL USES:

Agricultural Sale and Services

Automotive Sales

Automotive Rentals

Automotive Repair Services

Building Maintenance Services

Campground

Carriage Stable

Convenience Storage

Drop-off Recycling Collection Facility

Electronic Prototype Assembly

Electronic Testing

Equipment Repair Services

Equipment Sales

Exterminating Services

Funeral Services

Marina

Recreational Equipment Maintenance
& Storage

Recreational Equipment
Sales

Research Assembly Services

Research Testing Services

Research Warehousing
Services

Scrap and Salvage

Service Station

Stables

Vehicle Storage

INDUSTRIAL USES:

Basic Industry

General Warehousing and
Distribution

Recycling Center

Resource Extraction

AGRICULTURAL USES:

Animal Production

Crop Production

Indoor Crop Production

Understanding Monopoly's Residential Entitlements



Build 1 house – single family

Built 2 houses – duplex or two-unit use

Build 3 houses – tri-plex or three-unit use

Build 4 houses – multifamily development

Changing Zoning Districts

COMMERCIAL



Problems with Euclidean approach?



Euclidean zoning is limited and generally lacks flexibility.

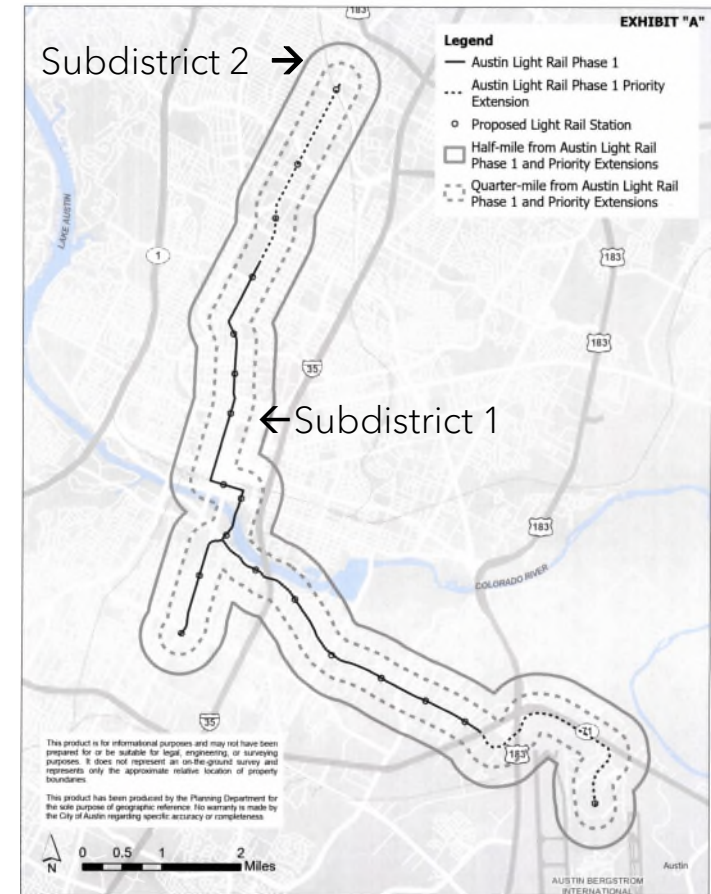
Meaning without modifications which allow for mixed use zoning - a person cannot operate a hotel and maintain a house on the same lot - *also true in Monopoly*.

With a lack in flexibility, transit supported zoning is problematic.

This may be why there is only the one train route that always takes you past GO!

DBETOD – May 2024

DBETOD Combining District allows residential uses, preserves certain existing residential and non-residential uses, modifies compatibility standards and site development regulations, and grants additional building height in exchange for income-restricted housing.



Regulation	ETOD
Maximum Building Height	No increase
Permitted Uses	Base zoning – ETOD prohibited
Minimum Affordability (Ownership)	None
Minimum Affordability (Rental)	None
Base zoning - minimum site area, max FAR; max building coverage; max stories; minimum street side yard setback and interior yard setback; and minimum front yard setback.	Required to comply

+

DBETOD (Subdistrict 1)	DBETOD (Subdistrict 2)
120	90
Base zoning – ETOD prohibited + Residential	Base zoning – ETOD prohibited + Residential
12% units to households with 60% or less (MFI) or pay fee in- lieu	12% units to households with 60% or less (MFI) or pay fee in- lieu
15% units to households with 60% or less (MFI) or 12% units to households with 50% or less (MFI)	12% units to households with 60% or less (MFI) or 10% units to households with 50% or less (MFI)
Not required to comply; additional lighting, noise, and screening requirements	Not required to comply; additional lighting, noise, and screening requirements

Transit Supportive Infrastructure.

Provide transit supportive infrastructure in exchange for reduction of two percent of required affordable units.

(a) In this subdivision, TRANSIT SUPPORTIVE INFRASTRUCTURE includes appurtenances, facilities, and amenities related to a transit system project as defined in Ordinance No. 20221115-048.

(b) If an applicant provides transit supportive infrastructure, the affordability requirement is reduced by two percent.

(c) It is presumed that the value of the transit supportive infrastructure equals at least two percent of the minimum affordability.

(i) The director of the Housing Department is authorized to reduce the affordability requirement by more than two percent if the director of the Housing Department and the Project Connect mobility officer agree that the value of the transit supportive infrastructure is greater than or equal to the value of the reduction.

(ii) The director of the Housing Department may not reduce the affordability requirement to less than one residential unit or the equivalent of the fee-in-lieu for one ownership unit.

(d) An applicant must submit a written request to the Project Connect mobility officer to provide transit supportive infrastructure.

(e) If the applicant proposes transit supportive infrastructure that serves a community benefit, the Project Connect mobility officer must approve a request.

(f) Before approving a request to provide transit supportive infrastructure, the Project Connect mobility officer must adopt rules under Chapter 1-2 (*Administrative Rules*) that establish when transit supportive infrastructure serves a community benefit.

Issues still to address? Yes, ... including the Great Streets Program.



Utilities and vault locations ?
Street Trees – spacing and number of plantings?
Sidewalk location and width?
Street Width?
Rail and buffer locations?



Thank you



Steven Maddoux



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www.austintexas.gov/departments/law

Casey Morris
Attorney, Kaplan Kirsch LLP

November 2025

Roadmap

- Build America Bureau
 - Transportation Infrastructure Finance and Innovation Act (TIFIA)
 - Railroad Rehabilitation and Improvement Financing (RRIF)
 - Innovative Finance and Asset Concession (IFAC)
- Federal Transit Administration
 - Pilot Program for TOD Planning
 - Capital Investment Grants (CIG)

Build America Bureau

- **Build America Bureau:** Established by Congress in 2016 (FAST Act) to provide innovative project finance and delivery
- Offers federal credit programs and technical assistance for transportation projects
- TOD projects are eligible under both the Railroad Rehabilitation and Improvement Financing (RRIF) and Transportation Infrastructure Finance and Innovation Act (TIFIA) federal credit programs

	TIFIA	RRIF
Project Cost	Minimum \$10 million for TOD No maximum	No minimum No maximum
Loan Size Limits	Maximum loan to cost ratio of 49% for TOD Maximum federal assistance (federal grants + loans) 80%	Maximum federal financing is 75% for TOD (25% must be non-federal)
Eligible Borrowers	<ul style="list-style-type: none"> - Government entities - Government-sponsored authorities - Corporations, private entities, developers - Business or transportation improvement districts - State infrastructure banks 	<ul style="list-style-type: none"> - Railroads (Class I, II, or III) - Government entities - Government-sponsored authorities - Interstate compacts (49 U.S.C. 24101 note) - Entities participating in a joint venture with one of the above
Eligible Projects	Focused on rail service (inc. transit) Public Infrastructure or Economic Development	Focused on intercity and commuter passenger rail Economic Development required Private investment must be >20%

TIFIA-Eligible TOD Projects

- Two Types of Eligible TOD Projects:
 - **Type 1:** Project to improve or construct public infrastructure that is located within walking distance of a qualified station or service. (23 U.S.C. § 601(a)(12)(E)(i)(I))
 - **Type 2: Economic development** project to improve or construct public infrastructure that:
 - (1) incorporates private investment;
 - (2) is related to a passenger rail station or multimodal station that includes rail service;
 - (3) has a high probability of commencing construction contracting within 90 days of TIFIA assistance being provided; and
 - (4) has a high probability of reducing the need for other federal financial assistance for the station or service through activities that generate revenue exceeding costs
(23 U.S.C. § 601(a)(12)(E)(i)(II))
- **Economic Development:** “real estate development projects that enhance the economic vitality and competitiveness of the surrounding neighborhood and region, and provide new spaces and opportunities for commercial activity and housing.”
- **Rail Service:** Includes rail transit service (in addition to intercity and commuter rail service)



RRIF-Eligible TOD Projects

- **Economic development** projects that:
 - (1) Incorporates private investment (>20%);
 - (2) Is connected to or within ½ mile of a “fixed guideway transit station, an intercity bus station, a passenger rail station, or multimodal station, provided that the location includes service by a railroad;
 - (3) demonstrates ability to commence construction contracting within 90 days of RRIF assistance being obligated; and
 - (4) demonstrates the ability to generate new revenue for the passenger rail station or service through activities that generate revenue exceeding costs
(49 U.S.C. § 22402(b)(1)(F))
- **Service by Railroad:** Uses definition from 49 U.S.C. § 20102, which includes **commuter and intercity passenger rail** but excludes transit.

Things to be aware of...

- Cannot fund operations (generally only capital construction)
- Timeline is long (12-14 months+)
- The loans “federalize” projects
 - NEPA (need final NEPA determination)
 - Buy America (domestic sourcing)
 - Davis-Bacon (prevailing wages)
 - Disadvantaged Business Enterprise (DBE) Program
 - Uniform Relocation Assistance and Real Property Acquisition Act (URA)



See the Bureau’s “TOD Frequently Asked Questions” for guidance



Build America Bureau: Innovative Finance and Asset Concession (IFAC) Grant Program

- IIJA/BIL established the program to enhance the technical capacity of eligible public entities to facilitate and evaluate P3s
- \$100 million over 5 fiscal years (FY 2022-2026).
- FY2025-26 NOFO application period closed on Oct. 1, 2025.



FTA Pilot Program for TOD Planning (49 U.S.C. 5303 note)

- Eligible Projects: New fixed guideway capital projects or core capacity improvement projects
- Eligible Entities: State or local governmental authorities
- 80% federal funding max
- \$14 million for FY 2026



FTA Capital Investment Grants (CIG) Program

- Funds fixed guideway investments, including new and expanded rapid rail, commuter rail, light rail, streetcars, bus rapid transit, and ferries, and corridor-based bus rapid transit investments that emulate the features of rail. (49 U.S.C. § 5309)
- Not TOD-specific, but TOD is relevant to several evaluation criteria
- FTA may increase focus on TOD under the program (August 2025 RFI)



Other considerations...



- Reduced staff at FTA (- >30%)
- Increased uncertainty in federal grant programs (e.g., cancellation of awarded grants that were “hostile to motor vehicles”)
- Upcoming reauthorization

Thank you!

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Questions?



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Thank You!



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