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# The Metropolitan Council

Susan Haigh

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## THE METROPOLITAN COUNCIL

Susan Haigh<sup>†</sup>

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## INTRODUCTION

The Metropolitan Council (“Council”) is a unique and innovative government entity that serves as a national model for effective and forward-looking regional planning. Since its inception in 1967, the Council has demonstrated the importance of coordinating the planning efforts of smaller governmental entities in a single region. The Council has grown, taken on new planning authorities, adopted new areas of responsibility, and risen to new challenges.

This article serves two purposes: (1) to recount the Council's history, purpose, and evolution, highlighting the critical role it has played in the development of the Minneapolis and Saint Paul ("Twin Cities") metropolitan area over the last forty-six years; and (2) to discuss the Council's future, including its focus on the innovative concept of transit-oriented development (TOD). It provides readers a clear look at what is next for the Council and the region: a sharp focus on smart, efficient TOD that will make it easier for all residents to live in strong and vibrant communities.

Section I traces the Council's history, providing an overview of the Council's background, role, and scope of authority. Section II sets out the Council's future priorities and introduces the Council's next comprehensive development guide, Thrive MSP 2040, and the concept of TOD. Section III discusses TOD in more detail, explaining how it is a natural response to the patterns of growth in the region. Section IV delves more deeply into why TOD makes sense for the Twin Cities metropolitan area, while Section V explains how the Council has implemented and will implement TOD, including through its ongoing TOD Strategic Action Plan.

## I. OVERVIEW OF THE METROPOLITAN COUNCIL

The Council is a unique government entity that serves as a national model for regional planning. This section recounts the history of the Council in order to help readers understand how and why the Council was developed. Next, this section discusses the sources and scope of the Council's authority, its current revenues and budget, and its real estate holdings in the region.

### A. *History of the Metropolitan Council*

In 1967, a rural-dominated Minnesota Legislature took a bold step—it created a regional planning and coordinating body for the Twin Cities seven-county metropolitan area.<sup>1</sup>

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1. METROPOLITAN COUNCIL, A BOLD EXPERIMENT: THE METROPOLITAN COUNCIL AT 40 YEARS (2007). See generally ARTHUR NAFTALIN, MAKING ONE COMMUNITY OUT OF MANY: PERSPECTIVES ON THE METROPOLITAN COUNCIL OF THE TWIN CITIES AREA (1986) (discussing the history of the Metropolitan Council); ARTHUR NAFTALIN & JOHN BRANDL, THE TWIN CITIES REGIONAL STRATEGY (1980) (same).

For much of their history, Minneapolis and Saint Paul were intense rivals. However, by the mid-1960s, the two cities had joined together to secure major league baseball, football, and hockey teams. They grew together more closely with the completion of the interstate freeway between the two cities, and they came to recognize that rapid growth presented region-wide opportunities and challenges requiring greater regional cooperation.<sup>2</sup>

At the urging of many government, business, and civic leaders, the Council was created to:

- Plan for the orderly and economical development of the seven-county metro area, and
- Coordinate the delivery of certain services that could not be effectively provided by any one city or county.

The drive for the Council's creation was led by the Citizens League, the Metropolitan Section of the League of Minnesota Municipalities, the League of Women Voters, and other civic organizations. They saw the need for a regional body to deal with issues that transcended the boundaries of the more than 200 separate local units of government served by the Council today, including 7 counties, 188 cities and townships, and dozens of special purpose districts.

In the 1967 session, the legislature considered two competing proposals: a Council elected from geographic districts with broad operating powers, and a Council of at-large appointees with limited planning powers.

The final bill was a compromise—a Council with planning and coordinating powers appointed by the governor from geographic districts. Operating responsibilities for regional services were vested in separate boards—the existing Metropolitan Airports Commission, the Metropolitan Transit Commission (also created in 1967), and the Metropolitan Sewer Board (created in 1969). The Council was not given operating responsibility for transit and wastewater services until 1994.

The measure was given final approval by the legislature on May 19, 1967, and signed by Governor Harold LeVander on May 25. In appointing the Council's first members, Governor LeVander said the Council "was conceived with the idea that we will

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2. See METROPOLITAN COUNCIL, *supra* note 1. The following eleven paragraphs are derived from a previous Metropolitan Council publication. *See id.*

be faced with more and more problems that will pay no heed to the boundary lines which mark the end of one community in this metropolitan area and the beginning of another.” “This Council was created to do a job which has proved too big for any single community,” the Governor said.

At the time of the Council’s creation, the region faced some major challenges:

- Individual private septic systems were failing in many suburban communities, and inadequately treated wastewater was being discharged into many of the region’s lakes, rivers, and streams.
- The Twin Cities’ privately owned bus company was rapidly disintegrating—a victim of rising fares, declining ridership, and an aging bus fleet.
- Rapid growth was threatening vital natural areas better suited for preservation as parks and open space.
- Growing fiscal disparities were making it difficult for communities with inadequate tax capacity to fund essential services and were providing unhealthy development incentives.

The fledgling agency did not start from scratch. It inherited a small staff and a decade of studies from the Metropolitan Planning Commission, an advisory body that had been created by state lawmakers in 1957.

The Council’s creation was followed in succeeding years by the enactment of other legislation to strengthen the Council and address pressing regional issues. These included the 1969 legislation that created the regional sewer system, the 1971 law that established the region’s unique tax-base sharing system (commonly called fiscal disparities<sup>3</sup>), and the 1974 law creating the regional park system.

The Council did not win immediate and broad public acceptance. Over the years, there were periodic calls for the legislature to eliminate the Council. In the mid-1970s, a group of Dakota County communities threatened to boycott the Council and withhold its property tax dollars.

However, the Council persevered and did not shy away from controversial decisions. One of the Council’s first major decisions

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3. See *Fiscal Disparities: Tax Base Sharing in the Twin Cities Metropolitan Area*, METROPOLITAN COUNCIL, <http://www.metrocouncil.org/Data-Maps/Fiscal-Disparities.aspx> (last visited Sept. 24, 2013).

came in 1970, when it vetoed the Metropolitan Airports Commission's selection of Ham Lake in Anoka County as a site for a second major airport. The Council stepped in due to fears that the development would cause environmental harm to the 23,000-acre Carlos Avery Wildlife Refuge, the state's largest wildlife refuge.

James Hetland, the Council's first chair, recalled that there were a number of powerful forces pushing the proposal, including business groups that wanted the region to have a "world class" airport. "The problem was that they wanted to build in a very ecologically sensitive area," he said.

Today, the Council's seventeen-member governing board continues to be appointed by, and serve at the pleasure of, the governor.<sup>4</sup> The Council operates efficient, award-winning services in three primary areas: transit, wastewater collection and treatment, and affordable housing.<sup>5</sup> Minnesota Statutes section 473.195 authorizes the Council to exercise municipal housing and redevelopment authority (HRA) powers.<sup>6</sup> The Council exercises some of the statutory HRA powers through its Metro HRA unit which serves a large portion of the metro area communities, while other powers are exercised throughout the region via its broader Community Development Division. The Council is also charged under state law with establishing regional growth management policies, and long-range plans for transportation (including aviation), water resources, and regional parks.<sup>7</sup> Its jurisdiction is the seven-county Twin Cities metropolitan area.<sup>8</sup> It employs roughly 3900 people and seventeen Council Members, all of whom work to achieve the Council's mission of fostering efficient and economic growth for a prosperous metropolitan region.<sup>9</sup>

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4. *About the Metropolitan Council*, METROPOLITAN COUNCIL, <http://metro council.org/About-Us.aspx> (last visited Sept. 24, 2013); *see also* MINN. STAT. § 473.123 (2012).

5. *About the Metropolitan Council*, *supra* note 4.

6. MINN. STAT. § 473.195, subdiv. 1.

7. *See id.* ch. 473.

8. *About the Metropolitan Council*, *supra* note 4.

9. *Id.*

B. *Council Authority*

1. *Metropolitan Land Planning Act*

As discussed above, the Council derives its authority from a variety of statutory provisions. One of the key governing statutes is the Metropolitan Land Planning Act (“Act”).<sup>10</sup> The Act is landmark legislation with wide-ranging implications for the growth and development of the seven-county metropolitan area<sup>11</sup> surrounding the core cities of Minneapolis and Saint Paul. The Act itself was preceded by a series of legislative enactments that required the Council to perform certain regional planning functions.

When the Council was created in 1967,<sup>12</sup> the legislature determined it was necessary to create an administrative agency “to coordinate the planning and development of the metropolitan area.”<sup>13</sup> The 1967 legislation required the Council to:

prepare and adopt, . . . a comprehensive development guide for the metropolitan area. It shall consist of a compilation of policy statements, goals, standards, programs, and maps prescribing guides for an orderly and economic development, public and private, of the metropolitan area. The comprehensive development guide shall recognize and encompass physical, social, or economic needs of the metropolitan area and those future developments which will have an impact on the entire area including but not limited to such matters as land use, parks and open space land needs, the necessity for and location of airports, highways, transit facilities, public hospitals, libraries, schools, and other public buildings.<sup>14</sup>

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10. Metropolitan Land Planning Act of 1976, ch. 127, 1976 Minn. Laws 292.

11. *See id.*; *see also* MINN. STAT. § 473.121, subdiv. 2 (The “metropolitan area” comprises “the counties of Anoka; Carver; Dakota excluding the city of Northfield; Hennepin excluding the cities of Hanover and Rockford; Ramsey; Scott excluding the city of New Prague; and Washington”).

12. *See* Act approved May 25, 1967, ch. 896, §§ 2, 5, 1967 Minn. Laws 1923, 1923–26 (abolishing the Metropolitan Planning Commission, creating the Metropolitan Council, and transferring all of the commission’s powers, duties, obligations, and property to the Council) (repealed and reorganized in 1975 under chapter 473).

13. *Id.* § 1, 1967 Minn. Laws at 1923.

14. *Id.* § 6, subdiv. 5, 1967 Minn. Laws at 1928.

The Council was authorized to “review” long-term comprehensive plans of independent commissions, boards, or agencies prepared for their operation and development within the seven-county metropolitan area “but only if such plan[s] [were] determined by the council to have an area-wide effect, a multicomunity effect, or to have a substantial effect on metropolitan development.”<sup>15</sup> The 1967 legislation also required metropolitan-area cities, villages, boroughs, and towns to submit their long term comprehensive plans to the Council “for comment and recommendation.”<sup>16</sup>

In 1974, the legislature conferred additional comprehensive planning duties on the Council. That legislation required the Council to adopt “long range comprehensive policy plans for each [regional] commission,”<sup>17</sup> that were to be followed by the Council and each commission (i.e., the Council and each commission had to adhere to the plans they adopted).<sup>18</sup> The 1974 legislation also required each metropolitan-area city, town, and county to “submit to the metropolitan council for *written comment and recommendation*

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15. *Id.* § 6, subdiv. 6, cl. 1, 1967 Minn. Laws at 1928.

16. *Id.* § 6, subdiv. 7, 1967 Minn. Laws at 1929. The Council subsequently was given additional planning responsibilities. *See, e.g.*, Act approved May 16, 1969, ch. 449, § 1, 1969 Minn. Laws 684, 684 (requiring the Council to conduct planning and other activities related to the “prevention, control and abatement of water pollution in the [metropolitan] area, and for the efficient and economic collection, treatment and disposal of sewage”); Act approved Mar. 28, 1974, ch. 346, § 9, 1974 Minn. Laws 582, 587–88 (requiring the Council to adopt a comprehensive plan for the management and disposal of hazardous waste as well as solid waste); Metropolitan Reorganization Act of 1974, ch. 422, art. III, § 8, 1974 Minn. Laws at 870–71 (designating the Council as the planning agency for any long-range comprehensive transportation planning required by federal law and requiring the Council to adopt a transportation policy plan as part of its comprehensive development guide); *id.* art. III, § 10, subdiv. 11, 1974 Minn. Laws 842, 872–73 (requiring the Council to review and approve highway projects); Act effective Jan. 1, 1975, ch. 565, § 3, 1974 Minn. Laws 1392, 1392 (requiring the Council to “promulgate standards and criteria and suggested model ordinances for [regulating] the use and development of the land and water within the metropolitan area”).

17. Metropolitan Reorganization Act, art. I, § 2, subdiv. 3, 1974 Minn. Laws at 843 (repealed and reorganized in 1975 under chapter 473). In 1974 the “commissions” were the Metropolitan Waste Control Commission and the Metropolitan Transit Commission.

18. *Id.* § 10, 1974 Minn. Laws at 857 (amending MINN. STAT. § 473B.06 (1971) by adding subdivision 5a).

thereon its proposed long-term comprehensive plans, including but not limited to plans for land use.”<sup>19</sup>

Two years later the Metropolitan Land Planning Act was enacted.<sup>20</sup> The 1976 legislation was significant because it replaced the Council’s “comment and recommendation” authority with some enforcement authority over local comprehensive planning. The regional comprehensive planning framework is grounded in the Council’s comprehensive development guide and its adopted metropolitan system plans; it is implemented through the adoption of local comprehensive plans that must be consistent with the Council’s regional plans and policies.

*a. Comprehensive Development Guide*

The Council prepares and adopts “a comprehensive development guide for the metropolitan area” consisting of “a compilation of policy statements, goals, standards, programs, and maps prescribing guides for the orderly and economic development, public and private, of the metropolitan area.”<sup>21</sup> The guide takes into account a variety of considerations:

The comprehensive development guide shall recognize and encompass physical, social, or economic needs of the metropolitan area and those future developments which will have an impact on the entire area including but not limited to such matters as land use, parks and open space land needs, the necessity for and location of airports, highways, transit facilities, public hospitals, libraries, schools, and other public buildings.<sup>22</sup>

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19. *Id.* § 12, subdiv. 4, 1974 Minn. Laws at 862 (emphasis added) (amending MINN. STAT. § 473B.06 (1971) by adding section 473B.061). The Council’s written comments and recommendations were filed with local government units’ plans. MINN. STAT. § 473B.061, subdiv. 4 (1974).

20. *See generally* Metropolitan Land Planning Act of 1976, ch. 127, 1976 Minn. Laws 292.

21. MINN. STAT. § 473.145 (2012). The Council’s comprehensive development guide has been known by different names over the past thirty-seven years. The current comprehensive development guide is known as the *2030 Regional Development Framework*; its immediate predecessor was known as the *Regional Blueprint*. The Council currently is updating and revising the comprehensive development guide which, when adopted, will be known as *Thrive MSP 2040*.

22. MINN. STAT. § 473.145.

*b. Metropolitan System Plans*

In conjunction with the adoption of its comprehensive development guide, the Council prepares and adopts long-range policy plans for transportation (including airports), wastewater treatment, and regional recreation open space.<sup>23</sup> These “metropolitan system plans” are specifically defined by the Act as “the transportation portion of the Metropolitan Development Guide, and the policy plans, and capital budgets for metropolitan wastewater service, transportation, and regional recreation open space.”<sup>24</sup> The metropolitan system plans are important for regional planning purposes because they are the foundation for this region’s coordinated regional planning efforts and the implementation of regional land use policies at the local level.

*c. Metropolitan System Statements*

When the Council updates or revises its comprehensive development guide, or when the Council amends or modifies its metropolitan system plans, the Council prepares and submits to local government units “metropolitan system statements.” These system statements contain information specific to each local government “that the council determines necessary for the unit to consider in reviewing the unit’s comprehensive plan.”<sup>25</sup> The system statements have been used to provide clear guidance to communities about regional policies and plans that impact them at the local level.

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23. *Id.* § 473.146, subdiv. 1 (requiring policy plans for transportation and wastewater treatment); *id.* § 473.147, subdiv. 1 (requiring policy plans for regional recreation open space).

24. *Id.* § 473.852, subdiv. 8.

25. *Id.* § 473.856. The Council typically updates and revises its comprehensive development guide on a decennial basis to coincide with local governments’ obligations to review and, as necessary, amend their comprehensive plans, fiscal devices, and official controls at least once every ten years. *See id.* § 473.864, subdiv. 2 (requiring each metropolitan-area local government unit to review and amend its comprehensive plan, fiscal devices, and official controls on a “decennial” basis).

*d. Local Comprehensive Plans*

When local government units<sup>26</sup> receive metropolitan system statements, they must, within specified time periods,<sup>27</sup> review and, as necessary, amend their local comprehensive plans, official controls,<sup>28</sup> and fiscal devices<sup>29</sup> to ensure they are consistent with the Council's comprehensive development guide<sup>30</sup> and do not permit any activity "in conflict with metropolitan system plans."<sup>31</sup>

Local comprehensive plans must "contain objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all lands and waters within the jurisdiction of the local governmental unit."<sup>32</sup> In addition to other required elements, local comprehensive plans must contain: a land-use plan, which must include a water management plan; a public facilities plan, which must include a transportation plan, a sewer policy plan, a parks and open space plan, and a water supply plan; and an implementation program.<sup>33</sup>

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26. *Id.* § 473.852, subdiv. 7. For the purposes of the Metropolitan Land Planning Act, the term "local government unit" means "all cities, counties and towns lying in whole or in part within the metropolitan area, but does not include school districts." *Id.*

27. *Id.* § 473.858, subdiv. 1. Local government units must review and, as necessary, amend their local comprehensive plans within nine months after receiving a metropolitan system statement when the system statements are issued in conjunction with amendments to a Council metropolitan system plan. When the Council issues system statements in conjunction with a decennial review under Minnesota Statutes section 473.864, subdivision 2, local government units must review and amend their local comprehensive plans within three years following their receipt of the system statements.

28. *See id.* § 473.582, subdiv. 9 (defining "official controls").

29. *See id.* § 473.852, subdiv. 6 (defining "fiscal devices").

30. *See id.* § 473.175, subdiv. 1 ("The council shall review the comprehensive plans of local governmental units . . . to determine their compatibility with each other and conformity with metropolitan system plans. The council shall review and comment on the apparent consistency of the comprehensive plans with adopted plans of the council.").

31. *Id.* § 473.858, subdiv. 1 ("[A] local government unit shall not adopt any fiscal device or official control which is in conflict with its comprehensive plan . . . or which permits activity in conflict with metropolitan system plans."); *id.* § 473.865, subdiv. 2 ("A local government unit shall not adopt any official control or fiscal device which is in conflict with its comprehensive plan or which permits activity in conflict with metropolitan system plans.").

32. *Id.* § 473.859, subdiv. 1.

33. *Id.* § 473.859, subdiv. 1-4. The implementation program: shall describe public programs, fiscal devices and other specific actions to be undertaken in stated sequences to implement the comprehensive plan and ensure

Local comprehensive plans and plan amendments must be submitted to the Council for review.<sup>34</sup>

*e. Council Review of Local Comprehensive Plans*

The Council reviews local comprehensive plans and plan amendments “to determine their compatibility with [other local comprehensive plans] and conformity with metropolitan system plans.”<sup>35</sup> The Council also “review[s] and comment[s] on the apparent consistency of the comprehensive plans with adopted plans of the council.”<sup>36</sup> Local comprehensive plans and plan amendments can be implemented by units of local government if the Council determines the plans are consistent with the Council’s adopted plans.<sup>37</sup> Regional land-use policies and regional planning objectives are implemented in part through the Council’s statutory authority to require modifications to local comprehensive plans and plan amendments when local plans do not conform with metropolitan system plans:

The council may require a local governmental unit to modify any comprehensive plan or part thereof if, upon the adoption of findings and a resolution, the council concludes that the plan is more likely than not to have a

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conformity with metropolitan system plans. An implementation program must be in at least such detail as may be necessary to establish existing or potential effects on or departures from metropolitan system plans and to protect metropolitan system plans. *Id.* § 473.859, subdiv. 4.

34. *Id.* § 473.864, subdiv. 2(a), (b)(1); *see also id.* § 473.858, subdiv. 3 (“The plans shall be submitted to the council following recommendation by the planning agency of the unit and after consideration but before final approval by the governing body of the unit.”). The Municipal Planning Act defines “planning agency” as “the planning commission or the planning department of a municipality.” *Id.* § 462.352, subdiv. 3.

When local government units amend their official controls and fiscal devices in conjunction with comprehensive plan updates or amendments, they must “submit copies of the official controls to the council within 30 days following adoption thereof, for information purposes only.” *Id.* § 473.865, subdiv. 1; *see also id.* § 473.864, subdiv. 2(b)(2) (providing that, after completing the decennial of their comprehensive plans, local governments are required to submit amendments to their fiscal devices and official controls to the Council “for information purposes as provided in section 473.865.”).

35. *Id.* § 473.175, subdiv. 1.

36. *Id.*

37. *See id.* § 473.858.

substantial impact on or contain a substantial departure from metropolitan system plans.<sup>38</sup>

Local government units may challenge Council plan modification decisions through a statutory process prescribed in the Act.<sup>39</sup> If a local government unit challenges a Council decision through the statutory process (including judicial review) but does not prevail, the local government unit must adopt a plan with the Council-required modifications within nine months after the conclusion of the process or a final decision in the matter has been made.<sup>40</sup>

Almost all plan modification issues have been successfully resolved at the administrative level through discussion and negotiation. However, one plan modification decision by the Council was challenged through the administrative process and was ultimately resolved by the Minnesota Supreme Court.

*f.* City of Lake Elmo v. Metropolitan Council

In its 2004 *Lake Elmo v. Metropolitan Council* decision, the Minnesota Supreme Court reaffirmed the Council's comprehensive planning authority, which the Council uses to protect and enhance regional systems today.<sup>41</sup> In January 1997, the Council submitted to the City of Lake Elmo ("City") a system statement that advised the City about newly adopted regional policies and plans and indicated what the Council expected the City to plan for when the City updated its local comprehensive plan as part of the 1998 decennial review and update process.<sup>42</sup> The City submitted a complete plan in February 2002, which the Council found was not consistent with the Regional Growth Strategy contained in the Council's adopted

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38. *Id.* § 473.175, subdiv. 1.

39. "A local unit of government may challenge a council action [requiring a plan modification] by following the procedures set forth in section 473.866." *Id.* "Any party to the proceeding aggrieved by the decision of the council may appeal to the court in the manner provided in chapter fourteen for contested cases." *Id.* § 473.866.

40. *Id.* §§ 473.175, subdiv. 3, 473.864, subdiv. 1. If a local government does not adopt a plan or plan amendment with Council-required modification, the Council "may commence civil proceedings to enforce the provisions of [the Metropolitan Land Planning Act] by appropriate legal action in the district court where the local governmental unit is located." *Id.* § 473.175, subdiv. 3.

41. *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1 (Minn. 2004).

42. For a complete summary of the administrative and judicial history of the Lake Elmo 1998 decennial plan update, see *id.* at 2–3.

comprehensive development guide (then titled the *Regional Blueprint*) and metropolitan system plans.<sup>43</sup> The City and the Council were unable to resolve their planning issues, the most important of which involved the City's desire to retain the rural character of the City with low-density development and the Council's expectation for the City to develop at higher densities consistent with the Council's policy plans for wastewater treatment and transportation.<sup>44</sup> Pursuant to statute and following a contested case proceeding under the state's Administrative Procedure Act, the Council found that the City's proposed plan update "may have a substantial impact on or contain a substantial departure from"<sup>45</sup> the Council's metropolitan system plans for wastewater and transportation. The Council adopted a resolution requiring the City to amend its comprehensive plan update to ensure its consistency with the Council's adopted metropolitan system plans.<sup>46</sup>

The City appealed the Council's final decision.<sup>47</sup> It challenged the Council's statutory authority to require the City to plan for higher-density development than was desired by the City, and it challenged the Council's authority to require the City to connect to the regional wastewater treatment system.<sup>48</sup> The Council's decision to require the plan modifications was "upheld . . . in all material respects" by the Minnesota Court of Appeals.<sup>49</sup> The Minnesota Supreme Court granted the City's petition for review.<sup>50</sup>

43. *Id.* at 3.

44. *Id.*

45. *Id.* at 4–5. Prior to 2003, the Council could require a plan modification if it found that a local comprehensive plan or a plan amendment "may have a substantial impact on or contain a substantial departure from metropolitan system plans." *See id.* at 5 (emphasis added) (quoting MINN. STAT. § 473.175, subdiv. 1 (2002)). In 2003, this provision of the statute was amended to read: "The council may require a local government unit to modify any comprehensive plan or part thereof if . . . the council concludes that the plan is *more likely than not* to have a substantial impact on or contain a substantial departure from metropolitan system plans." Act of June 8, 2003, ch. 16, sec. 6, § 473.175, subdiv. 1, 2003 Minn. Laws 2305, 2310 (emphasis added).

46. *See* Metropolitan Council Res. 2003-10 (2003) ("Final Decision, pursuant to Minn. Stat. § 473.866, with respect to the required modifications of the Lake Elmo Comprehensive Plan amendment, including the adoption of the Findings of Fact, Conclusions and Recommended Decision contained in the Report of the Administrative Law Judge"). Resolution No. 2003-10 contained a list of nine required modifications to the Lake Elmo comprehensive plan. *Id.*

47. *See City of Lake Elmo*, 685 N.W.2d at 2–3.

48. *Id.* at 4–5.

49. *Id.* at 2–3 (citing *City of Lake Elmo v. Metro. Council*, 674 N.W.2d 191

The supreme court concluded the Council has the statutory authority to require plan modifications and that the evidence showed the City's comprehensive plan update may have a substantial impact on the Council's metropolitan system plans:

The foregoing evidence supports the Council's decision that Lake Elmo's comprehensive plan may have a substantial impact on the metropolitan regional system plans. The current and planned regional wastewater treatment and transportation infrastructure can serve Lake Elmo and its projected growth through 2040. If Lake Elmo does not grow in the manner prescribed by the Council in Resolution 2003-10, the "coordinated, orderly and economic development" of the metropolitan area will be adversely effected [sic]. Therefore, we hold that, by a preponderance of the evidence, Lake Elmo's comprehensive plan may have both a substantial impact on and a constitute [sic] substantial departure from the Council's system plans.<sup>51</sup>

The court concluded the Council had the statutory authority to require Lake Elmo to modify its comprehensive plan update in the manner requested by the Council and that the Council had the statutory authority to require the City to connect to the regional wastewater treatment system.<sup>52</sup> The decision reaffirmed the Council's planning authority and the critical and central role it plays in the Twin Cities regional planning.

## 2. *Housing and Redevelopment Authority Powers*

The Council has also had the statutory power to exercise certain duties and responsibilities of municipal housing and redevelopment authorities for almost forty years.<sup>53</sup> In 1974 the

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(Minn. Ct. App. 2003)).

50. *Id.* at 3.

51. *Id.* at 10–11.

52. *See id.* at 11–12. The Mayor of Lake Elmo and the Chair of the Metropolitan Council subsequently negotiated an agreement on how the City should proceed with adopting a modified local comprehensive plan consistent with the Council's metropolitan system plans and the Minnesota Supreme Court's August 5, 2004 decision. *See* Metropolitan Council Res. 2005-04 (2005) ("Ratifying the January 27, 2005 Memorandum of Understanding between the City of Lake Elmo and the Metropolitan Council outlining criteria to be considered in preparing a modified city comprehensive plan").

53. *See generally* Act approved Apr. 10, 1974, ch. 359, 1974 Minn. Laws 635

legislature conferred municipal housing and redevelopment authority powers on the Council in part because the legislature found “many municipalities in the metropolitan area [were] unable adequately to provide the financing and staff necessary to an effective municipal and redevelopment authority” and it would be an inefficient use of resources for each metropolitan-area municipality to establish a separate authority.<sup>54</sup>

*a. Housing Assistance Programs*

In the mid-1970s the Council participated in a U.S. Department of Housing and Urban Development (HUD) demonstration housing certificate program, which provided rental subsidies for eligible families leasing private residential properties.<sup>55</sup> Over time, HUD’s demonstration program evolved into the Federal Section 8 housing voucher program. The Council currently administers the largest Section 8 housing assistance payments program in the State of Minnesota and one of the larger programs nationally.<sup>56</sup> The Council administers Section 8 Housing Choice vouchers throughout Carver and Anoka Counties, as well as suburban Hennepin and Ramsey Counties.<sup>57</sup> Other metropolitan area counties operate their own Section 8 voucher programs, but rely on the Metropolitan Council to administer smaller programs such as the Temporary Housing Assistance Program.<sup>58</sup>

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(“[T]he metropolitan council [is hereby granted] the powers of a municipal housing and redevelopment authority in the metropolitan area.”). The 1974 legislation originally was codified at Minnesota Statutes sections 473B.15 through 473B.19. In 1975, the laws relating to the Council were recodified at Minnesota Statutes chapter 473. The Council’s housing and redevelopment authority statutes currently are codified at Minnesota Statutes sections 473.195 to 473.201.

54. See Act approved Apr. 10, 1974, § 1, 1974 Minn. Laws at 635–36.

55. STEPHEN D. KENNEDY & MERYL FINKEL, SECTION 8 RENTAL VOUCHER AND RENTAL CERTIFICATE UTILIZATION STUDY 13 (1994).

56. The federal housing assistance payments program currently is known as the Federal Section 8 Housing Choice Voucher Program. See generally 24 C.F.R. pt. 982 (2013) (regulating Section 8 Tenant Based Assistance: Housing Choice Voucher Program). The Council also administers other federal and state rental subsidy programs through its Metro HRA unit.

57. See *Metro HRA Participating Communities*, METROPOLITAN COUNCIL, <http://metro council.org/getattachment/Housing/Services/Metro-HRA-Services/Section-8-Rental-Assistance/HRAMap.pdf.aspx> (last revised Apr. 2004).

58. See *Metro HRA Programs*, METROPOLITAN COUNCIL, <http://metro council.org/Housing/Services/Metro-HRA-Services/Metro-HRA-Programs.aspx> (last visited Sept. 24, 2013).

b. *Hollman v. Cisneros Litigation*

In the early 1990s the Council was a named party in a class action entitled *Hollman v. Cisneros*,<sup>59</sup> in which the plaintiffs sought action by the five named defendants, including the Council, to disperse and replace public housing units concentrated in the city of Minneapolis.<sup>60</sup> The *Hollman* matter was settled by consent decree in 1995.<sup>61</sup> The decree did not require the Council to develop, own, or operate any “replacement” units that the parties sought to develop in non-concentrated (by race and poverty) areas outside of Minneapolis. However, in 2000 the Council voluntarily agreed to help develop replacement housing units in suburban areas<sup>62</sup> and currently owns and operates 150 scattered-site single-family rental units in eleven suburban cities in Anoka, Hennepin, and Ramsey Counties.<sup>63</sup>

c. *HRA Authorities*

The Council generally is authorized to exercise within the metropolitan area “the same functions, rights, powers, duties, privileges, immunities and limitations as are provided for housing and redevelopment authorities created for municipalities.”<sup>64</sup>

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59. This case is also referred to in court filings as *Hollman v. Cuomo*. See *Hollman v. Cuomo*, No. 4:92-CV-00712 (D. Minn. Sept. 9, 1999). Henry Cisneros was the Secretary of HUD when the case was initially filed. Andrew Cuomo became Secretary of HUD in 1999, and his name was substituted for Henry Cisneros in the case name.

60. See Metropolitan Council’s Answer to Plaintiff’s Second Amended Class Action Complaint, *Hollman v. Cisneros*, No. 4:92-CV-00712 (D. Minn. Apr. 6, 1994), ECF No. 41.

61. The court-approved consent decree in the *Hollman* class action matter was filed April 21, 1995. See Consent Decree, *Hollman v. Cisneros*, No. 4:92-CV-00712 (D. Minn. Apr. 21, 1995), ECF No. 81. See generally EDWARD G. GOETZ, UNIV. OF MINN., *HOLLMAN V. CISNEROS: DECONCENTRATING POVERTY IN MINNEAPOLIS 1* (Michael D. Greco Ed., 2002), available at <http://www.housinglink.org/Files/Hollman-Compilation.pdf>.

62. See METROPOLITAN COUNCIL LIVABLE CMTYS. COMM., EXECUTIVE SUMMARY (Dec. 20, 1999) (Item 1999-56) (establishing a Metropolitan Council family housing program to help implement the replacement housing provisions of the *Hollman* consent decree).

63. See *Metro HRA—Services*, METROPOLITAN COUNCIL, <http://www.metrocouncil.org/Housing/Services/Metro-HRA-Services.aspx> (last visited Sept. 24, 2013).

64. MINN. STAT. § 473.195, subdiv. 1 (2012). The statutory authority for municipal housing and redevelopment authorities, port authorities, and economic

However, the Council's housing and redevelopment authority powers are limited in two respects.

First, the Council's authority is limited to the housing and redevelopment authority powers enumerated in Minnesota Statutes sections 469.001 to 469.047.<sup>65</sup> The Council may exercise those enumerated powers and duties to the extent provided in section 473.195 "or as clearly indicated otherwise from the context of such laws."<sup>66</sup> The statutory housing and redevelopment authorities are distinguishable from the economic development authorities that may be exercised by cities.<sup>67</sup>

Second, while the Council is generally authorized to plan and propose "projects" within the boundaries of any metropolitan-area city "and may otherwise exercise the powers of an authority at any time," the Council cannot implement any "housing project, housing development project, redevelopment project or urban renewal project within the boundaries of any municipality or county without the prior approval of the governing body of the municipality or county in which any such project is to be located."<sup>68</sup> In some cases, proposed Council projects must be submitted to municipal or county housing and redevelopment authorities for "review and recommendations" before the Council can undertake a proposed project within a city, and a city or county may undertake a proposed Council project itself if it chooses to do so.<sup>69</sup> Minnesota

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development authorities are found in Minnesota Statutes chapter 469.

65. MINN. STAT. § 473.195, subdiv. 1.

66. *Id.*

67. Municipal economic development authorities are contained in Minnesota Statutes sections 469.090 to 469.108. Minnesota Statutes chapter 469 distinguishes between municipal housing and redevelopment authority powers in sections 469.001 to 469.047 and powers exercised by economic development authorities under sections 469.090 to 469.108. *See id.* § 469.091, subdiv. 1 (authorizing cities to establish economic development authorities under sections 469.090 to 469.108 that also may exercise the powers of housing and redevelopment authorities under sections 469.001 to 469.047); *id.* § 469.094, subdiv. 1 (authorizing cities to "divide the economic development, housing, and redevelopment powers granted under sections 469.001 to 469.047 and 469.090 to 469.108 between the economic development authority and any other authority or commission established under statute or city charter for economic development, housing, or redevelopment").

68. *Id.* § 473.195, subdiv. 1; *see id.* § 469.002, subdiv. 12–15 (defining "project," "housing project," "housing development project," "redevelopment project," and "urban renewal project").

69. *See* MINN. STAT. § 473.195, subdiv. 1. ("[T]he council shall not propose any project to the governing body of a municipal or county authority having an

Statutes sections 473.25 to 473.254, known as the Livable Communities Act (LCA), also provide additional means by which the Council can encourage development, which are discussed in a later section of this article.<sup>70</sup>

*C. Council Funding, Budget, Functions, and Service Areas*

Today, the Council has an annual operating budget of \$827.8 million<sup>71</sup>: 70% of spending is for day-to-day operations; 19% is debt service for wastewater and transportation capital projects; and 11% is for pass-through grants to other agencies.<sup>72</sup> On the operations revenue side, 40% of revenues are from user fees, such as wastewater charges and bus fares; 42% are state funds; 12% are from a regional property tax; and 6% are from federal sources.<sup>73</sup>

The Council's 2013 capital budget is \$573 million, of which about 36% is dedicated to the construction of the METRO Green Line (called the Central Corridor light rail project during construction).<sup>74</sup> The remainder of the 2013 capital budget is dedicated to land acquisition, development and redevelopment of regional parks, capital expenses on other transitways, construction, repair and replacement of wastewater treatment plants and interceptors, and bus and rail preservation activities including facilities and fleet modernization.<sup>75</sup>

The Council's operating and capital budgets finance its work in six primary areas:

- Operations of Metro Transit, which carried 81 million bus and rail passengers in 2012, and regularly wins awards for innovation and energy efficiency;

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active authority . . . without first submitting the proposed project to the municipal or county authority for its review and recommendations.”). In addition, the Council cannot undertake a proposed project that has been approved by a city or a county “if within 60 days after it has been proposed, the municipality or county agrees to undertake the project.” *Id.*

70. See discussion *infra* Part V.A.1.

71. METROPOLITAN COUNCIL, 2013 UNIFIED OPERATING BUDGET 1-7 (2012), available at <http://www.metrocouncil.org/About-Us/Publications-And-Resources/2013-Unified-Operating-Budget.aspx>.

72. See *id.* app. at C-1.

73. *Id.* at 2-1.

74. METROPOLITAN COUNCIL, 2013 UNIFIED CAPITAL PROGRAM 2-3 (2012), available at <http://www.metrocouncil.org/About-Us/Publications-And-Resources/2013-Unified-Capital-Program.aspx>.

75. *Id.* at 1-2 to 1-4, 2-3.

- Investments in a growing network of bus and rail transitways and transit-oriented development;
- Collection and treatment of wastewater at rates 45% lower than peer regions, regularly winning state and national awards for environmental achievements;
- Partnerships with communities and the public in planning for future growth;
- Plans and funds acquisition and development of a world-class regional parks and trails system, including more than 54,000 acres of parkland;
- Provides and supports affordable housing opportunities for low- and moderate-income individuals and families.<sup>76</sup>

#### D. *Council Real Estate Holdings*

The Council is also a significant real estate owner in the Twin Cities metropolitan area. Minnesota law provides broad statutory powers to the Council with respect to acquisition and disposition of real property to enable the Council to carry out its statutory duties and responsibilities.<sup>77</sup>

In general, pursuant to Minnesota Statutes section 473.129, the Council “may acquire, own, hold, use, improve, operate, maintain, lease, exchange, transfer, sell, or otherwise dispose of personal or real property, franchises, easements, property rights or interests of any kind.”<sup>78</sup>

Historically, the Metropolitan Waste Control Commission and the Metropolitan Transit Commission each had their own statutory real property acquisition and disposition powers to carry out the regional wastewater treatment and transit programs.<sup>79</sup> The Council retains these original real property acquisition and disposition powers for the regional wastewater treatment and transit programs under Minnesota Statutes sections 473.405 (transit) and 473.504 (wastewater services). While the Council has authority to acquire

76. *Metropolitan Council Facts*, METROPOLITAN COUNCIL, <http://metro council.org/About-Us/Facts/MC/FACTS-Metropolitan-Council.aspx> (last visited Sept. 24, 2013).

77. See MINN. STAT. § 473.129, subdiv. 7 (2012).

78. *Id.*

79. See Metropolitan Reorganization Act of 1994, ch. 628, sec. 473.123, art. 2, § 4, subdiv. 3–4, 1994 Minn. Laws 1451, 1710.

real property for other programs such as parks<sup>80</sup> and housing,<sup>81</sup> most of the acquisition of real property by the Council is for its regional public transit and wastewater treatment systems in the form of ownership in fee, permanent easements, leases, and licenses. For both its regional transit and wastewater treatment systems, the Council may, by statute, use public highways and bridges, roadways, and other public rights-of-way.<sup>82</sup>

The Council's regional wastewater treatment system consists of eight regional treatment plants<sup>83</sup> on Council-owned property in fee and six hundred miles of regional interceptor sewers located within Council-owned permanent easements on private property or within public roads and rights-of-way.<sup>84</sup> Similarly, the Council owns property in fee for its regional transit rail and bus garages and maintenance facilities, and it operates its rail and bus systems within public roads, streets and highways, and by permanent easement on private property. According to its records, the Council owns buildings, lands, and improvements in the metropolitan area worth in excess of \$2.15 billion.<sup>85</sup>

From its inception, the Council has played a unique and expanding role in coordinating plans for the future of the Twin Cities metropolitan area. The Minnesota Legislature granted it significant planning, coordination, and real estate acquisition authority, and the Minnesota Supreme Court has recognized and

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80. See MINN. STAT. § 473.333. Note that while the Council provides funds to regional park implementing agencies to help acquire lands for regional parks and trails, it does not own or operate regional recreation open space facilities. See METROPOLITAN COUNCIL, 2013 ANNUAL REPORT TO MINNESOTA LEGISLATURE REGARDING CONSTITUTIONAL LAND AND LEGACY AMENDMENT 1 (2013), *available at* <http://metro council.org/Parks/Publications-And-Resources/2013-Annual-Report-to-the-Legislature-on-Regional.aspx>.

81. MINN. STAT. § 473.195, subdiv. 1.

82. *Id.* §§ 473.411, subdiv. 5, 473.504, subdiv. 10.

83. There are currently seven operational water treatment plants and an eighth plant under construction in East Bethel. See METROPOLITAN COUNCIL, COMPREHENSIVE ANNUAL FINANCIAL REPORT, at xii (2012), *available at* <http://metro council.org/About-Us/Publications-And-Resources/Metropolitan-Council-2012-Comprehensive-Annual-Fin.aspx>.

84. See METROPOLITAN COUNCIL ENVTL. SERVS., 2012 PERFORMANCE REPORT 1 (2012), *available at* <http://www.metro council.org/getattachment/3eb300fb-720a-46d9-a9cc-a9e3b64d5422/>.aspx.

85. See METROPOLITAN COUNCIL, COMPREHENSIVE ANNUAL FINANCIAL REPORT, *supra* note 83, at 20 (adding together lines under "Assets" for "Land" and "Buildings and Infrastructure" to arrive at the \$2.15 billion figure).

upheld that authority.<sup>86</sup> This overview of the Council and its history is critical for understanding the remainder of this article: a discussion of the future of the Council and the modern evolution of regional planning organized around transit infrastructure.

## II. THE FUTURE OF THE COUNCIL: THRIVE MSP 2040 AND TRANSIT-ORIENTED DEVELOPMENT

Building on the discussion of the Council's history, this section provides readers with a glimpse of the Council's future. First, this section summarizes the current priorities of the Council. Next, it walks through the Council's new comprehensive development guide, Thrive MSP 2040, and introduces the key concept of transit-oriented development.

### A. *Current Priorities of Governor Mark Dayton's Metropolitan Council*

Within its mission of fostering efficient and economical growth, the Dayton-appointed Council has three primary objectives: to create a financially sustainable twenty-first-century transportation system, to promote and expand dynamic housing opportunities for all, and to leverage investments that drive regional economic development.<sup>87</sup>

To help achieve these goals, Governor Dayton proposed a half-cent regional sales tax during the 2013 legislative session.<sup>88</sup> This proposal would have provided adequate funding for a build-out of a twenty-first-century transit system, including as many as twenty-one new street cars, arterial and highway bus rapid transit, and light rail transit lines in the seven-county metropolitan region.<sup>89</sup> The senate passed the governor's proposal but failed to reach an agreement with the house.<sup>90</sup> Transit and transportation funding is expected to be a major issue in future legislative sessions.<sup>91</sup>

86. See, e.g., *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1 (Minn. 2004).

87. See *About the Metropolitan Council*, *supra* note 4.

88. *Governor's Supplemental Budget Retains Strong Commitment to Transit*, METROPOLITAN COUNCIL (Mar. 18, 2013), <http://metro council.org/News-Events/Transportation/Newsletters/Governor-s-supplemental-budget-retains-strong-comm.aspx>.

89. *Id.*

90. Pat Doyle, *Permanent Transit Funding Takes a Back Seat*, STAR TRIB. (Minneapolis), May 21, 2013, at 2B, available at 2013 WLNR 12737699.

91. See Jessica Mador, *Status-Quo Transportation Bill Disappoints Transit*

Like transit, water supply also received considerable attention from the Minnesota Legislature during the 2013 session and will be a focus of the Council in the future. Water shortages in the region are predicted in areas where there has been considerable drawdown on the Prairie du Chien–Jordan aquifer.<sup>92</sup> As a result, the legislature extended the sunset date<sup>93</sup> on the Metropolitan Area Water Supply Advisory Committee and provided more than \$3.5 million for regional water supply planning, the study of water supply in White Bear Lake,<sup>94</sup> and grants to conserve water through correcting inflow and infiltration problems<sup>95</sup> with the local portions of the sanitary sewer system.<sup>96</sup> Although the Council operates the regional wastewater treatment system, there is no regional drinking water system.<sup>97</sup> Rather, municipalities and private users are responsible for local water supply. Momentum is growing for regional or sub-regional solutions to address aquifer drawdown. The Council anticipates playing a key role in the ongoing discussion of regional water supply issues.

*B. Metropolitan Development Guide—Thrive MSP 2040*

As discussed above, every ten years the Council updates and revises its comprehensive development guide, in conjunction with

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*Advocates*, MINN. PUB. RADIO (May 21, 2013), <http://minnesota.publicradio.org/display/web/2013/05/21/politics/transportation-bill>.

92. Metropolitan Council, *Water Supply: Testing the Limits of the Region's Aquifers*, YOUTUBE (Mar. 15, 2013), [http://www.youtube.com/watch?v=p0BsV\\_aDxto](http://www.youtube.com/watch?v=p0BsV_aDxto).

93. *See State Funding Will Keep Green Line Extension (Southwest Light Rail) Project on Schedule*, METROPOLITAN COUNCIL (May 30, 2013), [http://metrocouncil.org/News-Events/Council-News/Newsletters/State-funding-will-keep-Green-Line-extension-\(Sout.aspx](http://metrocouncil.org/News-Events/Council-News/Newsletters/State-funding-will-keep-Green-Line-extension-(Sout.aspx).

94. *See, e.g., Ron Meador, Get Ready for More White Bear Lakes: Two New Looks at Groundwater Depletion*, MINNPOST (May 1, 2013), <http://www.minnpost.com/earth-journal/2013/05/get-ready-more-white-bear-lakes-two-new-looks-groundwater-depletion> (discussing falling water levels in White Bear Lake and citing a recent study that attributes the water depletion to “increased groundwater pumping by city water systems to the north and west” of the lake).

95. *See Inflow & Infiltration (I/I) Program*, METROPOLITAN COUNCIL, [http://metrocouncil.org/Wastewater-Water/Funding-Finance/Rates-Charges/MCES-Inflow-and-Infiltration-\(I-I\)-Program.aspx](http://metrocouncil.org/Wastewater-Water/Funding-Finance/Rates-Charges/MCES-Inflow-and-Infiltration-(I-I)-Program.aspx) (last visited Sept. 24, 2013) (explaining the related problems of inflow and infiltration).

96. *See Governor's Supplemental Budget Retains Strong Commitment to Transit*, *supra* note 88.

97. *See id.*

the decennial review required by section 473.864 of the Metropolitan Land Planning Act.<sup>98</sup>

The 2040 update, known as Thrive MSP 2040, is expected to be completed by mid-2014. This long-range planning effort will include an expanded focus on economic competitiveness, equity, and sustainability.<sup>99</sup> Thrive MSP 2040 will reflect the findings of a Fair Housing and Equity Assessment (FHEA),<sup>100</sup> which is a requirement of the Council's \$5 million Sustainable Communities Regional Planning Grant from HUD in 2010.<sup>101</sup> It will also fulfill the requirement of the grant to create a Regional Plan for Sustainable Development.<sup>102</sup>

To date, the Council has proposed a set of outcomes, principles, and goals for Thrive MSP 2040.<sup>103</sup> In particular, the equity principle is expected to be prevalent throughout the document and the Council's work, including areas such as transit-oriented development.

The Council cites research by Oakland, California-based PolicyLink and Twin Cities-based Itasca Project Socioeconomic Disparities Task Force, indicating the need to implement equity-focused policies to ensure future regional economic growth.<sup>104</sup> In its current draft form, the Thrive MSP 2040 principle states, "Equity: Connecting all residents to opportunities such as good jobs, transportation choices, safe and stable housing, a range of parks and natural areas, and vibrant public spaces. The opportunities and

98. MINN. STAT. § 473.145 (2012).

99. See *Thrive MSP 2040 Mission, Outcomes, Principles & Goals*, METROPOLITAN COUNCIL, <http://www.metrocouncil.org/Planning/Projects/Thrive-2040/Thrive-MSP-2040-Mission,-Outcomes-Principles.aspx> (last visited Sept. 25, 2013).

100. *Fair Housing & Equity Assessment*, METROPOLITAN COUNCIL, [http://metrocouncil.org/Planning/Projects/Thrive-2040/Fair-Housing-Equity-Assessment-\(FHEA\).aspx](http://metrocouncil.org/Planning/Projects/Thrive-2040/Fair-Housing-Equity-Assessment-(FHEA).aspx) (last visited Sept. 25, 2013).

101. *Regional Fair Housing and Equity Assessment*, U.S. DEP'T HOUSING & URBAN DEV. (Aug. 29, 2013), [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/sustainable\\_housing\\_communities/regional\\_fairhsg\\_equityassesmt](http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities/regional_fairhsg_equityassesmt).

102. See *Sustainable Communities Regional Planning Grants*, U.S. DEP'T HOUSING & URBAN DEV. (Sept. 5, 2013), [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/sustainable\\_housing\\_communities/sustainable\\_communities\\_regional\\_planning\\_grants](http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities/sustainable_communities_regional_planning_grants).

103. *Thrive MSP 2040 Mission, Outcomes, Principles & Goals*, *supra* note 99.

104. *Messages From the Council Chair*, METROPOLITAN COUNCIL (Oct. 2013), <http://metrocouncil.org/About-Us/Who-We-Are/Council-Chair/Previous-Messages/October-2013.aspx>.

challenges of growth and change are equitably shared across our communities, both geographic and cultural.”<sup>105</sup>

1. *Future Demographic Patterns*

As a part of the planning process, the Council must consider future demographic and economic changes in the region.<sup>106</sup> In 2012, the Council released a regional forecast discussing future demographic and economic growth.<sup>107</sup> The report forecasts increased racial and ethnic diversity, and both population and economic growth in the region by 2040.<sup>108</sup> In 2010, people of color (that is people of races and ethnicities other than White, non-Hispanic) comprised 24% of the regional population.<sup>109</sup> By 2040, the report forecasts that people of color will comprise 43% of the residents in the region.<sup>110</sup>

The Council forecasts that the region will gain almost 900,000 people by 2040; economic opportunity in the region will attract population growth. The region’s gross metropolitan product, the sum of value added by all industry sectors, will rise to \$400 billion in 2040—equivalent to 1.5% of the U.S. gross domestic product.<sup>111</sup>

The Council’s forecasts anticipate that the region will continue to be an immigration gateway to the nation throughout the thirty-year period and that immigration will substantially advance the region’s diversity.<sup>112</sup> Of the expected 463,000 international immigrants, 83% are expected to be people of color from all continents and the remaining 17% are expected to be non-Hispanic whites.<sup>113</sup> Two-thirds of the region’s population growth will come from natural growth as births outpace deaths in the

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105. See *Thrive MSP 2040 Mission, Outcomes, Principles & Goals*, *supra* note 99.

106. See, e.g., MINN. STAT. § 473.145 (2012).

107. *Increased Economic Growth, Diversity Forecasted for Twin Cities Region by 2040*, METROPOLITAN COUNCIL (Apr. 18, 2012), <http://metro council.org/News-Events/Planning/News-Articles/Increased-economic-growth,-diversity-forecasted-fo.aspx> (reporting findings of METROPOLITAN COUNCIL, WHAT LIES AHEAD: POPULATION, HOUSEHOLD AND EMPLOYMENT FORECASTS TO 2040 (2012), available at [http://stats.metc.state.mn.us/stats/pdf/MetroStats\\_Forecasts.pdf](http://stats.metc.state.mn.us/stats/pdf/MetroStats_Forecasts.pdf)).

108. *Id.* at 1–2.

109. *Id.* at 3.

110. *Id.*

111. *Id.* at 5.

112. *Id.* at 1.

113. *Id.*

region.<sup>114</sup> Birth rates will continue to be higher among families of color than white families, thus accelerating the increasing racial and ethnic diversity in the region.<sup>115</sup> Migration and natural growth together will replenish school enrollments and the workforce.<sup>116</sup> These dynamics will balance out another substantial trend: the rapid expansion of the region's senior (sixty-five and over) population.<sup>117</sup> The senior population will double between 2010 and 2030, and continue growing throughout the forecast period, from 307,000 seniors in 2010 to 770,000 seniors in 2040.<sup>118</sup>

As the age profile of the population shifts, the mix of households is also changing. Growth in the Generation Y<sup>119</sup> or Millennial cohort (those born roughly between 1980 and 2000) will still generate growth in households with children.<sup>120</sup> However, most of the growth among households with children is anticipated to be growth in one-parent households (up 80,000 households over thirty years).<sup>121</sup>

Seniors will be significant contributors to the forecasted increase in households. Seniors tend to live alone, or with a spouse.<sup>122</sup> Not surprisingly, most of the gain in households projected by the Council is reflected in net growth of one-person households (up 179,000 over thirty years) and of married couples without children (up 87,000).<sup>123</sup> These gains reflect a progression of the household life-cycle, as married couples with children become households without children.<sup>124</sup>

## 2. *Transit-Oriented Development*

Transit-oriented development (TOD) is a planning concept that combines people-friendly dense urban design with excellent pedestrian access to public transportation, major destinations, and

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114. *Id.* at 2.

115. *Id.*

116. *Id.* at 2.

117. *Id.*

118. *Id.*

119. Generation Y is generally understood to be composed of individuals born between the early 1980s and mid-1990s.

120. *Id.* at 3.

121. *Id.*

122. *Id.* at 2.

123. *Id.*

124. *Id.* at 3.

diverse communities. TOD is particularly important for the region as it competes in a global marketplace for both business and a talented and highly mobile workforce that has come to expect the advanced transit systems and mature TOD of major cities around the globe. TOD is also important as the Council seeks to assist communities in planning for forecast demographic changes. These changes include larger senior populations, more people emigrating from countries where transit is a primary mode of travel, and the changing mobility and social desires of Generation Y. Since the adoption of the *2030 Regional Development Framework* in 2004,<sup>125</sup> the Council's transit system has also expanded to include significant capital investment in fixed transitways, including the METRO Blue Line (Hiawatha Line), which opened in 2004; the METRO Red Line, which opened in June 2013; and the METRO Green Line, which will open in mid-2014, along with others currently in various planning phases.<sup>126</sup>

In response to the changing demographics and the investment in new fixed transitways, the Council will focus on maximizing the regional transit investment through TOD. As a result, much of the rest of this article discusses the TOD concept in depth. A TOD is a built environment that allows for access to employment, services, goods, and housing without the use of a personal car.<sup>127</sup> In order to allow for this degree of access, communities and neighborhoods should be easily walkable, with safe pedestrian infrastructure, and with zoning ordinances that encourage both high density and a variety of land uses in close proximity to a transit hub. A typical TOD community includes a mixture of both commercial and residential uses within a half-mile of public transportation.<sup>128</sup>

In response to changing regional demographics and highway traffic congestion, and to maximize its investments in fixed transitways, the Council has embraced TOD as an important strategy for the efficient growth of the region. The Council

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125. METROPOLITAN COUNCIL, 2030 REGIONAL DEVELOPMENT FRAMEWORK 35 (2004), available at <http://metro council.org/Planning/Publications-And-Resources/2030-Regional-Development-Framework.aspx>.

126. See *id.*

127. Liam Cunningham, *Transit Oriented Development: A Viable Solution to Revitalize Inner Cities*, RIGHT OF WAY, Sept.–Oct. 2012, at 18, available at [http://www.irwaonline.org/eweb/upload/web\\_sepoct12\\_TOD.pdf](http://www.irwaonline.org/eweb/upload/web_sepoct12_TOD.pdf).

128. *What is TOD?*, RECONNECTING AM., <http://www.reconnectingamerica.org/what-we-do/what-is-tod> (last visited Sept. 25, 2013).

released a regionally focused *Guide for Transit-Oriented Development* in August 2006.<sup>129</sup> The guide acknowledges that TOD areas can vary in style and size, but that they all share some common elements. These common elements include: compact development, a mix of uses, pedestrian orientation, and transportation interfaces.<sup>130</sup>

In addition to the TOD guide, the Council, along with other partners, began a three-year Sustainable Communities Initiative, called Corridors of Opportunity, in 2011.<sup>131</sup> Positioning the existing and planned transitway corridors at the center of this initiative, TOD is a key component of nearly all the projects funded by Corridors of Opportunity. In addition to the Corridors of Opportunity funding, the Council began awarding Livable Communities Act (LCA) TOD grants through the Livable Communities Demonstration Account (LCDA) and Tax Base Revitalization Account (TBRA), making \$26 million in such grants in 2011 and 2012.<sup>132</sup> In order to better define its roles in TOD in relation to its partners, the Council has developed a TOD Strategic Action Plan.<sup>133</sup> This plan looks both externally and internally to evaluate TOD and the Council. From this plan, a provisional definition of TOD has emerged:

A moderate to higher density district/corridor located within easy walking distance of a major transit stop that typically contains a mix of uses such as housing, jobs, restaurants, shops, services and entertainment. These

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129. METROPOLITAN COUNCIL, *GUIDE FOR TRANSIT-ORIENTED DEVELOPMENT* (2006), available at <http://www.metrocouncil.org/getattachment/7f95e0f4-2909-4d0e-81cb-b19ca205a454/>.pdf.

130. *Id.* at 2–3.

131. Corridors of Opportunity is a three-year initiative jointly funded by the federal Partnership for Sustainable Communities and the Living Cities Integration Initiative; the federal funds come from HUD and are managed by the Metropolitan Council. See generally *Sustainable Communities*, P'SHIP FOR SUSTAINABLE CMTYS., <http://www.sustainablecommunities.gov> (last visited Sept. 25, 2013) (providing information on the partnership and links to additional resources); *The Integration Initiative*, LIVING CITIES, <http://www.livingcities.org/integration> (last visited Sept. 25, 2013) (providing information on the theory, practice, and principles of the initiative).

132. *Transit-Oriented Development Grants: Overview*, METROPOLITAN COUNCIL, <http://www.metrocouncil.org/Communities/Publications-And-Resources/TOD-Overview.aspx> (last visited Nov. 11, 2013).

133. METROPOLITAN COUNCIL, *TOD STRATEGIC ACTION PLAN* (2013), available at <http://www.metrocouncil.org/getattachment/050f7635-d434-4deb-b1fa-24210b64a0e9/>.aspx.

districts/corridors enable people of all ages, backgrounds, and incomes abundant transportation choices and the opportunity to live convenient, affordable and active lives.<sup>134</sup>

### 3. *Counties and Cities and TOD*

In the Twin Cities metropolitan area, counties and cities play strong roles in transit and TOD.

#### a. *Counties*

The Counties Transit Improvement Board (CTIB) was formed in April 2008 when five counties—Anoka, Dakota, Hennepin, Ramsey, and Washington—began to levy a quarter-cent sales tax and a \$20 motor vehicle sales tax.<sup>135</sup> This tax was authorized by the legislature and goes toward investments in transit projects via capital and operating grants. The CTIB’s vision is: “[A] network of interconnected transitways that allows users to move efficiently and safely, while mitigating congestion, enhancing economic development and improving environmental stability for the region.”<sup>136</sup>

To achieve its vision, CTIB works in close partnership with both the Council and two metropolitan counties not participating in the CTIB: Carver and Scott counties.<sup>137</sup> In addition to CTIB, the counties play strong roles in transitway development through their regional railroad authorities. The regional railroad authorities were formed under Minnesota Statutes chapter 398A, which authorizes regional railroad authorities to plan, acquire, construct, and operate railroads, including light rail transit (LRT) and other transit modes.<sup>138</sup> The purpose of the Regional Railroad Authorities Act is:

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134. *Id.* at 5.

135. *About*, COUNTIES TRANSIT IMPROVEMENT BOARD, <http://www.mnrides.org/about> (last visited Sept. 23, 2013).

136. *Id.*

137. OFFICE OF THE LEGISLATIVE AUDITOR, STATE OF MINN., GOVERNANCE OF TRANSIT IN THE TWIN CITIES REGION 11–12 (2011), *available at* <http://www.auditor.leg.state.mn.us/ped/pedrep/transit.pdf> (noting that only five of the seven counties in the metropolitan area opted to levy the sales tax and, as a result, the two remaining counties, Carver and Scott, are nonvoting members of the CTIB).

138. *See* MINN. STAT. § 398A.04, subdiv. 2 (2012). However, the Metropolitan Council has the statutory authority to “operate all light rail transit facilities and

to provide a means whereby one or more municipalities, with state and federal aids as may be available, may provide for the preservation and improvement of local rail service for agriculture, industry, or passenger traffic and provide for the preservation of abandoned rail right-of-way for future transportation uses, when determined to be practicable and necessary for the public welfare, particularly in the case of abandonment of local rail lines.<sup>139</sup>

In the seven-county metropolitan area, regional railroad authorities generally take the lead role in transitway planning and development prior to advancing transitways to the Council for final planning and federal government involvement. Regional railroad authorities have a vested interest in TOD occurring in their jurisdictions because TOD development supports their transit investments and can help create healthier communities in which citizens are more active and spend less on transportation.

Counties also directly fund TOD initiatives. For example, Hennepin County created a Transit-Oriented Development program in 2003 to support both redevelopment and new construction that enhances transit usage.<sup>140</sup> This program is funded at approximately \$2 million per year and assists projects on transit corridors, such as METRO Blue Line, Green Line, planned extensions to both LRT lines, and high frequency bus and express routes.<sup>141</sup>

*b. Cities*

Cities play an especially key role in TOD in the region. Since local jurisdictions have land use authority, they are able to create the conditions on the ground that can make TOD successful through planning, zoning, and public infrastructure provision. They can also purchase and sell sites in order to create the type of TOD they envision. Cities also play a key role in setting design standards and providing technical assistance to developers,

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services located in the metropolitan area.” *See id.* at § 473.4051, subdiv. 1.

139. *Id.* § 398A.02.

140. *Transit Oriented Development (TOD)*, HENNEPIN CNTY., MINN., <http://www.hennepin.us/business/work-with-henn-co/transit-oriented-development> (last visited Dec. 5, 2013).

141. *Id.*

business owners, and community groups seeking to locate near transit.

As an example, the City of Saint Paul is one of many cities that have taken an active role in shaping their communities through TOD. Its 2011 *Transit-Oriented Development Guidebook* for the Central Corridor provides existing and future property owners and residents with a wealth of information about how to take part in TOD along the corridor.<sup>142</sup> The guidebook includes tips for success, including zoning regulations and the process for environmental review.<sup>143</sup> It also provides policy guidance via the city's Central Corridor Development Strategy and other plans.<sup>144</sup> Finally, it provides design standards to illustrate elements and principles of TOD that should guide the built form in that transitway corridor.<sup>145</sup> The city has incorporated this guidance into its official land-use controls governing the land around the corridor. The city also is in the process of hiring a Transit Oriented Development Manager to direct the city's work in this area.

The Council partners with cities and counties in creating TOD. The Council recognizes that the region's cities and counties play strong roles in TOD. Therefore, the approach of the Council through the TOD Strategic Action Plan<sup>146</sup> and other efforts has been to identify the needs of the local jurisdictions in relation to TOD and to help fill those needs and gaps. Similarly, the Council has sought to focus on playing roles in TOD that leverage its unique authority and institutional structure.<sup>147</sup>

*c. Partnerships and Joint Power Agreements*

Partnership or a joint powers agreement with another governmental entity can be a key tool in creating TOD. The Council has participated in many partnerships and cooperative efforts with various state agencies and local governments since its creation. A typical mechanism for these partnerships has been a

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142. CENT. CORRIDOR DESIGN CTR. ET AL., SAINT PAUL TRANSIT-ORIENTED DEVELOPMENT GUIDEBOOK FOR THE CENTRAL CORRIDOR (2011), *available at* <http://www.stpaul.gov/DocumentCenter/Home/View/19527>.

143. *Id.* §§ 1.1–1.14.

144. *Id.* §§ 2.1–2.8.

145. *Id.* §§ 3.1–3.23.

146. *See infra* Part V.C.

147. *See infra* Part IV.A.

joint exercise of powers agreement under Minnesota Statutes section 471.59, which states in part:

Two or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised. The agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units. The term “governmental unit” as used in this section includes every city, county, town, school district, independent nonprofit firefighting corporation, other political subdivision of this or another state, another state, federally recognized Indian tribe, the University of Minnesota, the Minnesota Historical Society . . . and any agency of the state of Minnesota or the United States, and includes any instrumentality of a governmental unit. For the purpose of this section, an instrumentality of a governmental unit means an instrumentality having independent policy-making and appropriating authority.<sup>148</sup>

Joint powers agreements are mechanisms by which governmental units and other specified entities can “share” their statutory powers to achieve common purposes or to accomplish mutually desired outcomes. Joint powers agreements must comply with certain statutory requirements.<sup>149</sup> The agreements must be “entered into through action of [the parties’] governing bodies.”<sup>150</sup> The agreements must “state the purpose of the agreement or the power to be exercised and [they] shall provide for the method by which the purpose sought shall be accomplished or the manner in which the power shall be exercised.”<sup>151</sup> The agreements also must “provide for the disposition of any property acquired as the result of [a] joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several

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148. MINN. STAT. § 471.59, subdiv. 1 (2012). The Council is a “governmental unit” for the purposes of the joint powers statute because it is defined by statute as a “public corporation and political subdivision of the state.” *Id.* § 473.123, subdiv. 1.

149. *See id.* § 471.59, subdiv. 1.

150. *Id.*

151. *Id.* § 471.59, subdiv. 2.

contracting parties after the purpose of the agreement has been completed.”<sup>152</sup> In addition to these statutory requirements, joint powers agreements also can include other provisions the contracting entities may deem necessary or useful.<sup>153</sup>

Until 1982, governmental entities could enter into joint powers agreements only if there was “commonality of powers” between the parties to an agreement. In 1982, amendments to the joint powers statute authorized governmental units to enter into joint powers even when no “commonality of powers” exists between the participating governmental units.<sup>154</sup> The amendment states:

Notwithstanding the provisions of subdivision 1 requiring commonality of powers between parties to any agreement, the governing body of any governmental unit as defined in subdivision 1 may enter into agreements with any other governmental unit to perform on behalf of that unit any service or function which the governmental unit providing the service or function is authorized to provide for itself.<sup>155</sup>

The application and scope of this provision of the joint powers statute is very broad and authorizes governmental units to cooperatively and collaboratively engage in any number of joint or cooperative initiatives *if* at least one of the contracting government entities is authorized to provide the required service or perform the required function for itself. This provision can prove useful when governmental units are attempting to cooperatively and collaboratively accomplish initiatives that serve each unit’s individual needs while meeting their collective objectives.

Some examples of recent Council joint powers agreements with other government entities include: implementation of a

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152. *Id.* § 471.59, subdiv. 5.

153. *See, e.g., id.* § 471.59, subdiv. 3 (stating that the parties may “provide for disbursements from public funds to carry out the purposes of the agreement” and that funds “may be paid to and disbursed by such agency as may be agreed upon”); *id.* § 471.59, subdiv. 4 (allowing the parties to agree on their own termination provisions); *id.* § 471.59, subdiv. 11 (stating that participating government units “may establish a joint board to issue bonds or obligations”). The statute also identifies specific purposes for which governmental units may enter into joint powers agreements. *See, e.g., id.* § 471.59, subdiv. 12 (authorizing joint exercise of police powers); *id.* § 471.59, subdiv. 13 (authorizing a joint powers board for housing).

154. Act Approved Mar. 22, 1982, ch. 507, § 27, 1982 Minn. Laws 587, 595.

155. MINN. STAT. § 471.59, subdiv. 10.

temporary federal housing assistance program for survivors of Hurricanes Katrina and Rita;<sup>156</sup> operation of van pool services in areas adjacent to the seven-county metropolitan area;<sup>157</sup> implementation of a loan program for small businesses affected by light rail transit project construction;<sup>158</sup> and construction of transit facilities.<sup>159</sup>

### III. FOCUSING ON TRANSIT-ORIENTED DEVELOPMENT: TOD AS A RESPONSE TO DEVELOPMENT IN THE REGION

The Council has embraced TOD as a critical element of its long-term transportation plans, largely because TOD makes sense in light of how the region has expanded and evolved over the past twenty years. This section explains how TOD is a natural response to the patterns of growth and development in the Twin Cities metropolitan area.

#### A. *Pattern of Regional Development*

The Council's role in TOD is new and evolving. While the Council's legislative mandate and core functions remain the same, the tools that are applied to address regional issues of housing,

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156. See METROPOLITAN COUNCIL MGMT. COMM., EXECUTIVE SUMMARY 1-4 (Dec. 14, 2005) (Business Item SW 2005-430) (on file with author) (approving a joint powers agreement with the Dakota County Community Development Agency for region-wide administration of HUD's Katrina Disaster Housing Assistance Program).

157. See METROPOLITAN COUNCIL, PUBLIC MEETING ON UPDATE TO THE 2030 REGIONAL PUBLIC PARKS POLICY PLAN 3-4 (Oct. 13, 2010), available at [http://councilmeetings.metc.state.mn.us/council\\_meetings/2010/101310/1013\\_2010\\_Council%20Minutes\\_PH%20PPP.pdf](http://councilmeetings.metc.state.mn.us/council_meetings/2010/101310/1013_2010_Council%20Minutes_PH%20PPP.pdf) (Business Item 2010-342) (approving joint powers agreements with the Minnesota Department of Transportation and the state of Wisconsin to allow the operation of the Council's van pool program in Minnesota and Wisconsin counties immediately adjacent to the seven-county metropolitan area).

158. See METROPOLITAN COUNCIL MGMT. COMM., BUSINESS ITEM 2010-197 SW, at 1-2 (June 23, 2010), available at [http://councilmeetings.metc.state.mn.us/council\\_meetings/2010/062310/0623\\_2010\\_197%20SW.pdf](http://councilmeetings.metc.state.mn.us/council_meetings/2010/062310/0623_2010_197%20SW.pdf) (approving a joint powers agreement with the City of Saint Paul to implement a loan program for small businesses affected by the construction of the Central Corridor LRT Project).

159. See METROPOLITAN COUNCIL TRANSP. COMM., COMMITTEE REPORT 1-3 (July 25, 2012), available at [http://councilmeetings.metc.state.mn.us/council\\_meetings/2012/0725/0725\\_2012\\_218.pdf](http://councilmeetings.metc.state.mn.us/council_meetings/2012/0725/0725_2012_218.pdf) (Business Item 2012-218) (approving a joint powers agreement with the Dakota County Regional Railroad Authority and the City of Apple Valley for METRO Red Line station construction funding).

transportation, and environmental services have changed with the evolving dynamics in the region.

Students of urban planning and design will recognize the longstanding connection between urban form and transportation. The Twin Cities metropolitan area is no exception with the success and efficiency of transit being closely tied to the physical form of the urban areas in which transit operates.

The present layout of the core cities of Minneapolis and Saint Paul was greatly influenced by the available transportation at the time of their platting and initial development.<sup>160</sup> The basic framework of these two cities, such as the spacing of streets, the scale of city blocks, and the shape of individual parcels, was directly related to the means of transportation available at that time. Until the 1940s, access by families and individuals to privately owned automobiles was limited and travel by rail and streetcar was much more common. The neighborhoods and commercial centers that developed prior to the 1940s, essentially the core cities of Minneapolis and Saint Paul, were therefore structured around the prevalent means of transportation—transit. By design, both from what city planners of the day created and from what the private market also demanded, the scale and density of Minneapolis and Saint Paul was and remains well suited for transit. Even after the advent of widespread car ownership, it should come as no surprise that these two core cities remain the strongest market for transit.

This strong relationship between transportation and land use persisted after the '40s, albeit in a different form. In the second half of the century, access to private vehicles increased dramatically as their costs relative to other daily expenses decreased. While one can debate the extent to which the investment by the federal government in the U.S. highway network led to versus enabled changes in the development of cities, there is little denying the fact that an automobile-based form of urban development was markedly different than that which preceded it. This has shown itself to be true in the Twin Cities region. The form of the region's first and second-ring suburbs, and now third-ring suburbs, was heavily influenced by the primary mode of access, namely, the automobile.

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160. For a more in-depth discussion on how the evolution of transportation influenced transit design, see John S. Adams, Op-Ed., *Twin Cities Development: A History*, STAR TRIB. (Sept. 7, 2013), <http://www.startribune.com/opinion/commentaries/222747951.html?page=all&prepage=1&c=y#continue>.

The work of the Council, after its creation in 1967, started to effectively manage what were then perceived to be the major urban issues of the day: ensuring that the urban growth at the periphery could be adequately served by wastewater infrastructure, working in partnership with the Minnesota Department of Transportation (MnDOT) to manage a regional program of highway expansion and congestion mitigation, and working to ensure a geographically equitable distribution of major assets and impacts.

Now, at the beginning of the century, the region again sees a changing pattern of urban development that is closely aligned to transportation needs. Urban growth at the periphery has slowed.<sup>161</sup> Part of this is due to the economic headwinds of the last few years, but there has also been a shift in housing and land use that started before the Great Recession. The cities of Minneapolis, Saint Paul, and Bloomington that are largely built out have seen the greatest residential property growth and new building permits in the last three years. Much of this building activity has been in multi-unit apartments or condos, housing products favored by both Generation Y and retiring baby boomers.

These shifting trends in housing preference align with the changing financial fortunes of government. Government at all levels is struggling to fund services and programs at the levels of a decade ago. This is most true in the area of capital funds for infrastructure. A good example of this is MnDOT's new twenty-year State Highway Investment Plan,<sup>162</sup> which forecasts maintenance and needed renewals for existing road infrastructure, as well as new, expanded infrastructure, outstripping MnDOT's projected revenues. This financial picture leaves investments in multi-modal solutions as the most practical and cost effective transportation solution.

While still operating within its original mandate to promote orderly and economical development, the Council is now responding to new demographic and environmental trends that are affecting the region. Chief among the new regional factors that the present Council must face include:

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161. METROPOLITAN COUNCIL RESEARCH, METRO STATS: POPULATION RETURNS TO THE CORE: THE TWINS CITIES METROPOLITAN AREA IN 2011, at 3 (July 2012), available at [http://stats.metc.state.mn.us/stats/pdf/MetroStats\\_Estimates2011.pdf](http://stats.metc.state.mn.us/stats/pdf/MetroStats_Estimates2011.pdf).

162. MINN. DEP'T OF TRANSP., MINNESOTA STATE HIGHWAY INVESTMENT PLAN: 2014–2033 (2013), available at <http://www.dot.state.mn.us/planning/mnship/>.

- changing composition of regional demographics, especially an older and more diverse population;
- financial limitations by government at all levels to accommodate population and job growth by opening up land to development with new infrastructure;
- shifting cultural values that affect homeownership preference and living arrangements;
- increased appreciation of the environmental impacts associated with past forms of urban development; and
- the amenities of other peer regions with which we compete for jobs and a skilled workforce.

Both as a consequence of these factors and because of the Council's desire to proactively address the issues that affect the region, the present Council supports TOD as a rational response to the challenges that will face the seven-county metropolitan area in the coming decades. TOD requires investment in transit infrastructure, which is why the Council, in partnership with the county regional railroad authorities, other transit providers, and the Counties Transit Improvement Board, is planning and building a network of fixed bus and rail "transitways" in heavily traveled corridors.

Transit has been growing as a major contributor to regional mobility. Ridership has grown steadily to nearly 94 million rides in 2012.<sup>163</sup> The Council's goal is to double 2003 regional ridership (74.9 million rides) by 2030 (150 million rides).<sup>164</sup> Key factors driving this growth include the opening of the region's first modern rail transit line in 2004, increased park-and-rides and express service, higher fuel and parking prices, strong employment concentrations in the core cities, and increasing congestion.

Transit is currently moving people through the most heavily traveled, typically congested highway segments during the morning peak hour. On some stretches, express buses carry as many as thirty to forty percent of the people moving inbound during that peak sixty-minute period.<sup>165</sup> In the future, transit must take on an even

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163. *Transit Ridership Continues Climb Over Decade, Governor's Proposed Transit Tax Would Be "Game Changer" for Region*, METROPOLITAN COUNCIL (Feb. 4, 2013), <http://www.metrocouncil.org/News-Events/Transportation/Newsletters/Transit-ridership-continues-climb-over-decade.aspx>.

164. METROPOLITAN COUNCIL, *supra* note 125, at 39.

165. METROPOLITAN COUNCIL, REGIONAL 2030 TRANSPORTATION POLICY PLAN 4

bigger role in moving people in the region. A network of transitways is planned for construction that will allow travel that avoids congested lanes, connects regional employment centers, improves the reliability of riders' trips, and boosts the potential for TOD.<sup>166</sup> Future legislative action will be a key element in determining the pace of construction and scope of the region's transitway network.

The Northstar Commuter Rail Line started operations between downtown Minneapolis and Big Lake in November 2009.<sup>167</sup> The region's first bus rapid transit line, the METRO Red Line (Cedar Avenue) from Lakeville north to the Mall of America with express buses to downtown Minneapolis opened in June 2013. Construction is nearly complete on the METRO Green Line Light Rail which will connect the Saint Paul and Minneapolis downtowns and the University of Minnesota by mid-2014. The METRO Blue Line, already operating between downtown Minneapolis and the Mall of America, has been extended to meet the Northstar Commuter Rail line at the Target Field Station. The METRO Blue Line has shifted from two- to three-car trains in response to the positive public response to the service; METRO Blue Line ridership is significantly higher than originally anticipated. Also, a second Bus Rapid Transit (BRT) line is planned on I-35W, south of downtown Minneapolis, which includes a combination of a high-occupancy toll lane and a priced dynamic shoulder running from Lakeville to downtown Minneapolis.<sup>168</sup>

Nine other potential transitway corridors are under consideration. According to the Council's Transit Master Study, two of them show good potential for light rail: the METRO Green Line Extension in the southwest metro, between Eden Prairie and Minneapolis, and the METRO Blue Line Extension along the Bottineau corridor, connecting the northwest suburbs with downtown Minneapolis.<sup>169</sup> To date, the METRO Green Line Extension has received \$49 million from the Minnesota Legislature

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(2010), available at <http://www.metrocouncil.org/Transportation/Publications-And-Resources/TPP2010Chap1Overview-pdf.aspx>.

166. METROPOLITAN COUNCIL, *supra* note 125, at 10–11.

167. METROPOLITAN COUNCIL, *supra* note 165, at 4.

168. METRO *Orange Line*, METROPOLITAN COUNCIL, <http://www.metrotransit.org/orange-line-project> (last visited Nov. 11, 2013).

169. *Id.*

and will need more than \$79 million in additional state commitments in order to fulfill the state's ten percent share of project costs.<sup>170</sup> Project costs will likely be finalized before the spring of 2014. The METRO Blue Line Extension locally preferred alternative was recently amended into the Council's Transportation Policy Plan, but the project has yet to receive state funding.<sup>171</sup>

Additional transitways being studied include the Rush Line,<sup>172</sup> Red Rock,<sup>173</sup> and Gateway<sup>174</sup> corridors. The Rush Line, the proposed link between Hinckley and Saint Paul, is currently conducting an advanced alternatives analysis to refine options identified in an earlier study. An alternatives analysis for Red Rock was completed, and bus improvements are currently being studied. An alternatives analysis was conducted for the Gateway corridor (I-94 east) and has identified a high-capacity transit investment in BRT or LRT as promising alternatives. Several other transitway corridors are also being evaluated—I-35W North, Highway 36/NE Corridor, Robert St., Highway 65/Central Avenue/BNSF (Bethel/Cambridge), and Midtown—to determine the most appropriate mode and alignment for implementation.<sup>175</sup> Minneapolis and Saint Paul are both considering possible streetcar routes that would connect with the region's other transitways. Without legislative approval of a

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170. See *State Funding Will Keep Green Line Extension (Southwest Light Rail) Project on Schedule*, *supra* note 93; see also MNDOT & METROPOLITAN COUNCIL, GUIDEWAY STATUS REPORT 34 (November 2013), available at <http://www.dot.state.mn.us/govrel/reports/2013/2013GuidewayStatusReport.pdf>.

171. *METRO Blue Line Extension (Bottineau Transitway)*, METROPOLITAN COUNCIL, <http://www.metrocouncil.org/Transportation/Projects/Future-Projects/Bottineau-Transitway.aspx> (last visited Sept. 25, 2013). The "locally preferred alternative" is the mode and route of a transitway selected by the city and county along the proposed line after the conclusion of their evaluation process, known as an "alternatives analysis." The alternatives analysis usually includes thorough review of multiple route options and modes of transit (e.g., bus rapid transit, light rail, street car) before one is selected by involved communities and forwarded to the Metropolitan Council.

172. *Alternatives Analysis Update, RUSHLINE CORRIDOR STUDY*, <http://www.rushline.org/study.html> (last visited Nov. 11, 2013).

173. *Alternatives Analysis Update, REDROCK CORRIDOR*, <http://www.redrockrail.org/transit-study> (last visited Nov. 11, 2013).

174. *About the Gateway Corridor*, GATEWAY CORRIDOR, <http://www.thegatewaycorridor.com/html/about-gateway-corridor.php> (last visited Nov. 11, 2013).

175. METROPOLITAN COUNCIL, *supra* note 165, at 5.

dedicated transit sales tax or other dedicated source, funding is a considerable hurdle for all of these proposed transitways.<sup>176</sup>

The region's mobility—fundamental to its economic vitality and quality of life—is challenged by mounting congestion, rising costs of construction and fuel, and fiscal constraints. Traffic on the region's freeways and expressways is heavy and expected to worsen. By 2040, the seven-county metropolitan area will be home to nearly 900,000 more people than in 2010.<sup>177</sup>

In the past, the answer to meeting travel demand was to build additional highway lanes to meet projected twenty-year needs. This was the vision that built the interstate freeway system and guided subsequent highway development. But experience has shown that there are never enough highway lanes to meet the growing demand for peak-hour urban travel. Instead of preserving future capacity for decades, new highway lanes can fill up in a matter of months.

Compounding the situation is the issue of funding. Even if current and future funding levels were commensurate with those of decades past, there would still not be enough money to “fix” congestion throughout the region's highway system. According to the Council's most recent Transportation Policy Plan, “[a]dding enough highway capacity to meet forecasted 2030 demand over the next 20 years would cost some \$40 billion dollars, an amount that, if funded by the state gas tax alone, would add more than two dollars per gallon to the cost of fuel.”<sup>178</sup>

The lack of adequate and stable funding to support highway and transit programs has been a problem in past years and remains so, despite recent changes in state transportation financing. Beginning with fiscal year 2012, one hundred percent of revenues from the state motor vehicle sales tax are now dedicated to transportation.<sup>179</sup> The challenges posed by continued highway expansion, and the real benefits of transit expansion, have led the Council to embrace TOD as a rational response to the patterns of development discussed above. The next section will discuss how

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176. The following four paragraphs are derived from a previous Metropolitan Council publication. See METROPOLITAN COUNCIL TRANSP. COMM., *supra* note 159.

177. *2040 Forecast In-depth: Region to Add Almost 900,000 Residents*, METROPOLITAN COUNCIL (Apr. 27, 2012), <http://www.metrocouncil.org/News-Events/Planning/News-Articles/2040-forecast-in-depth-Region-to-add-almost-900,00.aspx>.

178. METROPOLITAN COUNCIL, *supra* note 165, at 1.

179. MINN. CONST. art. XIV, §§ 12–13.

TOD works, practically, in the development of transitway projects throughout the region.

*B. Evolution of Transitway Project Implementation and Impacts on TOD Opportunities*

In the past decade, the region made huge strides toward the creation of a twenty-first century transit system. With the opening of the METRO Blue Line in 2004, the region had its first light rail line. The focus at the time was to meet or exceed ridership expectations and prove light rail is a viable form of transportation in this region. The METRO Blue Line did just that, exceeding ridership expectations by thirty percent.<sup>180</sup> This occurred in great part because it connects major destinations such as the Mall of America, the MSP International Airport, and downtown Minneapolis with frequent, high-quality service.

While ridership on the METRO Blue Line has been high, the Council, local units of government, and developers did not initially put the detailed land use plans in place to support further TOD along the line. While station area planning and development has occurred at station areas over time and after the construction of the line, it was not the primary focus during the initial transitway planning phase. Since the opening of the line, local governments along the line have laid the planning groundwork to support TOD along the corridor in the future.

In contrast, public, nonprofit, and private partners have placed an emphasis on TOD and community benefits during the planning of the METRO Green Line. These partners have come together in a number of efforts, including the Central Corridor Funders Collaborative, to create “beyond the rail” benefits. In particular, these partners invested in programs and projects to help the communities, residents, and businesses on the METRO Green Line benefit from the investment.<sup>181</sup>

Similarly, planning on the METRO Green Line Extension is emphasizing the connection between land use and transit planning. To this end, Hennepin County and the five cities along

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180. METROPOLITAN COUNCIL, HIAWATHA LIGHT-RAIL TRANSIT (2011), available at <http://www.metrocouncil.org/Transportation/Publications-And-Resources/HiawathaLRTFacts-pdf.aspx>.

181. See *infra* Part V.B.

the proposed route are working together under the structure of Southwest LRT Community Works:

In order to maximize the public benefits of the investment in the Southwest LRT line, the Hennepin County Board established the Southwest LRT Community Works Program in December, 2009. The Southwest LRT Community Works Program will support a comprehensive, integrated, collaborative planning approach, across multiple municipalities, where land use planning and LRT engineering inform each other to maximize the public benefit and investment in the Southwest LRT line.<sup>182</sup>

In the cases of the METRO Blue Line, METRO Green Line, and the METRO Green Line Extension, there has been a steady progression toward more intentional TOD planning and implementation. In each case, the Council and its partners have learned new models and innovations that will enable it to be even more effective in the future. These lessons can also be applied to future transit corridors such as the METRO Blue Line Extension and Gateway.

As the preceding sections discuss, TOD is a natural response to the transportation and growth patterns and developments in the region. Furthermore, it is playing a critical role in the final construction of the METRO Green Line. The next section will take a step back and analyze TOD more thoroughly, focusing on the question of why a region would adopt TOD at all.

#### IV. WHY TOD?

Building on the last section, this section delves more deeply into why the Council has embraced TOD. Specifically, it addresses the benefits of TOD on a region-wide scale and how the Council has partnered with business interests and the federal government to make TOD a reality in the region.

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182. *Southwest LRT Community Works Program*, SW. TRANSITWAY, [http://www.southwesttransitway.org/index.php?option=com\\_content&view=article&id=75&Itemid=58](http://www.southwesttransitway.org/index.php?option=com_content&view=article&id=75&Itemid=58) (last visited Sept. 23, 2013).

A. *Why TOD on a Region-Wide Scale?*

TOD has many benefits. Because TOD is an integrator of multiple elements (transportation, housing, and jobs), its benefits are wide-ranging. Specifically, TOD benefits can be environmental, social, financial, and cultural. Some benefits are easily quantified while others are more intangible. The Center for Transit-Oriented Development's "Planning for TOD at the Regional Scale" outlines some of the benefits of TOD, including:

- reduced automobile trips and greenhouse gas emissions;
- increased transit ridership and transit agency revenues;
- the potential to increase land and property values near transit;
- improved access to jobs for households of all incomes;
- reduced infrastructure costs for cities and counties, compared to what is required to support sprawling growth;
- reduced transportation costs for residents;
- improved public health due to increased walking and biking; [and]
- creation of a sense of community and place.<sup>183</sup>

Locally, several studies have also demonstrated the benefits of TOD. In 2012, the Itasca Project, an employer-led civic alliance, commissioned a study to quantify the economic benefits of a fully built regional transit system.<sup>184</sup> This report, "Regional Transit System: Return on Investment Assessment," outlines many direct and indirect benefits of a complete transit system in our region. One of these benefits relates to TOD. In particular, this study found that "transit investments and resulting transportation efficiencies will lead to an additional expansion of the regional economy up to \$1.4 billion."<sup>185</sup>

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183. CTR. FOR TRANSIT-ORIENTED DEV., *PLANNING FOR TOD AT THE REGIONAL SCALE 2* (July 29, 2011), *available at* <http://www.reconnectingamerica.org/assets/Uploads/RA204REGIONS.pdf>.

184. ITASCA PROJECT, *REGIONAL TRANSIT SYSTEM: RETURN ON INVESTMENT ASSESSMENT* (Nov. 30, 2012), *available at* <http://www.theitascaproject.com/Transit%20ROI%20exec%20summary%20Nov%202012.pdf>.

185. *Id.* at 6.

The University of Minnesota's Transitway Impacts Research Program<sup>186</sup> has produced academic research that analyzes and quantifies the benefits of transit and TOD in the region. In particular, a 2010 report showed that TOD has been catalyzed by the METRO Blue Line.<sup>187</sup> In fact, 5400 new housing units had been completed or were currently under construction along the line by 2005.<sup>188</sup> In addition, permits had been approved to build 7000 additional units.<sup>189</sup> This amount of TOD exceeded expectations; there was more new construction within the first year of service than had been projected for the next twenty years. Numbers compiled by the cities of Minneapolis and Bloomington, in conjunction with the Council, show nearly 15,000 housing units constructed, in construction, or permitted along the METRO Blue Line through the end of 2012.<sup>190</sup>

Additional research from the University of Minnesota showed that not only is TOD occurring due to transit investments, but the marketplace is responding with increased property values.<sup>191</sup> This study found that homeowners near METRO Blue Line station areas saw their average single-family home values increase by an average of more than \$5000 between 2004 and 2007, controlling for market conditions.<sup>192</sup>

The investment in the METRO Green Line between downtown Minneapolis and downtown Saint Paul has also begun to show economic benefits a year before service commences. As of May 2013, the Council has documented \$1.7 billion in private and public investment in TOD near the METRO Green Line station

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186. *Transitway Impacts Research Program*, U. MINN. CENTER FOR TRANSP. STUD., <http://www.cts.umn.edu/Research/featured/transitways/> (last modified Aug. 20, 2013).

187. EDWARD G. GOETZ ET AL., UNIV. OF MINN. CTR. FOR TRANSP. STUDIES, *THE HIAWATHA LINE: IMPACTS ON LAND USE AND RESIDENTIAL HOUSING VALUE* (Feb. 2010), *available at* <http://www.cts.umn.edu/Publications/ResearchReports/pdfdownload.pl?id=1390>.

188. *Id.* at 70.

189. *Id.*

190. Karen Lyons et al., *Estimates of Housing Units 2* (Oct. 8, 2012) (on file with the Metropolitan Council).

191. *See* KATE KO & XINYU CAO, UNIV. OF MINN. CTR. FOR TRANSP. STUDIES, *IMPACTS OF THE HIAWATHA LIGHT RAIL LINE ON COMMERCIAL AND INDUSTRIAL PROPERTY VALUES IN MINNEAPOLIS* (June 2010), *available at* <http://www.cts.umn.edu/Publications/ResearchReports/reportdetail.html?id=1922>; *see also* GOETZ ET AL., *supra* note 187, at 35–64.

192. GOETZ ET AL., *supra* note 187, at 49.

areas. These development projects will result in an additional 13,000 housing units along the line.<sup>193</sup>

*B. Federal Government Directions and Limitations*

The federal government has shown significant support for enhanced regional coordination and more robust regional planning. Shortly after assuming office in 2009, President Obama and his administration sponsored the Sustainable Communities Initiative with the goal of coordinating federal policies and resources that support building more sustainable communities.<sup>194</sup> As a model for planning and development that promotes an efficient use of resources and more sustainable urban growth, TOD is aligned with the Sustainable Communities Initiative.

*1. Sustainable Communities Initiative*

In 2009, under the charge of the Sustainable Communities Initiative, HUD, the U.S. Department of Transportation, and the U.S. Environmental Protection Agency began to work together in new ways.<sup>195</sup> Coordinating across bureaucratic silos to better align the federal programs for housing, transportation, and environmental protection, the Partnership for Sustainable Communities supports communities across the country as they build out options for transit and affordable housing while lowering transportation costs and protecting the environment. The Partnership is guided by six livability principles that support a strong economy, thriving communities, and a future of prosperity:

- Provide more transportation choices
- Promote equitable, affordable housing
- Enhance economic competitiveness
- Support existing communities
- Coordinate and leverage federal policies and investment
- Value communities and neighborhoods<sup>196</sup>

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193. METROPOLITAN COUNCIL, CENTRAL CORRIDOR PROJECT OFFICE DATA SETS (on file with the Council).

194. Office of Urban Affairs, *Urban Policy Working Group*, WHITE HOUSE, <http://www.whitehouse.gov/administration/eop/oua/initiatives/working-groups> (last visited Sept. 25, 2013).

195. *About Us*, PARTNERSHIP FOR SUSTAINABLE COMMUNITIES, <http://www.sustainablecommunities.gov/aboutUs.html> (last visited Sept. 25, 2013).

196. *Six Livability Principles*, U.S. DEP'T HOUSING & URBAN DEV.,

In coordination with the Partnership for Sustainable Communities, HUD opened up a new office, the Office of Sustainable Housing and Communities, in 2010.<sup>197</sup> This office oversees two primary grant programs, the Regional Planning Grant Program and the Community Challenge Grant Program. In 2010, the Twin Cities Region partnered across jurisdictions and sectors to apply for and win a \$5 million Sustainable Communities Regional Planning Grant. The Council, as the region's metropolitan planning agency, was awarded the grant on behalf of the region—an initiative called Corridors of Opportunity.<sup>198</sup> This grant was coupled with substantial funding from the Living Cities coalition, which is discussed later in this article.<sup>199</sup>

## 2. Federal Funding Requirements

Federal funding is vital to implementation of most substantial transitway projects. The Council partners with the Federal Transit Administration (FTA) to implement transit projects. Via its funding of transit projects, the FTA provides guidance and regulates most transit providers across the country. Under current arrangements, federal funding accounts for up to fifty percent of the capital costs for New Starts projects<sup>200</sup> or fixed guideway projects like light rail and bus rapid transit.<sup>201</sup> The balance of capital costs for these New Starts projects comes from local sources such as the Counties

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[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/sustainable\\_housing\\_communities/Six\\_Livability\\_Principles](http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities/Six_Livability_Principles) (last visited Sept. 25, 2013).

197. U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF SUSTAINABLE HOUSING AND COMMUNITIES: HELPING COMMUNITIES REALIZE A MORE PROSPEROUS FUTURE 2 (Nov. 2012), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=2012OSHCCompRpt.pdf>.

198. *Background*, CORRIDORS OPPORTUNITY, <http://corridorsofopportunity.org/about/background> (last visited Sept. 25, 2013).

199. See *infra* Part V.B.1.

200. The New Starts Program is run by the U.S. Department of Transportation, Federal Transit Administration. See *Introduction to New Starts*, FED. TRANSIT ADMIN., [http://www.fta.dot.gov/12304\\_2608.html](http://www.fta.dot.gov/12304_2608.html) (last visited Nov. 12, 2013). The program funds major capital investments in public transit such as light rail, commuter rail and bus rapid transit. *Id.* The METRO Blue and Green Lines as well as Northstar Commuter rail are all recipients of fifty percent federal funding via these projects. See *Central Corridor LRT: St. Paul-Minneapolis, Minnesota*, FED. TRANSIT ADMIN. 1 (Nov. 2012), [http://www.fta.dot.gov/documents/MN\\_St\\_Paul-Minneapolis\\_Central\\_Corridor\\_Profile\\_FY14.pdf](http://www.fta.dot.gov/documents/MN_St_Paul-Minneapolis_Central_Corridor_Profile_FY14.pdf).

201. See *Introduction to New Starts*, *supra* note 200.

Transit Improvement Board, Regional Transit Capital, state general appropriations, and contributions from cities and counties.

As much as federal funds are critical to the implementation of new transitways, federal involvement also has implications for how local, public entities, such as the Council, pursue transit-oriented development. In recent years, the FTA has had an evolving stance on joint-development and transit-oriented development which has increasingly become more supportive of these two areas. The scoring process by which the FTA evaluates the effectiveness of proposed New Starts projects places increasing weight on anticipated land use and economic development benefits. In 2013, the FTA proposed a revised policy on joint development that creates greater opportunities for local transit agencies to use federal funds in developing facilities that have joint-use potential.<sup>202</sup>

Federal involvement in transitway projects in the Twin Cities has some significant impacts on how the Council pursues TOD. First, the federal government requires that the environmental review for projects using federal funds not be segmented. The approval process for a New Starts project lasts a decade, and specific development opportunities may not become clear until well after the environmental review process commences.<sup>203</sup> This has a chilling effect on acquiring property by using federal funds for potential joint use or transit-oriented development, thus stunting TOD in the early phases of a project.

Second, when a property has been acquired with federal funds, there are strict processes in place which limit how that property can be disposed of or redeveloped.<sup>204</sup> These restrictions have the laudable outcomes of ensuring that the federal financial interest is preserved and that a transparent public process is followed,

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202. FED. TRANSIT ADMIN., FEDERAL TRANSIT ADMINISTRATION GUIDANCE ON JOINT DEVELOPMENT (2013), available at [http://www.fta.dot.gov/documents/2013-03-07\\_Proposed\\_Joint\\_Development\\_Circular\\_\(FINAL\)\\_2\).pdf](http://www.fta.dot.gov/documents/2013-03-07_Proposed_Joint_Development_Circular_(FINAL)_2).pdf).

203. *The Environmental Process*, FED. TRANSIT ADMIN. (Apr. 26, 2006), [http://www.fta.dot.gov/15154\\_224.html](http://www.fta.dot.gov/15154_224.html).

204. See, e.g., 49 U.S.C. § 5334(h)(4) (2012) (governing the transfer of federally assisted assets that no longer are needed); 49 C.F.R. § 18.31 (2012) (governing disposition and sale of real property acquired with U.S. Department of Transportation funding); FED. TRANSIT ADMIN., MASTER AGREEMENT 119 (2012), available at <http://www.fta.dot.gov/documents/19-Master.pdf> (providing terms and conditions relating to real property acquired with FTA assistance).

however, they are not conducive to responding quickly to the market or accounting for local land use objectives.

Because the region's transitway projects necessarily require federal financial participation, the Council's integration of development with new transitways is restricted by prevailing federal policy and regulations. These federal limitations, along with the Council's statutory limitations, influence the Council's participation in TOD, both from a legal as well as practical perspective.

### C. *Private Sector Needs and Expectations*

There are a number of barriers to TOD for the private sector. In some areas, outdated or complicated land-use zoning codes inhibit the construction of mixed-use or specific land uses within close proximity of transit.<sup>205</sup> In addition to regulatory barriers to TOD, there are significant cost barriers for private sector developers. Primary among these cost barriers is parking.<sup>206</sup> As the antithesis to TOD, which encourages transit and walking as travel modes, large surface lots for parking are typically discouraged in favor of structured or underground parking—both of which have smaller footprints but far exceed the costs for surface parking. The conclusion from a University of Minnesota study on TOD that interviewed developers and business leaders found that while TOD is possible and in demand in this metropolitan area, single-use, low-density, greenfield development is still easier.<sup>207</sup> As a result, public investment is necessary to help the private sector get TOD projects off the ground.

In December of 2010, the Central Corridor Funders Collaborative funded a report on the gaps between public TOD goals and the private sector response.<sup>208</sup> The Central Corridor TOD

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205. See SACRAMENTO REG'L TRANSIT DIST., BARRIERS TO TRANSIT ORIENTED DEVELOPMENT 102, available at <http://www.sacrt.com/realestate/Real%20Estate%20Docs/Transit%20for%20Livable%20Communities/Section%207.pdf>.

206. Andrew Guthrie, *University of MN Research Interviews Twin Cities Developers and Business Leaders on TOD*, CORRIDORS OPPORTUNITY (Jan. 24, 2013), [http://www.corridorsofopportunity.org/Corridors\\_News/university-mn-research-interviews-twin-cities-developers-and-business-leaders-tod](http://www.corridorsofopportunity.org/Corridors_News/university-mn-research-interviews-twin-cities-developers-and-business-leaders-tod).

207. *Id.*

208. CTR. FOR TRANSIT-ORIENTED DEV., CENTRAL CORRIDOR TOD INVESTMENT FRAMEWORK: A CORRIDOR IMPLEMENTATION STRATEGY (Dec. 2010), available at [http://www.funderscollaborative.org/sites/default/files/pdfs/Central\\_Corridor](http://www.funderscollaborative.org/sites/default/files/pdfs/Central_Corridor)

Investment Framework analyzed the markets along the under-construction light rail line, categorizing them as high, medium, or low based on developer perceptions of the market strength. In conducting a feasibility analysis of development in each of these markets, the report found that even in high markets TOD projects would need to charge higher rents than the existing and standard rates.<sup>209</sup> This dynamic was alleviated somewhat by the impact of transit and other infrastructure improvements but remained a major barrier in the low markets.<sup>210</sup> As a result, heightened public investment in TOD is necessary in low-market areas along transitways for these major infrastructure projects to help provide equitable access and opportunity for all.

TOD has real benefits for regions like the Twin Cities and, as a result, the Council has embraced the concept as it looks toward the future of the region. As discussed above, the federal government has played a critical role in providing for TOD and the Council has seized federal opportunities as they have arisen. The Council has also worked closely with private partners in making TOD-style growth and planning a success. The next section delves more deeply into how the Council actually goes about implementing TOD on a region-wide scale.

## V. STRATEGIES, PROGRAMS, AND TOOLS FOR ADVANCING TOD

The article's final section analyzes the "how" of TOD—namely, how the Council has and will implement this innovative transportation-planning concept. From existing programs to new initiatives, the Council is embracing TOD in a variety of ways. But, the Council is also creating a TOD Strategic Action Plan, in order to move forward on TOD in an organized and sensible way.

### A. *Existing Programs or Tools with Applications to TOD*

#### 1. *LCA-TOD Grant Program*

The Livable Communities Act (LCA),<sup>211</sup> enacted in 1995, created a voluntary, incentive-based program to address the

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Investment\_Framework\_report.pdf.

209. *Id.* at 31.

210. *Id.* at 27–35.

211. Metropolitan Livable Communities Act, art. 1, § 1, 1995 Minn. Laws

region's affordable and lifecycle housing needs and to implement compact and efficient development.<sup>212</sup> The Livable Communities Act established the Livable Communities Fund, which includes four accounts<sup>213</sup> to which eligible communities could apply to fund various projects:

- Tax Base Revitalization Account (TBRA)—a fund to clean up brownfields for redevelopment, job creation, and affordable housing. The Council has awarded 360 TBRA grants through January 2013 for a total of over \$98 million.
- Livable Communities Demonstration Account (LCDA)—a fund to support development and redevelopment that links housing, jobs, and services while demonstrating efficient and cost-effective use of land and infrastructure. The Council has awarded 256 LCDA grants through 2012 for a total of over \$101 million.
- Local Housing Incentives Account (LHIA)—a fund to produce and preserve affordable housing choices for households with low to moderate incomes. There have been 147 grants awarded through 2012 for a total of \$27 million.<sup>214</sup>

The Livable Communities Act directs the Council to develop criteria for the use of the funds, guidelines for projects that will be considered for funding, and guidelines governing who may apply for funding.<sup>215</sup> Specifically, the statute indicates that guidelines governing the Livable Communities Demonstration Account program must ensure that projects eligible for funding will:

- (1) interrelate development or redevelopment and transit;
- (2) interrelate affordable housing and employment growth areas;
- (3) intensify land use that leads to more compact development or redevelopment;

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212. See METROPOLITAN COUNCIL, METROPOLITAN LIVABLE COMMUNITIES FUND: REPORT TO THE MINNESOTA STATE LEGISLATURE (June 2008).

213. The fourth account, Inclusionary Housing Account, is currently unfunded and will remain so through 2014.

214. METROPOLITAN COUNCIL, 2013 ANNUAL LIVABLE COMMUNITIES FUND DISTRIBUTION PLAN 1 (2013), available at <http://www.metrocouncil.org/Communities/Publications-And-Resources/Annual-Livable-Communities-Fund-Distribution-Plan.aspx>.

215. MINN. STAT. § 473.25 (2012).

(4) involve development or redevelopment that mixes incomes of residents in housing, including introducing or reintroducing higher value housing in lower income areas to achieve a mix of housing opportunities; or

(5) encourage public infrastructure investments which connect urban neighborhoods and suburban communities, attract private sector redevelopment investment in commercial and residential properties adjacent to public improvement, and provide project area residents with expanded opportunities for private sector employment.<sup>216</sup>

To be eligible for Livable Communities Act funding, communities must negotiate affordable and lifecycle housing goals with the Council, incorporate land uses to support those goals into their local comprehensive plans, and develop a Housing Action Plan to accomplish those goals.<sup>217</sup> In the 2008 decennial comprehensive plan update process, communities incorporated and addressed affordable housing needs for the 2011–2020 timeframe.<sup>218</sup> In 2013, 94 of the region's 186 communities participate in the program and are eligible to compete for funding from all three funded Livable Communities Act accounts.

The enabling legislation identified sources of funding for each account. The Tax Base Revitalization Account is funded by the fiscal disparities property tax levy up to an amount not to exceed \$5 million annually. The Livable Communities Demonstration Account is funded by a property tax levy established in the Council's annual budget, with an amount that varies from year to year. The Local Housing Incentives Account funding includes \$500,000 from the Livable Communities Demonstration Account plus \$1 million annually from the Council's general fund.

The Council has long collaborated with other agencies seeking to promote similar goals for each of the accounts. Through a shared application with Minnesota Housing, communities can

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216. *Id.* § 473.25(b).

217. *Livable Communities Program Facts*, METROPOLITAN COUNCIL, <http://metro council.org/About-Us/Facts/CommunitiesF/FACTS-Livable-Communities.aspx> (last visited Sept. 25, 2013).

218. Information in this paragraph and in the following three paragraphs are derived from two previous Metropolitan Council publications. *See* METROPOLITAN COUNCIL, METROPOLITAN LIVABLE COMMUNITIES FUND: 2008 ANNUAL FUND DISTRIBUTION PLAN (Apr. 2008); METROPOLITAN COUNCIL, *supra* note 212.

apply for funding to produce affordable multi-family rental housing from both the Livable Communities Act and Minnesota Housing funding programs. The Tax Base Revitalization Account funding is coordinated with related programs at the Minnesota Pollution Control Agency, the Minnesota Department of Employment and Economic Development, and Hennepin and Ramsey Counties.

The application process is a competitive process: each year, applicants compete with other eligible projects for funding. In some years, application requests outstrip the funding availability, but eligible projects are able to seek funding in following years. A team of Council staff reviews and scores Livable Communities Demonstration Account and TOD applications for each funding cycle, providing an initial ranking to the Livable Communities Advisory Committee (LCAC). The LCAC, which is comprised of professionals from a range of disciplines, including development, local government, transportation, finance, site design, and the environment, reviews and forwards recommendations for funding to the Council's Community Development Committee, and then to the full Council for action.

Livable Communities Act grants have long funded projects that meet the characteristics of TOD. One such project is Frogtown Square, formerly called Dale Street Village, which received \$1,050,000 in funding from the Council in 2007. Completed in 2011, Frogtown Square is a four-story development adjacent to Dale Street Station on the METRO Green Line. The project features underground parking, approximately 21,000 square feet of commercial space on the first floor and forty-six units of affordable housing on the second, third and fourth floors targeted toward active seniors. The commercial component of the project now includes the Daily Diner, a community-based restaurant that provides job training opportunities for local residents. The building sets aside more than 5000 square feet of commercial space for retail amenities leased to local residents and community gathering places.

The success of Livable Communities Act grant funding in places like Frogtown Square led the Council to add TOD as an area of focus within the funded accounts. The Council first identified the advancement of TOD along existing and emerging transitways a priority in 2011. To support this priority, in December of 2011,

the Council amended the 2011 Fund Distribution Plan to add a new category for TOD awards.<sup>219</sup> The economic downturn of the previous years resulted in the delay or abandonment of previously funded projects through the regular LCA programs. These project delays or abandonments caused grantees to relinquish nearly \$30 million in funding, leaving fund balances beyond the annual levies of nearly \$20 million for the Livable Communities Demonstration Account and \$12.5 million for the Tax Base Revitalization Account.<sup>220</sup> The Council took action to create a new LCA-TOD program fund, which initially utilized those relinquished funds for both Livable Communities Demonstration Account and Tax Base Revitalization Account grants. The Council continues to fund the program through an increase in the Livable Communities Demonstration Account levy and by making funds available from the Council's general fund.<sup>221</sup>

This category was developed for projects located within an identified set of TOD-eligible areas along light rail, commuter rail, and bus rapid transit corridors in the region. The program promotes moderate- to high-density development projects located within walking distance of a major transit stop, with development that typically includes the features of TOD: a mix of land uses; pedestrian-friendly streets and public spaces; physical orientation to the transit stations or stops; and convenient, abundant access to affordable transportation choices and the opportunity to live active lives for people of all ages, backgrounds, and abilities.<sup>222</sup> By focusing on the TOD-eligible areas, the Council has sought to incentivize development within a ten-minute walk to those transit stops, "maximizing access to transit for residents and workers across the Region."<sup>223</sup>

Within the category of LCA-TOD awards, communities may apply for funding through the Livable Communities Demonstration Account fund or the Tax Base Revitalization

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219. METROPOLITAN COUNCIL CMTY. DEV. COMM., COMMITTEE REPORT (Dec. 14, 2011), *available at* [http://councilmeetings.metc.state.mn.us/council\\_meetings/2011/121411/1214\\_2011\\_351.pdf](http://councilmeetings.metc.state.mn.us/council_meetings/2011/121411/1214_2011_351.pdf) (Business Item 2011-351).

220. *Id.*

221. *See* METROPOLITAN COUNCIL, *supra* note 214, at 1.

222. *Id.* at 2.

223. *Transit-Oriented Development Grants*, METROPOLITAN COUNCIL, <http://www.metrocouncil.org/Communities/Services/Livable-Communities-Grants/Transit-Oriented-Development.aspx> (last visited Dec. 21, 2013).

Account fund. Eligible activities may vary from year to year as the Council's priorities shift or new needs are identified by communities. As identified in 2013, eligible activities include the following:

- LCDA—site assembly, placemaking activities, and publically-accessible [sic] infrastructure. The grant-funded activities should support development that is connected to transit, intensifies land uses, connects housing and employment, and provides a mix of housing and affordability.
- TBRA—investigation and cleanup of polluted land. TBRA grant-funded activities should catalyze development that enhances the tax base of the recipient municipality while promoting job retention or job growth and/or the production of affordable housing.<sup>224</sup>

The Livable Communities Demonstration Account-TOD criteria and evaluation process are coordinated with state agency policies and initiatives so that funding consideration is given to projects that include or demonstrate:

- strategies to provide a continuum of affordable housing (Minnesota Housing);
- [projects located in Transit Improvement Areas (TIAs) designated by DEED, or TIA-eligible areas];
- Green Communities criteria for building affordable housing (Minnesota Housing);
- the potential benefit of major state transportation investments ([MnDOT]);
- the Minnesota Sustainable Building Guidelines to encourage more sustainable building practices (Minnesota Departments of Administration and Commerce);
- the land use goals of Project 2030, an initiative that identifies the impact of the aging of the baby boom generation and supports lifecycle housing (Minnesota Department of Human Services); and
- implementation of policies and requirements of the Minnesota Pollution Control Agency for surface water management.<sup>225</sup>

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224. *Id.*

225. METROPOLITAN COUNCIL, *supra* note 214, at 19.

In its first round of Livable Communities Demonstration Account-TOD funding, the Council awarded \$2,000,000 in funds to the Midway Pointe project (called Episcopal Homes in application materials), amongst others.<sup>226</sup> The project, which is currently under construction, will include 170 senior rental housing units for a range of income levels and health needs, 50 affordable independent units, 60 catered living units, 36 skilled nursing facility units, and 24 memory care units next to Fairview Station on the METRO Green Line.<sup>227</sup> The multistory building will also feature separate entrances for each of the housing components, underground parking, and a neighborhood coffee shop on the corner.<sup>228</sup> Within the building will be “The Plaza,” a center for services and amenities including a day spa, therapy pool, exercise room, bank, cafe, gift shop, classrooms, fireplace lounges, and indoor and outdoor gardens.<sup>229</sup> The campus is just across Lynnhurst Avenue from Iris Park, with its pond, fountain, and pathways. This project includes improvements to the north end of Iris Park and engineering of improvements to Lynnhurst Avenue that will benefit both tenants and the entire neighborhood as the city works toward creating a truly livable TOD community.<sup>230</sup>

2. *Land Holdings with Potential for Development and Partnerships with Other Local Authorities*

The Council is a significant property owner in the region. As discussed above, the Council’s several thousand real estate holdings have an estimated value of \$2.15 billion. The Council’s land holdings relate directly to the services authorized by its statutory powers. Properties that the Council owns in fee title include transit centers, park-and-rides, bus garages, light rail maintenance and operations facilities, wastewater treatment plants, office buildings for Council staff, and several units of multi-family housing complexes as well as single-family homes. Beyond fee title,

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226. METROPOLITAN COUNCIL, METROPOLITAN LIVABLE COMMUNITIES ANNUAL REPORT TO THE MINNESOTA STATE LEGISLATURE 18 (2012), available at <http://www.metrocouncil.org/getattachment/c7b2038c-4db8-4795-be70-df11698083d8/>.aspx.

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

the Council also owns a large number of easements for its wastewater pipes, regional trails, right-of-way for transit purposes such as light rail tracks, and for transit facilities where other entities are the fee owner. In addition to the fee title and easements, the Council retains other property rights in the form of leases, covenants, and grant agreements, the latter being particularly common for regional parks where the land is held by cities and counties but where the use is restricted on the basis of regional funds that were used to acquire said assets.

Despite these substantial property holdings, there are only a limited number of properties that the Council presently has in its portfolio which are suitable for transit-oriented development. The Council has focused its property acquisition to its traditional activities of providing and operating transit, environmental, recreation, and housing services. Properties that the Council now owns and which are suitable for transit-oriented development were originally acquired for these core services.

A prime example of this is the nearly ten-acre site that the Council owns at the intersection of Snelling Avenue and I-94 in Saint Paul. This property was originally part of the privately owned Twin Cities Rapid Transit Company, which operated streetcar and then bus service in Minneapolis and Saint Paul. The assets of the failing Twin Cities Rapid Transit Company, by then the Twin Cities Lines Company, were transferred to the publicly held Metropolitan Transit Commission, the predecessor to today's Metro Transit, via action by the state legislature in 1970. One of these assets was a former streetcar and then bus garage at Snelling and I-94. Use of the site by transit was wound down in 2002 when the bus garage was demolished.<sup>231</sup> Although the property no longer has a clear transit purpose, it is fortuitously located near the Snelling Avenue Station on the new METRO Green Line, which will begin service in June 2014. This property no longer fulfills its initial transit purpose; however, its redevelopment has the potential to contribute to the wider regeneration that the METRO Green Line is helping to spur along University Avenue. The Council has begun exploring a

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231. See Mary Lynn Smith, *St. Paul Getting New Metro Transit Garage*, STAR TRIB. (Minneapolis), Oct. 23, 1998, at 3B, available at 1998 WLNR 6332174.

partnership with the City of Saint Paul regarding the development of this site.<sup>232</sup>

The scale and redevelopment opportunity presented by the Snelling Site is rare among Council assets. The Snelling Site is, however, indicative of how the Council can strategically use its property assets to support wider regional objectives such as encouraging the creation of new housing and jobs that maximize the benefits and efficiency of regional infrastructure. The Council owns additional remnant properties adjacent to the METRO Blue and Green LRT lines which, if strategically released for redevelopment, can help realize local and regional development objectives.

The Council's portfolio of properties that can support jobs and housing adjacent to transit is likely to grow. The Council has additional transitways planned, most notably the METRO Green Line Extension (Southwest LRT) to Eden Prairie and the METRO Blue Line Extension (Bottineau LRT) to Brooklyn Park. Each of these projects involves the acquisition of land for right-of-way, stations, and park-and-rides. Once the project needs have been satisfied, it is not uncommon for remnant parcels to remain. These excess properties, as well as the joint development opportunities that exist at LRT station and park-and-rides, present additional instances where the Council may be able to use its property portfolio to maximize the efficiency of transit infrastructure and support effective land use.

*B. New and Innovative Initiatives that the Council Is Pursuing*

*1. Corridors of Opportunity*

In 2010, the Council was awarded a \$5 million Sustainable Communities Regional Planning Grant from HUD's Office of Sustainable Housing and Communities.<sup>233</sup> As a part of the Obama Administration's Sustainable Communities Initiative,<sup>234</sup> the grant

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232. *Request for Information: Snelling Transit-Oriented Development Opportunity*, METROPOLITAN COUNCIL, (June 5, 2013), <http://metro council.org/News-Events/Transportation/Temp-files/Snelling-Station-Area-FRI.aspx>.

233. Brian Johnson, *HUD Awards \$5 Million Planning Grant to Met Council*, FIN. & COM. (Oct. 14, 2010), <http://finance-commerce.com/2010/10/hud-awards-5-million-planning-grant-to-met-council/>.

234. See Office of Urban Affairs, *supra* note 194.

supports integrated and coordinated planning for the development of transit infrastructure and affordable housing.<sup>235</sup> At the same time, The Saint Paul Foundation and the McKnight Foundation applied for and won funding from the Living Cities Integration Initiative—a package of nearly \$16 million in loans and grants.<sup>236</sup> In 2011, the two grants were merged into one program to form “Corridors of Opportunity.”<sup>237</sup>

As a broad-based initiative, Corridors of Opportunity is focused on accelerating the build-out of a regional transit system for the Twin Cities Metropolitan Region within an equitable economic development framework.<sup>238</sup> That is, both the development of the transit system and TOD will occur in ways that advance regional economic competitiveness and “ensure people of all incomes and backgrounds share in the resulting opportunities.”<sup>239</sup> Corridors of Opportunity funds projects along seven existing, under construction, or planned transitway corridors.<sup>240</sup> The Council’s “work with the stakeholders along these corridors encompasses nearly two dozen planning and implementation activities that promote:

- Transit-oriented development
- Affordable housing
- Small business support and investment
- Community outreach and engagement
- Demonstration projects, tools and policy studies.<sup>241</sup>

The Council’s overall aim for Corridors of Opportunity is to support development along transitways that advances sustainability, equity, and economic competitiveness. The Council understands sustainability through the lenses of economic, environmental, and

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235. *Sustainable Communities Regional Planning Grants*, U.S. DEP’T HOUSING & URBAN DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/sustainable\\_housing\\_communities/sustainable\\_communities\\_regional\\_planning\\_grants](http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities/sustainable_communities_regional_planning_grants) (last visited Sept. 25, 2013).

236. *See generally The Integration Initiative*, LIVING CITIES, <http://www.livingcities.org/integration/> (last visited Sept. 25, 2013) (providing information on the theory, principles, and practice of the initiative and links to more information).

237. *See Background*, *supra* note 198.

238. *About the Initiative*, CORRIDORS OPPORTUNITY, <http://www.corridorsofopportunity.org/about-initiative> (last visited Sept. 25, 2013).

239. *Id.*

240. *Id.*

241. *Id.*

equity concerns in order to meet present needs without compromising the ability of future generations to meet their needs. Sustainable development seeks to balance innovative solutions for the future while honoring continuity and the unique histories of individual communities. Through Corridors of Opportunity, the Council's pursuit of equity focuses on benefits for all but is particularly concerned with the wellbeing of low-income households, which are disproportionately made up of people of color, people with disabilities, and new Americans. The Council is guided by the idea that the Twin Cities region is made stronger when all people live in communities that provide them access to opportunities for success, prosperity, and quality of life. Economic competitiveness contains two important dimensions: the idea that the Twin Cities region must compete in the global economy, while local people, businesses, and communities also thrive and benefit.

In order to achieve the three primary outcomes of the work, the Council has three high-level strategies for its work: community engagement, integrated planning, and aligned resources. Underpinning all of this, Corridors of Opportunity partners share a commitment to carrying out the work with a set of guiding principles that include transparency, collaboration, and innovation.<sup>242</sup>

The guiding principles for the initiative promote important work both within Corridors of Opportunity-funded projects as well as among all the partner agencies and organizations. Following the leadership of the Obama Administration in establishing the Partnership for Sustainable Communities, Corridors of Opportunity partners are working to integrate their work and coordinate across professional and organizational silos.<sup>243</sup> Additionally, the Council promotes efforts across the region to diversify decision-making tables and the decision-making process to include both professional and community-based perspectives that have been historically left out or uncoordinated.<sup>244</sup> These efforts

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242. *Vision and Principles*, CORRIDORS OPPORTUNITY, <http://www.corridorsofopportunity.org/about/vision-and-principles> (last visited Sept. 25, 2013).

243. ELLEN SHELTON, CORRIDORS OF OPPORTUNITY: EARLY EVIDENCE OF SYSTEMS CHANGE 4 (Nov. 2011), *available at* <http://www.corridorsofopportunity.org/sites/default/files/CoOMaterials-11-30-2011-EvidenceSystemChange.pdf>.

244. ELLEN SHELTON & BRIAN PITTMAN, CORRIDORS OF OPPORTUNITY: SECOND YEAR PROGRESS REPORT 9 (Mar. 2013), *available at*

include working across jurisdictional boundaries and for individuals and communities to see beyond themselves and view their communities as corridors and as a part of a larger regional system.<sup>245</sup>

*a. Multi-Sector Collaboration*

As a partnership between the public, philanthropic, and private sectors from the beginning, Corridors of Opportunity is influenced by public, private, nonprofit, and philanthropic sector leaders and organizations. The Corridors of Opportunity Initiative is governed by a twenty-six-member policy board made up of top leadership from these sectors.

Along with the lead foundations, the Saint Paul Foundation and the McKnight Foundation, there are a number of nonprofit influences. These include the organizations from the Community Engagement Team: the Alliance for Metropolitan Stability, Nexus Community Partners, and the Minnesota Center for Neighborhood Organizing.<sup>246</sup> In addition to the Community Engagement Team—and the smaller, grassroots and community-based organizations from throughout the region that they represent—there are representatives from Twin Cities Local Initiatives Support Corporation, Metropolitan Economic Development Association, Twin Cities Community Land Bank, Metropolitan Consortium of Community Developers, Summit Academy OIC, the Business Resources Collaborative, the Family Housing Fund, and the Neighborhood Development Center.<sup>247</sup>

In addition, Corridors of Opportunity has partners from the private sector, including the Minneapolis and Saint Paul Regional Chambers of Commerce and some of their respective members, as well as the Itasca Project.

From the public sectors, the policy board has members from state agencies as well as county and municipal governments from across the region, including Minnesota Department of

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[http://www.corridorsofopportunity.org/sites/default/files/LivingCitiesCorridorsOfOpportunity-2ndYear\\_3-13.pdf](http://www.corridorsofopportunity.org/sites/default/files/LivingCitiesCorridorsOfOpportunity-2ndYear_3-13.pdf).

245. *The Opportunities*, CORRIDORS OPPORTUNITY, <http://www.corridorsofopportunity.org/about/opportunities> (last visited Sept. 25, 2013).

246. *Policy Board*, CORRIDORS OPPORTUNITY, <http://www.corridorsofopportunity.org/partners/policy-board> (last visited Sept. 25, 2013).

247. *Id.*

Employment and Economic Development (DEED); MnDOT; Minnesota Housing Finance Agency; Ramsey, Hennepin, and Washington Counties; the Counties Transit Improvement Board (CTIB); and the cities of Apple Valley, Eden Prairie, Minneapolis, and Saint Paul.<sup>248</sup>

The broad participation from leaders and organizations working toward greater equity, economic competitiveness, and sustainability across the region has influenced the articulation of a definition and principle of equitable development for the region. The principle of equitable development is:

to ensure that everyone regardless of race, economic status, ability or the neighborhood in which they live has a access [sic] to essential ingredients for environmental, economic, social and cultural well-being including: living wage jobs, entrepreneurial opportunities, viable housing choices, public transportation, good schools, strong social networks, safe and walkable streets, services, parks and access to healthy food.<sup>249</sup>

*b. Central Corridor Funders Collaborative*

The Central Corridor Funders Collaborative (CCFC) is a group of local and national funders working to leverage the opportunities offered by the new METRO Green Line light rail transit line that runs between downtown Saint Paul and downtown Minneapolis. As partners with the Council and Corridors of Opportunity, CCFC is channeling investment into the corridor before, during, and after construction to bolster regional transportation planning, TOD, and the resulting benefits for low-income residents.<sup>250</sup>

As a nationally recognized and innovative approach to community and economic development, CCFC has an investment strategy that focuses on corridor-wide strategies to promote affordable housing, transit-oriented places, a strong local economy,

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248. *Id.*

249. CORRIDORS OF OPPORTUNITY, DEFINITION AND PRINCIPLE OF EQUITABLE DEVELOPMENT (Nov. 30, 2011), *available at* <http://corridorsofopportunity.org/sites/default/files/Definition-and-principle-of-equitable-development-adopted-November-30-2011.pdf>.

250. *About Us*, CENT. CORRIDOR FUNDERS COLLABORATIVE, <http://www.funderscollaborative.org/about-us> (last visited Sept. 25, 2013).

and coordination and collaboration.<sup>251</sup> CCFC's investment strategy model has influenced the model for Corridors of Opportunity—better alignment and integration with a regional or corridor-wide perspective. As partners, both programs fund projects along the METRO Green Line that support small businesses and explore new transit-oriented strategies for workforce development and affordable housing.<sup>252</sup>

## 2. *Greater MSP*

The Council is a funding partner in Greater MSP,<sup>253</sup> a 501(c)(3) entity “dedicated to providing public and private sector leadership, coordination and engagement to grow the economy of the 16-County Minneapolis-Saint Paul region.”<sup>254</sup> The Council offers resources and expertise as Greater MSP seeks to attract employers to the region, bringing jobs and economic prosperity to the communities it serves.<sup>255</sup> Greater MSP will no doubt contribute to the Council's focus on TOD, as it helps to inform the Council's perspective on how TOD can attract and retain the best employers in the Twin Cities metropolitan area.

## C. *TOD Steps Still to Be Taken*

As discussed above, existing projects, programs, and resources have broad potential application to TOD. Furthermore, the Council is pursuing a number of exciting and innovative new initiatives that will spur TOD in the region. Nevertheless, there is more to do. As a result, the Council has retained a team of the

251. CENT. CORRIDOR FUNDERS COLLABORATIVE, INVESTMENT STRATEGY 2 (2011), available at [http://www.funderscollaborative.org/sites/default/files/CCFC\\_InvestmentStrategy2011.pdf](http://www.funderscollaborative.org/sites/default/files/CCFC_InvestmentStrategy2011.pdf).

252. *Small Business Support on Central Corridor*, CORRIDORS OPPORTUNITY (May 17, 2013), [http://www.corridorsofopportunity.org/Corridors\\_News/small-business-support-central-corridor](http://www.corridorsofopportunity.org/Corridors_News/small-business-support-central-corridor).

253. GREATER MSP, PROSPERITY THROUGH PARTNERSHIP: 2012 ANNUAL REPORT 23 (2012), available at <https://www.greatersp.org/clientuploads/GMSP%20ANNUAL%20REPORT%20FINAL.pdf>.

254. *About Us*, GREATER MSP, <https://www.greatersp.org/landing-pages/about-us/> (last visited Sept. 25, 2013). Note that Greater MSP encompasses a broader geographic area, 16 counties, than the 7-county region covered by the Council. See *16 County Metro*, GREATER MSP, <https://www.greatersp.org/landing-pages/16-county-metro/> (last visited Sept. 25, 2013).

255. See GREATER MSP, *supra* note 253, at 11.

nation's best consultants to advise the organization on the steps it could take to strengthen TOD in the region. As discussed briefly above, this effort is called the "TOD Strategic Action Plan," having commenced in 2013, and will conclude with a final report in June of 2014.<sup>256</sup>

Thus far, the TOD Strategic Action Plan has outlined the following goals:

- Collaborate between the Metropolitan Council and its regional partners to accelerate the implementation of high-quality TOD.
- Prioritize limited resources by targeting investments in TOD to programs and locations where they can have the greatest success.
- Focus on implementation of, as well as planning for, TOD as part of a larger regional equitable economic competitiveness strategy.
- Improve internal coordination on TOD related programs and projects in order to align investments and priorities and support TOD implementation.<sup>257</sup>

To date, the TOD Strategic Action Plan has recommended that the Council take action, both by crafting a "TOD policy that will guide the implementation of the action plan" and by developing tools and strategies to address a variety of TOD-related issues.<sup>258</sup> The plan has also recommended that the Council take the following immediate next steps in order to move forward on TOD:

- Establish TOD staff capability within the Council to work with partners to deliver high-quality TOD outcomes.
- Create an internal Council TOD working group and dedicated TOD program staff to improve internal coordination and collaboration across the organizational divisions.
- Continue talking with regional partners and begin the process of creating a regional TOD Advisory Group to work with the Council on implementing the Action Plan recommendations.
- Establish and adopt a Council TOD policy, including joint development and land acquisition policies.

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256. See METROPOLITAN COUNCIL, *supra* note 133.

257. *Id.*

258. *Id.* at 7.

- Incorporate the goals in the TOD policy into the criteria for allocating Council funding related to TOD.<sup>259</sup>

Finally, the plan has thus far recommended other action in a number of areas, including technical resources, TOD planning strategy, TOD development strategy, and TOD funding strategy.<sup>260</sup>

The focus on the future is more evidence of the fact that while the Council's tools may change over time, its overall role and mandate has stayed consistent. Founded on a belief that coordination and sensible planning could chart a better course for the region, the Council has been keenly focused, not just on the present, but on what the region needs for the future. TOD is the next logical step in the Council's evolution, as it looks toward how to plan in a way that is smart, effective, and cognizant of limitations and opportunities. By applying existing programs to TOD, formulating new TOD-centered initiatives, and crafting a comprehensive TOD action plan, the Council is keeping the region on track for a successful future.

#### CONCLUSION

The Council is a unique government entity. From its early days as a coordinating body with limited power to its position today as one of the most innovative and effective regional planning and operating entities, the Council has left a positive imprint on the region and on Minnesota as a whole. As the Council plans for the future via its Thrive MSP 2040 plan, it must think carefully about the future of transit in the Twin Cities region. Specifically, the Council must focus on and use TOD, a concept that encourages smart, transit-centered growth and rejects a transportation model that is solely based on the personal automobile.

The Council's involvement in TOD is a natural and rational response to the evolution and growth of the Twin Cities region. Furthermore, TOD aligns well with the Council's founding mission to coordinate the planning and development of the metropolitan area and its current priorities. Implementing TOD in the coming decades will not only improve the quality of life in the region, but it will maximize taxpayer investments in infrastructure and help to keep the region vibrant and competitive.

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259. *Id.*

260. *Id.* at 8.