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**Georgia's Redevelopment Powers Law:  
A Policy Guide to the Evaluation and Use of Tax Allocation Districts**



**Authors Carolyn Bourdeaux & John Matthews**

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### **About the Authors**

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# **Georgia's Redevelopment Powers Law: A Policy Guide to the Evaluation and Use of Tax Allocation Districts**

## **Executive Summary**

### **Introduction**

Within the past five years, eleven separate tax allocation districts (TADs) have been created in the metropolitan Atlanta region. Currently, policy-makers in the City of Atlanta are considering the use of TADs to finance the proposed “Beltline” project. While TADs are a powerful tool in a localities’ economic development arsenal, these policies are not without cost and not without risk. The sudden surge in popularity of this economic development tool generally has not been accompanied by any systematic assessment or set of policies to guide their evaluation or their use. Thus, this report sets out to familiarize local policy makers with:

- How TADs work;
- The potential benefits of TADs;
- The potential risks and costs associated with TADs and how these might be distributed across different stakeholder groups; and
- Policies to help minimize costs and risks.

### **What is a TAD?**

When a jurisdiction experiences redevelopment or new economic development, typically the value of taxable properties in that jurisdiction increases, and thus, the tax revenues collected from these properties increase. Tax allocation districts work by capturing the incremental tax revenues gained from this increase in property values in a pre-designated geographic area and using these funds to retire debt or to fund improvements on a pay-as-you-go basis.

The most significant financing innovation associated with TADs is the use of TAD-backed debt (often referred to as “tax increment financing”). Specifically, jurisdictions can issue debt to fund capital improvements and/or to support other public or private sector investments in an area, and use the *anticipated* increase in property values from this investment to finance the debt. Recently, Georgia expanded this law to allow localities to commit incremental gains in sales taxes and other taxes such as the hotel-motel taxes to support TAD activities. In most cases, the incremental revenues involved include those of all the tax jurisdictions that overlap with the TAD – cities, counties, schools, and special districts. Under Georgia State Law, these jurisdictions must agree to commit their incremental revenues to the TAD.

### **Benefits of TADs**

The expectation when using TADs is that the revenues they produce will finance projects that stimulate growth and thus contribute to growth in jobs, wealth, housing opportunities and other economic development goals, while also enhancing the fiscal position of participating jurisdictions. Planners can point to a number of TAD-financed projects around the country that produced significant returns on investment. However,

the benefits of TADs come not only from its potential to stimulate growth but from its flexibility as a financing and redevelopment tool. These benefits include:

- The ability to finance economic development activities based on anticipated increases in revenues, rather than drawing on the current tax base;
- The ability to issue TAD debt, which does not count against state-imposed local debt ceilings and does not have to be backed by the full faith and credit of the issuing jurisdiction;
- Access to a policy tool that allows overlapping jurisdictions to pool resources (from incremental increases in property tax revenues) to support economic development activities; and
- Access to redevelopment powers, such as eminent domain.

### **Costs and Risks of TADs**

While TADs appear to have been highly successful in certain regions around the country, TADs do represent a financial gamble on the part of local governments. The increased growth from a TAD investment needs not only to cover the upfront costs of the local investment in a particular project *but also* any related increases in public service costs.

The use of TADs can potentially reduce the net wealth of jurisdictions in three key ways:

- Jurisdictions may use anticipated TAD revenues to finance projects whose benefits do not materialize sufficiently to cover the costs of the debt issued or other public sector investments;
  - Further, TAD debt is expensive because it is considered to be high risk by bond markets; and
  - While jurisdictions may not explicitly back this debt, bond rating agencies (if not the bond market) may penalize a locality for a default.
- TAD investments may stimulate growth that increases demand for public services but may not generate sufficient new revenues to meet this demand. This problem may be particularly acute for school districts.
- Localities may use TAD resources to give benefits to businesses that would have made the necessary improvements or investments without public support (or might have made the same investment in another part of the jurisdiction outside the TAD); in other words, jurisdictions are giving out public money to a business that could have been better invested elsewhere.

TADs may also come with social equity issues that have been associated with previous redevelopment policies. For instance, TADs may explicitly or inadvertently force low to moderate income families out of neighborhoods as new investment and redevelopment occurs.

### **Capitalizing on the Benefits; Hedging Against the Risks of TADs**

Because these costs and risks are non-trivial, most states and localities have adopted strategies to try to ensure the careful use of tax allocation districts. Georgia

localities should have a particular incentive to deploy this policy tool carefully because a jurisdiction can only commit 10 percent of its property tax base to TADs at any given point in time. Further, TADs, which rely on *increases* in the value of property, may conflict with other public policy objectives such as property tax relief or tax abatements for targeted businesses. Thus, key recommendations from this report include the following:

1. To husband the use of TADs and to avoid conflicting policy priorities, localities should develop TADs as part of an overall planning and economic development strategy. In particular, a locality should identify the areas that should be targeted for redevelopment, the critical public purposes that will be served by TAD, and the types of projects that are appropriate for TAD backing.

At the project level, jurisdictions need to make sure that the proposed TAD-financed projects will produce the returns needed to cover at least the initial investment and the increase in public service demands from the project.

2. Localities should conduct a full and careful feasibility, fiscal impact, and cost-benefit analysis of proposed TAD projects. Localities should be conservative in estimating revenues from TADs that can be used for backing debt.

In dealing with the private sector, a classic problem with economic development subsidies is that local governments sometimes do not bargain shrewdly with their private sector counterparts.

3. In general, jurisdictions should develop policies to target TADs for projects where private sector investment is unlikely without public sector investment. Some of the most successful uses of TADs have been in brownfield redevelopment, redevelopment of areas with significant levels of urban blight, and reuse of old industrial or military facilities.

By carefully picking key areas to target, TADs are also less likely to raise concerns about inequitable treatment of communities included in the district – and instead may be of substantial benefit to them.

Other recommendations to try to minimize taxpayer risk include:

4. Minimize direct government subsidy in favor of strategies that share risk with the private sector. Examples of these strategies include reimbursement of private sector entities for environmental clean-up or providing gap financing.
5. Develop annual performance audits or evaluations, as well as financial audits, to determine private sector progress towards agreed up goals and to show how public funds are being used to support TAD redevelopment plans.

6. Clearly specify the benefits to be produced by the private sector entity receiving TAD assistance and include meaningful sanctions for failure to meet goals.

Finally, TAD debt needs to be assessed in conjunction with the initial review of the project(s) being considered. Localities should be conservative in their assessment and use of TAD-backed debt. The worst case scenario is that a locality issues a large amount of debt for benefits that never materialize and is implicitly or explicitly held liable for the debt by the bond rating agencies or bondholders. In effect, the taxpayers are left holding the bag.

## **Conclusion**

Tax allocation districts and the financing instruments associated with them have become mainstream economic development tools in many states. Georgia is just beginning to experiment more broadly with this strategy. As it does so, localities in the state can benefit from the experiences, both positive and negative, with this financing instrument. This report is an effort to assimilate many of the lessons learned from across the country and provide an initial framework for Georgia localities to consider as they determine how best to use TADs in their own communities.

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**GEORGIA'S REDEVELOPMENT POWERS LAW:  
A POLICY GUIDE TO THE EVALUATION AND USE OF TAX ALLOCATION DISTRICTS**

**Introduction**

A tax allocation district (TAD) is an important and potentially powerful tool in a municipality's economic redevelopment arsenal. Many municipalities across the country report significant positive outcomes from the implementation of a TAD. However, there exist numerous examples of less than positive outcomes as well. The principal purpose of this report is to assist policy makers in their assessment and implementation of tax allocation districts so that TADs are successful.

The report thus sets out to familiarize local policy makers with:

- How TADs work;
- The potential benefits of TADs;
- The potential risks and costs associated with TADs and how these might be distributed across different stakeholder groups; and
- Strategies to help minimize many of these costs and risks.

Drawing on examples from Atlanta and elsewhere, this report discusses and suggests economic development policies, with the ultimate objective of helping local policy-makers sort through some of the concerns and issues that use of TADs raise. The discussion of costs and risks should provide ideas about ways to evaluate and structure TADs more effectively in order to promote the redevelopment of blighted or underused areas while protecting the fiscal health of local jurisdictions.

Within the past five years, eleven separate tax allocation districts have been created in metropolitan Atlanta, nine of which were initiated within the past two years. For the most part, this sudden surge in popularity of TADs has not been accompanied by formal or consistent policies to guide their evaluation or use, even though any given jurisdiction may create only a limited number of TADs under current state law. The Atlanta region is not alone in wrestling with ways to guide and structure the use of this particular policy instrument. Forty-eight of the 50 states allow localities to use some form of tax increment financing for economic development purposes (Johnson and Kriz 2001); in almost every state there is an on-going debate about how TIF should be used.

TADs represent a particular financial trade off where local governments commit a portion of the anticipated growth in municipal revenues to an investment in economic development related activities rather than to providing general services; in return, these jurisdictions expect that their investment will generate new growth and that the long term revenues generated by this new economic development will cover and exceed the costs of their investment, as well as any related increases in public service costs.

Research on TADs has shown them to be beneficial in certain circumstances, and this report describes several TAD projects that appear to have stimulated new growth and

development. At the same time, local decision-makers should be aware that TADs are not costless and not without risk. As with any economic development financial tool, local governments can end up giving the private sector unmerited and unneeded benefits. TADs may also require use of risky investment tools, may create equity concerns, and may become costly to taxpayers if the new development prompted by a TAD does not produce the anticipated tax growth or creates unfunded public service demands.

The report lays out issues that should be considered in deciding which projects should receive TAD financing. Decisions about TADs (and the use of any economic development incentive for that matter) are as much about what not to do, or what to avoid, as they are about what to do. Therefore, a major focus of this report is on ways to deal with potential problems that could emerge from a TIF project. While there is no magic formula to determine what is a good TAD project, policy-makers can conduct careful analyses of projects that will help make more informed decisions. This report attempts to explain what steps should be taken and what factors should be considered in making such a decision to hone TIF into a more cost-effective financing and policy tool.

Chapter 1 describes TAD mechanics and covers the procedures for implementing a TAD in Georgia. Chapter 2 describes the benefits and costs of TADs generally, while Chapter 3 deals more specifically with the issues of cost and risk in issuing debt based on incremental revenues. These latter chapters also discuss different strategies that might be adopted to avoid or hedge against these risks and costs. Chapter 4 discusses the Redevelopment Powers Act and policy issues that might need to be addressed the State level with respect to TADs (the other Chapters presume that the law is fixed as it is). Finally, the Appendix includes case studies of the current TADs in the Atlanta metropolitan area.

### **What are Tax Allocation Districts?**

Tax allocation district financing works by capturing the incremental tax revenues gained from new private development within a specific geographic area. These funds are then pledged to either the retirement of debt issued by a sponsoring city, county, or redevelopment agency or to funding improvements on a pay-as-you-go basis. The improvements, in turn, are planned to attract, or in many cases, provide direct support to new private development. Usually, the incremental taxes involve only property taxes, but some states, including Georgia, also allow local sales taxes and other taxes (e.g., hotel-motel taxes, business license receipts, etc.) that are generated by new development to be committed to the repayment of redevelopment expenses. In most cases, the incremental tax revenues involved include those of all taxing jurisdictions that overlap the TIF district – cities, counties, and variety of special districts, including (importantly) school districts, which typically levy and collect the largest portion of local taxes.

### **A Brief History of TIF**

Use of tax increment financing is now over 50 years old, having first been introduced in California in 1952 to provide localities with matching funds for the federal Urban

Renewal grant program. Numerous other states followed suit with various forms of TIF legislation. The greatest period of growth occurred in the 1970s and 1980s as local appetite for community renewal began to outstrip the federal government's capacity and willingness to provide grant funds (Klacik and Nunn 2001).

In many cities, TIF has been used to promote public-private redevelopment projects on large tracts of land no longer needed for their original purposes. In the 1950s and 1960s, abandoned rail yards located in the core areas of cities were a focal point for redevelopment activity. More recently, cities have turned their attention to recycling old wharves, pier heads, and shipyards. In the 1990s, TIF was applied to military base conversions, and new public-private partnerships have emerged for redevelopment of "brownfield" sites located where abandoned factories and steel mills once operated.

While 48 states and the District of Columbia authorize the use of TIF, there is substantial variation in its actual use by local governments. California, Minnesota, Wisconsin, and Illinois have made extensive use of TIF while states such as Hawaii, Mississippi, and New Jersey have few to no operating TIF districts. Different states have also experimented with different rules and regulations governing the use and structure of TIF financing (Johnson and Kriz 2001; Johnson 2002).

Localities in Georgia have not made extensive use of TIF financing until recently. While Georgia adopted its TIF statute, the Redevelopment Powers Law, in 1985, the state did not have its first TIF district until 1992 and did not see its first TAD bonds issued until 2001. Recent legislation amending the Redevelopment Powers Law in 2004 gave localities increased flexibility by permitting use of sales tax increments in a district, as well as the use of all property taxes collected in a TAD to make debt payments in the event tax increments are insufficient.

### **The Vision: TIF Projects That Worked**

While there have been few systematic evaluations of TIF projects, the following cases describe projects outside Georgia that appear to have been successful in rehabilitating previously blighted or difficult to develop areas. In the Appendices we have included descriptions of all the TADs that have been adopted in the Atlanta metropolitan area and a discussion of the various considerations that went into these projects.

#### ***San Diego: Horton Plaza and Petco Park***

San Diego has been pursuing downtown redevelopment for several decades. The city of San Diego has a FY 2005 redevelopment budget of \$333,241,000. Current year tax increment revenue is \$72,777,000 of which \$43,536,000 is required for debt service. There are 20 current redevelopment projects. Redevelopment plans are generated and adopted within the framework of the city's General Plan and its community plans. Where allowed by redevelopment law, redevelopment powers, importantly TIF and

*eminent domain*, may be used to implement community plans. Use of these powers requires, among other things, a finding of blight and provision of affordable housing. 30% of agency built and 15% of private new and rehabilitated housing must be affordable to low- and moderate-income households, and 20% of tax increments collected must be spent on low- and moderate income housing (Centre City Development Corporation 2004).

Among the numerous San Diego projects are two very interesting downtown TADs: Horton Plaza and Petco Park. Both these projects were initiated by private interests, but “fit” the city’s general plan and redevelopment objectives.

**Horton Plaza.** San Diego’s first successful TIF project was Horton Plaza. This project was structured very much like a classic urban renewal project. The City paid for land assembly and supporting public infrastructure. Private redevelopment followed. The difference is that the city’s share came from increases in local property tax resulting from the new private development, not a federal grant.

Planning for Horton Plaza in San Diego began more than 20 years ago. It was in a part of downtown San Diego that had become notorious for its strip clubs and X-rated movie theaters. \$40 million of the \$160 million project cost came from public sources. The city’s redevelopment agency acquired 11.5 acres of downtown land for about \$25 million and wrote-down the price to the developer to \$1 million. The city also paid roughly \$15 million more for public improvements, including wider streets and sidewalks, water and sewer lines, and other items. Within a year of the 1985 opening, there was an additional \$368 million in private investment downtown. Horton Plaza generated enough property tax increment revenue in the first eight years to repay the initial public investment. In 17 years, the Horton Plaza Redevelopment Project has increased assessed property values by \$451 million (Callies and Gruth 2002; Eddy 1995; The Jerde Partnership 2004).

**Petco Park.** Petco Park is the new San Diego Padres baseball stadium. The City of San Diego, the city’s redevelopment agency Centre City Development Corporation (CCDC), and the Padres entered into a “memorandum of understanding” in 1998 for construction of the new ballpark and redevelopment of the surrounding East Village area. East Village was a blighted area that had already been qualified for redevelopment. The city agreed to participate in financing a new ballpark for the Padres; it put about \$300 million, \$169 million in bond sale proceeds, into the \$454 million stadium. In return, the city required the team owner to invest in the ballpark district, a part of the East Village area adjacent to the stadium. This investment creates the tax increments through real estate and hotel/motel taxes needed to secure the tax increment bond funding. The team owner’s real estate development firm, JMI Realty, became the master developer, either building or engaging others to develop \$593 million of hotel, residential, retail, and parking structures. The minimum value of new development needed to produce a sufficient increment was about \$300 million, so the new JMI development is about twice what was needed. Additionally, other “unconnected” developers have launched 32 new housing developments that range from lofts to apartments for the elderly. The entire East Village is now redeveloping (Gross 2004; Heller 2002).

## Roseville, Minnesota: Brownfield Clean-up

The State of Minnesota has explicitly authorized TIF use for two types of environmental clean-up districts: localities may create either a “soils condition district” or a “hazardous substance districts” depending on the nature of the environmental damage to the site. Prior to declaring such districts a locality must certify that the cost of the environmental clean up is greater than the fair market value of the land.

A hazardous substance district comes with some particularly unique features. Specifically, the locality may actually write down the base assessed value of the land and also may expand the district to include lands adjacent to the contaminated properties thereby increasing the “increment” available for remediation purpose.

In Roseville, the city had entered into a TIF agreement with a developer for redevelopment purposes only. The project initially entailed simply tearing down some existing structures and constructing new ones for industrial and commercial uses. However, as the developer proceeded with the project he found that creosote, solvents, and other chemicals contaminated the site. Clean up costs were estimated at \$2.7 million.

The city then proceeded to declare the site a hazardous substance district and wrote down the value of the property to zero. This policy shift gave the city an additional tax increment of \$1.5 million towards the cleanup. The city assisted with the remainder of the costs by renegotiating the development agreement to allow the developer to use the land more intensively and increasing the minimum market value of the improvements. With the financing the developer cleaned up the land and built the improvements that the city had proposed. The site then received a certificate from the state that environmental remediation had been completed to the state’s satisfaction.

In several case study reviews of similar situations in Minnesota, researchers have found that while the tax increment is often not sufficient to cover the costs of the entire clean-up, it is important in building partnerships with the private sector to complete environmental remediation (Zackman and Steinwell 2001).

## Circle Centre Mall, Indianapolis

In 1988 and 1992, Indianapolis issued a combined total of \$293.5 million in TIF bonds to help revitalize its ailing downtown. \$265 million of these bonds was spent on assisting with the development of the Circle Centre Mall. The city was responsible for land acquisition, improving infrastructure around the site, constructing parking garages, developing the core and shell of the mall building and preserving historic building facades. Initially the project bogged down in several lawsuits and had to be scaled back from a \$1 billion project to a \$500-\$700 million project. In 1991 twenty Indianapolis companies agreed to assist with a \$50 million investment in the project and the project received a \$72.5 million loan from a group of banks. The project was completed in 1995 and on the opening day 60,000 people visited the mall. Between 1995 and 2000, the economic return to the city from the project was estimated at \$2.1 billion (Johnson 2002).

## Chapter 1: The Mechanics of TIF

### A Primer on How TIF Works

A number of terms are essential to an understanding of TIF and TIF calculations. In districts where only property tax revenues<sup>1</sup> are used, they are as follows:

- *Base Year* – the year (usually at that point in the year when tax assessments are determined) that the TIF district is established.
- *Base Assessed Value* – the assessed value of property within the TIF district in the base year (net of any and all exemptions).
- *Incremental Assessed Value* – the assessed value in the TIF district in any year after the base year (net of exemptions) minus the base assessed value.
- *Incremental Tax Revenue* – the incremental assessed value multiplied by the overall tax rate applicable to TIF district properties.
- *Initiating Jurisdiction* – the local government entity that creates and activates the TIF district and usually (but not always) issues TIF bonds.
- *Participating Jurisdiction* – the taxing jurisdictions whose assessed value is at least partially contained within a TIF district, including the initiating jurisdiction, and whose incremental tax revenue is applied to TIF projects. (Klacik and Nunn 2001).

Before a TIF district or TAD is established, the initiating jurisdiction and all participating jurisdictions derive individual tax revenues from property in the district based on their respective tax rates and allowable exemptions (e.g., various homestead exemptions). After establishment of a TAD, property tax revenues generated by the base assessed value continue to go to each individual jurisdiction, but the *incremental tax revenues* flow solely to the initiating jurisdiction for financing TAD activities. Table 1 shows a simple example of the allocation of base year and incremental tax revenues for a hypothetical 5-year TIF plan covering four jurisdictions.

The example shows a 5-year TIF period. Typically, TIF revenues would be captured for the length of any TIF bonds issued – often 25 to 30 years. Also, notice that the “incremental tax revenues” available depend on both the *assessed value* and the *tax rate*. Any policy, business-cycle, or economic change that affect either the assessed value or tax rate will also impact the TIF revenues collected. **Thus, a financial commitment based on projected increases in property tax revenues has both financial risk associated with the economy at large and has policy implications that relate to keeping the assessed value and tax rates consistent across time.** For instance, under Georgia State law, once a TAD is created, no participating jurisdictions can cut tax rates in that district.

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<sup>1</sup> While Georgia recently made the sales tax available to support TIF, this report will primarily focus on property tax uses. The same form of analysis, however, can be applied to the sales tax.

**Table 1**  
**Base Year and Incremental Tax Revenue Allocation**

	Tax Rate per \$1,000 AV	TIF Period Assessed Value						Post-TIF Period Assessed Value
		\$ 1,000,000 Base Year	\$ 1,100,000 Base Year +1	\$ 1,200,000 Base Year +2	\$ 1,500,000 Base Year +3	\$ 2,000,000 Base Year +4	\$ 3,000,000 Base Year +5	\$ 5,000,000 Base Year +6
<u>Jurisdiction</u>								
Initiating Jurisdiction	\$10.50	\$ 10,500	\$ 11,550	\$ 12,600	\$ 15,750	\$ 21,000	\$ 31,500	\$ 52,500
Participating Jurisdiction 1	9.00	9,000	9,900	10,800	13,500	18,000	27,000	45,000
Participating Jurisdiction 2	21.25	21,250	23,375	25,500	31,875	42,500	63,750	106,250
Participating Jurisdiction 3	5.00	5,000	5,500	6,000	7,500	10,000	15,000	25,000
Total TIF district tax rate	\$46.75							
<u>Tax Revenues</u>								
Base year revenues		\$ 45,750	\$ 45,750	\$ 45,750	\$ 45,750	\$ 45,750	\$ 45,750	\$ 137,250
Incremental tax revenues		-	4,575	9,150	22,875	45,750	91,500	-
Total		\$ 45,750	\$ 50,325	\$ 54,900	\$ 68,625	\$ 91,500	\$ 137,250	\$ 137,250
<u>Tax Revenue Allocation</u>								
Share to TIF district		0.0%	9.1%	16.7%	33.3%	50.0%	66.7%	0.0%
Share to initiating and participating jurisdictions		100.0%	90.9%	83.3%	66.7%	50.0%	33.3%	100.0%

**Notes:**

1. The example shows a five-year TIF period, although the TIF period typically would correspond to the length of any TIF bonds issued (e.g., 20-25 years)
2. The example applies only to real property, although in some states (e.g., Georgia) personal property would also be included in the calculations.

## A Generic Process for Planning and Implementing TIF

The generic process for planning and implementing TIF involves five broad steps: 1) initiation; 2) formulation; 3) adoption; 4) implementation; and 5) evaluation and termination (Johnson 2002). The Georgia Redevelopment Powers Act gives localities much discretion for the evaluation of a proposed TAD and the structuring of the partnerships and financial agreements necessary for implementation.

**Initiation:** Project initiation begins with ascertaining whether a project is sufficiently needed and financially feasible, making the more involved process of project formulation worthwhile. While straightforward in principle, this step can be tricky in application. One of the most important determinations is whether there are private participants who are interested and willing to participate in the proposed project. Eligibility of the area under state law must also be examined as should the initial estimates of economic benefits and costs.

**Formulation:** Project formulation includes numerous components that are mandated under state law. In almost all states, including Georgia, a jurisdiction initiating a TAD must create a “redevelopment plan”. This plan includes a formal analysis of the components assessed in the “initiation” stage. Georgia’s requirements are described in detail later in this chapter. Broadly, key components include:

- Dimensions of the TAD, including geographic boundaries, value of property, and anticipated revenues;
- A finding of blight;
- An assessment of whether development would occur without public assistance (colloquially called a “but for” finding);

- A formal evaluation of project costs;
- Specification of financing;
- Details of necessary agreements with overlapping jurisdictions and private parties.

**Adoption:** While the plan is still in its draft stages, in Georgia, the initiating jurisdiction must also solicit consent resolutions from overlapping jurisdictions to include their portion of the tax increment in any financing arrangements. During the adoption stage, the initiating jurisdiction will also hold public hearings and develop any draft ordinances and contracts necessary to implement the agreements detailed in the redevelopment plan.

**Implementation:** Implementation involves certifying the base assessed value of the TAD, initiating the collection of incremental tax revenues, issuing debt or otherwise managing project finances, initiating and managing the capital improvements process (i.e., construction, environmental remediation, etc., if applicable), and managing contracts with private parties and other participating entities.

**Evaluation and Termination:** This final part of the process includes evaluating the efficacy of the TAD and ending the collection of the incremental tax revenues.

The following section describes how this process is applied under Georgia's Redevelopment Powers Law.

### **Applying the TAD Process in Georgia**

#### ***Overview of the Georgia Redevelopment Powers Law***

In 1985, the General Assembly enacted the Redevelopment Powers Law (GA Code Annotated 36-44-1, *et seq.*, the "Law"). This law is intended to give localities new tools to form public/private partnerships to redevelop areas that "contribute to or cause unemployment, limit the tax resources of counties and municipalities while creating a greater demand for governmental services and, in general, have a deleterious effect upon the public health, safety, morals, and welfare". The Law which spells out how TADs should be created and implemented has been amended several times to give localities more flexibility in the types of funds that can be used in TADs and in the types of projects and areas that are eligible.

#### ***Pre-Initiation: Obtaining Authority to Implement TAD***

In Georgia, prior to even initiating its first TAD project, a local government must receive authorization from the State General Assembly to exercise powers under the Law. Once enacted, the local act must be approved by a majority of registered voters in the initiating jurisdiction in a special election held for that purpose. After voter approval, a local jurisdiction may proceed to initiate tax allocation districts (§36-44-22 O.C.G.A.). Georgia also has several other "global" limitations on the use of TADs:

- Localities cannot create a TAD if the total current taxable value of property within the proposed TAD plus the total current taxable value of property within all its existing

TADs exceeds 10 percent of the total current taxable value of all taxable property located within the initiating jurisdiction's area of operation (§36-44-17 O.C.G.A.).

- All overlapping jurisdictions whose tax increment is captured by a TAD (or “participating jurisdictions”) must pass consent resolutions agreeing to participate in the TAD. Otherwise their tax increment cannot be captured by the initiating jurisdiction for redevelopment purposes (§36-44-9 O.C.G.A.).

*Delegation to Redevelopment Agency:*

The Law allows an initiating jurisdiction to delegate many of its redevelopment powers to a “redevelopment agency”. An initiating jurisdiction may create a public corporation to carry out such powers or designate a local housing authority or a downtown development authority (so long as the TAD lies within the authority's area of operation) to do so. Delegation cannot include certain powers, which must remain with the initiating jurisdiction:

- Adoption of the required redevelopment plan;
- Creation of TADs and the establishment of TAD boundaries;
- Issuance of tax allocation bonds; and
- Exercise of eminent domain within a TAD (§36-44-6(b) O.C.G.A.) except where a downtown development authority is serving as a redevelopment agency (§36-44-96(c) O.C.G.A.).

*Initiation:*

Once a jurisdiction has received authorization from the State and voter approval, it may initiate a TAD. TADs typically take one of two paths, either a developer proposes a specific project and goes to a locality for financing assistance in developing this project, or alternatively, a locality may identify a particular project or area for redevelopment that is likely to benefit from TIF assistance.

In either case a locality should assess the plan to ensure it meets some basic criteria. These criteria will in part have to be formally evaluated and certified in the project formulation process.

- *Financial feasibility:* TIF relies on appreciation in the value of property. Thus any evaluation should examine the probability that a proposed project or redevelopment plan will lead to increases in the value of the property in the proposed TAD. In some cases, local governments have made an infrastructure investment using TIF bonds and the anticipated development has failed to materialize. The local government is then forced to choose between letting the debt default and drawing on general fund revenues to bail out the TIF backed debt.<sup>2</sup> For reasons that will be discussed in Chapter 3, much pressure may be brought to bear on local government to bail out TIF backed debt.

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<sup>2</sup> For instance, one researcher found that districts in Florida and Michigan did not generate sufficient revenues to cover debt obligations (McKaig 2002).

Fundamentally, a project is more likely to be financially viable if there is significant private sector interest and engagement in the project, as opposed to an “if you build it they will come” mentality on the part of local government. In structuring the TAD arrangements, local governments may be able to transfer some of the risk of insufficient appreciation in incremental taxes to the private sector. The question early in the process is whether the private sector interests are willing to bear some of the risk associated with TIF.

- *Eligibility for TIF:* Local governments should determine that the proposed project or plan is eligible for TIF assistance under Georgia Law. A TAD can be used for “redevelopment purposes” in a “redevelopment area” for “redevelopment costs”. Each redevelopment activity is broadly defined in Georgia State law (for exact definitions see §36-44-3 O.C.G.A.). Amendments passed in 2001 expanded the definition of a “redevelopment area,” enabling communities to undertake redevelopment activities in areas other than those that met the traditional characteristics of “slum and blight.” In effect, it gave suburban jurisdictions throughout the state access to the provisions of the Law.

A locality must certify the eligibility of a redevelopment area for TAD in its redevelopment plan (§36-44-3(9)(B) and 36-44-3(G)(i) O.C.G.A.). This certification requires the locality to attest that growth or development would not have occurred without a TAD or certain natural assets would not be preserved or protected without the TAD.

- *Assessing the Costs and Benefits of TIF:* There is no state provision mandating that a locality assess the potential costs and benefits to themselves and their taxpayers at any point in the process. But, it is in a locality’s best interests to do so, if for no other reason than to avoid failure of the project. The issues that an initiating jurisdiction should consider when evaluating costs, risks, and benefits of TIF are discussed in detail in Chapters 2 and 3.

#### ***Formulation:***

The next step in creating a TAD is the preparation of a redevelopment plan for the proposed district. The redevelopment plan must contain several elements conform to the Law’s requirements. Specifically, it must:

1. Specify the boundaries of the tax allocation district;
2. Include a finding that the redevelopment area has not been subject to growth and development and would not reasonably be anticipated to be developed without the approval of the redevelopment plan;
3. Explain the proposed uses of real property within the redevelopment area after redevelopment has occurred;
4. Describe the redevelopment projects to be undertaken under the plan, along with estimates of their cost and method of funding;
5. Describe any multi-year contracts or other agreements that would obligate the initiating jurisdiction in the plan’s implementation;

6. Describe any relocation payments proposed to be authorized by the redevelopment plan;
7. Include a statement that the proposed redevelopment plan conforms with the local comprehensive plan, master plan, zoning ordinance, and building codes of the initiating jurisdiction or explain any exceptions;
8. Include estimates of redevelopment costs to be incurred during the course of implementing the redevelopment plan;
9. Recite the last known assessed valuation of property within the redevelopment area and the estimated assessed valuation after redevelopment;
10. Provide adequate protections from substantial alteration and/or demolition to historic property within the redevelopment area that is to be redeveloped under the plan;
11. Specify the proposed effective date for the creation of the tax allocation district and the proposed termination date;
12. Contain a map specifying the boundaries of the proposed tax allocation district and showing existing uses and conditions of real property within the TAD;
13. Specify the estimated base assessed value of property within the proposed TAD;
14. Specify which participating jurisdictions' property taxes are to be included in the calculation of incremental tax revenues of the TAD (supported by the required consent resolutions from such jurisdictions);
15. Indicate the amount of any proposed TAD bond issue or issues and the term(s) and assumed rate(s) of interest applicable to them;
16. Provide estimates of the amounts of incremental tax revenues that will be available to pay TAD bond principal and interest over their proposed term(s); and
17. It must also specify any other property to be pledged as security for payment of any proposed TAD bonds. (§36-44-3 O.C.G.A.)

***Adoption:***

Once the redevelopment plan has been prepared and formally submitted to the legislative body of an initiating jurisdiction, at least one public hearing on the plan must be held within 60 days (§36-44-7(b) O.C.G.A.). The proposed plan (as submitted or amended) must be approved or rejected within 45 days after the public hearing (§36-44-7(c) O.C.G.A.). Until recently, obtaining the consent of overlapping jurisdictions to include their tax increments had to be accomplished during the 45 day period, but SB 514, enacted by the Georgia General Assembly in 2004, removes this step from the 45 day period and simply requires that it be done before the incremental taxes of such jurisdictions may be included in the overall tax allocation increment.

Amendments to any approved redevelopment plan are allowed if preceded by adequate public notice (§36-44-7 O.C.G.A.). However, if an amendment changes the boundaries of the TAD the base assessed value for the amended district must be recalculated as of the effective date of the boundary change (§36-44-10 O.C.G.A.).

Finally, the Law specifies that the effective date of the creation of any TAD is December 31<sup>st</sup> of the year in which the redevelopment plan for the TAD is adopted (§36-44-8(3)(b) O.C.G.A.). It also requires the initiating jurisdiction (or its redevelopment agent) to apply to the State Revenue Commissioner for an official determination of the TAD's base

assessed value as of the effective date for purposes of determining future incremental tax revenues (§36-44-10 O.C.G.A.).<sup>3</sup>

***Implementation:***

The Law provides that all incremental tax revenues generated after the effective date of a TAD be allocated to the initiating jurisdiction each year until all redevelopment costs and/or TAD bonds have been paid. All incremental tax revenues are required to be placed in a special fund controlled by the initiating jurisdiction and used exclusively to pay TAD redevelopment costs, including debt service.

Any lease or contract payments received by an initiating jurisdiction also are required to be deposited into the special fund and, as with incremental tax, may be used only to pay TAD redevelopment costs or debt service. After all redevelopment costs and TAD bonds have been paid or provided for, any moneys remaining are distributed in proportion to their contributions to the initiating and participating jurisdictions. (§36-44-11(c) O.C.G.A.)

The Law has several other key provisions that affect debt and the implementation of TAD.

- *Issuing Debt:* For the sole purpose of paying redevelopment costs, TAD bonds may be issued by an initiating jurisdiction. TAD bonds do not constitute debt within the meaning of Article IX, Section V of the Georgia Constitution, and therefore cannot be secured by the full faith and credit of the initiating jurisdiction, and do not count against the debt limitation placed on cities and counties within the state. TAD bonds must mature within 30 years of their issuance, may bear interest at either fixed or variable rates without regard to any state usury limits imposed in other sections of the Georgia Code, may be subject to early redemption on such terms as the issuer may determine, may be refunded through the issuance of additional TAD bonds, and are subject to superior court validation, as required of other state and local bonds in Georgia.
- *Freezing Property Tax Millage Rates:* The Law provides that until a TAD is terminated, neither an initiating jurisdiction nor any participating jurisdiction may decrease *ad valorem* tax rates within the TAD below the rate levied when TAD bonds were issued. This provision effectively establishes a “floor” on property tax rates applicable to properties within a TAD, removing one significant risk of holding TAD bonds.
- *Securing TAD Bonds:* Finally, an initiating jurisdiction may secure TAD bonds by backing the debt with all its general fund revenues derived from the TAD. Until this year, the Law allowed use of these funds only if incremental tax revenues, together with other security pledges, were insufficient in any year to make full debt payments (i.e., in the past they could be used only as “back up security,” not as primary security). As of this year, if there is a “finding” by a jurisdiction that positive tax

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<sup>3</sup> The lack of coordination between initiating jurisdictions and local tax officials has often resulted in this very important legal requirement being overlooked.

increments and other security in the district will not be sufficient to cover debt obligations, general funds may be pledged directly. In effect, this amendment allows an initiating jurisdiction to pledge all property taxes that it (and its county government, if the county approves) levies within a TAD, as well as local option sales taxes collected within the district, to pay TAD bond debt service.

***Evaluation and Termination:***

While some states restrict the length of time that a TAD can exist, in Georgia, a TAD may exist until the initiating jurisdiction votes to terminate the designation. A locality may not terminate a TAD until all the redevelopment costs have been paid (§36-44-12 O.C.G.A.).

No formal evaluation requirements are stipulated in the State law. Nonetheless, localities would benefit from careful regular on-going assessment of whether private sector interests are meeting the expectations of benefits expected from public/private partnerships as well as noteworthy lessons learned from the process.

## **Chapter 2**

### **Assessing the Costs and Benefits of TADs**

#### **Overview**

Given the framework described, tax allocation districts can be a powerful and flexible redevelopment tool; however, they should be carefully deployed. In Georgia, localities may only commit 10% of their tax base to TADs (§36-44-17), so TAD is a policy tool that needs to be husbanded and used only when it is most appropriate. Also, as with any economic development tool, TADs have the potential to become a costly mistake. This Chapter focuses on an analysis to help policy-makers sort through some of the potential problems they might confront in the use of TIF.

Several evaluations of TIF districts have shown that TIF investments can stimulate increases in property values in the district in amounts greater than the costs to local government (Beckett-Camarata 2001; Cox, Mundell, and Johnson 2001). Other studies have found that TIF appears to increase property values in the jurisdiction overall (Man 2001; Man and Rosentraub 1998). In contrast, other evaluations found that TIF simply shifts development from one part of a jurisdiction to another (Haulk and Montarti 2001) and are unlikely to produce net benefits because the costs of the investment plus increases in service demand will swamp the incremental increases in revenues (Kriz 2003). As a result, the research is still judged to be inconclusive on the net benefits of TIF (Man 2001). A probable reason for these varying results is that TIFs can be structured very differently from one jurisdiction to another or even one project to the next. Therefore, it is hard to reach any generalizable conclusions.

The expectation when using TIF is that it will stimulate growth that would not otherwise occur and thus contribute to growth in jobs, wealth, housing opportunities, and other economic development goals while also enhancing the fiscal position of the jurisdiction. Ideally, TIF investments reduce public service costs by cleaning up blighted areas that attract crime and lead to further deterioration of a neighborhood. Atlanta's own experience with the Atlantic Steel TAD illustrates a project that likely would not have occurred without some public sector financial investments. The project involved important environmental remediation, brought in new businesses and housing, closed a gap in the urban fabric, and is expected to stimulate growth in surrounding areas (see Appendix).

Despite being popularly portrayed as an almost costless proposition to local governments (Pendered 2004; DeSue 2004), TADs do come with both risks and costs. They can undermine the fiscal position of a jurisdiction as well as create considerable concerns about equity. While successful TADs can create wealth for a jurisdiction, poorly implemented or simply unsuccessful TADs can have the opposite effect. Specifically, TADs have the potential to reduce the net wealth of a jurisdiction in three key ways: 1) by giving development benefits to businesses that either would have made the needed investments without public support and/or are simply moving from one part of the jurisdiction to another, 2) by stimulating growth that creates increased service demands

without generating sufficient revenues to cover these services, and 3) through problems in the application and development of a TAD, which may leave local governments stuck with debt for economic development projects that do not fully materialize.

TADs may also create equity “costs” that were associated with many previous redevelopment policies. For instance, the Redevelopment Powers Act not only provides for use of tax increment financing in tax allocation districts, but also enables use of eminent domain for redevelopment purposes in these districts. One issue raised by TADs is whether they can be used to change the character of a neighborhood (e.g. “gentrification”) through a combination of eminent domain and appreciating housing values. TADs might explicitly or inadvertently force low to moderate income families out of a neighborhood (Reingold 2001).

### **Addressing the Costs of TADs**

Because these costs are potentially non-trivial, states and localities have adopted strategies to encourage careful use of tax allocation districts (Johnson 2002). While even the best laid plans can go awry, these policies include both planning approaches to attempt to avoid future problems and approaches to structuring the TIF to hedge against over-commitment of a local tax base or private sector abuse of the program.

#### ***Integrated Planning Requirements:***

##### ***Placing TAD in an Overall Economic Development Strategy***

One strategy for promoting the careful deployment of TADs is to consider its use in an overall framework of economic development goals and fiscal and planning policies. Planning is important both to ensure the best use of TIF, and to evaluate whether a TIF conflicts with other economic development policies. For instance, because TIF is dependent on a stable property tax, TIF projects may pre-empt efforts to reduce property taxes generally or to assist certain business development through tax abatements or exemptions.

Also, TIF also is one of dozens of economic development tools that draw on the fiscal capacities of a jurisdiction. While one alone may have only a trivial impact on fiscal health, combinations of tax abatements, exemptions, and credits may have a significant negative cumulative effect. Careful planning that considers TIF in an overall framework is important to avoid these effects, though it may also reduce a jurisdiction’s ability to respond quickly to development opportunities.

#### ***Addressing TIF in an Overall Framework:***

Some existing practices that require evaluation of TIF in a larger context include:

- Prohibiting TIF until a general plan for the jurisdiction is completed with explicit consideration of TIF districts.

- Johnson (2002) shows 31 states including Georgia require that TIF redevelopment plans conform to the locality's comprehensive plan.
- The District of Columbia and Nebraska actually require local general plans to identify targeted redevelopment areas prior to the development of a TIF district. The intent of this requirement is to ensure that projects are developed with public participation, foster legitimate public purposes, and contribute to achieving a community's objectives and goals (Nebraska Department of Economic Development; *D.C. Act 12-354, Tax Increment Financing Act of 1998* 1998).
- Requiring an assessment of the strength and weakness of alternative financing arrangements, such as community improvement districts, tax abatements, and grants through the Community Development Block Grant (Zimmer Real Estate Services and Associates 2003)
- Requiring the development of a "Unified Economic Development Budget" where taxing bodies should annually report on all tax abatements, exemptions, reductions, and redirections, individually and totally, and the amount of revenue not paid. The budget also includes reasons for tax relief, expected outcomes, and progress toward outcomes. While this may seem burdensome, jurisdictions that gather and report this kind of information are in a good position to evaluate economic development subsidies in terms of total impact on taxes and overall performance (Hinkely et al. 2000).
- Use a multi-year budget to assess the fiscal impact of economic development policies in the "out years."

### **Preventing Unneeded TAD Subsidies**

One of the classic problems of all economic development policies that benefit a particular private sector interest is that public sector subsidies or support may be unnecessary; the business would have made the investment anyway but would like a subsidy to enhance its profits at the expense of the taxpayer. The public sector subsidy may also give a particular firm an advantage over its competitor.

Ideally a local government would be able to look directly at a private sector company's true "return on investment" (ROI) for a particular project, assess the efficiency of that business relative to its competitors, and thereby directly determine whether a public subsidy is needed. Given the difficulties of such an analysis, a rigorous assessment of "blight" and a "but for" finding are imperfect but important ways to protect taxpayers. In addition, a local government might want to consider ways to structure public-private agreements to protect a local government from the risks of TADs.

### ***Finding of “Blight”/Establishment of Public Purpose***

Thirty-three states including Georgia require that localities include a finding of blighted conditions in their redevelopment plan for a TAD. This requirement is a legacy of TIF’s beginnings in urban renewal and is now often supplemented with an alternative, less stringent requirement to find an area “economically underdeveloped.” However, there are good reasons to maintain or strengthen an emphasis on using TADs in blighted areas or in areas that are clearly defined as meeting an important public purpose.

One reason to focus on a finding of blight specifically prior to initiating a TAD is that blight suggests areas where promoting economic development might be intrinsically good – by enhancing job accessibility for poor persons, for example - even if it shifts business from one area of a community to another. A finding of blight indicates that an area might not “spontaneously” redevelop. Also, one might argue that blighted conditions are a drag on the local economy and create high operating costs for local government. Last, a finding of “blight” lays the foundation for any declarations of eminent domain associated with projects, and in so far as equity concerns are raised by use of TIF, a finding of blight may be important in establishing the legitimacy of its use.

In Georgia, as in many other states, the “blight” requirement has been softened by allowing underused areas or areas that *could* become blighted to qualify as TADs. One state merely requires that buildings in the project area be over 35 years old to make a finding of blight (LeRoy and Hinkely 2002). Using this criterion, the neighborhood around Georgia’s Governor’s mansion could be “blighted.”

### ***Addressing the Blight Finding:***

Seven states have attempted to tighten up their “blight requirement” by quantifying their blight definition (Alabama, Arkansas, California, Maine, Minnesota, Nebraska and South Dakota) (Johnson and Kriz 2001). Items that can be quantified to establish blight might include some combination of the following:

- Unemployment or poverty rates in the identified district area;
- Number or percentage of buildings that are substandard, vacant and/or require clearance or renovation;
- Number or percentage of parcels that are urban or occupied by buildings (as opposed to vacant land);
- Land and buildings have remained unimproved for certain number of years (it is 40 years in Nebraska);
- Growth has been stable or decreasing in past years;
- In Nebraska, the blight finding also requires a public hearing and requires a recommendation from the planning commission that their “blighted and substandard” criteria do apply to the area in question.

### ***Extensions of the Blight Finding: Other Important Public Purposes***

There are other important policy ends that might be served beyond the amelioration of traditional notions of “blight”. These include environmental remediation and reuse of

properties such as military bases or old industrial facilities. One argument for a looser definition of blight is that TIF should be available to make urban redevelopment competitive with development in greenfields at the periphery of a metropolitan area.

The point is not so much to cleave to one definition of blight, as it is to clearly articulate the public purposes that are to be served (and that would not be served otherwise) by use of TIF. Further, a jurisdiction should consider the implications for “equity” for residents who live in and around the TAD.

### ***“But For” Assessments***

Another key test for any economic development subsidy is whether a development would have occurred without a subsidy. If it would have occurred anyway then the local government is losing money by giving an unwarranted and unneeded handout to a developer or a business.

For example, pressures from increasing travel congestion in Atlanta’s suburban areas are creating increasing incentives to redevelop urban downtown districts. Far from offering subsidies, organizations such as the Midtown Alliance have shown that businesses and property owners will pay additional taxes through Community Improvement Districts (CID) for better planning and zoning and public improvements needed to maintain or raise quality in the face of mounting development pressure. Prior to turning to TIF, local officials might want to explore alternative less costly policies that may be equally or more effective than TAD in a given situation. In Midtown, the City of Atlanta is reaping the benefits of an improved tax base without providing costly public incentives to stimulate private investment. The question to be raised is whether business would develop or grow anyway without (or “but for”) a subsidy.

Most states rely on vague statements of “finding” to establish that development would not have occurred “but for” a subsidy. While the question of need for subsidy has not been well developed in the context of TIF, in the context of economic development incentives more generally, some scholars have proposed a set of considerations that policy makers should take into account when assessing whether or not to provide a subsidy:

#### *General Criteria:*

- Have strategies other than subsidies been attempted in the TAD area or in similar areas? To what extent have these alternative strategies been successful in generating growth?
- What are the patterns of growth in the community – i.e. is growth and development moving towards the TAD area? Has it already been initiated in the TAD?
- What specifically might be a barrier to development in a particular area? For instance, a brownfield might create a significant redevelopment barrier.
- Is there a compelling finding of blight?
- Is the tax base in the target area growing as fast or faster than the tax base in general? (This suggests that incentives for development such as TIF may not be warranted.)

More tightly developed “but for” considerations can be applied to developer/business initiated TADs and/or project specific TADs:

- Are the improvements financed through the TAD a vital input or are they likely to simply contribute “excess profits” to the firm? Consider where the developer might have located without these incentives and any influence incentives might have on the “bottom line.”

One method of examining the “bottom line” impact is to estimate the “return on investment” (ROI) for a private firm with and without a public subsidy. While a ROI analysis is instructive, this assessment is not sufficient to determine fully whether a development would have happened anyway as it does not assess the efficiency of the firm’s operations vis-à-vis its competitors. Overall, research has found that in most cases the influence of public assistance is small on a firm’s bottom line.

- Is the project one that would have developed in the metro area anyway (though perhaps in a different location)? Depending on circumstances, a locality may want to consider the “but for” question in the context of the entire jurisdiction. In other words, would the development occur somewhere else in the same jurisdiction “but for” the subsidy or assistance. If the answer is “yes,” then again the locality and overlapping jurisdictions are facing a loss of revenue that would otherwise be available. However, returning to notions of “blight,” the public purpose may be to direct development to particularly difficult to develop areas and build a more even distribution of jobs and wealth. Development in blighted areas may be seen as more likely to have a positive ripple effect on the surrounding community as well.
- To what extent does the project simply displace or replace existing activity by creating unfair competition between assisted and non-assisted development or projects? (Persky, Felsenstein, and Wiewel 1997).

### ***Structuring Public-Private Partnerships***

While the first line of defense for a locality against misapplication of TAD is a careful assessment of the feasibility and need for a particular project, localities may also want to employ economic development strategies and tools that help ensure that 1) developers or other private interests do not excessively profit off taxpayers and 2) that private interests make the investments claimed.

- *Requiring Up-Front Private Sector Investment First:* As will be discussed in Chapter 3, the TIF arrangements can be structured so that the private sector investor is reimbursed for infrastructure investments or environmental clean-up through TIF rather than having the public sector implement the project or pay for it up front.
- *Equity Kickers:* This policy requires private developers to give the public participants a subordinated equity position in return for their participation. This technique was

commonly used in the Department of Housing and Urban Development's Urban Development Action Grant (UDAG) program. In the jargon of the day it was called an "equity kicker." If a development's annual internal return on investment ever exceeds a negotiated level, the public participants get a share of the "excess return". In this way, an overly cautious "but for" does not lead to a private economic profit at public expense.

The April 30, 2001 *Philadelphia Business Journal* reported that in the \$32 million Avenue of the Arts project, the developer received \$6.25 million in assistance through TAD financing. However, the agreement included an arrangement requiring the developer to pay the city 50¢ out of every \$1 in excess of an annual \$1.3 million return on his project (McCalla 2004).

#### *Pre-negotiated Specific Benefits from a Project*

Frequently, local governments and TIF supported development will have "agreements" or even contractual understandings regarding the timing of development, its final value, and benefits including, and in addition to, increased tax revenue flowing from a project. Frequently, provision of low- and moderate-income housing and job creation are expected benefits. For example, in California, state law requires 20% of increment revenue be used for low- and moderate-income affordable housing. Similarly, Atlanta's Westside TAD planned at least 1,000 to 2,000 new housing units, in addition to Atlanta Housing Authority housing renovation, in the first ten to fifteen years of operation. Also, many TIF subsidies of private projects are justified by promises of job creation. The Westside plan speaks of creating as many as 13,000 jobs around Centennial Olympic Park, not to mention the remainder of the district. Some states and localities have developed tools and techniques to further protect the public's investment in TIF. These include:

- *Regular audits:* The public interest organization "Good Jobs First" recommends annual reporting of progress toward plan implementation, including accounting for both the public and private financial resources generated and spent and the benefits produced (e.g. jobs created and wages, housing built, public works completed).

Reliable data collection and reporting are essential to measuring the effectiveness of subsidies and monitoring the performance of projects. Additionally, in the case of project specific TADs, such as Atlantic Station, communities may never know whether a company has kept its side of the bargain without effective monitoring. Many observers believe that monitoring must be done by an independent agency to be effective. Minnesota and Maine are both cited as having good reporting requirements (*Best Practices*).

- *"Clawbacks:"* A clawback (also called "recapture") is a contractual provision requiring a company to pay back all or part of a development subsidy, such as a grant, loan or tax break, if it fails to fulfill its responsibilities required by the subsidy agreement or program. For example, if a TIF funded private development fails to

produce as many jobs as promised, it may be required to pay back the costs of infrastructure financed to assist the development.

### **Covering the Costs of Public Service Provision**

One of the critical but often “under discussed” issues of TADs is their potential to bring

#### **Box 1.**

#### **Schools and TIF**

School districts face a particular dilemma in the use of TIF. First, they are often more dependent than other governments on property taxes, and thus projects that tie up a significant portion of the growth of their tax base are more likely to threaten their fiscal health. Second, schools face a clear and direct cost from development that brings new families to a jurisdiction.

On the other hand, because of their reliance on property taxes, if the TIF project is sound, a school district may benefit *more* than other overlapping jurisdictions by an investment that increases the long- term value of the property tax base. Further, because they collect such a large share of total property tax, a school district’s “incremental” contribution to the TIF is often critical in making the project financially viable in the first place.

In Georgia, unlike many other states, school districts must be directly consulted and must approve the use of their property tax increment in a TAD. This provision gives school districts a critical role in the development of TAD and means that they should be particularly careful to educate themselves about the use of this financing instrument.

While by no means a complete list, the following are some strategies adopted by states and school districts to hedge against the risks posed by TIF.

- Complete a costs-benefits analysis to assess impact on school district over time from the proposed TAD. As noted above, while school districts may be more at risk than other jurisdictions, they may also stand to benefit heavily from TAD generated growth!
- Set stipulations on the use of TAD, such as limiting total amount of bonds, setting a date for termination of TAD, and setting requirements for recapture of a percentage of any excess return from the TAD that is not needed for debt service. (See the East Point, Sandy Springs, Acworth, Marietta, and Smyrna TAD case studies in the Appendix to this document for arrangements of this type.)
- Require TIF districts to be limited to industrial and commercial development that will minimize increased service costs to schools.
- By intergovernmental agreement with the initiating jurisdiction, require that the TIF base be adjusted periodically for inflationary increases in the property values to prevent degradation of existing tax base over time.
- Require school district reimbursement for any increases in service demand (i.e. more children) generated in the TIF district.
- Limit the amount of school district increment from inclusion in TAD by requiring an annual “rebate” of a portion of the school increment in an intergovernmental agreement with the initiating jurisdiction.

in growth that creates demand for public services: schools, parks, police, fire, health services, etc. Also, while new infrastructure is likely to be financed through TIF, TIF does not account for service demands placed on infrastructure networks. For instance, the cost of congestion of new development and subsequent needs to improve the regional transportation network may not be absorbed by the new development specifically.

While many public services can absorb a certain amount of population increase without serious degradation in service, schools are particularly likely to be hit hard by TADs that take away their access to increases in tax base stimulated by the TAD yet increase service demand over the base amount. In Georgia, school districts are also highly dependent on property tax revenues, and these problems have led to significant resistance to TIF by some school districts. On the other hand, TADs do not necessarily create higher service costs. By eliminating blight and promoting growth, there is potential that TADs might actually lower public service costs by improving infrastructure, reducing crime, etc.

Yet, because of the potential for TADs to tie up tax base growth in infrastructure development (which in turn may be of uncertain value), some states have developed planning requirements that include detailed cost-benefits analyses. Others have simply attempted to limit the scope of TIF that can be applied or have mandated increased participation by stakeholders, such as schools, that are likely to face the most serious fiscal consequences of incorrect usage of TIF.

***Assessing the Costs of TADs:  
Feasibility Study, Fiscal Impact Analysis, or Cost-Benefit Analysis***

Twenty states and the District of Columbia require some form of a feasibility, cost benefit, or fiscal impact study to support TAD designation. Georgia does not, although such reports may be produced in conjunction with TAD projects anyway.

Such analyses are intended to ensure that a TIF project generates more revenues than costs. For example, a TIF in Pittsburgh for a new downtown department store project cost \$130 million, but produced only \$38 million in increased real property value (Montari 1999). Conversely, other cost-benefit analyses have helped reassure school districts and other participating jurisdictions that they will likely see a solid return on their investment.

However, being mindful of the different fiscal position of the initiating jurisdiction compared to other participating jurisdictions is important. The ratio of costs to benefits for each government may be quite different. Three general types of analysis are useful:

- **Feasibility Analysis:** A feasibility analysis focuses on the private sector investment in the TAD and will assess whether the proposed private development has a reasonable chance of success and thus, is likely to contribute the required increment necessary for financing TAD investments. This type of analysis shows the expected return-on-investment projected for proposed private developments and can serve as an analytic basis of a “but for” statement.

- Fiscal Impact Study: A fiscal impact study will show whether the net revenue to all involved governmental jurisdictions is positive in selected time frames. Specifically, these studies ask whether the cost of providing expanded day-to-day services to the project plus the cost of capital support is less or more than the expected tax revenues at the end of five years, ten years, and so on.
- Cost Benefit Study: Cost-benefit studies are the most comprehensive studies and will attempt to develop information on total community benefits, e.g., value of new jobs, or the benefit of new low- and moderate-income houses, as compared to the net public cost of supporting development. Cost-benefit studies reach beyond fiscal impact studies, attempting to assess total community benefit, not simply government revenue.

In some cases, analysis is undertaken via private consultants, in others, modeling is provided by or through the state government. Examples of public sector models that have been developed include:

- The Community Policy Analysis Center (CPAC) at the University of Missouri/Columbia has developed a regional economic analysis model: “Show Me.” The model has many different community applications. In one case it was used to do a general cost-benefit analysis of a proposed TIF in Kirkland, Missouri.

“As part of the cost-benefit analysis, CPAC analyzed the revenue structure of each jurisdiction to be impacted by the proposed TIF district. Real property values that are contained in the proposed TIF district were also analyzed. In addition, potential impacts on employment, labor force, and retail sales were estimated. This study then projected how these changes could affect the local economy and the political subdivisions involved.” (Cox, Johnson, and Mundell 1999)

- Georgia Tech’s Economic Development Institute has several fiscal and economic development impact analysis models in use. LOCI can help a government assess the fiscal impact of new or expanding business. A newer tool, WebFIT, can estimate the fiscal impact of a long-run land use plan on overlapping governments, e.g. a county, its municipalities, and school systems. These tools have not yet been used on a TIF, but appear to be potentially applicable (*Fiscal and Economic Research*).

### ***Controlling the Costs of TADs***

While a TAD is active and the base is frozen, tax growth funds are diverted from general coffers to specific redevelopment/economic development projects. To the extent that a TAD captures normal property value inflation or to the extent that any growth in the TAD creates a demand for additional local government services, a TAD can create “unfunded” burdens for day-to-day government operations.

Ideally, TIF is structured to capture just enough money to pay development costs, administer the project, and service debt. It is common, however, for TIF districts to accumulate surplus funds. Surpluses may accrue because of the success and health of TIF assisted projects, but there are other reasons that TIF increments may be greater than needed to cover project costs. Restoration of surpluses to participating jurisdictions' general funds (or prevention of their capture in the first place) may be important to help those governments provide needed public services and to prevent the degradation of their fiscal capacities as service demands rise. It is likely to be particularly important for schools.

Reasons TADs might generate surpluses include: 1) conservative initial estimates of the size of an increment, 2) sizing the TAD to capture non-blighted areas, 3) normal growth (inflation) in the tax base captured in increments, and 4) continuing diversion of increments to TADs long after original project improvements have been paid off. TIF administration needs methods to limit accumulation of surpluses and return them to taxing jurisdictions (Johnson 2002).

The following strategies reduce surplus funds available for TADs. However, policy-makers should make sure that they also consider need to ensure robust revenue streams for debt financing. For instance, TADs may be sized larger than needed to capture incremental revenues from properties that are highly likely to appreciate in value even without a TAD investment. While capture of these funds may reassure bondholders that they will be repaid, these funds may also be needed to pay for increased service demands created by new development.

Strategies that are used to limit the scope of TADs and TAD surpluses include:

- *Recapture excess increments:* TAD laws in some states stipulate that revenues or increments received in excess of the amount approved in adopting resolutions revert to the general funds of the sponsoring governments in proportionate shares.

Annual reversions prevent development agencies from building large accounts of “uncommitted funds” at the expense of funding day-to-day operations of participating local governments and school systems. This technique is especially appropriate if a large TAD has been defined in effort to generate a large increment and reduce risk of default (New York City Independent Budget Office 2002).

- *Time Limits on TADs:* Enabling legislation in many states places specific limits on the life span of TADs and tax increment financing. For instance, California requires designation of a time limit with each district. Perhaps the most comprehensive set of “time bands” is in Minnesota’s law, which includes the following (McGarry et al. 2001):
  - “5 year rule”: No additional tax increment debt may be issued five years after the inception of a project. This is an effort to keep development authorities from continually eating up all new increments produced by new development.

## Box 2.

### Developing an Appropriately Sized TAD

TADs can come in many shapes and sizes, everything from a very discrete project and TAD area such as the Atlantic Steel and Princeton Lake TADs in Atlanta, the Camp Creek TAD in East Point, and the Lakeside TAD in Acworth, to large sprawling TADs such as Atlanta's Westside and Perry-Bolton, and the recently approved Eastside TAD. These latter, "mega-TADs," may encompass many projects or may simply encompass an area that a jurisdiction would like to develop.

While projects may vary across many dimensions, some key considerations when scaling a TAD include:

- 1) Do the project boundaries capture sufficient projected incremental revenues to make TAD financing viable? How much of the future growth in the overall tax base should be committed to economic development?

On the one hand, capturing increments from areas that are already developing or are more likely to be developable might be helpful in making any TAD financing financially viable; on the other hand, taking this money represents an "earmark" on funds that would otherwise have gone into the general funds of participating jurisdictions and thus could have been allocated to day-to-day operating expenses, other government programs, or could have gone towards reducing taxes.

- 2) What is the *strategy* for using a TAD to promote economic development?

If a TAD is initiated without significant private sector commitments then a jurisdiction needs to consider how it will use TIF to attract development. One alternative is to use the flexibility offered by a pre-existing "mega-TAD," including its powers of *eminent domain*, to tailor TIF based packages to the needs of developers and businesses expressing an interest in the area. Another is to allow TAD revenues to accumulate and use the funds to make infrastructure investments on a pay-as-you-go (non-debt financed) basis that might attract private sector investment.

The problem with these strategies is that they may be very slow to stimulate development. The private sector simply may not be interested in the district, and without an initial project, the jurisdiction administering the TAD may have to rely on inflationary increases in property values or improvements to existing properties to accumulate the increment necessary to finance infrastructure. In Chicago, of the 77 TIFs old enough to generate increments, 45 have generated less than \$1 million, 58% have less than \$1 million and 44% have less than \$500,000 (Neighborhood Capital Budget Group 2003). Further, long term capture of inflationary increases in property values creates a slow degradation of a jurisdiction's fiscal capacity to support on-going public services.

- 3) Is the TAD likely to conflict with other economic development policies or projects?

A benefit of a very discretely defined TAD is that the financing can be structured in such a way that would be appropriate for a particular project. In contrast, large TADs can become a problem when they start to conflict with other economic development projects. A good example is the early problems of the Techwood (now Westside) TAD that saw large portions of this property taken off of the tax rolls to develop Centennial Olympic Park.

- 4) How flexible should the jurisdiction's overall use of TAD financing be?

An argument for a large TAD is that it allows a jurisdiction to respond more quickly to proposed development in a targeted redevelopment area. Jurisdictions have already committed any incremental funds in the district and so do not have to revisit the planning and approval process. Often large TADs, such as the San Diego TIF district described in the introduction, have comprehensive redevelopment plans outlining the goals and objective for which TIF financing will be available.

- 5) Is the TAD likely to be more successful if it encompasses multiple projects at once?

Large TADs may be created to cluster projects together and a jurisdiction only need work through one planning process for multiple projects and can consider the proposed developments holistically. One trade off is that some projects may be more viable than others and this problem may not emerge if all are considered as a part of a single TAD plan.

- *Reimbursement of School Districts:* Some states, California and Iowa, for example, reimburse school districts for diverted revenue during the life of a TAD. Georgia does not do this, but because schools must sign off directly on the use of their tax. Different types of TADs have different completion rates. An “economic development” TAD may only capture increments for eight years, but a “redevelopment” TAD may remain open for 25 years ([Minn. Stat. § 469.176](#) subd. 1b.).
- *Bounding the Area of a TAD:* In addition to placing time limits on TADs as a method for reducing potential overuse of these redevelopment tools, 22 states, including Georgia, limit the land area of individual or aggregate TADs and/or limit total property value included in TADs (Johnson 2002). As cited earlier, Georgia’s law limits the aggregate TADs to 10% of the property tax base of any given jurisdiction (O.C.G.A. §36-44-17). Currently, Chicago has about 13% of its equalized assessed value in TADs; some fear this amount is excessive.
- A State that is more restrictive than Georgia is Maine, which limits any given TAD to 2% of a municipality’s total area and all TADs in a municipality to 5% of the total area. In addition, all TADs combined may not exceed 5% of the total tax value of a municipality. (M.R.S.A. 30A§5253(B)-(C))
- increments in a TAD, school districts have negotiated a recapture of a certain percentage of revenues as well as time limits on the TAD with initiating jurisdictions (for example, see the conditions placed by Fulton County School District on the Camp Creek TAD in Appendix).
- *Limitations on TAD-Backed Debt:* Though debt limits will be discussed in more detail in the next Chapter, localities may also want to consider limiting the TAD-backed debt issued. Restrictions might include limiting the total value of debt that can be outstanding at any particular time or setting termination dates for the TAD concurrent with its bonds reaching maturity. These provisions would prevent on-going financing with incremental revenues.
- *Capture of Inflationary Increases in Base Assessed Value:* Some states, such as California, require the base assessed value to include inflationary increases rather than simply being frozen in time.

### **Chapter 3**

#### **Using the Tax Increment to Secure Long-Term Debt**

Localities can use the captured tax increment in various ways. Commonly, the initiating jurisdiction will issue debt based on the incremental revenue stream from projected property (or sales) tax growth, and use the money raised from bonds to make investments to enhance the “buildability” of a particular location. Debt financed arrangements are often called “pay as you use” because of the projection of payments into the future as infrastructure or other capital investments are enjoyed. Alternatively, the initiating jurisdiction may collect the increment and pay for investments in infrastructure as the funds accumulate in a “pay as you go” arrangement. These arrangements typically involve infrastructure financed by developers on the condition that an initiating jurisdiction will use the tax increment accrued from the district to reimburse the developer for expenses incurred (Johnson 2002). There are also creative ways to use TIF such as use of Maine’s “credit enhancements” (see Box 3). San Diego has a policy of using “gap financing” as its preferred method of direct subsidy to private developers (see Box 4).

In Georgia and in other states, TIF debt is highly flexible. The debt is typically not counted as general obligation debt, and therefore, technically is not considered a commitment of the full faith and credit of the initiating jurisdiction. As a result, the debt is also not counted against a jurisdiction’s debt limit nor does it trigger any voter referenda requirements for specific bond issues.

However, this apparent dissociation of an initiating jurisdiction from the risk of the debt can prove illusory. Whether legally binding or not, TIF bonds generally are viewed by the capital markets as “moral obligations” of the initiating jurisdiction, and one or more defaults could, and probably would, adversely affect a jurisdiction’s standing in the markets and increase its general cost of borrowing. For instance, when the Englewood Urban Renewal Authority defaulted on a \$27 million TIF bond issue, Moody’s Investors Service downgraded the City of Englewood’s general obligation bond rating from A1 to A, citing the inextricable links between the city and the authority, regardless of how the debt was ultimately secured (Johnson 2001).

In Georgia, where state law requires the initiating jurisdiction – be it a city, a county or a consolidated government – to be the issuer of TAD bonds, this risk may be greater. Even were the locality to be unconcerned with its bond rating, a default on TIF backed bonds could potentially compromise the long-term capacity of that jurisdiction or its redevelopment agency to engage in a variety of economic development finance activities.

Also, TIF debt is often considered highly risky and thus is likely to be more expensive as a locality must pay a premium to induce bondholders to hold this kind of debt. For instance, the yield on the longest maturity of TAD bonds issued by the City of Atlanta in October 2001 for the Atlantic Station project was 8% at a time when the City’s own investment grade general obligation bonds would have yielded 5.5% or less.

**Box 3.****Using TIF for Credit Enhancements**

In Maine a 1993 amendment to their TIF statute created a TIF financing option called credit enhancement agreements (CEAs). This option permits a municipality to return all or part of an annual increment directly to the private concern whose investment created the increment, thereby enhancing that business's credit; perhaps allowing it to borrow in the first place. Michael Starn, Editor of the Maine Townsman notes:

"Credit enhancement agreements permit the "captured" property tax dollars to be channeled directly to the business doing the development. The money must be used for the project but the business is given considerable latitude in its use of these funds, unless stipulated otherwise by the municipality.

"CEAs have infused new life into the tax increment financing program. Since the CEA change, TIF activity has skyrocketed. Over the past two years, according to Alan Brigham at the Maine Department of Economic and Community Development, there have been 33 approved projects, most of them using credit enhancement agreements.

"Businesses appear to like the flexibility that a CEA has in directly reducing their development costs. Communities without infrastructure needs are able to offer a tax incentive to potential developers. Municipalities also like CEAs because they carry less risk - they are performance based. Unlike infrastructure investments that involve long-term payments which continue whether or not the project is successful, CEAs are paid out each year based on what development has actually occurred." (Starn 1997)

**Box 4.****Using TIF for Gap Financing Loans**

"Gap Financing" with subordinated loans was first widely used in the federal Urban Development Action Grant (UDAG) program during the Carter administration. Cities received UDAG money from the federal government, and loaned that money to private development projects in the form of a negotiated subordinated loan in an amount and at terms necessary to close the "gap" between what private equity and loans would contribute in a high risk project (e.g., downtown redevelopment in a blighted areas) and what was needed to make a financially viable project. UDAGs were not made in the absence of private equity investment and loans of the amount and type typical for lower risk projects. Public investment was usually highly leveraged. Loans funds repaid to a city were kept by the city to be recycled into additional redevelopment activities.

Gap financing in the form of loans has been adapted to TIF and is the preferred method of channeling redevelopment funds into development projects in San Diego. Tax increment dollars are used to "leverage" private investment. All project proposals presented to the redevelopment agency must include a financial proforma that identifies all costs anticipated for the project and demonstrates the developer's ability to achieve conventional financing prior to discussions regarding the need for assistance to close any existing "gap." Property owners are encouraged to work with CCDC to negotiate projects that remove blight and reach redevelopment project objectives (Centre City Development Corporation 2002).

In an effort to ensure sufficient revenues and to assure bondholders of the security for the bonds, localities may face a further trade off. In some states, and more recently in Georgia, the state has permitted TIF debt to be backed or even directly financed by all the property taxes collected in the designated tax allocation district as well as by sales tax (and other tax) increments generated in the district. The temptation then is to attach a more secure revenue stream to back the debt, potentially garner a higher rating, and generally increase the “purchasing power” of the debt issued (as less has to be paid to bondholders for less risky borrowing). However, this added security means that an even greater portion of the tax base is potentially encumbered by the TIF debt.

### **Policies that Help Mitigate the Risks of TIF Debt**

While tax increment, or tax allocation, financing has brought about numerous benefits to implementing communities in the form of increased economic development and needed additions to public infrastructure, the use of TIF backed debt poses significant risks to virtually every party to a TIF plan. Initiating jurisdictions are exposed to project failures and the political and credit-related risks that can attend them. TIF bond investors risk the loss of all or a portion of their investment, and face risk of adverse tax consequences if their bonds somehow lose their exemption from federal and/or state income taxation.

#### ***Risk of Insufficient Incremental Growth***

In general, most of the risks inherent in tax increment financing stem from the gamble of using a financing stream based on yet to be realized future increases in the value of property tax revenues. Both economic problems and policy changes can reduce the amount of property taxes collected and put the debt in jeopardy. The risk to issuing jurisdictions is default and the subsequent need to intervene to cover debt payments. Bondholders face a risk of loss of money if revenues are insufficient.

These risks may be caused by 1) insufficient appreciation in assessed value, 2) decreases in tax rate, and 3) failure to collect the appropriate incremental increases in value.

Problems that may decrease level of property tax collected include:

- Public land acquisition in a TAD, reducing the amount of taxable property.
- Project failure, downsizing, or delay.
- Private sector firm failure.
- Economic downturn.
- Default on property tax payment by major property owners.
- Changes in law or policy increasing tax exemptions or abatements.
- Unanticipated successful assessment appeals.
- Natural catastrophe.

*Addressing the Risk:* The risks of TIF debt can be reduced by the using sound planning. When estimating TIF revenues, planners should be conservative in their growth estimates. Also, the importance of assessing the feasibility of private sector investment is critical. Developer initiated project specific TADs are likely to have a feasibility analysis “in hand”. General “economic development district” TADs often start with no project and, consequently, no market of feasibility testing.

Beyond good planning, however, there are hedging tactics to against the risk of insufficient appreciation in property values. Hedges to ensure that developers and other private sector investors do not back out of the project include:

- Use of binding agreements on degree and timing of private investment, i.e., developer must pay the anticipated tax increment regardless of whether the increment has been generated by the proposed development;
- Requiring private sector investors develop the project first and using TIF on a reimbursement basis; as has been done in Atlanta with Atlantic Station;
- Use of “pay as you go” arrangements letting TIF increments accumulate either prior to issuing debt or simply using funds to cover redevelopment expenses as they accumulate without issuing debt. This approach is used in Chicago’s neighborhood TIFs. Funds tend to accumulate slowly.

Alternatively, a local government can secure a TIF with other public sector revenues. Ensuring that TIF financing is financially secure may increase the bond rating and/or reduce the costs of debt because bondholders are more certain of repayment. It is important to note, however, that many of the policies that enhance TIF credit *conflict* with policies designed to limit the scope of the revenues captured by TIF and protect local revenues needed for on-going public services.

Policies to ensure coverage of TIF debt obligations include:

- Back property tax based TIF debt with sales tax increments collected within the TAD (recently permitted by State of Georgia). Sales taxes, however, tend to be volatile and are reduced during economic downturns (as is the case now).
- Back TIF debt with all property tax revenues collected in the TIF district. In Georgia, this requires a finding that the incremental taxes will be insufficient.
- Expand the size of the TIF district to encompass non-blighted properties and/or properties that are highly likely to appreciate.
- Annual reassessments to capture appreciation in property values.

### ***Risk of Future Tax Policy Changes***

Tax rate cuts by a participating jurisdiction could cause the amount of tax collected to decline. Georgia law precludes this possibility by setting minimum tax rates in Tax Allocation Districts if debt has been issued:

...a political subdivision or county or independent board of education consenting to the inclusion of its property taxes as a basis for computing a tax allocation increment base within a tax allocation district, as provided in Code Section 36-44-9, may not decrease its ad valorem tax millage rate on taxable property located within that district below the millage rate levied on that property on the last date tax allocation bonds were issued for redevelopment costs of that district. (§36-44-15(b))

An important point for policy-makers to consider when adopting a TAD is that the creation of a TAD may reduce their flexibility to decrease taxes for property owners in the district or in their entire jurisdiction. Because Georgia's Constitution requires "uniformity of taxation," local governments become locked in to a minimum tax rate established during the formation of a TAD. Another dilemma may be created by state law changes that decrease or cap increases in assessed valuations, authorize alternative forms of local taxation (if such alternatives also result in a rollback in property tax rates), and/or change state school funding laws to replace local levies with state education dollars.<sup>4</sup>

*Addressing the Risk:* Localities may want to monitor proposed State changes to assessed property values, millage rates, exemptions, and so on to assess their impact on local TADs. Additionally, creating TADs as Special Districts, as discussed in Chapter 4, would insulate TADs from other taxing jurisdictions and protect their tax rates and revenues from challenges based on the uniformity clause if jurisdiction-wide rates change.

### ***Risk That TIF Debt Is Not Tax Exempt***

An important concern for the holders of TIF bonds is the risk that the interest on their bonds may lose its exemption from federal income taxation, which most debt instruments of state and local governments enjoy. If lost, the federal government will collect taxes from bondholders from the date of the bonds' original issuance.

Internal Revenue Service rules limit the extent to which tax-exempt bonds may be used for private purposes and/or secured by anything other than "generally applicable taxes". Generally, more than 10% of the proceeds of such bonds may be used to fund privately owned improvements (if state TIF laws allow it) only if at least 90% of bond debt service

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<sup>4</sup> S.B. 510, introduced (but not passed) in the 2004 session of the Georgia General Assembly, is one example of such property tax relief bills and would have allowed to Fulton County property taxpayers a homestead exemption equal to the difference between their "base year assessment" and any future assessment as long as they owned and occupied their home.

is payable from tax revenues within a TIF district that apply equally to all district taxpayers. In such cases, extreme care must be exercised to eliminate any special arrangements with TIF district taxpayers that would cause their taxes to become something other than “generally applicable.” For instance, any of the following would violate this rule: 1) an agreement with a TIF district taxpayer waiving the taxpayer’s right to appeal his or her property assessment, 2) an agreement that guarantees payment of taxes in certain minimum amounts, 3) an agreement that indemnifies other TIF taxpayers against any future tax increases, or 4) the posting of any security (e.g., a privately backed bank letter of credit) as additional security for bond repayment. On the other hand, more than 10% of TIF bond debt service may be secured by sources of funds other than generally applicable taxes within a TIF district if at least 90% of TIF bond proceeds are used to fund governmentally owned assets. Many states restrict the use of TIF bond proceeds (and incremental tax revenues, in general) to publicly owned infrastructure. In these states any number of private guarantees of bond repayment are possible.

***Addressing the Risk:*** In states such as Georgia, where bond proceeds may be used to pay virtually any redevelopment cost, including improvements to private property, the risk of bonds being designated “private activity bonds” under IRS rules, even years after their original issuance, is real and should be monitored by initiating jurisdictions and their legal counsel carefully and continuously. Localities might also want to consider being conservative in the purposes for which they issue TIF bonds. For example, they may want to issue bonds only to pay for any public infrastructure components of TIF projects.

## **Chapter 4**

### **Problems and Issues with Georgia's Redevelopment Powers Law**

Georgia's Redevelopment Powers Law provides cities, counties and consolidated governments in the state with significant flexibility in revitalizing blighted areas. By defining redevelopment activities broadly, it allows sponsoring communities wide latitude in shaping the kinds of projects and public-private partnerships necessary to improve local economies. By requiring a judgment that "but for" the exercise of the Law's powers, redevelopment within a TAD would not occur, and by providing for public review and input, it may inhibit initiating jurisdictions from undertaking redevelopment projects of questionable benefit. By requiring the consent of participating jurisdictions to the inclusion of their respective portions of incremental tax revenues in paying redevelopment costs, it prevents local government sponsors from usurping the tax revenues of other entities. Moreover, allowing the possibility of payments to participating jurisdictions to compensate them for tax revenues foregone as an eligible redevelopment cost provides a means by which participants may benefit from TAD development more immediately. Finally, the Law's provisions governing TAD bonds imposes some fiscal discipline on initiating jurisdictions and protects the interests of TAD bondholders.

However, implementation of the Law's provisions in many jurisdictions throughout the state has been hindered by a number of legal and practical constraints – some of which are discussed below.

***Referendum Requirement.*** Chief among the constraints inhibiting local government's use of the Law is its requirement that authority to implement the Law's enumerated powers must be approved by the registered voters of a prospective initiating jurisdiction. Because the debt obligations of a local government issuing TAD bonds are not and cannot technically be secured by the full faith and credit of a sponsoring local government, many local governments may see the referenda requirements as an unnecessary impediment to pursuing local economic development objectives. Many feel the fact that local governments are held responsible by the markets and by bond rating agencies for non-general obligation debt such as revenue debt and debt issued by subordinate jurisdictions (e.g., development authorities) is sufficient protection for local taxpayers. Regardless, in many jurisdictions in the Atlanta metropolitan area have successfully received approval from voters to use TIF. Further removal of this requirement is unlikely as it is embedded in the State Constitution and its removal would involve statewide voter approval.

***TAD Termination and Size Limits.*** The Law imposes no time limit on the life of a TAD, providing only that one shall exist until all redevelopment costs have been paid. Additionally, the Law does not limit the physical size of TADs, individually or in the aggregate. Although it restricts the term of any single issue of TAD bonds to 30 years, and any contract with private entities to this same term, the Law does not prevent an initiating jurisdiction from amending a TAD plan numerous times, issuing several series

of TAD bonds or entering into serial agreements with different private sector participants, each having successive 30-year terms.

Total assessed tax base in aggregated TADs is restricted. A new TAD, at the time of its establishment, may not push the total assessed value in TADs to more than ten percent of the jurisdiction's total assessment base. Even so, within this framework, a mega-TAD could be created and effectively last forever. For this reason, many states impose 25-30 year limits on the life of TIF districts, and nine states restrict their number, not by their aggregate values (which tends to penalize jurisdictions with successful redevelopment programs), but by their geographic size. Other states limit the amount of time in which actual project work must be initiated. If a project does not begin in a specified period, the TAD will expire.

***Consent of Participating Jurisdictions.*** In a few cases, participating jurisdictions had refused to give consent until after an initiating jurisdiction had acted to create the TAD. This raised the possibility that consent would not have been not legally binding, even though TAD bonds, secured in part by the tax increments from such jurisdictions, had already been issued. SB 514, enacted by the 2004 General Assembly, clarified this issue by requiring an initiating jurisdiction simply obtain consent from participating jurisdictions prior to the inclusion of their respective portion of the incremental taxes regardless of the date of TAD creation.

***Use of Non-Property Tax Increments.*** The inability under the Law to pledge certain non-property taxes to pay redevelopment costs (including debt service on TAD bonds) had, until this year, restricted an initiating jurisdiction's financial flexibility in implementing a redevelopment plan. However, SB 514 now allows the direct pledge of these revenues, increasing the leverage available to cover costs.

By pledging the local option sales taxes collected within a TAD, particularly one involving commercial and mixed-use developments, an initiating jurisdiction could pay TAD redevelopment costs more quickly, and/or reduce the need to involve the property tax increments of participating jurisdictions. By enacting this amendment to the Law, Georgia joined nine other states plus the District of Columbia in allowing the use of sales tax increments, along with incremental property tax revenues, to pay redevelopment costs.

As a practical matter, however, measuring the local sales taxes collected, or that may be collected, within a TAD is compromised by other deficiencies in Georgia state law and practices. The chief deficiency is the lack of any means, or legal mandate, by which the State Revenue Department, the State's sales tax collector, can accurately record collections by point of sale. As a result, despite this year's amendment to the Law allowing the pledge of local sales taxes to pay redevelopment costs within a TAD, its actual implementation may be compromised by the existence of conflicting state tax collection procedures.

***Expansion of TAD Boundaries.*** If the geographic boundaries of a TAD are expanded, the Law requires that the base assessed value of a TAD be reset to the TAD's assessed value in the year of expansion. This provision limits an initiating jurisdiction's capacity to make even minor revisions in TAD boundaries. Whatever the requirement's original motivation, its unintended consequence has been to provide initiating jurisdictions an incentive to create larger TADs. Oversized TADs unnecessarily deprive all participating jurisdictions of the incremental tax revenues needed to support general government services.

***Minimum TAD Tax Rates.*** The Law's requirement that initiating and participating jurisdictions may not impose a property tax rate less than that imposed when TAD bonds were issued, while friendly to TAD bondholders, may run afoul of the state constitutional provision requiring uniformity of tax rates throughout a taxing jurisdiction. The risk of running afoul of the constitution may eventually provide a significant disincentive for development within a TAD.

Article VII, Section I, Paragraph III of the Georgia Constitution requires that, except in the case of certain enumerated situations, "all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." The Constitution does allow cities and counties within the State to create "special districts" within which certain services (including "community redevelopment" services) may be provided and taxes, assessments, and fees may be levied to pay for such services (Article IX, Section II, Paragraph VI); however, the Law does not explicitly provide that TADs constitute such special districts. As a result, the Law's provision for minimum tax rates within TADs may be subject to legal challenge and, for this reason or others, has not been complied with by participating jurisdictions thus far. Clarification of this issue in the General Assembly is warranted.

In working to clarify the issue in the General Assembly, local jurisdictions are faced with tax policy choices. If on the one hand, tax rates in TADs were allowed or required to vary and tax rates decrease within a total jurisdiction, TAD bond holders may take legal because as tax rates decrease, tax allocation increments securing their bonds also fall reducing the security and value of the bonds. On the other hand, allowing the remainder of a jurisdiction's tax rates to vary while maintaining fixed tax rates in a TAD could, over time, result in significantly higher tax rates within a TAD than without, creating a disincentive for private investment in the TAD.

***Conflict with "Education Purpose" Clause.*** A final, and potentially significant, legal conflict arises in the Law's provision for school districts to participate in a TAD's redevelopment. The Law clearly anticipates local school districts' ability to consent to the inclusion of their portions of any tax allocation increments created within a TAD to pay TAD redevelopment costs. However, the State Constitution, in Article VIII, Section VI, Paragraph I(b), provides that "school tax funds shall be expended only for the support and maintenance of public schools, public vocational-technical schools, public education, and activities necessary or incidental thereto, including school lunch purposes." Therefore, to allow use of a portion of a local school tax levy to pay costs unrelated to an

educational purpose may put a school district in conflict with this constitutional provision.

On the other hand, to exclude that portion of tax increments attributable to a local school levy, which typically constitutes half or more of such increments, risks gutting an initiating jurisdiction's ability to afford its redevelopment objectives. Participating school districts have attempted to reconcile this conflict by requiring that a portion of tax increments be used for the construction of new schools, improvements to existing schools and the implementation within a TAD of job training or other educational activities and/or that a portion of the increments be returned to the districts as payments in lieu of taxes foregone.

In an opinion dated December 11, 2001, Georgia's Attorney General concluded that these kinds of arrangements essentially comply with the Constitution's "educational purpose" clause.<sup>5</sup> In addition, some legal experts have argued that, because their portions of incremental taxes generated in a TAD are never actually returned to local school districts, but rather are returned by local tax collectors directly to initiating cities or counties, they never truly become "school tax funds," and, thus, their use by such jurisdictions to pay redevelopment costs does not conflict with this constitutional provision. The issue has not been settled.

***Personal Property Taxes.*** Personal property values and the values of utility properties are included in calculation of jurisdictions' total property tax bases, but have often not been included in the calculation of TAD property tax bases or increments. The reason is that it is difficult to tie-down the actual locations of personal and utility property in a jurisdiction. Over 17 percent of Atlanta's property tax base is comprised of personal and utility property. A potential problem arises from the inability to assign personal and utility property to a TAD location. The Law limits TADs to 10 percent of the property tax base. Suppose that a new TAD, combined with existing TADs, would total a reported 9 percent of the total base. It is possible that someone could argue that the City does not comply with the limit specified in the Law because the City has not included personal and utility property in the calculation of the TAD property tax base. The actual property tax base included in TADs may exceed 10 percent of the City's total property tax base, and the city has acted illegally.

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<sup>5</sup> Letter from Attorney General Thurbert E. Baker to Charles S. Johnson, III, Attorney for City of East Point, dated December 11, 2001, regarding City of East Point's Proposed Camp Creek Tax Allocation District.

## Chapter 5 Recommendations

This Chapter presents recommendations for the implementation of a local TAD policy and suggests modifications of TAD policies at the state level. Because each TAD is unique, these recommendations are ones that are sufficiently general that they can apply to TAD policies in general. For a method of avoiding some of the costs and risks of a particular TAD, please see the cost-risk matrix.

The advantage of TAD is that it allows the capture of increments from overlapping taxing governments, a pooling of resources not available with any other tool, and the ability to leverage future revenues. But a TAD does have costs, the most obvious being a diversion of resources, for a while, from provision of day-to-day local government services.

This report shows that TAD projects in some areas appear to have produced important redevelopment benefits; however, we have also seen that state and local governments across the country are continually wrestling with fundamental issues of appropriately structuring TADs. These governments as well as those in Georgia have developed a number of tactics to capitalize on the benefits of TADs while trying to hedge against the costs and risks. With these considerations in mind, we offer the following recommendations:

### **Actions Prior to Initiating a TAD**

**1. Develop TADs as part of an overall planning and economic development strategy. In particular, a locality should identify the areas that should be targeted for redevelopment, the critical public purposes that will be served by TAD, and the types of projects that are appropriate for TAD backing.**

While this should not necessarily preclude the use of TAD to assist with innovative projects that fall outside this framework, fitting TADs into a broader economic development strategy will help 1) ensure that jurisdictions do not use up their TAD capacity on projects that are not priorities; 2) ensure that TAD is appropriately applied and does not conflict with broader policy priorities or with other economic development strategies; and 3) consider overall resources expended for economic development purposes. An economic development budget may be particularly helpful in assessing total resources directed to economic development.

**2. Establish a set of clearly defined economic development goals for which TAD can be used. TADs should be particularly targeted to projects where private sector investment is *unlikely* without public sector stimulus.**

Private sector investments are unlikely when there are unusual costs, for example, for brown field site preparation, or low returns on affordable housing. Thus, TADs may be an important strategy in ameliorating significantly blighted areas, promoting environmental remediation, or stimulating reuse of abandoned industrial properties.

Depending on the priorities of jurisdictions participating in a TAD, TADs may also help promote mixed income development and the development of transit.

**3. Conduct a full and careful feasibility, fiscal impact, and cost-benefit analyses of proposed TAD projects.**

These assessments are the only way to assess the value of the project to the participating jurisdictions, the risks involved, and the amount and form of government investment that is needed and appropriate. Such studies are important because they assess the impact of the project on the fiscal health of the jurisdictions involved and help assess the potential viability of any bonds issued from TAD revenues.

**4. Avoid government-initiated speculative projects.**

The greater the involvement from private sector partners from the beginning the better. All of the successful projects reviewed in the Introduction had significant developer participation and commitment from the outset. By initiating projects with no identified private sector commitment, the government runs the risk of adopting projects based on hope and a prayer rather than market reality.

**5. Work with strong private sector actors.**

Prior to making any contractual commitments, jurisdictions should carefully research the reliability, development experience and capacity, and financial strength of all private parties. Avoid entering into TAD development agreements with private developers who cannot assure performance.

## **Structuring TAD Arrangements**

**6. Shift the risk of TADs to the private sector by minimizing direct government contribution to a project or upfront contribution to a project.**

Good examples of policies to minimize public sector risk include the Atlantic Station policy of developer reimbursement (see Appendix) and San Diego's policy of providing financing to private redevelopers as "gap filling loans," rather than as a direct subsidy.

**7. Clearly specify the public benefits to be produced by the private sector entity receiving TAD assistance and include meaning sanctions for failure to meet agreed upon goals.**

The government should make clear upfront what it expects from the private sector in return for TAD assistance, if the expectation includes more than the mere redevelopment of a property in a distressed area. For example, for a housing project, the government should clearly state the number of affordable units and the price points for those units and

should hold the developer accountable through binding development agreements, claw-back provisions, or other policies.

#### **8. Bound the time-period during which a TAD investment can be made.**

Supporting a developer using TAD financing should be bounded by a particular time period, for instance 5 years. If private sector investments have not been initiated by the end of this period, the jurisdiction should re-evaluate the project and reclaim its TAD capacity, which may then be redirected to other projects or, if the TAD is project-specific, to the general funds of participating jurisdictions.

#### **9. Set clear limits on the duration of the TAD and on the amount of debt that can be issued in a particular TAD.**

Establishing a TAD with no time or debt limit can risk committing excessive resources to a particular area or project and may limit a locality's ability to establish other TADs. California and Minnesota practices both provide examples of project performance deadlines and final project termination deadlines.

#### **10. Size TAD bonds only on the value of real property tax increments.**

Even though Georgia Law provides that TAD bonds can be backed by funding sources in addition to real property tax increments, TAD bonds should be sized as if property tax increments were the only security. Personal property increments, sales tax increments, and other forms of revenue generated within TADs should be used only for debt coverage (i.e., to increase the creditworthiness of the bonds and reduce their cost) and, if not needed to pay debt service or other contractually committed expenses, returned in proportional share to participating jurisdictions each year.

Sources of revenue other than taxes on real property can be volatile. Sales tax revenues, for example, can fluctuate markedly from year to year depending on overall economic trends. Personal property taxes, particularly on inventories, may also fluctuate each year, and taxes on furniture, fixtures, and equipment actually decrease each year as they depreciate. Avoiding use of volatile sources of revenue as primary sources of bond repayment and using them instead as sources of "backup" security is prudent policy.

#### **11. Avoid over-sizing TADs to direct funds arising from natural growth to economic development purposes.**

If an area larger than a project's "benefit area" is needed to generate sufficient tax increments then the project may be of questionable value or TAD may not be the appropriate tool. Including areas that are not going to benefit from a TAD-financed project means that a jurisdiction is simply capturing general fund revenues from natural growth or inflation (from themselves and overlapping jurisdictions) which might otherwise be spent on schools, police, fire, parks, etc. and dedicating it to economic development purposes. Jurisdictions may face some incentive to capture such revenues in order to access a wider pool of revenues to back TAD debt. If jurisdictions decide to

do this as a means of pooling general fund revenues for economic development purposes and/or for backing TAD debt, this strategy should be made explicit in the redevelopment plan and the trade offs evaluated accordingly. Jurisdictions should also consider the implications for the 10 percent ceiling on taxable property that can be dedicated to TADs.

## **12. Consider clustering adjacent projects**

Clustering adjacent compatible projects may reduce the cost and risk of a single project and/or allow the jurisdiction to meet other important public purposes through TAD. Petco Park is a good example. The overall project incorporated several projects into one “action plan.” The projects included a baseball stadium and revitalization of the surrounding neighborhoods. The second part of the plan “guaranteed” the generation of the tax increment needed to support the first component.

## **Evaluation and Audit**

### **13. Develop annual performance audits or evaluations, as well as financial audits, to determine private sector progress towards agreed upon goals and to show how public funds are being used to support the TAD redevelopment plan.**

Regular audits will bring increased transparency to the process for both the public and private sector and will help reassure participating jurisdictions that their incremental tax revenues are used wisely.

## **State Law and Administrative Changes**

### **14. Specify that TADs are Special Districts as authorized by Article IX, Section II, Paragraph VI of the Georgia Constitution and therefore avoid conflict with Constitutional uniformity of taxation provisions.**

While some now argue that TADs already are Special Districts, the law is not clear. If a TAD is not considered a Special District, millage rate differences that arise between frozen bases in TADs and reduced general property tax rates effective throughout a jurisdiction may give rise to constitutional issues of uniformity of taxation.

### **15. Modify state sales tax administration so that the state can identify point of origin of sales taxes.**

Currently, the Department of Revenue does not identify point of sales below the county level. Providing for point of origin of sales tax for smaller areas, i.e., TADs, will allow jurisdictions to use the incremental revenues from the local sales tax to back TAD projects.

**16. Change Redevelopment Powers Law to clarify that when TAD boundaries are expanded, this shift will not “reset” the base property value for the entire TAD. Only the newly added areas will have its property tax base frozen at the time the district is expanded.**

This change is designed to remove an incentive for setting very large initial TADs that is probably an unintended consequence of the current “resetting” requirement.

**17. Clarify the role of state-assessed property (for example utilities) in the calculation of the tax increment for a TAD.**

Utility properties and personal are included in a jurisdiction’s general property tax base, but, including these type properties in TAD property valuations has proven difficult. The State, which assesses utility property does not keep records of their specific locations and most personal property is not taxed at a specific site. The easiest, and probably best, solution is to exclude both utility and personal property values from both the tax allocation increment base and subsequent calculations of tax allocation increments. In making any changes however, state officials will need to make sure that the measure is structured so that it does not create a conflict with the security arrangements of existing debt obligations.

<b>Risks/Costs</b>	<b>Policies to hedge against risks and costs</b>
Loss of fiscal capacity due to cumulative effects of TAD and other economic development policies.	Place TAD in overall framework of economic development policies: <ul style="list-style-type: none"> <li>• Consider TADs during development of local General Plan;</li> <li>• Create unified economic development budget.</li> </ul>
<p>Unnecessarily giving away future fiscal capacity for economic development purposes.</p> <p>Can be caused by:</p> <ul style="list-style-type: none"> <li>• creating conditions where businesses /developments shift from one part of a jurisdiction to another; or</li> <li>• giving businesses/developers subsidies that they don't need, or</li> <li>• private sector partners renege or are unable to provide agreed upon public benefits</li> </ul>	<p>Either establish that development would not have occurred otherwise or public purpose is sufficiently strong to accept risk that development would have occurred otherwise.</p> <ul style="list-style-type: none"> <li>• Establishment of “blight finding” or other clear reasons that property would be unlikely to develop without public sector assistance; or that some broader public purpose is served through the TAD aid.</li> <li>• Establishment that “but for” the subsidy development would not have occurred.</li> <li>• Evaluation of return on investment (ROI) for private sector business to determine importance of subsidy in making profit on investment.</li> </ul> <p>Structuring a TAD to ensure that public sector benefits from private sector profits.</p> <ul style="list-style-type: none"> <li>• Equity kickers: if private sector business/developer makes profit higher than anticipated; public sector receives a return on the investment</li> <li>• Pre-negotiated specific benefits: ensure that public purposes are served such as meeting needs for low to moderate income housing, job creation, etc. <ul style="list-style-type: none"> <li>○ Audit to ensure that private sector follows through on promised benefits.</li> <li>○ Clawback to ensure company pays back any public sector support if promised benefits do not materialize.</li> </ul> </li> </ul>
<p>Investing in development that creates costs that are higher than revenues.</p> <p>Costs may be a result of:</p> <ul style="list-style-type: none"> <li>• Increased service demand (most seriously, more children attending schools, but can be other costs)</li> <li>• Costs of TAD financed project</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct cost-benefit or fiscal impact analysis <ul style="list-style-type: none"> <li>○ Must be done for <i>each overlapping jurisdiction</i> as costs and benefits may be distributed differently</li> </ul> </li> <li>• Reimbursement of school districts some or portion of incremental revenues collected since costs may be unduly borne by school districts.</li> </ul>
Unnecessarily giving away too much future fiscal capacity to TAD.	<ul style="list-style-type: none"> <li>• Review impact of TAD on multi-year budget or create “economic development budget” to assess overall impact of economic development policies</li> <li>• Develop agreements to recapture excess increments of a TAD; limiting the revenues that can be collected from a TAD</li> <li>• Reimbursement of school districts</li> <li>• Time limits on TADs</li> <li>• Bounding the area of TADs</li> </ul>

	<ul style="list-style-type: none"> <li>• Time, amount, or other limitations on TAD-backed debt</li> <li>• Keep inflationary increases in the “base assessed value” of the district</li> </ul> <p><i>(Note: These may conflict with criteria needed to reassure bondholders of the security of TIF bonds.)</i></p>
Equity concerns: TAD is used to displace low to moderate income families.	<ul style="list-style-type: none"> <li>• Finding of blight</li> <li>• Requiring low to moderate income housing to be protected/developed in TAD</li> </ul> <p><i>(Note: This may conflict with desire to keep public service costs low in a TAD district as housing tends to be more service intensive than commercial development because of schooling needs.)</i></p>
<p>Insufficient revenues generated by TAD to cover debt obligations.</p> <p>Can be caused by:</p> <ul style="list-style-type: none"> <li>• public land acquisition,</li> <li>• project failure, downsizing, or delay</li> <li>• private sector firm failure</li> <li>• economic downturn</li> <li>• default on property tax payment by major property owners</li> <li>• changes in law or policy increasing tax exemptions or abatements</li> <li>• unanticipated successful assessment appeals</li> <li>• natural catastrophe</li> </ul>	<p>While TAD debt is not backed by the full faith and credit of an issuing jurisdiction, if TIF revenues are insufficient and a local government allows TIF bonds to default, it may face a lower bond rating, higher costs of issuing debt, and a degradation of its capacity to invest in future economic development projects.</p> <p>Policies to assist with avoiding revenue shortfalls include:</p> <ul style="list-style-type: none"> <li>• Rigorous assessment of feasibility of private sector projects and/or likelihood that public sector investments will generate sufficient future growth!</li> <li>• Use of binding agreements with private sector investor on degree and timing of payments to local government</li> <li>• Reimburse private sector investor rather than pay up front</li> <li>• Use of “pay as you go” to allow TIF funds to accumulate prior to paying for redevelopment expenses</li> </ul> <p>Back TIF debt with other revenues:</p> <ul style="list-style-type: none"> <li>• Use of sales tax increments</li> <li>• Use of all property tax revenues collected in TAD</li> <li>• Expand size of TAD to encompass likely high growth areas</li> <li>• Regular reassessments to capture appreciation in property values</li> </ul> <p><i>(Note: These policies may conflict with efforts to limit the tax base growth and thus fiscal capacity of a jurisdiction captured by TADs.)</i></p>
Risk of future tax policy changes	<p>Georgia State law provides that localities <i>cannot change millage rates in a TAD</i> while debt is still outstanding; however, State law changes and changes that affect the base assessed value can influence tax increments collected.</p> <ul style="list-style-type: none"> <li>• Monitor State laws to assess implications for TAD backed debt.</li> <li>• Prior to issuing TAD debt, localities should assess their future aspirations in terms of property tax policy (i.e., do they think cutting taxes is important economic development policy)</li> </ul>
Risk that TIF debt is not tax exempt	<p>Primarily a risk to bondholders, however the higher the risk the higher the interest rate on TIF debt (and thus the more expensive it may be).</p>

	<ul style="list-style-type: none"> <li>• Initiating jurisdictions and their legal counsel need to carefully consider TIF debt and extent to which falls under rubric of “private activity bonds”</li> <li>• Be conservative in purposes for which TIF bonds are issued.</li> </ul>
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## Appendix

### Current Tax Allocation Districts in Metropolitan Atlanta

Eleven tax allocation districts have been created in metropolitan Atlanta to date. Seven are located in Fulton County – five in the City of Atlanta, one in the City of East Point and one in unincorporated Fulton County. Three are located in Cobb County – one each in the Cities of Acworth, Marietta and Smyrna. One is located in unincorporated Clayton County. These TADs, along with their respective net assessed values for tax year 2004, are listed below.

**Table 2**  
**Current Tax Allocation Districts in Metropolitan Atlanta**

	<b>Year Created</b>	<b>Base Assessed Value</b>	<b>2004 Assessed Value</b>	<b>Incremental Assessed Value</b>	<b>Projected Incremental Assessed Value</b>
<b>Fulton County</b>					
<u>City of Atlanta:</u>					
Westside TAD	1998 <sup>1</sup>	\$ 418,680,920	\$ 610,200,440	\$ 191,519,520	\$ 73,300,000
Atlantic Steel TAD	1999	7,173,240	129,140,720	121,967,480	598,850,000
Perry-Bolton TAD	2002	66,022,880 <sup>2</sup>	85,567,400	19,544,520	120,000,000
Princeton Lakes TAD	2002	826,760 <sup>2</sup>	1,746,000	919,240	131,115,000
Eastside TAD	2003	<u>299,727,400 <sup>2</sup></u>	<u>343,698,050</u>	<u>43,970,650</u>	<u>328,326,900</u>
Subtotal		792,431,200	1,170,352,610	377,921,410	1,251,591,900
<u>City of East Point:</u>					
Camp Creek TAD	2001	<u>4,720,280</u>	<u>25,316,280</u>	<u>20,596,000</u>	<u>92,400,000</u>
Subtotal		4,720,280	25,316,280	20,596,000	92,400,000
<u>Unincorporated Fulton:</u>					
Sandy Springs TAD	2003	<u>321,283,240 <sup>2</sup></u>	<u>350,631,920</u>	<u>29,348,680</u>	<u>632,000,000</u>
Subtotal		321,283,240	350,631,920	29,348,680	632,000,000
<b>Cobb County</b>					
<u>City of Acworth:</u>					
Lakeside TAD	2003	<u>1,017,348</u>	<u>3,384,438</u>	<u>2,367,090</u>	<u>18,480,552</u>
Subtotal		1,017,348	3,384,438	2,367,090	18,480,552
<u>City of Marietta:</u>					
City Center South Renaissance TAD	2003	<u>21,296,708</u>	<u>21,374,750</u>	<u>78,042</u>	<u>40,000,000</u>
Subtotal		21,296,708	21,374,750	78,042	40,000,000
<u>City of Smyrna:</u>					
Atlanta Road Corridor TAD	2003	<u>29,478,740</u>	<u>30,058,898</u>	<u>580,158</u>	<u>60,000,000</u>
Subtotal		29,478,740	30,058,898	580,158	60,000,000
<b>Clayton County</b>					
<u>Unincorporated Clayton:</u>					
Ellewood Town Center TAD	2003	<u>16,116,068 <sup>3</sup></u>	<u>na</u>	<u>na</u>	<u>180,000,000</u>
Subtotal		16,116,068	-	-	180,000,000
Grand Total		\$ 1,186,343,584	\$ 1,601,118,896	\$ 430,891,380	\$ 2,274,472,452

**Notes:**

<sup>1</sup> An expansion and redefinition of the original Techwood Park TAD, created in 1992.

<sup>2</sup> Submitted, but not yet certified by State Revenue Commissioner.

<sup>3</sup> As per Redevelopment Plan.

A brief description of each of these existing tax allocation districts, their redevelopment objectives and achievements to date, the policies that guided their creation, and the constraints placed upon them by their initiating and participating jurisdictions are provided in the following sections.

### **City of Atlanta TADs**

The City of Atlanta has created five tax allocation districts pursuant to the Redevelopment Power Law: the Westside TAD in 1998, the Atlantic Steel TAD in 1999, the Perry-Bolton TAD and the Princeton Lakes TAD in 2002 and the Eastside TAD in 2003. As indicated in Table 2 above, by tax year 2004, the combined assessed value of these five TADs amounted to nearly \$1.17 billion – or approximately 6.84% of the City’s 2004 net tax digest of \$17.11 billion. If redeveloped as planned, their combined assessed value would amount to over \$2 billion – well over 10% of the City’s net assessed value. If and when this happens, the City will be unable, pursuant to the Redevelopment Powers Law, to create any additional TADs.

#### **Westside TAD**

The City of Atlanta created its first tax allocation district in 1992. Encompassing the Techwood Park Urban Redevelopment Area, the City’s Tax Allocation Number One – Atlanta/Techwood Park (“Techwood Park TAD”) was established to bring about the redevelopment of that area immediately west of Atlanta’s central business district, generally between CNN Center and the Georgia World Congress Center (“GWCC”) and the Coca-Cola Company headquarters on North Avenue, and including the old Techwood Homes public housing project. However, before the City’s plan gained any significant momentum, Atlanta was selected to host the 1996 Centennial Olympic Games. Two years later it was announced that a large portion of the district would be purchased by the Georgia World Congress Authority (with funds provided by the Atlanta Committee for the Olympic Games) for the purpose of developing what is now Centennial Olympic Park. As a majority of property within the TAD was thus converted from private to public ownership, assessed values within the district plummeted, creating, overall, a negative amount of incremental *ad valorem* taxes.

The original redevelopment area was significantly expanded in July 1998 to include downtown’s Fairlie-Poplar District, the “railroad gulch” just east of CNN Center and Philips Arena (then under construction), an old commercial and warehouse distribution area south of the GWCC and Georgia Dome, an area around Hendon Homes and certain older commercial warehouse distribution areas north of and including GWCC and the Georgia Dome, and the English Avenue and Vine City residential neighborhoods.<sup>6</sup> This expanded TAD Number One (at nearly 1,000 acres, the City’s largest) was renamed

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<sup>6</sup> The TAD was expanded again in October 1998 to include three parcels bounded on the west by Peachtree Street, on the north by Ellis Street, on the east by Peachtree Center Avenue and on the south by property owned by Georgia Pacific to facilitate the potential development of property just north and east of the Georgia Pacific Building downtown.

Westside, and, effective December 31, 1998, its initial base assessed value (or “tax allocation increment base”) was adjusted to \$418,680,920. The City’s general goals for the Westside TAD were to capitalize on opportunities to revitalize land surrounding Centennial Olympic Park, foster the development and connections between the City’s CBD, Clark Atlanta University Center, Georgia Tech and adjoining neighborhoods by promoting improved transportation corridors, safer streets and pedestrian and greenway trails, and support efforts then underway to remove blighted conditions and expanding redevelopment efforts in the Vine City and English Avenue neighborhoods and certain fragmented commercial/warehouse districts located throughout the expanded district. In essence, it was to induce the redevelopment of these latter areas within the TAD that constituted the “but for” test required by the Redevelopment Powers law. To ensure an equitable distribution of benefits derived from the creation of the TAD, the City provided that 20% of the proceeds of any TAD bonds supported by valuations created in the “downtown area” of the TAD would go to fund projects in the Vine City and English Avenue neighborhoods, while 100% of the proceeds derived from valuations created within the Vine City and English Avenue neighborhoods (as well as certain other Empowerment Zone areas within the TAD) would go toward projects within such neighborhoods. The Atlanta Development Authority (“ADA”) was designated by the City to act as its redevelopment agent for Westside,<sup>7</sup> which is scheduled for termination as of December 31, 2023.

According to Westside’s redevelopment plan, additional taxable development within the TAD was expected to produce \$183,250,000 in incremental assessed values. As of the end of 2004, that goal had been achieved, with the incremental assessed value of real property within the TAD at \$191,519,520. Since the plan’s preparation, additional projects have been announced for the area. Construction of the Georgia Aquarium, though itself exempt from *ad valorem* taxation, will almost certainly spur additional development north of Centennial Olympic Park, as will the Coca-Cola Company’s planned relocation of the World of Coca-Cola Museum to an adjacent 22-acre parcel. Redevelopment of the historic Winecoff Hotel and Glenn Building into a luxury boutique hotels is being planned for the area, as are additional residential and mixed-use developments on Centennial Hill and commercial office space development on and around the site of the former Boomershine automobile dealership.

In December 2001, the City issued \$14,995,000 in TAD bonds to pay redevelopment costs within the district. Projects receiving assistance from the bond issue were the Historic Westside Village development, the Museum Tower Condominium development, the Atlanta Centennial House Condominium development, the 123 Luckie Street residential development, the Northyard Business Park project and a portion (\$1.5 million) of the cost of constructing Centennial Elementary School by the Atlanta Board of

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<sup>7</sup> ADA is an umbrella organization that encompasses three public agencies created by the City to provide community and economic development assistance – the Development Authority of the City of Atlanta, the Downtown Development Authority of the City of Atlanta and the Urban Residential Finance Authority – and one not-for-profit entity – the Atlanta Renaissance Corporation, formerly the Atlanta Economic Development Corporation.

Education.<sup>8</sup> One additional project that was slated for support – the Centennial Market project in Vine City – has not yet been implemented by ADA due to lack of market support. Because the bonds were not issued until after a significant amount of incremental taxes had been generated, the City was able to obtain credit enhancement for them in the form of a bank letter of credit and was thus able to obtain an investment grade credit rating for the bonds of “A+” from Standard & Poor’s Corporation based on the LOC provider’s rating. The City is currently planning a second TAD bond issue for the district of between \$20 million and \$40 million to fund further improvements in the area and support additional redevelopment within it.

The Westside TAD has, by most measures, been a successful undertaking by the City. Both the amount and taxable value of redevelopment that have taken place within the district since its reincarnation as Westside in 1998 have been significant – exceeding in five years that which was originally projected. It is even likely that the second issue of TAD bonds for the district could obtain investment grade credit ratings, based on preliminary indications from Moody’s Investors Service, even without credit enhancement from another creditworthy entity – a stunning achievement for a redevelopment district of its age.

However, Westside’s successes have not been evenly spread throughout the TAD. Despite the City’s requirement that at least 20% of incremental taxes generated in the “downtown” section of the TAD (i.e., the area within the TAD lying east of Northside Drive) go toward inducing redevelopment activity in the “neighborhood” section of the TAD (i.e., the area west of Northside Drive), relatively little such activity has happened there. In fact, virtually all of the completed projects have been located in the area immediately surrounding Centennial Olympic Park, with very little redevelopment activity thus far migrating to adjacent areas and very little of that activity resulting in affordable rental housing other than the Atlanta Housing Authority’s successful redevelopment of the old Techwood/Clark Howell public housing projects under the federal Department of Housing and Urban Development’s Hope VI grant program. While this uneven development trend may change over time, it currently presents a significant challenge to the City and ADA. To the extent the “but for” test in connection with Westside had more to do with the difficulties of redeveloping such low and moderate income neighborhoods as Vine City and English Avenue, and not with the relative ease of creating new development around one of downtown’s newest and most significant public assets, Centennial Olympic Park, Westside has provided little more than public stimulus to redevelopment activities that, arguably, could have taken place anyway.

From an administrative standpoint, Westside, as the City’s first TAD, has also experienced several potentially serious problems. The tax allocation increment generated within Westside has come exclusively from increases in real property assessments, in part because the City’s resolution creating the TAD specified that only real property be used

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<sup>8</sup> In a separate agreement with the Board of Education, the City agreed to apply a minimum of \$1.5 million from each TAD bond issue for Westside, together with 10% of the amount of TAD bonds issued in excess of \$15 million, to reimburse it for the cost of constructing Centennial Elementary on the site of the old Fowler Elementary School.

for computing the increment. However, the Redevelopment Powers Law requires that both real and personal property be taken into account in that computation. The failure by the Fulton County Tax Commissioner to abide by the terms of this higher legal authority, the sheer complexity of compliance, given the past and current difficulty in matching personal property tax returns with real estate parcel identification numbers, and the failure thus far of the City to insist that the problem be resolved, has reduced the amount of tax increments that otherwise would have been available to pay redevelopment costs and TAD bond debt service.

Of greater significance was the inclusion by County tax officials in 1998 of exempt properties (e.g., properties owned by governmental entities, churches, schools and other exempt owners) in Westside's tax allocation increment base (based assessed value) and in subsequent years' assessed value figures. The Redevelopment Powers Law requires that such amounts include only the "taxable values of taxable property" within the TAD. Thus, the implications of this error, though perhaps not immediately apparent, are substantial. For instance, as of the current tax year (2004), the gross assessed value of property within Westside, as determined by County tax officials, is \$610,200,440. Over a third of this total, or \$208,288,040 is represented by the assessed value of wholly exempt property. Remember that the tax allocation increment is calculated by multiplying each year's combined tax levies of the city, county and school board by a fraction, the numerator of which is the growth in assessed value since creation of the TAD and the denominator of which is the total assessed value of property within the TAD. If both the tax allocation increment base of Westside and its 2004 gross assessed value had not included these exempt property assessments, and assuming for the moment that the total value of exempt property within the TAD has not changed since December 31, 1998, the district's 2004 tax allocation increment would be as much as 50% higher than the \$4.7 million estimated for the current tax year, as shown in the following table.

**Table 3**

	1 Increment Base	2 2004 Gross AV	3 Incremental AV (2-1)	Increment Fraction (3/2)	Total Operating Levies	Tax Allocation Increment
W/ Exempt Prop.	\$418,680,920	\$610,200,440	\$191,519,520	31.4%	\$14,984,948	\$4,703,176
W/out Exempt Prop.	210,392,880	401,912,400	191,519,520	47.7%	14,984,948	7,140,636

If Westside's tax allocation increment base were re-certified so as to exclude exempt property, more tax increments could be made available to TAD projects and hasten the day that the TAD could be terminated and incremental taxes returned to the general funds of the City, Fulton County and Atlanta Board of Education.

### **Atlantic Steel TAD**

The Atlantic Steel Brownfield Redevelopment Area and Tax Allocation District Number Two – Atlantic Steel (the "Atlantic Steel TAD") was created by the City of Atlanta in September 1999, to be effective on December 31 of that year. It is scheduled for termination as of December 31, 2024. The TAD includes a 119-acre parcel upon which the former steel-making operations of Atlantic Steel Industries, Inc. were located for one hundred years and a 1.7-acre parcel that was formerly occupied by Tri-Chem Corporation, which manufactured fertilizer. Both parcels were classified as

“brownfields” and required extensive remediation under state and federal environmental laws prior to their planned redevelopment (along with another seven-acre parcel and five single-family residential parcels in the Home Park neighborhood within the TAD) into a mixed-use “mini-city” called Atlantic Station. When completed, Atlantic Station will include, among other improvements, office towers, retail stores, entertainment facilities, restaurants, residential apartments and lofts, condominiums, single-family homes, hotels, public streets, plazas and parking facilities, pedestrian walkways and bike paths. The remainder of the 138-acre TAD includes a 12-acre parcel owned by the Georgia Tech Foundation and used as a golf practice facility and other activities related to the Georgia Institute of Technology, whose long-range redevelopment into a technology office park is currently, and separately, planned by the Foundation.

Remediation of the brownfield area within the TAD, which was completed in late 2001, consisted of four components: (i) excavation and removal of contaminated soils from “potentially impact areas” within the TAD; (ii) installation of a ground water interception and monitoring system that will capture all ground water flowing from the basin in which the TAD is located, evaluate the ground water and, if needed, pre-treat it before it is discharged into the City’s sanitary sewer system; (iii) coverage of the entire brownfield site with either hard cover (e.g., parking decks, streets, sidewalks, roofs, etc.) or at least two feet of clean fill; and (iv) execution of a “conservation easement” to establish permanent restrictions upon the use of, and the permanent interception of all, ground water on or beneath the brownfield area, and ensuring that certain engineering and institutional controls relating to the brownfield sites are maintained in perpetuity.

Unlike the Westside TAD and most of the other TADs created by the City of Atlanta, the Atlantic Steel TAD is a project-specific TAD. General site remediation and infrastructure development (including the construction of a parking deck, providing over 10,000 covered spaces beneath the planned office, retail and residential areas to the north of 17<sup>th</sup> Street and east of the proposed State Street extension) is being managed by Atlantic Station L.L.C. – a joint venture of local developer Jacoby Development, Inc. and AIG Global Real Estate Investment Corp., a wholly owned affiliate of American International Group, one of the world’s largest insurance companies (the “Developer”). The Developer acquired most of the property within the TAD from Atlantic Steel Industries, Inc. in December 1999, with the intent of dividing the site into 38 developable parcels to be developed by affiliates of the Developer and other entities (the “Vertical Developers”). To date, the Developer has either sold or contracted for the sale of several such parcels with the following Vertical Developers (three of which are affiliated with the Developer):

**Table 4**  
**Atlantic Station Vertical Developers and Development Components**

Section	Developer	Component	Units/Sq.Ft.	Status
Home Park North	Beazer Homes, Inc.	Low-rise Townhomes (fee)	94	Under Construction
The Commons	Lane Investment and Development Corp.	Mid-rise Residential (fee/rental)	1,150	Under Construction
The District (residential)	Lane Investment and Development Corp.	Main Podium Lofts (fee)	270	Under Construction
The District (residential)	Novare Group	Condominiums (fee)/Hotel	404/101	Under Construction
The District (retail)	Atlantic District, L.L.C.	Main Podium Retail/Entertainment	1,200,000	Under Construction
The District (office)	Atlantic District, L.L.C.	Main Podium Office	500,000	Completed
Tech Village (residential/rental)	Lane IDC/Flagstone Holdings	Residential (elderly/student)	216	Begin Construction 2005
Tech Village (retail)	IKEA, Inc.	Retail (home furnishings)	400,000	Under Construction
District North (retail)	Target Stores	Retail (general)	175,000	Begin Construction 2004

Development of Atlantic Station was contingent upon the construction of a bridge across Interstates 75/85 (the “Downtown Connector”) at 17<sup>th</sup> Street by the Georgia Department of Transportation, in order to connect the relatively isolated site to the bulk of midtown Atlanta, and the extension of 17<sup>th</sup> Street through the TAD to Northside Drive. Construction of the bridge, which was funded primarily by federal highway grant funds, was completed in April 2004; and completion of the 17<sup>th</sup> Street extension, which was funded by the Developer, was completed in August 2004.

The tax allocation increment base assessment for the Atlantic Steel TAD was initially set, and confirmed by the State Revenue Commissioner as being, \$1,905,480. However, it was later discovered that the ADA, in its initial submission to the State Revenue Department, had omitted a number of the highest value parcels in the TAD (including the Atlantic Steel Industries site itself); and the assessment base was officially changed to \$7,173,240 in 2001. The Redevelopment Plan for the TAD projected total assessed value within the district to increase by nearly \$592 million over the course of Atlantic Station’s development period. As of tax year 2004, with all environmental remediation and most site and infrastructure development completed and significant vertical development on the assessment rolls, assessed values within the TAD had grown by over \$126.5 million.

The Redevelopment Plan calls for the City to reimburse the Developer its cost of remediating the brownfield sites, installing all public infrastructure and preparing properties within the TAD for vertical development from the net proceeds of tax allocation bonds issued over the initial ten-year development period. All such horizontal development has been completed, with well over \$200 million in costs having been incurred. In October 2001, the City issued its first series of tax allocation bonds for this purpose – sold on a non-rated basis in a limited offering to nine institutional investors. The total principal amount of bonds issued amounted to \$76,505,000, of which about \$46.2 million went toward covering these site development costs<sup>9</sup>, with another \$19 million contributed from City water and sewer funds. The City is currently planning a second TAD bond offering, in an amount ranging from \$50 and \$100 million to reimburse an additional amount of these costs.

The Atlantic Steel TAD, as one of the City’s early such districts, fell victim to some of the same administrative errors that beset Westside. However, their effects are less significant and much easier to resolve. For instance, exempt property also was included in Atlantic Steel’s base assessed value, but it constituted just the Georgia Tech Foundation property mentioned above, can easily be isolated and thus removed if County tax officials agree to do so. Similarly, personal property values were not included in the base assessment and have not been included in subsequent AV calculations. However, as a largely vacant brownfield in December 1999, there was no appreciable amount of

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<sup>9</sup> The remaining bond proceeds were used (i) to pay interest on the bonds until sufficient tax increments became available to do so (\$10.8 million), (ii) to repay the City a \$10 million loan used to separate the combined stormwater/sanitary sewer that ran through the site, (iii) to establish a debt service reserve fund equal to maximum annual debt service on the bonds (\$7.6 million), and (iv) to pay the costs of issuing the bonds (\$1.9 million).

personalty within the TAD and, until the SouthTrust office building was completed in April 2004, there has not been an appreciable amount of new such property to be included in the district's assessed valuations.

The Atlantic Steel TAD, and the Atlantic Station project for which it was created, have been very successful thus far in accomplishing their purpose and offer an excellent case study in the appropriate use of local tax incentives to stimulate private development that, without such incentives, could not or would not occur. For decades, the cost of purchasing and remediating the Atlantic Steel site, as well as the cost of installing the public infrastructure almost totally lacking on the site and of connecting it to similarly developed parts of midtown Atlanta on the east side of the Downtown Connector, had prevented the private sector from seriously considering it, despite its central location and otherwise exceptionally good redevelopment potential. The use by the City of tax base that otherwise would not have been created to incentivize that redevelopment could recapture a lost part of the City's center, as well as expand considerably the tax base needed to support future city, county and school district operational needs.

### **Perry/Bolton TAD**

The Northwest Atlanta Redevelopment Area and Tax Allocation District Number Three – Perry/Bolton (the “Perry/Bolton TAD”) was the third such district created by the City of Atlanta, with an effective date of December 31, 2002. Unlike the Westside and Atlantic Steel TADs, Perry/Bolton's termination date, while estimated to be 25 years from its creation, will not occur until “all redevelopment costs have been paid” – including debt service on any TAD bonds issued to cover such costs, regardless when they may be issued.

The district's boundaries are quite serpentine (requiring a three-page description in the City's Redevelopment Plan), but the TAD generally is bounded by Marietta Street on the north and east, Bolton Road on the north and west, and Bankhead Highway on the south. Perry Boulevard (named for Herman E. Perry, founder of Standard Life Insurance Company and Citizens Trust Bank) is the major thoroughfare within the district, generally running northwest to southeast, parallel and just south of Norfolk Southern Railroad's Inman Yards and the CSX Railroad terminals, which, along with certain adjacent industrial land uses, are not included within the TAD. For reasons that are not clear, Perry/Bolton's redevelopment area is larger than the TAD itself.<sup>10</sup>

The goals of the TAD are to make general public infrastructure improvements within the district and throughout the larger redevelopment area that will attract private investment in mixed income, mixed-use residential developments and serve as a catalyst for additional private commercial and residential investments in Northwest Atlanta. The animating force behind, and initial focus of the district's redevelopment plan, as well as the likely recipient of initial City TAD bond proceeds, is the Atlanta Housing Authority's planned redevelopment of the former Perry Homes and Perry Homes Annex public

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<sup>10</sup> The TAD itself, at 550 acres, is the City's third largest in size after the Westside TAD and the Eastside TAD.

housing projects into a 50-acre mixed-use development initially planned to consist of nearly 1,200 new homes, 46,000 square feet of commercial development, a 65,000 square foot YMCA, 18,000 square foot public library and 85,000 square foot elementary school in the central area of the development. The plan also includes the conversion of the City's old Gun Club landfill site into a 13-acre public golf course accessible to all residents in the development. The plan asserts that implementation of this so-called "West Highlands" project, could not happen without the establishment of the TAD but, with it, could result in \$340 million in private investment. Public investment will be in the forms of revitalization and demolition grants received by the AHA under the U.S. Department of Housing and Urban Development's HOPE VI program, federal and state transportation funds, and TAD bond proceeds.

The resolution of the City creating the Perry/Bolton TAD and surrounding redevelopment area provides that all tax allocation increments created within the West Highlands master plan area shall be allocated first to West Highlands-related redevelopment costs. All tax increments created within the Bolton/Marietta Street Livable Cities Initiative ("LCI") planning area within the TAD shall be allocated to redevelopment costs within that area. And any tax increments in excess of those needed to pay redevelopment costs in these two areas shall be allocated to the area south of the CSX railroad tracks outside the West Highlands master plan area.

While not yet certified by the State Commissioner of Revenue, the tax allocation increment assessment base for the Perry/Bolton TAD, as submitted by the City for certification, is \$66,022,880. Due primarily to property reassessments within the District, the value of taxable property within Perry/Bolton for tax year 2004 stands at \$85,567,400, resulting in over \$19.5 million in incremental assessed value.

The Atlanta Board of Education's resolution consenting to the inclusion of its portion of tax increments generated within the TAD was conditioned on the execution of an intergovernmental agreement with the City providing for certain "infrastructure improvements to schools" located in the TAD and certain "redevelopment cost payments" to the school district, the terms of which have yet to be negotiated. Similarly, Fulton County's consent to its financial participation in Perry/Bolton was conditioned on at least 40% of any new housing developed in the TAD be "affordable" to low and moderate income families – not the 20% level required in the City's resolution creating the TAD – creating a conflict that has to be resolved before planned development may proceed.

Updated plans for the West Highlands project have site development and remaining site acquisition commencing in 2004, with vertical construction commencing either in late 2004 or early 2005. Those plans call for approximately \$22.3 million in net TAD bond proceeds – probably from two separate bond issues, given the expected pace of development.

The Perry/Bolton TAD has not experienced at least one of the administrative errors that has adversely affected the Westside and Atlantic Steel TADs – the inclusion of exempt property within the district's base assessed value – due to cooperative efforts between the

ADA and County tax officials. However, the identification and incorporation of personal property tax values has been a challenge and will be until changes are made in the Board of Assessors systems that will allow, starting in tax year 2006, it to match personal property tax returns with real property valuations.

Of perhaps greater significance, Perry/Bolton appears to have marked somewhat of a turning point in local public policy regarding tax allocation districts in at least four respects. While essentially project-driven – in this case, the West Highlands project – Perry/Bolton continued the City’s trend, established initially in Westside, toward large TADs. Moreover, by encompassing neighborhoods with significantly different redevelopment prospects, it tended to reinforce a corollary policy trend, established in Westside, toward providing public improvements to surrounding neighborhoods from tax increments generated elsewhere – if not for the stated purpose of stimulating private investment in those neighborhoods, then at least, while the City has access to county and school district taxes, to put those improvements in place.

Second, and perhaps more importantly, Perry/Bolton marked the first time a City TAD was created primarily, if not specifically, to fund at least a portion of the costs of redeveloping a former public housing project. With the future of federal HOPE VI funding in jeopardy, the use of tax allocation increments may sustain AHA’s heretofore successful public housing redevelopment efforts. However, the controversy those efforts have generated, related to the displacement of former public housing tenants in favor of the establishment of “mixed income” communities in town, was reflected in the third important policy response – Fulton County’s requirement that a significantly higher amount of “affordable” housing be built within the TAD than that required by the City

Finally, and perhaps most importantly, creation of the Perry/Bolton TAD marked the first time participating jurisdictions in the City of Atlanta – both Fulton County, as mentioned above, and, significantly, the Atlanta Board of Education – balked at providing unconditional consent to the inclusion of its portion of any tax increments created within a TAD.<sup>11</sup> Although the precise conditions placed on the School Board’s consent to Perry/Bolton have yet to be completely defined, its willingness to question the need for a TAD could spell (and in instances involving other metro Atlanta TADs has spelled) a dramatic public policy complication for an initiating jurisdiction.

### **Princeton Lakes TAD**

The Princeton Lakes Redevelopment Area and Tax Allocation District Number Four – Princeton Lakes (the “Princeton Lakes TAD”) was the fourth district created by the City of Atlanta, effective, like Perry/Bolton, as of December 31, 2002. Also like Perry/Bolton, Princeton Lakes’ scheduled termination date, while estimated to be in 2027, will occur only when all redevelopment costs within the TAD have been paid. The district encompasses approximately 475 acres of undeveloped land just west of the new Camp Creek Marketplace development (see summary of City of East Point’s Camp Creek

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<sup>11</sup> Although, as summarized in the discussion below regarding the City of East Point’s Camp Creek TAD, it was certainly not the first time a local board of education placed significant conditions on its financial participation in a TAD.

TAD below) on the northwest corner of Camp Creek Parkway and Interstate 285 in southwest Atlanta. The land had been held since the mid-1980s by owners who planned to develop a private golf club.

The redevelopment plan for the Princeton Lakes TAD calls for the development of over 1,000 single family homes, an approximate 500,000 square foot shopping center (essentially, an extension of Camp Creek Marketplace), 225 hotel rooms, five restaurants, two banks branch offices and an 8,000 square foot child care center. The plan asserts that, but for the creation of the TAD, the costs of preparing the site for development, because of its challenging topography and the lack of any useable public infrastructure – e.g., streets, bridges (Camp Creek winds through the site), traffic control devices, sanitary or storm sewers, water supply or storm water detention facilities. The TAD is a project-specific district in which the site is controlled by one developer, the Bentley Group, Ltd, who, along with Pulte Homes and North American Properties, will provide all vertical development. The estimated value of planned private investment within the TAD is approximately \$366 million in consideration of approximately \$26 million in public incentives, to be derived from TAD bond proceeds.

The City resolution creating the Princeton Lakes TAD provided no special conditions, other than to use “excess” tax allocation increment to pay down any TAD bonds issued or other required redevelopment costs early; nor did the Fulton County resolution consenting to the inclusion of its portion of any incremental taxes generated within the TAD. However, the Atlanta Board of Education has refused to give such consent with respect to its portion of tax increments created within the TAD, citing the need for such tax revenues to provide educational services to the new public school students expected to be generated by the large single-family housing development planned for the district. The Board also expressed doubt that planned development within the TAD required the level of public assistance requested in order to make it financially feasible. This marked the first time a school district in metropolitan Atlanta refused to participate in a newly created tax allocation district. Although the developers involved continue to pursue the various permits that will be necessary to allow the planned development to proceed, no ground has been broken as of the date of this report.

The tax allocation increment base of the Princeton Lakes TAD, as submitted by the City for state certification, is \$826,760. Based on the redevelopment plan’s estimated value of new development within the TAD of \$366 million, it is expected that approximately \$131 million in incremental assessed value will be created (net of homestead exemptions). With site preparation having begun in the TAD, the total assessed value for tax year 2004 stands at \$1,746,000.

### **Eastside TAD**

The fifth and newest tax allocation district created by the City of Atlanta is the Eastside Atlanta Redevelopment Area and Tax Allocation District Number 5 – Eastside (the “Eastside TAD”). The Eastside TAD’s creation was effective on December 31, 2003 and will terminate when any and all tax allocation bonds issued by the City for the district have been fully paid. At 840 acres, it is the second largest of Atlanta’s TADs, being

generally bounded by North Avenue, Piedmont Avenue and Freedom Parkway on the north, the Southern/CSX Railroad lines and Berean Avenue on the east, and Memorial Drive and Interstate 20 on the south. Eastside's western boundary generally includes Cooper Street, Forsyth Street, Peachtree Center Avenue, Baker Street, Courtland Street, Spring Street, Alexander Street and Williams Street. Generally bisected by the Downtown Connector, it, together with the Westside TAD, covers virtually all of Atlanta's Central Business District, along with certain blighted residential neighborhoods to the east and west of downtown.

Planned redevelopment in Eastside is as spread out and as diverse as the neighborhoods within the TAD, although its general goals are to make public infrastructure improvements in the district that will precipitate private, tax-paying developments and thereby mitigate "conditions that have led to disinvestment, urban blight and marginal uses of property." The redevelopment plan projects an estimated \$1.5 billion in private and public investment, comprising at least 18 projects that would add approximately 6,200 new housing units, more than 400,000 square feet of retail space and 2.45 million square feet of new office space in and around downtown Atlanta. Such projects, which are listed in Table 5 below, generally are centered either in the traditional downtown area west of I-20, in or around the historic Auburn Avenue Business District, or in or around the Atlanta Housing Authority's Capitol Homes and Grady Homes public housing projects (including the Old Fourth Ward neighborhood and the areas surrounding the MLK MARTA station).

Similar to City policy regarding Westside, the City resolution creating Eastside requires that at least 20% of the proceeds of any TAD bonds generated from tax increments created in the TAD will be set aside for improvements in those commercial and residential areas east of the Downtown Connector (the "non-downtown area"). No conditions were placed by Fulton County consent to participate financial in the TAD, but the Atlanta Board of Education did condition its consent on its being paid 5.5% of the proceeds of all tax allocation bonds issued for the district, as well as an additional sum each year to the extent the Board is required by the State to levy more than the five mills otherwise required in order to receive State Quality Basic Education funding due to its inability to levy such taxes in the TAD.<sup>12</sup>

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<sup>12</sup> The issue of whether this "QBE Make-Whole" payment will be required has not yet been resolved by the State Revenue Department.

**Table 5**  
**Proposed Private and Public/Private Developments in the Eastside TAD**

<b>Downtown Projects</b>	<b>Non-Downtown Projects</b>
Peachtree Portal Condominiums	Auburn-Butler Street Village Mixed-Use Project
SunTrust Plaza, Phase III	Memorial Drive Corridor Redevelopment
RCG Mixed-Use Project	Capitol Homes Redevelopment
Taylor Simpson Office Tower	Grady Homes Redevelopment
SoNo Tower	Wheat Street Gardens Project
GSU/Beaudry Ford Student Housing Project	MLK Memorial MARTA Station Development
First Congregational Housing Development	Historic Oakland Cemetery Redevelopment
Sheraton Atlanta Hotel Expansion	
Downtown Health and Bioscience District	
DeFoor's Mixed-Use Project	
South Company Headquarters Project	

Although not yet certified by the Georgia State Revenue Commissioner, the tax allocation increment base that has been submitted for certification is \$299,727,240. (This figure excludes exempt property values in compliance with the Redevelopment Powers Law, and also excludes personal property values in contravention of it.) The estimated \$1.5 billion in improvements planned for the TAD are estimated to result in approximately \$893 million in additional taxable value and, at stabilization, about \$13.9 million in annual tax allocation increment. Eastside's redevelopment plan calls for public investments of between \$29 and \$91 million within the TAD and, while it cites such other sources of such investments as federal and state planning and transportation funds and "other federal, state and local grant funding sources as appropriate and available," it would appear to depend primarily on the proceeds of City TAD bonds for most these funds. Under current market conditions, it is estimated that as much as \$120 million could be generated from tax increments derived from private development planned within the TAD.

In many ways, Eastside is the culmination of one set of evolving City policies regarding tax increment financing – the creation of large mega-TADs containing areas where blight and disinvestment have made private sector intervention difficult, combined with adjacent areas where private development interest is relatively keen. Such TADs use incremental taxes generated largely in these latter areas to subsidize the cost of needed public improvements in the former areas in the hope that eventually such improvements will induce private interest there. With termination dates set at such time as all redevelopment costs have been paid, but without specificity as to what those costs are or when they all will have been paid, such TADs potentially provide significant incremental taxes to provide public improvements and, hopefully, stimulate additional private investment. If such TADs succeed in this latter objective, then they may be worthwhile and, in fact, be the only feasible way to effect desired redevelopment in such areas. If they fail, however, they merely expose participating jurisdictions to the risk that their tax dollars will go toward subsidizing the cost of public improvements that otherwise would be the City's responsibility alone, without generating any return on their investment other than that which they would have experienced without the TAD – and to do so for many, many years into the future. Unlike the Atlantic Station TAD, for instance, or the

Princeton Lakes TAD, for that matter, where specific developments within well-defined areas are proposed to occur within relatively well-defined timeframes, such mega-TADs will require management attention and development savvy from the City and its redevelopment agent, ADA.

### **City of East Point TAD**

The City of East Point was the second municipality within Fulton County to create a tax allocation district and, in the process of so doing, set a number of interesting precedents for subsequent initiating jurisdictions to consider.

### **Camp Creek TAD**

The Camp Creek Redevelopment Area and Tax Allocation District Number One – Camp Creek (the “Camp Creek TAD”) was created by the City of East Point to be effective as of December 31, 2001. It was the third tax allocation district created in metropolitan Atlanta and the first and, thus far, only TAD created in south Fulton County. The City scheduled the Camp Creek TAD to terminate at such time as all redevelopment costs have been paid; however, by subsequent agreement with the Fulton County Board of Education, it will terminate not later than December 31, 2026. The district includes 831 acres of previously undeveloped land located at the southeast and northwest corners of the intersection of Camp Creek Parkway and Interstate 285 in southwest Fulton County.

Camp Creek is a project-specific TAD. Planned development includes the Camp Creek Trade Center, 4 million square feet of planned office and distribution/warehouse space to be developed south of Camp Creek Parkway (and west of I-285) by Duke Realty Corporation, one of the largest real estate companies in the country, and Camp Creek Market Place, a 650,000 square foot open-air shopping center (so-called “power center”) that has been developed to the north of Camp Creek Parkway by North American Properties, a privately held shopping center developer based in Atlanta. Private investment within the TAD is estimated at \$185 million, but will require a public investment (from TAD bond proceeds) of approximately \$20 million in order to install public infrastructure on the two development sites (e.g., new roads and bridges, intersection improvements, water and wastewater facilities, etc.) needed to allow the developments to occur. (As mention above, the North American Properties development site within the TAD is adjacent to and just east of the City of Atlanta’s Princeton Lakes TAD.) Camp Creek’s tax allocation increment base was certified at \$4,720,280 as of December 31, 2001, and as of tax year 2004, assessed value within the TAD stands at \$25,316,280. Neither figure includes personal property.

The City of East Point issued \$22,00,000 in tax allocation bonds for the TAD in May 2002, which, net of \$3.68 million in capitalized interest and \$510,000 in issuance expenses, provided approximately \$17.81 million toward infrastructure costs. Since Duke Realty’s development schedule was to be based exclusively on market demand, reasonably accurate projections of the amount and timing of tax allocation increments could not be made. Thus, the bonds were privately placed with Duke Realty.

The resolution creating the TAD contained no particularly special conditions, nor did Fulton County's consent resolution. However, the Fulton County Board of Education imposed three significant conditions to its consent to participate financially in the TAD, some of which have been embraced by other school boards facing similar circumstances within their jurisdictions. Initially, the School Board maintained, on the advice of legal counsel, that any participation by it in funding redevelopment costs within the TAD would violate with the "educational purposes" clause of the Georgia Constitution. As discussed above, that clause, contained in Article VIII, Section VI, Paragraph I (b), provides that "school tax funds" shall be expended only for public education purposes; and the Fulton County School Board could see no such purposes being served by the development of a business/industrial park and adjacent shopping center. However, based on an opinion from the state's Attorney General, the Board ultimately agreed to participate on the condition that a long-term intergovernmental contract be executed between the Board and the City providing, among other things, the following:

1. that no TAD bonds, over and above the initial \$22 million, would be issued by the City (excepting only bonds issued to refinance that initial issue);
2. that such TAD bonds would mature, and the TAD itself would terminate, not later than December 31, 2026; and
3. that any tax allocation increment in excess of TAD bond debt service in any year be used by the City as follows:
  - (a) 45.3% of any such excess would be reimbursed to the Board to compensate it for taxes foregone (as mentioned earlier, an allowable "redevelopment cost" under the Redevelopment Powers Law); and
  - (b) the remaining 54.7% would be used by the City to redeem TAD bonds prior to their maturity.

The Camp Creek TAD was significant, from a policy standpoint, for at least two reasons. Most significantly, it was the first time a local school board objected to, and ultimately placed significant conditions on its financial participation in, a tax allocation district. These conditions included the concepts of capping the assistance to be provided TAD development projects, of sharing excess tax increments with a participating jurisdiction prior to a TAD's termination, and of requiring that a TAD be terminated within a pre-established, precise, not-to-exceed period of time. As is discussed above, and more fully below, it was not to be the last time participating jurisdictions in metro Atlanta have asserted themselves in the exercise of local redevelopment powers. Additionally, by placing TAD bonds with that development entity most knowledgeable about and responsible for the creation of sufficient incremental taxes to meet TAD bond debt service requirements, when due, Camp Creek created a template that, in similar circumstances, could reduce default risk to an initiating jurisdiction.

In addition to participating financially in six tax allocation districts created by the cities of Atlanta and East Point, Fulton County created its own TAD in the unincorporated area of Sandy Springs in north Fulton County.

### **Sandy Springs TAD**

Effective as of December 31, 2003, the Sandy Springs Redevelopment Area and Tax Allocation District Number One – Fulton County/Sandy Springs (the “Sandy Springs TAD”) was created by the Fulton County Commission to address the grinding traffic congestion and deteriorating business district along, as well as the deleterious effects such conditions have had on neighborhoods on either side of, Roswell Road from the Atlanta City limits on the south to just north of Dalrymple road on the north. At approximately 1,200 acres, it is the largest tax allocation district yet created in metropolitan Atlanta. By agreement with the Fulton County Board of Education, the TAD will terminate on or before December 31, 2028.

Sandy Springs’ redevelopment plan calls for several projects whose primary goals are to overcome historic deficiencies in public investment within the TAD, which have served to divert private development to the Central Perimeter area between and along the newer north-south corridors of Ashford-Dunwoody Road and Georgia Highway 400 north of Interstate 285, and to stimulate private investment within Sandy Springs as a result. Such projects fall into one or more of five general categories:

- Circulation system improvements, including vehicular, pedestrian and transit
- Public spaces
- Public facilities
- Public-private partnerships
- Land assemblage

Selective street segment extensions to remove vehicular traffic from congested Roswell Road, pedestrian streetscape improvements, a Sandy Springs shuttle, the development of parks, open space and public parking in the historic heart of Sandy Springs, and a land assemblage revolving fund to help overcome redevelopment barriers caused by multiple small property owners are expected to require approximately \$23.5 million in TAD bond proceeds and approximately \$43.3 million in state and federal transportation funds and foundation grants. The plan projects that, with such public investments, nearly \$270 million in direct private investments in four new mixed-use developments, and as much as another \$500 million in new investment and natural appreciation in property values on adjacent parcels and in the numerous neighborhoods along the Roswell Road corridor.

The tax allocation increment base assessment within the district, as submitted by the City for state certification, is \$321,283,240, excluding personal property, but is still awaiting certification by the State Revenue Commissioner. That assessment base is projected to more than double, with the creation of approximately \$317.7 million in additional assessed valuation in the TAD over the plan’s 10-year implementation period. For tax

year 2004, total assessed values have increased over \$29 million, due largely to property reassessments, to \$350,631,920.

Fulton County imposed no special conditions on the TAD in creating it, although the County Board of Education, following the precedent it established in connection with the Camp Creek TAD, did. As with Camp Creek, school board consent to the inclusion of its portion of any tax increments created within the Sandy Springs TAD was conditioned on three general conditions:

4. that TAD bonds would be limited in amount to \$24 million or less (excepting only additional TAD bonds issued to refinance outstanding bonds);
5. that such TAD bonds would mature, and the TAD itself would terminate, not later than 25 years from the their date of issuance; and
6. that any tax allocation increment in excess of TAD bond debt service in any year be used by the City as follows:
  - (a) 52.1% of any such excess would be reimbursed to the Board to compensate it for taxes foregone (as mentioned earlier, an allowable “redevelopment costs” under the Law); and
  - (b) the remaining 47.9% would be used by the City to redeem TAD bonds prior to their maturity.

However, in addition to these conditions, the school board provided that its portion of tax increments could be spent only on redevelopment costs associated with specific projects, and that those projects had to have received prior approval of the board. It also required that the TAD be terminated if TAD bonds had not been issued for such specific projects by December 31, 2008.

### **Tax Allocation Districts in Cobb County**

Cobb County, along with three of its incorporated municipalities, Acworth, Marietta and Smyrna, received voter approval in November 2002 of a local act allowing them to operate under the Redevelopment Powers Law. All three of the municipalities created tax allocation districts in 2003. Although Cobb County itself has not yet created any TADs, it did develop the first written set of public policies and guidelines in early 2003 that, along with refinements generated later by the Cobb County Board of Education, guided its decision-making concerning the three municipal TADs seeking its financial participation. In the process, public policies regarding the creation and support of TADs, particularly suburban TADs, in metropolitan Atlanta evolved yet another step.

#### **Lakeside TAD**

The City of Acworth created the Lakeside Redevelopment Area and Tax Allocation District Number One – Lakeside (the “Lakeside TAD”) to be effective as of December 31, 2003. A project-specific TAD, Lakeside’s sole purpose was to redevelopment a 40-acre site that had been operated for years as an inert construction and demolition

(“C&D”) landfill and flea market on U.S. 41 Highway just inside Cobb County at the Paulding County line. Working with North American Properties (also involved in Atlanta’s Princeton Lakes TAD and East Point’s Camp Creek TAD), the City sought to develop a 370,000 square foot retail “power center,” anchored by a Target Superstore, on the site, remove a blighting influence in this otherwise developing corridor, and capitalize on a large and rapidly growing customer base in Paulding County.

At an estimated value of \$46.2 million, the proposed development is projected to add over \$17.5 million in assessed value to Lakeside’s tax allocation increment base (as of the end of 2003) of \$1,017,348 (which includes personal property values). With Cobb County and County Schools financial participation, it is estimated that this incremental assessed value will support as much as \$7.5 million in City TAD bonds, the net proceeds of which would go toward covering North American Properties’ cost of site preparation. Due to the site’s use for years as a C&D landfill, foundation pilings had to be set, in some areas, as deep as 95 feet to support the vertical construction planned for the site. The additional costs of preparing such a site for redevelopment, including the collection and release of methane gases that had built up over the years, served as the primary justification for providing TAD bond assistance to the project.

Virtually all other terms and conditions related to the administration of the TAD were dictated by an intergovernmental agreement with Cobb County and the Cobb County Board of Education pursuant to which the County and the School District consented to the inclusion of their respective portions of any tax increments generated in the TAD to pay TAD redevelopment costs. That agreement required the City to comply with the following conditions:

1. That any and all TAD bonds issued would not in the aggregate exceed \$7.5 million;
2. That any such TAD bonds shall mature, and the TAD shall be in existence, not later than December 31, 2030;
3. That if all or a portion of such TAD bonds have not been issued by December 31, 2006, the County and School Board’s consent would terminate;
4. Though personal property tax increments would go toward securing the TAD bonds, that any and all such bonds be sized based solely on the real property tax increments projected for the TAD; and
5. That all tax increments generated in excess of TAD Bond debt service and certain other “contractually committed expenditures” be paid over to the County and the School District each year in amounts proportionate to their annual contributions.

### **City Center South Renaissance TAD**

The City of Marietta created the City Center South Renaissance Redevelopment Area and Tax Allocation District Number One (the “CCSR TAD”) effective as of December 31, 2003. The 270-acre TAD is centered on, and includes the neighborhoods surrounding, the intersection of Powder Springs Road, South Marietta Parkway and Atlanta Street, just

south of the downtown Marietta square (including, oddly enough, the Confederate Cemetery on Powder Springs Road). It also includes the Marietta Golf Course and Conference Center to the immediate southwest of these neighborhoods. The TAD is described as a project-specific effort, focusing on the redevelopment of one former public housing site (Johnny Walker Homes) and one current public housing site (Clay Homes) into mixed-use residential and convenience retail developments. (Some of the express purposes of the redevelopment plan are to increase home ownership and family incomes and decrease crime, unemployment and poverty within the TAD.) However, future projects within the TAD are anticipated in the redevelopment plan. (While it is a standing question as to why the City-owned, and thus tax-exempt, Marietta Golf Course and Conference Center was included within the TAD, it would appear at this point that the TAD was drawn broadly – like Atlanta’s Eastside and Westside TADs – so as to collect enough tax increments to subsidize these relatively high-risk undertakings.

The tax allocation increment base of the CCSR TAD is estimated in the redevelopment plan at \$21,296,708, and it is projected that the Johnny Walker Homes redevelopment would generate between \$8 million and \$19 million in incremental assessed value, depending upon the density level of its development. This is estimated to support between \$3 million and \$5.9 million in City tax allocation bonds and, although the City initially insisted that it had no plans to issue any such bonds, Marietta insisted on keeping the option of issuing up to \$20 million in TAD bonds over the life of the TAD.

Cobb County insisted on essentially the same conditions that it imposed on Acworth’s Lakeside TAD in consenting to the inclusion of its portion of incremental taxes generated to pay TAD redevelopment costs. The Marietta City School Board imposed no such conditions on its financial participation in the TAD.

Marietta currently is seeking County and City School Board consent to participate in a significantly expanded CCSR TAD, to include residential neighborhoods to the west and south and may be seeking the creation of a new TAD on either side of Interstate 75 at Hwy, 120S. The City appears to be expanding TADs to certain areas less for the prospect of additional increment-producing development than for the opportunity to use eminent domain powers to replace deteriorated rental housing complexes with owner-occupied housing and complementary commercial development.

### **Atlanta Road TAD**

The City of Smyrna created the Atlanta Road Corridor Redevelopment Area and Tax Allocation District Number One (the “Atlanta Road TAD”) effective December 31, 2003. This 140-acre TAD is centered on Atlanta Road from Windy Hill Road on the north to Spring Road on the south. It includes the Belmont Hills Shopping Center on the north side of the TAD, Jonquil Plaza shopping center on the south side and the newly redeveloped Smyrna city government complex and adjacent Market Village (“City Center”) in the center of the TAD. The overall goal of the Atlanta Road TAD is fairly general: to encourage private investment in Smyrna’s northern sector by offering financing incentives that will help ameliorate current conditions that have contributed to

disinvestment and marginal use of property. The projects planned for the TAD, however, are somewhat more specific:

1. Redevelopment of the Belmont Hills Shopping Center;
2. Redevelopment of the apartment communities immediately adjacent to the Belmont Hills Shopping Center;
3. Development of a condominium project near City Center;
4. Redevelopment of retail and office space between the Atlanta Road/Spring Road intersection and Market Village; and
5. Mixed-use redevelopment, including retail and residential, of the existing Jonquil Plaza shopping center.

As of the date of the TAD's creation, however, the City had not obtained commitments from the owners of the properties to be redeveloped, other than the City itself for the condominium project mentioned above. Thus, while planned projects are estimated to add over \$70 million in net assessed values to the TAD's tax allocation increment base of \$29,478,740 – values that would support nearly \$23 million in City TAD bonds – the City has not yet developed specific plans for the use of bond proceeds.

In reviewing the Atlanta Road TAD, both Cobb County and the County Board of Education were uncomfortable with the apparent lack of any ready-to-go projects, other than the further enhancement of City Center, or specific plans for the use of TAD bond proceeds. Thus, while both governments agreed to participate financially, they did so under essentially the same conditions as those imposed on the Acworth and Marietta TADs, plus the condition that specific projects, if, as and when developed by the City, would have to receive their prior approval. After the fact, County and School Board discomfiture with the Smyrna plan occasioned a change in their policies regarding tax allocation districts expressing a strong preference for project-specific TADs and indicating that only under rare circumstances would they again agree to participate in any other type.

### **Unincorporated Clayton County**

The Clayton County Commission also went into the tax increment financing business in 2003, but did so in a way different from other metro Atlanta governments – a way more of them may have to emulate in the future – the “go-it-alone” TAD.

#### **Ellenwood Town Center TAD**

Clayton County created the Ellenwood Town Center Redevelopment Area and Tax Allocation District Number One – Ellenwood Town Center (the “Ellenwood Town Center TAD”) effective December 31, 2003 and terminating once all redevelopment costs, including TAD bond debt service, have been paid. The TAD is a project-specific

TAD, created to induce the development, by Ellenwood Partners LLC<sup>13</sup>, of a new mixed-use community on approximately 400 acres at the intersection of Interstate 675 and Anvil Block Road, just south of I-285 in unincorporated Clayton County. This Ellenwood Town Center will contain more than 1.4 million square feet of specialty retail shops and stores, restaurants and entertainment facilities, three hotels, professional and medical office space and mini-storage facilities. This “lifestyle center” will be developed on approximately 270 acres of largely undeveloped land along Anvil Block Road and will serve the Villages of Ellenwood, which will include over 1,000 new homes, townhomes, condominiums and apartments, to be developed in conjunction with the Town Center – as well as the more than 12,000 new homes currently planned, zoned or under construction within a five-mile radius, more than half of which are outside Clayton County.

Justification for the TAD, and the reason given in the TAD’s redevelopment plan for the property not having been heretofore developed, is the site’s challenging topography, characterized by extensive rock deposits, and the resulting lack of sanitary and storm sewer and water supply infrastructure needed to connect with existing public systems. The cost of overcoming these challenges, and of installing “an integrated system of sidewalks, trails, streets, landscaping, parks and a town center”, is estimated in the plan at \$29.5 million – to be derived from County TAD bond proceeds. Such bonds are to be supported by the estimated \$248 million in additional private investment associated with the project that is contemplated, which is estimated to contribute approximately \$99 million in assessed values over and above the TAD’s estimated tax allocation increment base of \$16.1 million.

In order to support the \$25-30 million in TAD bonds required to support the project, however, the County would need more than the incremental taxes derived by it from these incremental values. Rather than request that the Clayton County Board of Education participate financially in the TAD, the County chose to earmark the estimated \$1.37 million in incremental local option sales taxes that it would derive as a result of the Town Center retail development – contingent on an amendment to the Redevelopment Powers Law allowing the direct pledge of such tax revenues. As mentioned above, that amendment was enacted this year by the Georgia General Assembly. Thus, the Ellenwood Town Center TAD became the first tax allocation district in metro Atlanta supported solely by the initiating jurisdiction and supported by both incremental *ad valorem* taxes and incremental local sales taxes generated by development within the TAD.

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<sup>13</sup> Ellenwood Partners LLC is comprised of Liberty Development Corporation, an Atlanta-based residential real estate developer, and National Retail Real Estate Services, Inc., a local commercial real estate development firm.

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**Georgia's Redevelopment Powers Law:  
A Policy Guide to the Evaluation and Use of Tax Allocation Districts**



**Authors Carolyn Bourdeaux & John Matthews**

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**Georgia's Redevelopment Powers Law:  
A Policy Guide to the Evaluation and Use of Tax Allocation Districts**



**Authors Carolyn Bourdeaux & John Matthews**

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# **Georgia's Redevelopment Powers Law: A Policy Guide to the Evaluation and Use of Tax Allocation Districts**

## **Executive Summary**

### **Introduction**

Within the past five years, eleven separate tax allocation districts (TADs) have been created in the metropolitan Atlanta region. Currently, policy-makers in the City of Atlanta are considering the use of TADs to finance the proposed “Beltline” project. While TADs are a powerful tool in a localities’ economic development arsenal, these policies are not without cost and not without risk. The sudden surge in popularity of this economic development tool generally has not been accompanied by any systematic assessment or set of policies to guide their evaluation or their use. Thus, this report sets out to familiarize local policy makers with:

- How TADs work;
- The potential benefits of TADs;
- The potential risks and costs associated with TADs and how these might be distributed across different stakeholder groups; and
- Policies to help minimize costs and risks.

### **What is a TAD?**

When a jurisdiction experiences redevelopment or new economic development, typically the value of taxable properties in that jurisdiction increases, and thus, the tax revenues collected from these properties increase. Tax allocation districts work by capturing the incremental tax revenues gained from this increase in property values in a pre-designated geographic area and using these funds to retire debt or to fund improvements on a pay-as-you-go basis.

The most significant financing innovation associated with TADs is the use of TAD-backed debt (often referred to as “tax increment financing”). Specifically, jurisdictions can issue debt to fund capital improvements and/or to support other public or private sector investments in an area, and use the *anticipated* increase in property values from this investment to finance the debt. Recently, Georgia expanded this law to allow localities to commit incremental gains in sales taxes and other taxes such as the hotel-motel taxes to support TAD activities. In most cases, the incremental revenues involved include those of all the tax jurisdictions that overlap with the TAD – cities, counties, schools, and special districts. Under Georgia State Law, these jurisdictions must agree to commit their incremental revenues to the TAD.

### **Benefits of TADs**

The expectation when using TADs is that the revenues they produce will finance projects that stimulate growth and thus contribute to growth in jobs, wealth, housing opportunities and other economic development goals, while also enhancing the fiscal position of participating jurisdictions. Planners can point to a number of TAD-financed projects around the country that produced significant returns on investment. However,

the benefits of TADs come not only from its potential to stimulate growth but from its flexibility as a financing and redevelopment tool. These benefits include:

- The ability to finance economic development activities based on anticipated increases in revenues, rather than drawing on the current tax base;
- The ability to issue TAD debt, which does not count against state-imposed local debt ceilings and does not have to be backed by the full faith and credit of the issuing jurisdiction;
- Access to a policy tool that allows overlapping jurisdictions to pool resources (from incremental increases in property tax revenues) to support economic development activities; and
- Access to redevelopment powers, such as eminent domain.

### **Costs and Risks of TADs**

While TADs appear to have been highly successful in certain regions around the country, TADs do represent a financial gamble on the part of local governments. The increased growth from a TAD investment needs not only to cover the upfront costs of the local investment in a particular project *but also* any related increases in public service costs.

The use of TADs can potentially reduce the net wealth of jurisdictions in three key ways:

- Jurisdictions may use anticipated TAD revenues to finance projects whose benefits do not materialize sufficiently to cover the costs of the debt issued or other public sector investments;
  - Further, TAD debt is expensive because it is considered to be high risk by bond markets; and
  - While jurisdictions may not explicitly back this debt, bond rating agencies (if not the bond market) may penalize a locality for a default.
- TAD investments may stimulate growth that increases demand for public services but may not generate sufficient new revenues to meet this demand. This problem may be particularly acute for school districts.
- Localities may use TAD resources to give benefits to businesses that would have made the necessary improvements or investments without public support (or might have made the same investment in another part of the jurisdiction outside the TAD); in other words, jurisdictions are giving out public money to a business that could have been better invested elsewhere.

TADs may also come with social equity issues that have been associated with previous redevelopment policies. For instance, TADs may explicitly or inadvertently force low to moderate income families out of neighborhoods as new investment and redevelopment occurs.

### **Capitalizing on the Benefits; Hedging Against the Risks of TADs**

Because these costs and risks are non-trivial, most states and localities have adopted strategies to try to ensure the careful use of tax allocation districts. Georgia

localities should have a particular incentive to deploy this policy tool carefully because a jurisdiction can only commit 10 percent of its property tax base to TADs at any given point in time. Further, TADs, which rely on *increases* in the value of property, may conflict with other public policy objectives such as property tax relief or tax abatements for targeted businesses. Thus, key recommendations from this report include the following:

1. To husband the use of TADs and to avoid conflicting policy priorities, localities should develop TADs as part of an overall planning and economic development strategy. In particular, a locality should identify the areas that should be targeted for redevelopment, the critical public purposes that will be served by TAD, and the types of projects that are appropriate for TAD backing.

At the project level, jurisdictions need to make sure that the proposed TAD-financed projects will produce the returns needed to cover at least the initial investment and the increase in public service demands from the project.

2. Localities should conduct a full and careful feasibility, fiscal impact, and cost-benefit analysis of proposed TAD projects. Localities should be conservative in estimating revenues from TADs that can be used for backing debt.

In dealing with the private sector, a classic problem with economic development subsidies is that local governments sometimes do not bargain shrewdly with their private sector counterparts.

3. In general, jurisdictions should develop policies to target TADs for projects where private sector investment is unlikely without public sector investment. Some of the most successful uses of TADs have been in brownfield redevelopment, redevelopment of areas with significant levels of urban blight, and reuse of old industrial or military facilities.

By carefully picking key areas to target, TADs are also less likely to raise concerns about inequitable treatment of communities included in the district – and instead may be of substantial benefit to them.

Other recommendations to try to minimize taxpayer risk include:

4. Minimize direct government subsidy in favor of strategies that share risk with the private sector. Examples of these strategies include reimbursement of private sector entities for environmental clean-up or providing gap financing.
5. Develop annual performance audits or evaluations, as well as financial audits, to determine private sector progress towards agreed up goals and to show how public funds are being used to support TAD redevelopment plans.

6. Clearly specify the benefits to be produced by the private sector entity receiving TAD assistance and include meaningful sanctions for failure to meet goals.

Finally, TAD debt needs to be assessed in conjunction with the initial review of the project(s) being considered. Localities should be conservative in their assessment and use of TAD-backed debt. The worst case scenario is that a locality issues a large amount of debt for benefits that never materialize and is implicitly or explicitly held liable for the debt by the bond rating agencies or bondholders. In effect, the taxpayers are left holding the bag.

## **Conclusion**

Tax allocation districts and the financing instruments associated with them have become mainstream economic development tools in many states. Georgia is just beginning to experiment more broadly with this strategy. As it does so, localities in the state can benefit from the experiences, both positive and negative, with this financing instrument. This report is an effort to assimilate many of the lessons learned from across the country and provide an initial framework for Georgia localities to consider as they determine how best to use TADs in their own communities.

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**GEORGIA'S REDEVELOPMENT POWERS LAW:  
A POLICY GUIDE TO THE EVALUATION AND USE OF TAX ALLOCATION DISTRICTS**

**Introduction**

A tax allocation district (TAD) is an important and potentially powerful tool in a municipality's economic redevelopment arsenal. Many municipalities across the country report significant positive outcomes from the implementation of a TAD. However, there exist numerous examples of less than positive outcomes as well. The principal purpose of this report is to assist policy makers in their assessment and implementation of tax allocation districts so that TADs are successful.

The report thus sets out to familiarize local policy makers with:

- How TADs work;
- The potential benefits of TADs;
- The potential risks and costs associated with TADs and how these might be distributed across different stakeholder groups; and
- Strategies to help minimize many of these costs and risks.

Drawing on examples from Atlanta and elsewhere, this report discusses and suggests economic development policies, with the ultimate objective of helping local policy-makers sort through some of the concerns and issues that use of TADs raise. The discussion of costs and risks should provide ideas about ways to evaluate and structure TADs more effectively in order to promote the redevelopment of blighted or underused areas while protecting the fiscal health of local jurisdictions.

Within the past five years, eleven separate tax allocation districts have been created in metropolitan Atlanta, nine of which were initiated within the past two years. For the most part, this sudden surge in popularity of TADs has not been accompanied by formal or consistent policies to guide their evaluation or use, even though any given jurisdiction may create only a limited number of TADs under current state law. The Atlanta region is not alone in wrestling with ways to guide and structure the use of this particular policy instrument. Forty-eight of the 50 states allow localities to use some form of tax increment financing for economic development purposes (Johnson and Kriz 2001); in almost every state there is an on-going debate about how TIF should be used.

TADs represent a particular financial trade off where local governments commit a portion of the anticipated growth in municipal revenues to an investment in economic development related activities rather than to providing general services; in return, these jurisdictions expect that their investment will generate new growth and that the long term revenues generated by this new economic development will cover and exceed the costs of their investment, as well as any related increases in public service costs.

Research on TADs has shown them to be beneficial in certain circumstances, and this report describes several TAD projects that appear to have stimulated new growth and

development. At the same time, local decision-makers should be aware that TADs are not costless and not without risk. As with any economic development financial tool, local governments can end up giving the private sector unmerited and unneeded benefits. TADs may also require use of risky investment tools, may create equity concerns, and may become costly to taxpayers if the new development prompted by a TAD does not produce the anticipated tax growth or creates unfunded public service demands.

The report lays out issues that should be considered in deciding which projects should receive TAD financing. Decisions about TADs (and the use of any economic development incentive for that matter) are as much about what not to do, or what to avoid, as they are about what to do. Therefore, a major focus of this report is on ways to deal with potential problems that could emerge from a TIF project. While there is no magic formula to determine what is a good TAD project, policy-makers can conduct careful analyses of projects that will help make more informed decisions. This report attempts to explain what steps should be taken and what factors should be considered in making such a decision to hone TIF into a more cost-effective financing and policy tool.

Chapter 1 describes TAD mechanics and covers the procedures for implementing a TAD in Georgia. Chapter 2 describes the benefits and costs of TADs generally, while Chapter 3 deals more specifically with the issues of cost and risk in issuing debt based on incremental revenues. These latter chapters also discuss different strategies that might be adopted to avoid or hedge against these risks and costs. Chapter 4 discusses the Redevelopment Powers Act and policy issues that might need to be addressed the State level with respect to TADs (the other Chapters presume that the law is fixed as it is). Finally, the Appendix includes case studies of the current TADs in the Atlanta metropolitan area.

### **What are Tax Allocation Districts?**

Tax allocation district financing works by capturing the incremental tax revenues gained from new private development within a specific geographic area. These funds are then pledged to either the retirement of debt issued by a sponsoring city, county, or redevelopment agency or to funding improvements on a pay-as-you-go basis. The improvements, in turn, are planned to attract, or in many cases, provide direct support to new private development. Usually, the incremental taxes involve only property taxes, but some states, including Georgia, also allow local sales taxes and other taxes (e.g., hotel-motel taxes, business license receipts, etc.) that are generated by new development to be committed to the repayment of redevelopment expenses. In most cases, the incremental tax revenues involved include those of all taxing jurisdictions that overlap the TIF district – cities, counties, and variety of special districts, including (importantly) school districts, which typically levy and collect the largest portion of local taxes.

### **A Brief History of TIF**

Use of tax increment financing is now over 50 years old, having first been introduced in California in 1952 to provide localities with matching funds for the federal Urban

Renewal grant program. Numerous other states followed suit with various forms of TIF legislation. The greatest period of growth occurred in the 1970s and 1980s as local appetite for community renewal began to outstrip the federal government's capacity and willingness to provide grant funds (Klacik and Nunn 2001).

In many cities, TIF has been used to promote public-private redevelopment projects on large tracts of land no longer needed for their original purposes. In the 1950s and 1960s, abandoned rail yards located in the core areas of cities were a focal point for redevelopment activity. More recently, cities have turned their attention to recycling old wharves, pier heads, and shipyards. In the 1990s, TIF was applied to military base conversions, and new public-private partnerships have emerged for redevelopment of "brownfield" sites located where abandoned factories and steel mills once operated.

While 48 states and the District of Columbia authorize the use of TIF, there is substantial variation in its actual use by local governments. California, Minnesota, Wisconsin, and Illinois have made extensive use of TIF while states such as Hawaii, Mississippi, and New Jersey have few to no operating TIF districts. Different states have also experimented with different rules and regulations governing the use and structure of TIF financing (Johnson and Kriz 2001; Johnson 2002).

Localities in Georgia have not made extensive use of TIF financing until recently. While Georgia adopted its TIF statute, the Redevelopment Powers Law, in 1985, the state did not have its first TIF district until 1992 and did not see its first TAD bonds issued until 2001. Recent legislation amending the Redevelopment Powers Law in 2004 gave localities increased flexibility by permitting use of sales tax increments in a district, as well as the use of all property taxes collected in a TAD to make debt payments in the event tax increments are insufficient.

### **The Vision: TIF Projects That Worked**

While there have been few systematic evaluations of TIF projects, the following cases describe projects outside Georgia that appear to have been successful in rehabilitating previously blighted or difficult to develop areas. In the Appendices we have included descriptions of all the TADs that have been adopted in the Atlanta metropolitan area and a discussion of the various considerations that went into these projects.

#### ***San Diego: Horton Plaza and Petco Park***

San Diego has been pursuing downtown redevelopment for several decades. The city of San Diego has a FY 2005 redevelopment budget of \$333,241,000. Current year tax increment revenue is \$72,777,000 of which \$43,536,000 is required for debt service. There are 20 current redevelopment projects. Redevelopment plans are generated and adopted within the framework of the city's General Plan and its community plans. Where allowed by redevelopment law, redevelopment powers, importantly TIF and

*eminent domain*, may be used to implement community plans. Use of these powers requires, among other things, a finding of blight and provision of affordable housing. 30% of agency built and 15% of private new and rehabilitated housing must be affordable to low- and moderate-income households, and 20% of tax increments collected must be spent on low- and moderate income housing (Centre City Development Corporation 2004).

Among the numerous San Diego projects are two very interesting downtown TADs: Horton Plaza and Petco Park. Both these projects were initiated by private interests, but “fit” the city’s general plan and redevelopment objectives.

**Horton Plaza.** San Diego’s first successful TIF project was Horton Plaza. This project was structured very much like a classic urban renewal project. The City paid for land assembly and supporting public infrastructure. Private redevelopment followed. The difference is that the city’s share came from increases in local property tax resulting from the new private development, not a federal grant.

Planning for Horton Plaza in San Diego began more than 20 years ago. It was in a part of downtown San Diego that had become notorious for its strip clubs and X-rated movie theaters. \$40 million of the \$160 million project cost came from public sources. The city’s redevelopment agency acquired 11.5 acres of downtown land for about \$25 million and wrote-down the price to the developer to \$1 million. The city also paid roughly \$15 million more for public improvements, including wider streets and sidewalks, water and sewer lines, and other items. Within a year of the 1985 opening, there was an additional \$368 million in private investment downtown. Horton Plaza generated enough property tax increment revenue in the first eight years to repay the initial public investment. In 17 years, the Horton Plaza Redevelopment Project has increased assessed property values by \$451 million (Callies and Gruth 2002; Eddy 1995; The Jerde Partnership 2004).

**Petco Park.** Petco Park is the new San Diego Padres baseball stadium. The City of San Diego, the city’s redevelopment agency Centre City Development Corporation (CCDC), and the Padres entered into a “memorandum of understanding” in 1998 for construction of the new ballpark and redevelopment of the surrounding East Village area. East Village was a blighted area that had already been qualified for redevelopment. The city agreed to participate in financing a new ballpark for the Padres; it put about \$300 million, \$169 million in bond sale proceeds, into the \$454 million stadium. In return, the city required the team owner to invest in the ballpark district, a part of the East Village area adjacent to the stadium. This investment creates the tax increments through real estate and hotel/motel taxes needed to secure the tax increment bond funding. The team owner’s real estate development firm, JMI Realty, became the master developer, either building or engaging others to develop \$593 million of hotel, residential, retail, and parking structures. The minimum value of new development needed to produce a sufficient increment was about \$300 million, so the new JMI development is about twice what was needed. Additionally, other “unconnected” developers have launched 32 new housing developments that range from lofts to apartments for the elderly. The entire East Village is now redeveloping (Gross 2004; Heller 2002).

## Roseville, Minnesota: Brownfield Clean-up

The State of Minnesota has explicitly authorized TIF use for two types of environmental clean-up districts: localities may create either a “soils condition district” or a “hazardous substance districts” depending on the nature of the environmental damage to the site. Prior to declaring such districts a locality must certify that the cost of the environmental clean up is greater than the fair market value of the land.

A hazardous substance district comes with some particularly unique features. Specifically, the locality may actually write down the base assessed value of the land and also may expand the district to include lands adjacent to the contaminated properties thereby increasing the “increment” available for remediation purpose.

In Roseville, the city had entered into a TIF agreement with a developer for redevelopment purposes only. The project initially entailed simply tearing down some existing structures and constructing new ones for industrial and commercial uses. However, as the developer proceeded with the project he found that creosote, solvents, and other chemicals contaminated the site. Clean up costs were estimated at \$2.7 million.

The city then proceeded to declare the site a hazardous substance district and wrote down the value of the property to zero. This policy shift gave the city an additional tax increment of \$1.5 million towards the cleanup. The city assisted with the remainder of the costs by renegotiating the development agreement to allow the developer to use the land more intensively and increasing the minimum market value of the improvements. With the financing the developer cleaned up the land and built the improvements that the city had proposed. The site then received a certificate from the state that environmental remediation had been completed to the state’s satisfaction.

In several case study reviews of similar situations in Minnesota, researchers have found that while the tax increment is often not sufficient to cover the costs of the entire clean-up, it is important in building partnerships with the private sector to complete environmental remediation (Zackman and Steinwell 2001).

## Circle Centre Mall, Indianapolis

In 1988 and 1992, Indianapolis issued a combined total of \$293.5 million in TIF bonds to help revitalize its ailing downtown. \$265 million of these bonds was spent on assisting with the development of the Circle Centre Mall. The city was responsible for land acquisition, improving infrastructure around the site, constructing parking garages, developing the core and shell of the mall building and preserving historic building facades. Initially the project bogged down in several lawsuits and had to be scaled back from a \$1 billion project to a \$500-\$700 million project. In 1991 twenty Indianapolis companies agreed to assist with a \$50 million investment in the project and the project received a \$72.5 million loan from a group of banks. The project was completed in 1995 and on the opening day 60,000 people visited the mall. Between 1995 and 2000, the economic return to the city from the project was estimated at \$2.1 billion (Johnson 2002).

## Chapter 1: The Mechanics of TIF

### A Primer on How TIF Works

A number of terms are essential to an understanding of TIF and TIF calculations. In districts where only property tax revenues<sup>1</sup> are used, they are as follows:

- *Base Year* – the year (usually at that point in the year when tax assessments are determined) that the TIF district is established.
- *Base Assessed Value* – the assessed value of property within the TIF district in the base year (net of any and all exemptions).
- *Incremental Assessed Value* – the assessed value in the TIF district in any year after the base year (net of exemptions) minus the base assessed value.
- *Incremental Tax Revenue* – the incremental assessed value multiplied by the overall tax rate applicable to TIF district properties.
- *Initiating Jurisdiction* – the local government entity that creates and activates the TIF district and usually (but not always) issues TIF bonds.
- *Participating Jurisdiction* – the taxing jurisdictions whose assessed value is at least partially contained within a TIF district, including the initiating jurisdiction, and whose incremental tax revenue is applied to TIF projects. (Klacik and Nunn 2001).

Before a TIF district or TAD is established, the initiating jurisdiction and all participating jurisdictions derive individual tax revenues from property in the district based on their respective tax rates and allowable exemptions (e.g., various homestead exemptions). After establishment of a TAD, property tax revenues generated by the base assessed value continue to go to each individual jurisdiction, but the *incremental tax revenues* flow solely to the initiating jurisdiction for financing TAD activities. Table 1 shows a simple example of the allocation of base year and incremental tax revenues for a hypothetical 5-year TIF plan covering four jurisdictions.

The example shows a 5-year TIF period. Typically, TIF revenues would be captured for the length of any TIF bonds issued – often 25 to 30 years. Also, notice that the “incremental tax revenues” available depend on both the *assessed value* and the *tax rate*. Any policy, business-cycle, or economic change that affect either the assessed value or tax rate will also impact the TIF revenues collected. **Thus, a financial commitment based on projected increases in property tax revenues has both financial risk associated with the economy at large and has policy implications that relate to keeping the assessed value and tax rates consistent across time.** For instance, under Georgia State law, once a TAD is created, no participating jurisdictions can cut tax rates in that district.

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<sup>1</sup> While Georgia recently made the sales tax available to support TIF, this report will primarily focus on property tax uses. The same form of analysis, however, can be applied to the sales tax.

**Table 1**  
**Base Year and Incremental Tax Revenue Allocation**

	Tax Rate per \$1,000 AV	TIF Period Assessed Value						Post-TIF Period Assessed Value
		\$ 1,000,000 Base Year	\$ 1,100,000 Base Year +1	\$ 1,200,000 Base Year +2	\$ 1,500,000 Base Year +3	\$ 2,000,000 Base Year +4	\$ 3,000,000 Base Year +5	\$ 5,000,000 Base Year +6
<u>Jurisdiction</u>								
Initiating Jurisdiction	\$10.50	\$ 10,500	\$ 11,550	\$ 12,600	\$ 15,750	\$ 21,000	\$ 31,500	\$ 52,500
Participating Jurisdiction 1	9.00	9,000	9,900	10,800	13,500	18,000	27,000	45,000
Participating Jurisdiction 2	21.25	21,250	23,375	25,500	31,875	42,500	63,750	106,250
Participating Jurisdiction 3	5.00	5,000	5,500	6,000	7,500	10,000	15,000	25,000
Total TIF district tax rate	\$46.75							
<u>Tax Revenues</u>								
Base year revenues		\$ 45,750	\$ 45,750	\$ 45,750	\$ 45,750	\$ 45,750	\$ 45,750	\$ 137,250
Incremental tax revenues		-	4,575	9,150	22,875	45,750	91,500	-
Total		\$ 45,750	\$ 50,325	\$ 54,900	\$ 68,625	\$ 91,500	\$ 137,250	\$ 137,250
<u>Tax Revenue Allocation</u>								
Share to TIF district		0.0%	9.1%	16.7%	33.3%	50.0%	66.7%	0.0%
Share to initiating and participating jurisdictions		100.0%	90.9%	83.3%	66.7%	50.0%	33.3%	100.0%

**Notes:**

1. The example shows a five-year TIF period, although the TIF period typically would correspond to the length of any TIF bonds issued (e.g., 20-25 years)
2. The example applies only to real property, although in some states (e.g., Georgia) personal property would also be included in the calculations.

## A Generic Process for Planning and Implementing TIF

The generic process for planning and implementing TIF involves five broad steps: 1) initiation; 2) formulation; 3) adoption; 4) implementation; and 5) evaluation and termination (Johnson 2002). The Georgia Redevelopment Powers Act gives localities much discretion for the evaluation of a proposed TAD and the structuring of the partnerships and financial agreements necessary for implementation.

**Initiation:** Project initiation begins with ascertaining whether a project is sufficiently needed and financially feasible, making the more involved process of project formulation worthwhile. While straightforward in principle, this step can be tricky in application. One of the most important determinations is whether there are private participants who are interested and willing to participate in the proposed project. Eligibility of the area under state law must also be examined as should the initial estimates of economic benefits and costs.

**Formulation:** Project formulation includes numerous components that are mandated under state law. In almost all states, including Georgia, a jurisdiction initiating a TAD must create a “redevelopment plan”. This plan includes a formal analysis of the components assessed in the “initiation” stage. Georgia’s requirements are described in detail later in this chapter. Broadly, key components include:

- Dimensions of the TAD, including geographic boundaries, value of property, and anticipated revenues;
- A finding of blight;
- An assessment of whether development would occur without public assistance (colloquially called a “but for” finding);

- A formal evaluation of project costs;
- Specification of financing;
- Details of necessary agreements with overlapping jurisdictions and private parties.

**Adoption:** While the plan is still in its draft stages, in Georgia, the initiating jurisdiction must also solicit consent resolutions from overlapping jurisdictions to include their portion of the tax increment in any financing arrangements. During the adoption stage, the initiating jurisdiction will also hold public hearings and develop any draft ordinances and contracts necessary to implement the agreements detailed in the redevelopment plan.

**Implementation:** Implementation involves certifying the base assessed value of the TAD, initiating the collection of incremental tax revenues, issuing debt or otherwise managing project finances, initiating and managing the capital improvements process (i.e., construction, environmental remediation, etc., if applicable), and managing contracts with private parties and other participating entities.

**Evaluation and Termination:** This final part of the process includes evaluating the efficacy of the TAD and ending the collection of the incremental tax revenues.

The following section describes how this process is applied under Georgia's Redevelopment Powers Law.

### **Applying the TAD Process in Georgia**

#### ***Overview of the Georgia Redevelopment Powers Law***

In 1985, the General Assembly enacted the Redevelopment Powers Law (GA Code Annotated 36-44-1, *et seq.*, the "Law"). This law is intended to give localities new tools to form public/private partnerships to redevelop areas that "contribute to or cause unemployment, limit the tax resources of counties and municipalities while creating a greater demand for governmental services and, in general, have a deleterious effect upon the public health, safety, morals, and welfare". The Law which spells out how TADs should be created and implemented has been amended several times to give localities more flexibility in the types of funds that can be used in TADs and in the types of projects and areas that are eligible.

#### ***Pre-Initiation: Obtaining Authority to Implement TAD***

In Georgia, prior to even initiating its first TAD project, a local government must receive authorization from the State General Assembly to exercise powers under the Law. Once enacted, the local act must be approved by a majority of registered voters in the initiating jurisdiction in a special election held for that purpose. After voter approval, a local jurisdiction may proceed to initiate tax allocation districts (§36-44-22 O.C.G.A.). Georgia also has several other "global" limitations on the use of TADs:

- Localities cannot create a TAD if the total current taxable value of property within the proposed TAD plus the total current taxable value of property within all its existing

TADs exceeds 10 percent of the total current taxable value of all taxable property located within the initiating jurisdiction's area of operation (§36-44-17 O.C.G.A.).

- All overlapping jurisdictions whose tax increment is captured by a TAD (or “participating jurisdictions”) must pass consent resolutions agreeing to participate in the TAD. Otherwise their tax increment cannot be captured by the initiating jurisdiction for redevelopment purposes (§36-44-9 O.C.G.A.).

*Delegation to Redevelopment Agency:*

The Law allows an initiating jurisdiction to delegate many of its redevelopment powers to a “redevelopment agency”. An initiating jurisdiction may create a public corporation to carry out such powers or designate a local housing authority or a downtown development authority (so long as the TAD lies within the authority's area of operation) to do so. Delegation cannot include certain powers, which must remain with the initiating jurisdiction:

- Adoption of the required redevelopment plan;
- Creation of TADs and the establishment of TAD boundaries;
- Issuance of tax allocation bonds; and
- Exercise of eminent domain within a TAD (§36-44-6(b) O.C.G.A.) except where a downtown development authority is serving as a redevelopment agency (§36-44-96(c) O.C.G.A.).

*Initiation:*

Once a jurisdiction has received authorization from the State and voter approval, it may initiate a TAD. TADs typically take one of two paths, either a developer proposes a specific project and goes to a locality for financing assistance in developing this project, or alternatively, a locality may identify a particular project or area for redevelopment that is likely to benefit from TIF assistance.

In either case a locality should assess the plan to ensure it meets some basic criteria. These criteria will in part have to be formally evaluated and certified in the project formulation process.

- *Financial feasibility:* TIF relies on appreciation in the value of property. Thus any evaluation should examine the probability that a proposed project or redevelopment plan will lead to increases in the value of the property in the proposed TAD. In some cases, local governments have made an infrastructure investment using TIF bonds and the anticipated development has failed to materialize. The local government is then forced to choose between letting the debt default and drawing on general fund revenues to bail out the TIF backed debt.<sup>2</sup> For reasons that will be discussed in Chapter 3, much pressure may be brought to bear on local government to bail out TIF backed debt.

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<sup>2</sup> For instance, one researcher found that districts in Florida and Michigan did not generate sufficient revenues to cover debt obligations (McKaig 2002).

Fundamentally, a project is more likely to be financially viable if there is significant private sector interest and engagement in the project, as opposed to an “if you build it they will come” mentality on the part of local government. In structuring the TAD arrangements, local governments may be able to transfer some of the risk of insufficient appreciation in incremental taxes to the private sector. The question early in the process is whether the private sector interests are willing to bear some of the risk associated with TIF.

- *Eligibility for TIF:* Local governments should determine that the proposed project or plan is eligible for TIF assistance under Georgia Law. A TAD can be used for “redevelopment purposes” in a “redevelopment area” for “redevelopment costs”. Each redevelopment activity is broadly defined in Georgia State law (for exact definitions see §36-44-3 O.C.G.A.). Amendments passed in 2001 expanded the definition of a “redevelopment area,” enabling communities to undertake redevelopment activities in areas other than those that met the traditional characteristics of “slum and blight.” In effect, it gave suburban jurisdictions throughout the state access to the provisions of the Law.

A locality must certify the eligibility of a redevelopment area for TAD in its redevelopment plan (§36-44-3(9)(B) and 36-44-3(G)(i) O.C.G.A.). This certification requires the locality to attest that growth or development would not have occurred without a TAD or certain natural assets would not be preserved or protected without the TAD.

- *Assessing the Costs and Benefits of TIF:* There is no state provision mandating that a locality assess the potential costs and benefits to themselves and their taxpayers at any point in the process. But, it is in a locality’s best interests to do so, if for no other reason than to avoid failure of the project. The issues that an initiating jurisdiction should consider when evaluating costs, risks, and benefits of TIF are discussed in detail in Chapters 2 and 3.

#### ***Formulation:***

The next step in creating a TAD is the preparation of a redevelopment plan for the proposed district. The redevelopment plan must contain several elements conform to the Law’s requirements. Specifically, it must:

1. Specify the boundaries of the tax allocation district;
2. Include a finding that the redevelopment area has not been subject to growth and development and would not reasonably be anticipated to be developed without the approval of the redevelopment plan;
3. Explain the proposed uses of real property within the redevelopment area after redevelopment has occurred;
4. Describe the redevelopment projects to be undertaken under the plan, along with estimates of their cost and method of funding;
5. Describe any multi-year contracts or other agreements that would obligate the initiating jurisdiction in the plan’s implementation;

6. Describe any relocation payments proposed to be authorized by the redevelopment plan;
7. Include a statement that the proposed redevelopment plan conforms with the local comprehensive plan, master plan, zoning ordinance, and building codes of the initiating jurisdiction or explain any exceptions;
8. Include estimates of redevelopment costs to be incurred during the course of implementing the redevelopment plan;
9. Recite the last known assessed valuation of property within the redevelopment area and the estimated assessed valuation after redevelopment;
10. Provide adequate protections from substantial alteration and/or demolition to historic property within the redevelopment area that is to be redeveloped under the plan;
11. Specify the proposed effective date for the creation of the tax allocation district and the proposed termination date;
12. Contain a map specifying the boundaries of the proposed tax allocation district and showing existing uses and conditions of real property within the TAD;
13. Specify the estimated base assessed value of property within the proposed TAD;
14. Specify which participating jurisdictions' property taxes are to be included in the calculation of incremental tax revenues of the TAD (supported by the required consent resolutions from such jurisdictions);
15. Indicate the amount of any proposed TAD bond issue or issues and the term(s) and assumed rate(s) of interest applicable to them;
16. Provide estimates of the amounts of incremental tax revenues that will be available to pay TAD bond principal and interest over their proposed term(s); and
17. It must also specify any other property to be pledged as security for payment of any proposed TAD bonds. (§36-44-3 O.C.G.A.)

***Adoption:***

Once the redevelopment plan has been prepared and formally submitted to the legislative body of an initiating jurisdiction, at least one public hearing on the plan must be held within 60 days (§36-44-7(b) O.C.G.A.). The proposed plan (as submitted or amended) must be approved or rejected within 45 days after the public hearing (§36-44-7(c) O.C.G.A.). Until recently, obtaining the consent of overlapping jurisdictions to include their tax increments had to be accomplished during the 45 day period, but SB 514, enacted by the Georgia General Assembly in 2004, removes this step from the 45 day period and simply requires that it be done before the incremental taxes of such jurisdictions may be included in the overall tax allocation increment.

Amendments to any approved redevelopment plan are allowed if preceded by adequate public notice (§36-44-7 O.C.G.A.). However, if an amendment changes the boundaries of the TAD the base assessed value for the amended district must be recalculated as of the effective date of the boundary change (§36-44-10 O.C.G.A.).

Finally, the Law specifies that the effective date of the creation of any TAD is December 31<sup>st</sup> of the year in which the redevelopment plan for the TAD is adopted (§36-44-8(3)(b) O.C.G.A.). It also requires the initiating jurisdiction (or its redevelopment agent) to apply to the State Revenue Commissioner for an official determination of the TAD's base

assessed value as of the effective date for purposes of determining future incremental tax revenues (§36-44-10 O.C.G.A.).<sup>3</sup>

***Implementation:***

The Law provides that all incremental tax revenues generated after the effective date of a TAD be allocated to the initiating jurisdiction each year until all redevelopment costs and/or TAD bonds have been paid. All incremental tax revenues are required to be placed in a special fund controlled by the initiating jurisdiction and used exclusively to pay TAD redevelopment costs, including debt service.

Any lease or contract payments received by an initiating jurisdiction also are required to be deposited into the special fund and, as with incremental tax, may be used only to pay TAD redevelopment costs or debt service. After all redevelopment costs and TAD bonds have been paid or provided for, any moneys remaining are distributed in proportion to their contributions to the initiating and participating jurisdictions. (§36-44-11(c) O.C.G.A.)

The Law has several other key provisions that affect debt and the implementation of TAD.

- *Issuing Debt:* For the sole purpose of paying redevelopment costs, TAD bonds may be issued by an initiating jurisdiction. TAD bonds do not constitute debt within the meaning of Article IX, Section V of the Georgia Constitution, and therefore cannot be secured by the full faith and credit of the initiating jurisdiction, and do not count against the debt limitation placed on cities and counties within the state. TAD bonds must mature within 30 years of their issuance, may bear interest at either fixed or variable rates without regard to any state usury limits imposed in other sections of the Georgia Code, may be subject to early redemption on such terms as the issuer may determine, may be refunded through the issuance of additional TAD bonds, and are subject to superior court validation, as required of other state and local bonds in Georgia.
- *Freezing Property Tax Millage Rates:* The Law provides that until a TAD is terminated, neither an initiating jurisdiction nor any participating jurisdiction may decrease *ad valorem* tax rates within the TAD below the rate levied when TAD bonds were issued. This provision effectively establishes a “floor” on property tax rates applicable to properties within a TAD, removing one significant risk of holding TAD bonds.
- *Securing TAD Bonds:* Finally, an initiating jurisdiction may secure TAD bonds by backing the debt with all its general fund revenues derived from the TAD. Until this year, the Law allowed use of these funds only if incremental tax revenues, together with other security pledges, were insufficient in any year to make full debt payments (i.e., in the past they could be used only as “back up security,” not as primary security). As of this year, if there is a “finding” by a jurisdiction that positive tax

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<sup>3</sup> The lack of coordination between initiating jurisdictions and local tax officials has often resulted in this very important legal requirement being overlooked.

increments and other security in the district will not be sufficient to cover debt obligations, general funds may be pledged directly. In effect, this amendment allows an initiating jurisdiction to pledge all property taxes that it (and its county government, if the county approves) levies within a TAD, as well as local option sales taxes collected within the district, to pay TAD bond debt service.

***Evaluation and Termination:***

While some states restrict the length of time that a TAD can exist, in Georgia, a TAD may exist until the initiating jurisdiction votes to terminate the designation. A locality may not terminate a TAD until all the redevelopment costs have been paid (§36-44-12 O.C.G.A.).

No formal evaluation requirements are stipulated in the State law. Nonetheless, localities would benefit from careful regular on-going assessment of whether private sector interests are meeting the expectations of benefits expected from public/private partnerships as well as noteworthy lessons learned from the process.

## **Chapter 2**

### **Assessing the Costs and Benefits of TADs**

#### **Overview**

Given the framework described, tax allocation districts can be a powerful and flexible redevelopment tool; however, they should be carefully deployed. In Georgia, localities may only commit 10% of their tax base to TADs (§36-44-17), so TAD is a policy tool that needs to be husbanded and used only when it is most appropriate. Also, as with any economic development tool, TADs have the potential to become a costly mistake. This Chapter focuses on an analysis to help policy-makers sort through some of the potential problems they might confront in the use of TIF.

Several evaluations of TIF districts have shown that TIF investments can stimulate increases in property values in the district in amounts greater than the costs to local government (Beckett-Camarata 2001; Cox, Mundell, and Johnson 2001). Other studies have found that TIF appears to increase property values in the jurisdiction overall (Man 2001; Man and Rosentraub 1998). In contrast, other evaluations found that TIF simply shifts development from one part of a jurisdiction to another (Haulk and Montarti 2001) and are unlikely to produce net benefits because the costs of the investment plus increases in service demand will swamp the incremental increases in revenues (Kriz 2003). As a result, the research is still judged to be inconclusive on the net benefits of TIF (Man 2001). A probable reason for these varying results is that TIFs can be structured very differently from one jurisdiction to another or even one project to the next. Therefore, it is hard to reach any generalizable conclusions.

The expectation when using TIF is that it will stimulate growth that would not otherwise occur and thus contribute to growth in jobs, wealth, housing opportunities, and other economic development goals while also enhancing the fiscal position of the jurisdiction. Ideally, TIF investments reduce public service costs by cleaning up blighted areas that attract crime and lead to further deterioration of a neighborhood. Atlanta's own experience with the Atlantic Steel TAD illustrates a project that likely would not have occurred without some public sector financial investments. The project involved important environmental remediation, brought in new businesses and housing, closed a gap in the urban fabric, and is expected to stimulate growth in surrounding areas (see Appendix).

Despite being popularly portrayed as an almost costless proposition to local governments (Pendered 2004; DeSue 2004), TADs do come with both risks and costs. They can undermine the fiscal position of a jurisdiction as well as create considerable concerns about equity. While successful TADs can create wealth for a jurisdiction, poorly implemented or simply unsuccessful TADs can have the opposite effect. Specifically, TADs have the potential to reduce the net wealth of a jurisdiction in three key ways: 1) by giving development benefits to businesses that either would have made the needed investments without public support and/or are simply moving from one part of the jurisdiction to another, 2) by stimulating growth that creates increased service demands

without generating sufficient revenues to cover these services, and 3) through problems in the application and development of a TAD, which may leave local governments stuck with debt for economic development projects that do not fully materialize.

TADs may also create equity “costs” that were associated with many previous redevelopment policies. For instance, the Redevelopment Powers Act not only provides for use of tax increment financing in tax allocation districts, but also enables use of eminent domain for redevelopment purposes in these districts. One issue raised by TADs is whether they can be used to change the character of a neighborhood (e.g. “gentrification”) through a combination of eminent domain and appreciating housing values. TADs might explicitly or inadvertently force low to moderate income families out of a neighborhood (Reingold 2001).

### **Addressing the Costs of TADs**

Because these costs are potentially non-trivial, states and localities have adopted strategies to encourage careful use of tax allocation districts (Johnson 2002). While even the best laid plans can go awry, these policies include both planning approaches to attempt to avoid future problems and approaches to structuring the TIF to hedge against over-commitment of a local tax base or private sector abuse of the program.

#### ***Integrated Planning Requirements:***

##### ***Placing TAD in an Overall Economic Development Strategy***

One strategy for promoting the careful deployment of TADs is to consider its use in an overall framework of economic development goals and fiscal and planning policies. Planning is important both to ensure the best use of TIF, and to evaluate whether a TIF conflicts with other economic development policies. For instance, because TIF is dependent on a stable property tax, TIF projects may pre-empt efforts to reduce property taxes generally or to assist certain business development through tax abatements or exemptions.

Also, TIF also is one of dozens of economic development tools that draw on the fiscal capacities of a jurisdiction. While one alone may have only a trivial impact on fiscal health, combinations of tax abatements, exemptions, and credits may have a significant negative cumulative effect. Careful planning that considers TIF in an overall framework is important to avoid these effects, though it may also reduce a jurisdiction’s ability to respond quickly to development opportunities.

#### ***Addressing TIF in an Overall Framework:***

Some existing practices that require evaluation of TIF in a larger context include:

- Prohibiting TIF until a general plan for the jurisdiction is completed with explicit consideration of TIF districts.

- Johnson (2002) shows 31 states including Georgia require that TIF redevelopment plans conform to the locality's comprehensive plan.
- The District of Columbia and Nebraska actually require local general plans to identify targeted redevelopment areas prior to the development of a TIF district. The intent of this requirement is to ensure that projects are developed with public participation, foster legitimate public purposes, and contribute to achieving a community's objectives and goals (Nebraska Department of Economic Development; *D.C. Act 12-354, Tax Increment Financing Act of 1998* 1998).
- Requiring an assessment of the strength and weakness of alternative financing arrangements, such as community improvement districts, tax abatements, and grants through the Community Development Block Grant (Zimmer Real Estate Services and Associates 2003)
- Requiring the development of a "Unified Economic Development Budget" where taxing bodies should annually report on all tax abatements, exemptions, reductions, and redirections, individually and totally, and the amount of revenue not paid. The budget also includes reasons for tax relief, expected outcomes, and progress toward outcomes. While this may seem burdensome, jurisdictions that gather and report this kind of information are in a good position to evaluate economic development subsidies in terms of total impact on taxes and overall performance (Hinkely et al. 2000).
- Use a multi-year budget to assess the fiscal impact of economic development policies in the "out years."

### **Preventing Unneeded TAD Subsidies**

One of the classic problems of all economic development policies that benefit a particular private sector interest is that public sector subsidies or support may be unnecessary; the business would have made the investment anyway but would like a subsidy to enhance its profits at the expense of the taxpayer. The public sector subsidy may also give a particular firm an advantage over its competitor.

Ideally a local government would be able to look directly at a private sector company's true "return on investment" (ROI) for a particular project, assess the efficiency of that business relative to its competitors, and thereby directly determine whether a public subsidy is needed. Given the difficulties of such an analysis, a rigorous assessment of "blight" and a "but for" finding are imperfect but important ways to protect taxpayers. In addition, a local government might want to consider ways to structure public-private agreements to protect a local government from the risks of TADs.

### ***Finding of “Blight”/Establishment of Public Purpose***

Thirty-three states including Georgia require that localities include a finding of blighted conditions in their redevelopment plan for a TAD. This requirement is a legacy of TIF’s beginnings in urban renewal and is now often supplemented with an alternative, less stringent requirement to find an area “economically underdeveloped.” However, there are good reasons to maintain or strengthen an emphasis on using TADs in blighted areas or in areas that are clearly defined as meeting an important public purpose.

One reason to focus on a finding of blight specifically prior to initiating a TAD is that blight suggests areas where promoting economic development might be intrinsically good – by enhancing job accessibility for poor persons, for example - even if it shifts business from one area of a community to another. A finding of blight indicates that an area might not “spontaneously” redevelop. Also, one might argue that blighted conditions are a drag on the local economy and create high operating costs for local government. Last, a finding of “blight” lays the foundation for any declarations of eminent domain associated with projects, and in so far as equity concerns are raised by use of TIF, a finding of blight may be important in establishing the legitimacy of its use.

In Georgia, as in many other states, the “blight” requirement has been softened by allowing underused areas or areas that *could* become blighted to qualify as TADs. One state merely requires that buildings in the project area be over 35 years old to make a finding of blight (LeRoy and Hinkely 2002). Using this criterion, the neighborhood around Georgia’s Governor’s mansion could be “blighted.”

### ***Addressing the Blight Finding:***

Seven states have attempted to tighten up their “blight requirement” by quantifying their blight definition (Alabama, Arkansas, California, Maine, Minnesota, Nebraska and South Dakota) (Johnson and Kriz 2001). Items that can be quantified to establish blight might include some combination of the following:

- Unemployment or poverty rates in the identified district area;
- Number or percentage of buildings that are substandard, vacant and/or require clearance or renovation;
- Number or percentage of parcels that are urban or occupied by buildings (as opposed to vacant land);
- Land and buildings have remained unimproved for certain number of years (it is 40 years in Nebraska);
- Growth has been stable or decreasing in past years;
- In Nebraska, the blight finding also requires a public hearing and requires a recommendation from the planning commission that their “blighted and substandard” criteria do apply to the area in question.

### ***Extensions of the Blight Finding: Other Important Public Purposes***

There are other important policy ends that might be served beyond the amelioration of traditional notions of “blight”. These include environmental remediation and reuse of

properties such as military bases or old industrial facilities. One argument for a looser definition of blight is that TIF should be available to make urban redevelopment competitive with development in greenfields at the periphery of a metropolitan area.

The point is not so much to cleave to one definition of blight, as it is to clearly articulate the public purposes that are to be served (and that would not be served otherwise) by use of TIF. Further, a jurisdiction should consider the implications for “equity” for residents who live in and around the TAD.

### ***“But For” Assessments***

Another key test for any economic development subsidy is whether a development would have occurred without a subsidy. If it would have occurred anyway then the local government is losing money by giving an unwarranted and unneeded handout to a developer or a business.

For example, pressures from increasing travel congestion in Atlanta’s suburban areas are creating increasing incentives to redevelop urban downtown districts. Far from offering subsidies, organizations such as the Midtown Alliance have shown that businesses and property owners will pay additional taxes through Community Improvement Districts (CID) for better planning and zoning and public improvements needed to maintain or raise quality in the face of mounting development pressure. Prior to turning to TIF, local officials might want to explore alternative less costly policies that may be equally or more effective than TAD in a given situation. In Midtown, the City of Atlanta is reaping the benefits of an improved tax base without providing costly public incentives to stimulate private investment. The question to be raised is whether business would develop or grow anyway without (or “but for”) a subsidy.

Most states rely on vague statements of “finding” to establish that development would not have occurred “but for” a subsidy. While the question of need for subsidy has not been well developed in the context of TIF, in the context of economic development incentives more generally, some scholars have proposed a set of considerations that policy makers should take into account when assessing whether or not to provide a subsidy:

#### *General Criteria:*

- Have strategies other than subsidies been attempted in the TAD area or in similar areas? To what extent have these alternative strategies been successful in generating growth?
- What are the patterns of growth in the community – i.e. is growth and development moving towards the TAD area? Has it already been initiated in the TAD?
- What specifically might be a barrier to development in a particular area? For instance, a brownfield might create a significant redevelopment barrier.
- Is there a compelling finding of blight?
- Is the tax base in the target area growing as fast or faster than the tax base in general? (This suggests that incentives for development such as TIF may not be warranted.)

More tightly developed “but for” considerations can be applied to developer/business initiated TADs and/or project specific TADs:

- Are the improvements financed through the TAD a vital input or are they likely to simply contribute “excess profits” to the firm? Consider where the developer might have located without these incentives and any influence incentives might have on the “bottom line.”

One method of examining the “bottom line” impact is to estimate the “return on investment” (ROI) for a private firm with and without a public subsidy. While a ROI analysis is instructive, this assessment is not sufficient to determine fully whether a development would have happened anyway as it does not assess the efficiency of the firm’s operations vis-à-vis its competitors. Overall, research has found that in most cases the influence of public assistance is small on a firm’s bottom line.

- Is the project one that would have developed in the metro area anyway (though perhaps in a different location)? Depending on circumstances, a locality may want to consider the “but for” question in the context of the entire jurisdiction. In other words, would the development occur somewhere else in the same jurisdiction “but for” the subsidy or assistance. If the answer is “yes,” then again the locality and overlapping jurisdictions are facing a loss of revenue that would otherwise be available. However, returning to notions of “blight,” the public purpose may be to direct development to particularly difficult to develop areas and build a more even distribution of jobs and wealth. Development in blighted areas may be seen as more likely to have a positive ripple effect on the surrounding community as well.
- To what extent does the project simply displace or replace existing activity by creating unfair competition between assisted and non-assisted development or projects? (Persky, Felsenstein, and Wiewel 1997).

### ***Structuring Public-Private Partnerships***

While the first line of defense for a locality against misapplication of TAD is a careful assessment of the feasibility and need for a particular project, localities may also want to employ economic development strategies and tools that help ensure that 1) developers or other private interests do not excessively profit off taxpayers and 2) that private interests make the investments claimed.

- *Requiring Up-Front Private Sector Investment First:* As will be discussed in Chapter 3, the TIF arrangements can be structured so that the private sector investor is reimbursed for infrastructure investments or environmental clean-up through TIF rather than having the public sector implement the project or pay for it up front.
- *Equity Kickers:* This policy requires private developers to give the public participants a subordinated equity position in return for their participation. This technique was

commonly used in the Department of Housing and Urban Development's Urban Development Action Grant (UDAG) program. In the jargon of the day it was called an "equity kicker." If a development's annual internal return on investment ever exceeds a negotiated level, the public participants get a share of the "excess return". In this way, an overly cautious "but for" does not lead to a private economic profit at public expense.

The April 30, 2001 *Philadelphia Business Journal* reported that in the \$32 million Avenue of the Arts project, the developer received \$6.25 million in assistance through TAD financing. However, the agreement included an arrangement requiring the developer to pay the city 50¢ out of every \$1 in excess of an annual \$1.3 million return on his project (McCalla 2004).

#### *Pre-negotiated Specific Benefits from a Project*

Frequently, local governments and TIF supported development will have "agreements" or even contractual understandings regarding the timing of development, its final value, and benefits including, and in addition to, increased tax revenue flowing from a project. Frequently, provision of low- and moderate-income housing and job creation are expected benefits. For example, in California, state law requires 20% of increment revenue be used for low- and moderate-income affordable housing. Similarly, Atlanta's Westside TAD planned at least 1,000 to 2,000 new housing units, in addition to Atlanta Housing Authority housing renovation, in the first ten to fifteen years of operation. Also, many TIF subsidies of private projects are justified by promises of job creation. The Westside plan speaks of creating as many as 13,000 jobs around Centennial Olympic Park, not to mention the remainder of the district. Some states and localities have developed tools and techniques to further protect the public's investment in TIF. These include:

- *Regular audits:* The public interest organization "Good Jobs First" recommends annual reporting of progress toward plan implementation, including accounting for both the public and private financial resources generated and spent and the benefits produced (e.g. jobs created and wages, housing built, public works completed).

Reliable data collection and reporting are essential to measuring the effectiveness of subsidies and monitoring the performance of projects. Additionally, in the case of project specific TADs, such as Atlantic Station, communities may never know whether a company has kept its side of the bargain without effective monitoring. Many observers believe that monitoring must be done by an independent agency to be effective. Minnesota and Maine are both cited as having good reporting requirements (*Best Practices*).

- *"Clawbacks:"* A clawback (also called "recapture") is a contractual provision requiring a company to pay back all or part of a development subsidy, such as a grant, loan or tax break, if it fails to fulfill its responsibilities required by the subsidy agreement or program. For example, if a TIF funded private development fails to

produce as many jobs as promised, it may be required to pay back the costs of infrastructure financed to assist the development.

### **Covering the Costs of Public Service Provision**

One of the critical but often “under discussed” issues of TADs is their potential to bring

#### **Box 1.**

#### **Schools and TIF**

School districts face a particular dilemma in the use of TIF. First, they are often more dependent than other governments on property taxes, and thus projects that tie up a significant portion of the growth of their tax base are more likely to threaten their fiscal health. Second, schools face a clear and direct cost from development that brings new families to a jurisdiction.

On the other hand, because of their reliance on property taxes, if the TIF project is sound, a school district may benefit *more* than other overlapping jurisdictions by an investment that increases the long- term value of the property tax base. Further, because they collect such a large share of total property tax, a school district’s “incremental” contribution to the TIF is often critical in making the project financially viable in the first place.

In Georgia, unlike many other states, school districts must be directly consulted and must approve the use of their property tax increment in a TAD. This provision gives school districts a critical role in the development of TAD and means that they should be particularly careful to educate themselves about the use of this financing instrument.

While by no means a complete list, the following are some strategies adopted by states and school districts to hedge against the risks posed by TIF.

- Complete a costs-benefits analysis to assess impact on school district over time from the proposed TAD. As noted above, while school districts may be more at risk than other jurisdictions, they may also stand to benefit heavily from TAD generated growth!
- Set stipulations on the use of TAD, such as limiting total amount of bonds, setting a date for termination of TAD, and setting requirements for recapture of a percentage of any excess return from the TAD that is not needed for debt service. (See the East Point, Sandy Springs, Acworth, Marietta, and Smyrna TAD case studies in the Appendix to this document for arrangements of this type.)
- Require TIF districts to be limited to industrial and commercial development that will minimize increased service costs to schools.
- By intergovernmental agreement with the initiating jurisdiction, require that the TIF base be adjusted periodically for inflationary increases in the property values to prevent degradation of existing tax base over time.
- Require school district reimbursement for any increases in service demand (i.e. more children) generated in the TIF district.
- Limit the amount of school district increment from inclusion in TAD by requiring an annual “rebate” of a portion of the school increment in an intergovernmental agreement with the initiating jurisdiction.

in growth that creates demand for public services: schools, parks, police, fire, health services, etc. Also, while new infrastructure is likely to be financed through TIF, TIF does not account for service demands placed on infrastructure networks. For instance, the cost of congestion of new development and subsequent needs to improve the regional transportation network may not be absorbed by the new development specifically.

While many public services can absorb a certain amount of population increase without serious degradation in service, schools are particularly likely to be hit hard by TADs that take away their access to increases in tax base stimulated by the TAD yet increase service demand over the base amount. In Georgia, school districts are also highly dependent on property tax revenues, and these problems have led to significant resistance to TIF by some school districts. On the other hand, TADs do not necessarily create higher service costs. By eliminating blight and promoting growth, there is potential that TADs might actually lower public service costs by improving infrastructure, reducing crime, etc.

Yet, because of the potential for TADs to tie up tax base growth in infrastructure development (which in turn may be of uncertain value), some states have developed planning requirements that include detailed cost-benefits analyses. Others have simply attempted to limit the scope of TIF that can be applied or have mandated increased participation by stakeholders, such as schools, that are likely to face the most serious fiscal consequences of incorrect usage of TIF.

***Assessing the Costs of TADs:  
Feasibility Study, Fiscal Impact Analysis, or Cost-Benefit Analysis***

Twenty states and the District of Columbia require some form of a feasibility, cost benefit, or fiscal impact study to support TAD designation. Georgia does not, although such reports may be produced in conjunction with TAD projects anyway.

Such analyses are intended to ensure that a TIF project generates more revenues than costs. For example, a TIF in Pittsburgh for a new downtown department store project cost \$130 million, but produced only \$38 million in increased real property value (Montari 1999). Conversely, other cost-benefit analyses have helped reassure school districts and other participating jurisdictions that they will likely see a solid return on their investment.

However, being mindful of the different fiscal position of the initiating jurisdiction compared to other participating jurisdictions is important. The ratio of costs to benefits for each government may be quite different. Three general types of analysis are useful:

- **Feasibility Analysis:** A feasibility analysis focuses on the private sector investment in the TAD and will assess whether the proposed private development has a reasonable chance of success and thus, is likely to contribute the required increment necessary for financing TAD investments. This type of analysis shows the expected return-on-investment projected for proposed private developments and can serve as an analytic basis of a “but for” statement.

- Fiscal Impact Study: A fiscal impact study will show whether the net revenue to all involved governmental jurisdictions is positive in selected time frames. Specifically, these studies ask whether the cost of providing expanded day-to-day services to the project plus the cost of capital support is less or more than the expected tax revenues at the end of five years, ten years, and so on.
- Cost Benefit Study: Cost-benefit studies are the most comprehensive studies and will attempt to develop information on total community benefits, e.g., value of new jobs, or the benefit of new low- and moderate-income houses, as compared to the net public cost of supporting development. Cost-benefit studies reach beyond fiscal impact studies, attempting to assess total community benefit, not simply government revenue.

In some cases, analysis is undertaken via private consultants, in others, modeling is provided by or through the state government. Examples of public sector models that have been developed include:

- The Community Policy Analysis Center (CPAC) at the University of Missouri/Columbia has developed a regional economic analysis model: “Show Me.” The model has many different community applications. In one case it was used to do a general cost-benefit analysis of a proposed TIF in Kirkland, Missouri.

“As part of the cost-benefit analysis, CPAC analyzed the revenue structure of each jurisdiction to be impacted by the proposed TIF district. Real property values that are contained in the proposed TIF district were also analyzed. In addition, potential impacts on employment, labor force, and retail sales were estimated. This study then projected how these changes could affect the local economy and the political subdivisions involved.” (Cox, Johnson, and Mundell 1999)

- Georgia Tech’s Economic Development Institute has several fiscal and economic development impact analysis models in use. LOCI can help a government assess the fiscal impact of new or expanding business. A newer tool, WebFIT, can estimate the fiscal impact of a long-run land use plan on overlapping governments, e.g. a county, its municipalities, and school systems. These tools have not yet been used on a TIF, but appear to be potentially applicable (*Fiscal and Economic Research*).

### ***Controlling the Costs of TADs***

While a TAD is active and the base is frozen, tax growth funds are diverted from general coffers to specific redevelopment/economic development projects. To the extent that a TAD captures normal property value inflation or to the extent that any growth in the TAD creates a demand for additional local government services, a TAD can create “unfunded” burdens for day-to-day government operations.

Ideally, TIF is structured to capture just enough money to pay development costs, administer the project, and service debt. It is common, however, for TIF districts to accumulate surplus funds. Surpluses may accrue because of the success and health of TIF assisted projects, but there are other reasons that TIF increments may be greater than needed to cover project costs. Restoration of surpluses to participating jurisdictions' general funds (or prevention of their capture in the first place) may be important to help those governments provide needed public services and to prevent the degradation of their fiscal capacities as service demands rise. It is likely to be particularly important for schools.

Reasons TADs might generate surpluses include: 1) conservative initial estimates of the size of an increment, 2) sizing the TAD to capture non-blighted areas, 3) normal growth (inflation) in the tax base captured in increments, and 4) continuing diversion of increments to TADs long after original project improvements have been paid off. TIF administration needs methods to limit accumulation of surpluses and return them to taxing jurisdictions (Johnson 2002).

The following strategies reduce surplus funds available for TADs. However, policy-makers should make sure that they also consider need to ensure robust revenue streams for debt financing. For instance, TADs may be sized larger than needed to capture incremental revenues from properties that are highly likely to appreciate in value even without a TAD investment. While capture of these funds may reassure bondholders that they will be repaid, these funds may also be needed to pay for increased service demands created by new development.

Strategies that are used to limit the scope of TADs and TAD surpluses include:

- *Recapture excess increments:* TAD laws in some states stipulate that revenues or increments received in excess of the amount approved in adopting resolutions revert to the general funds of the sponsoring governments in proportionate shares.

Annual reversions prevent development agencies from building large accounts of “uncommitted funds” at the expense of funding day-to-day operations of participating local governments and school systems. This technique is especially appropriate if a large TAD has been defined in effort to generate a large increment and reduce risk of default (New York City Independent Budget Office 2002).

- *Time Limits on TADs:* Enabling legislation in many states places specific limits on the life span of TADs and tax increment financing. For instance, California requires designation of a time limit with each district. Perhaps the most comprehensive set of “time bands” is in Minnesota’s law, which includes the following (McGarry et al. 2001):
  - “5 year rule”: No additional tax increment debt may be issued five years after the inception of a project. This is an effort to keep development authorities from continually eating up all new increments produced by new development.

## Box 2.

### Developing an Appropriately Sized TAD

TADs can come in many shapes and sizes, everything from a very discrete project and TAD area such as the Atlantic Steel and Princeton Lake TADs in Atlanta, the Camp Creek TAD in East Point, and the Lakeside TAD in Acworth, to large sprawling TADs such as Atlanta's Westside and Perry-Bolton, and the recently approved Eastside TAD. These latter, "mega-TADs," may encompass many projects or may simply encompass an area that a jurisdiction would like to develop.

While projects may vary across many dimensions, some key considerations when scaling a TAD include:

- 1) Do the project boundaries capture sufficient projected incremental revenues to make TAD financing viable? How much of the future growth in the overall tax base should be committed to economic development?

On the one hand, capturing increments from areas that are already developing or are more likely to be developable might be helpful in making any TAD financing financially viable; on the other hand, taking this money represents an "earmark" on funds that would otherwise have gone into the general funds of participating jurisdictions and thus could have been allocated to day-to-day operating expenses, other government programs, or could have gone towards reducing taxes.

- 2) What is the *strategy* for using a TAD to promote economic development?

If a TAD is initiated without significant private sector commitments then a jurisdiction needs to consider how it will use TIF to attract development. One alternative is to use the flexibility offered by a pre-existing "mega-TAD," including its powers of *eminent domain*, to tailor TIF based packages to the needs of developers and businesses expressing an interest in the area. Another is to allow TAD revenues to accumulate and use the funds to make infrastructure investments on a pay-as-you-go (non-debt financed) basis that might attract private sector investment.

The problem with these strategies is that they may be very slow to stimulate development. The private sector simply may not be interested in the district, and without an initial project, the jurisdiction administering the TAD may have to rely on inflationary increases in property values or improvements to existing properties to accumulate the increment necessary to finance infrastructure. In Chicago, of the 77 TIFs old enough to generate increments, 45 have generated less than \$1 million, 58% have less than \$1 million and 44% have less than \$500,000 (Neighborhood Capital Budget Group 2003). Further, long term capture of inflationary increases in property values creates a slow degradation of a jurisdiction's fiscal capacity to support on-going public services.

- 3) Is the TAD likely to conflict with other economic development policies or projects?

A benefit of a very discretely defined TAD is that the financing can be structured in such a way that would be appropriate for a particular project. In contrast, large TADs can become a problem when they start to conflict with other economic development projects. A good example is the early problems of the Techwood (now Westside) TAD that saw large portions of this property taken off of the tax rolls to develop Centennial Olympic Park.

- 4) How flexible should the jurisdiction's overall use of TAD financing be?

An argument for a large TAD is that it allows a jurisdiction to respond more quickly to proposed development in a targeted redevelopment area. Jurisdictions have already committed any incremental funds in the district and so do not have to revisit the planning and approval process. Often large TADs, such as the San Diego TIF district described in the introduction, have comprehensive redevelopment plans outlining the goals and objective for which TIF financing will be available.

- 5) Is the TAD likely to be more successful if it encompasses multiple projects at once?

Large TADs may be created to cluster projects together and a jurisdiction only need work through one planning process for multiple projects and can consider the proposed developments holistically. One trade off is that some projects may be more viable than others and this problem may not emerge if all are considered as a part of a single TAD plan.

- *Reimbursement of School Districts:* Some states, California and Iowa, for example, reimburse school districts for diverted revenue during the life of a TAD. Georgia does not do this, but because schools must sign off directly on the use of their tax. Different types of TADs have different completion rates. An “economic development” TAD may only capture increments for eight years, but a “redevelopment” TAD may remain open for 25 years ([Minn. Stat. § 469.176](#) subd. 1b.).
- *Bounding the Area of a TAD:* In addition to placing time limits on TADs as a method for reducing potential overuse of these redevelopment tools, 22 states, including Georgia, limit the land area of individual or aggregate TADs and/or limit total property value included in TADs (Johnson 2002). As cited earlier, Georgia’s law limits the aggregate TADs to 10% of the property tax base of any given jurisdiction (O.C.G.A. §36-44-17). Currently, Chicago has about 13% of its equalized assessed value in TADs; some fear this amount is excessive.
- A State that is more restrictive than Georgia is Maine, which limits any given TAD to 2% of a municipality’s total area and all TADs in a municipality to 5% of the total area. In addition, all TADs combined may not exceed 5% of the total tax value of a municipality. (M.R.S.A. 30A§5253(B)-(C))
- increments in a TAD, school districts have negotiated a recapture of a certain percentage of revenues as well as time limits on the TAD with initiating jurisdictions (for example, see the conditions placed by Fulton County School District on the Camp Creek TAD in Appendix).
- *Limitations on TAD-Backed Debt:* Though debt limits will be discussed in more detail in the next Chapter, localities may also want to consider limiting the TAD-backed debt issued. Restrictions might include limiting the total value of debt that can be outstanding at any particular time or setting termination dates for the TAD concurrent with its bonds reaching maturity. These provisions would prevent on-going financing with incremental revenues.
- *Capture of Inflationary Increases in Base Assessed Value:* Some states, such as California, require the base assessed value to include inflationary increases rather than simply being frozen in time.

### **Chapter 3**

#### **Using the Tax Increment to Secure Long-Term Debt**

Localities can use the captured tax increment in various ways. Commonly, the initiating jurisdiction will issue debt based on the incremental revenue stream from projected property (or sales) tax growth, and use the money raised from bonds to make investments to enhance the “buildability” of a particular location. Debt financed arrangements are often called “pay as you use” because of the projection of payments into the future as infrastructure or other capital investments are enjoyed. Alternatively, the initiating jurisdiction may collect the increment and pay for investments in infrastructure as the funds accumulate in a “pay as you go” arrangement. These arrangements typically involve infrastructure financed by developers on the condition that an initiating jurisdiction will use the tax increment accrued from the district to reimburse the developer for expenses incurred (Johnson 2002). There are also creative ways to use TIF such as use of Maine’s “credit enhancements” (see Box 3). San Diego has a policy of using “gap financing” as its preferred method of direct subsidy to private developers (see Box 4).

In Georgia and in other states, TIF debt is highly flexible. The debt is typically not counted as general obligation debt, and therefore, technically is not considered a commitment of the full faith and credit of the initiating jurisdiction. As a result, the debt is also not counted against a jurisdiction’s debt limit nor does it trigger any voter referenda requirements for specific bond issues.

However, this apparent dissociation of an initiating jurisdiction from the risk of the debt can prove illusory. Whether legally binding or not, TIF bonds generally are viewed by the capital markets as “moral obligations” of the initiating jurisdiction, and one or more defaults could, and probably would, adversely affect a jurisdiction’s standing in the markets and increase its general cost of borrowing. For instance, when the Englewood Urban Renewal Authority defaulted on a \$27 million TIF bond issue, Moody’s Investors Service downgraded the City of Englewood’s general obligation bond rating from A1 to A, citing the inextricable links between the city and the authority, regardless of how the debt was ultimately secured (Johnson 2001).

In Georgia, where state law requires the initiating jurisdiction – be it a city, a county or a consolidated government – to be the issuer of TAD bonds, this risk may be greater. Even were the locality to be unconcerned with its bond rating, a default on TIF backed bonds could potentially compromise the long-term capacity of that jurisdiction or its redevelopment agency to engage in a variety of economic development finance activities.

Also, TIF debt is often considered highly risky and thus is likely to be more expensive as a locality must pay a premium to induce bondholders to hold this kind of debt. For instance, the yield on the longest maturity of TAD bonds issued by the City of Atlanta in October 2001 for the Atlantic Station project was 8% at a time when the City’s own investment grade general obligation bonds would have yielded 5.5% or less.

**Box 3.****Using TIF for Credit Enhancements**

In Maine a 1993 amendment to their TIF statute created a TIF financing option called credit enhancement agreements (CEAs). This option permits a municipality to return all or part of an annual increment directly to the private concern whose investment created the increment, thereby enhancing that business's credit; perhaps allowing it to borrow in the first place. Michael Starn, Editor of the Maine Townsman notes:

"Credit enhancement agreements permit the "captured" property tax dollars to be channeled directly to the business doing the development. The money must be used for the project but the business is given considerable latitude in its use of these funds, unless stipulated otherwise by the municipality.

"CEAs have infused new life into the tax increment financing program. Since the CEA change, TIF activity has skyrocketed. Over the past two years, according to Alan Brigham at the Maine Department of Economic and Community Development, there have been 33 approved projects, most of them using credit enhancement agreements.

"Businesses appear to like the flexibility that a CEA has in directly reducing their development costs. Communities without infrastructure needs are able to offer a tax incentive to potential developers. Municipalities also like CEAs because they carry less risk - they are performance based. Unlike infrastructure investments that involve long-term payments which continue whether or not the project is successful, CEAs are paid out each year based on what development has actually occurred." (Starn 1997)

**Box 4.****Using TIF for Gap Financing Loans**

"Gap Financing" with subordinated loans was first widely used in the federal Urban Development Action Grant (UDAG) program during the Carter administration. Cities received UDAG money from the federal government, and loaned that money to private development projects in the form of a negotiated subordinated loan in an amount and at terms necessary to close the "gap" between what private equity and loans would contribute in a high risk project (e.g., downtown redevelopment in a blighted areas) and what was needed to make a financially viable project. UDAGs were not made in the absence of private equity investment and loans of the amount and type typical for lower risk projects. Public investment was usually highly leveraged. Loans funds repaid to a city were kept by the city to be recycled into additional redevelopment activities.

Gap financing in the form of loans has been adapted to TIF and is the preferred method of channeling redevelopment funds into development projects in San Diego. Tax increment dollars are used to "leverage" private investment. All project proposals presented to the redevelopment agency must include a financial proforma that identifies all costs anticipated for the project and demonstrates the developer's ability to achieve conventional financing prior to discussions regarding the need for assistance to close any existing "gap." Property owners are encouraged to work with CCDC to negotiate projects that remove blight and reach redevelopment project objectives (Centre City Development Corporation 2002).

In an effort to ensure sufficient revenues and to assure bondholders of the security for the bonds, localities may face a further trade off. In some states, and more recently in Georgia, the state has permitted TIF debt to be backed or even directly financed by all the property taxes collected in the designated tax allocation district as well as by sales tax (and other tax) increments generated in the district. The temptation then is to attach a more secure revenue stream to back the debt, potentially garner a higher rating, and generally increase the “purchasing power” of the debt issued (as less has to be paid to bondholders for less risky borrowing). However, this added security means that an even greater portion of the tax base is potentially encumbered by the TIF debt.

### **Policies that Help Mitigate the Risks of TIF Debt**

While tax increment, or tax allocation, financing has brought about numerous benefits to implementing communities in the form of increased economic development and needed additions to public infrastructure, the use of TIF backed debt poses significant risks to virtually every party to a TIF plan. Initiating jurisdictions are exposed to project failures and the political and credit-related risks that can attend them. TIF bond investors risk the loss of all or a portion of their investment, and face risk of adverse tax consequences if their bonds somehow lose their exemption from federal and/or state income taxation.

#### ***Risk of Insufficient Incremental Growth***

In general, most of the risks inherent in tax increment financing stem from the gamble of using a financing stream based on yet to be realized future increases in the value of property tax revenues. Both economic problems and policy changes can reduce the amount of property taxes collected and put the debt in jeopardy. The risk to issuing jurisdictions is default and the subsequent need to intervene to cover debt payments. Bondholders face a risk of loss of money if revenues are insufficient.

These risks may be caused by 1) insufficient appreciation in assessed value, 2) decreases in tax rate, and 3) failure to collect the appropriate incremental increases in value.

Problems that may decrease level of property tax collected include:

- Public land acquisition in a TAD, reducing the amount of taxable property.
- Project failure, downsizing, or delay.
- Private sector firm failure.
- Economic downturn.
- Default on property tax payment by major property owners.
- Changes in law or policy increasing tax exemptions or abatements.
- Unanticipated successful assessment appeals.
- Natural catastrophe.

*Addressing the Risk:* The risks of TIF debt can be reduced by the using sound planning. When estimating TIF revenues, planners should be conservative in their growth estimates. Also, the importance of assessing the feasibility of private sector investment is critical. Developer initiated project specific TADs are likely to have a feasibility analysis “in hand”. General “economic development district” TADs often start with no project and, consequently, no market of feasibility testing.

Beyond good planning, however, there are hedging tactics to against the risk of insufficient appreciation in property values. Hedges to ensure that developers and other private sector investors do not back out of the project include:

- Use of binding agreements on degree and timing of private investment, i.e., developer must pay the anticipated tax increment regardless of whether the increment has been generated by the proposed development;
- Requiring private sector investors develop the project first and using TIF on a reimbursement basis; as has been done in Atlanta with Atlantic Station;
- Use of “pay as you go” arrangements letting TIF increments accumulate either prior to issuing debt or simply using funds to cover redevelopment expenses as they accumulate without issuing debt. This approach is used in Chicago’s neighborhood TIFs. Funds tend to accumulate slowly.

Alternatively, a local government can secure a TIF with other public sector revenues. Ensuring that TIF financing is financially secure may increase the bond rating and/or reduce the costs of debt because bondholders are more certain of repayment. It is important to note, however, that many of the policies that enhance TIF credit *conflict* with policies designed to limit the scope of the revenues captured by TIF and protect local revenues needed for on-going public services.

Policies to ensure coverage of TIF debt obligations include:

- Back property tax based TIF debt with sales tax increments collected within the TAD (recently permitted by State of Georgia). Sales taxes, however, tend to be volatile and are reduced during economic downturns (as is the case now).
- Back TIF debt with all property tax revenues collected in the TIF district. In Georgia, this requires a finding that the incremental taxes will be insufficient.
- Expand the size of the TIF district to encompass non-blighted properties and/or properties that are highly likely to appreciate.
- Annual reassessments to capture appreciation in property values.

### ***Risk of Future Tax Policy Changes***

Tax rate cuts by a participating jurisdiction could cause the amount of tax collected to decline. Georgia law precludes this possibility by setting minimum tax rates in Tax Allocation Districts if debt has been issued:

...a political subdivision or county or independent board of education consenting to the inclusion of its property taxes as a basis for computing a tax allocation increment base within a tax allocation district, as provided in Code Section 36-44-9, may not decrease its ad valorem tax millage rate on taxable property located within that district below the millage rate levied on that property on the last date tax allocation bonds were issued for redevelopment costs of that district. (§36-44-15(b))

An important point for policy-makers to consider when adopting a TAD is that the creation of a TAD may reduce their flexibility to decrease taxes for property owners in the district or in their entire jurisdiction. Because Georgia's Constitution requires "uniformity of taxation," local governments become locked in to a minimum tax rate established during the formation of a TAD. Another dilemma may be created by state law changes that decrease or cap increases in assessed valuations, authorize alternative forms of local taxation (if such alternatives also result in a rollback in property tax rates), and/or change state school funding laws to replace local levies with state education dollars.<sup>4</sup>

*Addressing the Risk:* Localities may want to monitor proposed State changes to assessed property values, millage rates, exemptions, and so on to assess their impact on local TADs. Additionally, creating TADs as Special Districts, as discussed in Chapter 4, would insulate TADs from other taxing jurisdictions and protect their tax rates and revenues from challenges based on the uniformity clause if jurisdiction-wide rates change.

### ***Risk That TIF Debt Is Not Tax Exempt***

An important concern for the holders of TIF bonds is the risk that the interest on their bonds may lose its exemption from federal income taxation, which most debt instruments of state and local governments enjoy. If lost, the federal government will collect taxes from bondholders from the date of the bonds' original issuance.

Internal Revenue Service rules limit the extent to which tax-exempt bonds may be used for private purposes and/or secured by anything other than "generally applicable taxes". Generally, more than 10% of the proceeds of such bonds may be used to fund privately owned improvements (if state TIF laws allow it) only if at least 90% of bond debt service

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<sup>4</sup> S.B. 510, introduced (but not passed) in the 2004 session of the Georgia General Assembly, is one example of such property tax relief bills and would have allowed to Fulton County property taxpayers a homestead exemption equal to the difference between their "base year assessment" and any future assessment as long as they owned and occupied their home.

is payable from tax revenues within a TIF district that apply equally to all district taxpayers. In such cases, extreme care must be exercised to eliminate any special arrangements with TIF district taxpayers that would cause their taxes to become something other than “generally applicable.” For instance, any of the following would violate this rule: 1) an agreement with a TIF district taxpayer waiving the taxpayer’s right to appeal his or her property assessment, 2) an agreement that guarantees payment of taxes in certain minimum amounts, 3) an agreement that indemnifies other TIF taxpayers against any future tax increases, or 4) the posting of any security (e.g., a privately backed bank letter of credit) as additional security for bond repayment. On the other hand, more than 10% of TIF bond debt service may be secured by sources of funds other than generally applicable taxes within a TIF district if at least 90% of TIF bond proceeds are used to fund governmentally owned assets. Many states restrict the use of TIF bond proceeds (and incremental tax revenues, in general) to publicly owned infrastructure. In these states any number of private guarantees of bond repayment are possible.

***Addressing the Risk:*** In states such as Georgia, where bond proceeds may be used to pay virtually any redevelopment cost, including improvements to private property, the risk of bonds being designated “private activity bonds” under IRS rules, even years after their original issuance, is real and should be monitored by initiating jurisdictions and their legal counsel carefully and continuously. Localities might also want to consider being conservative in the purposes for which they issue TIF bonds. For example, they may want to issue bonds only to pay for any public infrastructure components of TIF projects.

## **Chapter 4**

### **Problems and Issues with Georgia's Redevelopment Powers Law**

Georgia's Redevelopment Powers Law provides cities, counties and consolidated governments in the state with significant flexibility in revitalizing blighted areas. By defining redevelopment activities broadly, it allows sponsoring communities wide latitude in shaping the kinds of projects and public-private partnerships necessary to improve local economies. By requiring a judgment that "but for" the exercise of the Law's powers, redevelopment within a TAD would not occur, and by providing for public review and input, it may inhibit initiating jurisdictions from undertaking redevelopment projects of questionable benefit. By requiring the consent of participating jurisdictions to the inclusion of their respective portions of incremental tax revenues in paying redevelopment costs, it prevents local government sponsors from usurping the tax revenues of other entities. Moreover, allowing the possibility of payments to participating jurisdictions to compensate them for tax revenues foregone as an eligible redevelopment cost provides a means by which participants may benefit from TAD development more immediately. Finally, the Law's provisions governing TAD bonds imposes some fiscal discipline on initiating jurisdictions and protects the interests of TAD bondholders.

However, implementation of the Law's provisions in many jurisdictions throughout the state has been hindered by a number of legal and practical constraints – some of which are discussed below.

***Referendum Requirement.*** Chief among the constraints inhibiting local government's use of the Law is its requirement that authority to implement the Law's enumerated powers must be approved by the registered voters of a prospective initiating jurisdiction. Because the debt obligations of a local government issuing TAD bonds are not and cannot technically be secured by the full faith and credit of a sponsoring local government, many local governments may see the referenda requirements as an unnecessary impediment to pursuing local economic development objectives. Many feel the fact that local governments are held responsible by the markets and by bond rating agencies for non-general obligation debt such as revenue debt and debt issued by subordinate jurisdictions (e.g., development authorities) is sufficient protection for local taxpayers. Regardless, in many jurisdictions in the Atlanta metropolitan area have successfully received approval from voters to use TIF. Further removal of this requirement is unlikely as it is embedded in the State Constitution and its removal would involve statewide voter approval.

***TAD Termination and Size Limits.*** The Law imposes no time limit on the life of a TAD, providing only that one shall exist until all redevelopment costs have been paid. Additionally, the Law does not limit the physical size of TADs, individually or in the aggregate. Although it restricts the term of any single issue of TAD bonds to 30 years, and any contract with private entities to this same term, the Law does not prevent an initiating jurisdiction from amending a TAD plan numerous times, issuing several series

of TAD bonds or entering into serial agreements with different private sector participants, each having successive 30-year terms.

Total assessed tax base in aggregated TADs is restricted. A new TAD, at the time of its establishment, may not push the total assessed value in TADs to more than ten percent of the jurisdiction's total assessment base. Even so, within this framework, a mega-TAD could be created and effectively last forever. For this reason, many states impose 25-30 year limits on the life of TIF districts, and nine states restrict their number, not by their aggregate values (which tends to penalize jurisdictions with successful redevelopment programs), but by their geographic size. Other states limit the amount of time in which actual project work must be initiated. If a project does not begin in a specified period, the TAD will expire.

***Consent of Participating Jurisdictions.*** In a few cases, participating jurisdictions had refused to give consent until after an initiating jurisdiction had acted to create the TAD. This raised the possibility that consent would not have been not legally binding, even though TAD bonds, secured in part by the tax increments from such jurisdictions, had already been issued. SB 514, enacted by the 2004 General Assembly, clarified this issue by requiring an initiating jurisdiction simply obtain consent from participating jurisdictions prior to the inclusion of their respective portion of the incremental taxes regardless of the date of TAD creation.

***Use of Non-Property Tax Increments.*** The inability under the Law to pledge certain non-property taxes to pay redevelopment costs (including debt service on TAD bonds) had, until this year, restricted an initiating jurisdiction's financial flexibility in implementing a redevelopment plan. However, SB 514 now allows the direct pledge of these revenues, increasing the leverage available to cover costs.

By pledging the local option sales taxes collected within a TAD, particularly one involving commercial and mixed-use developments, an initiating jurisdiction could pay TAD redevelopment costs more quickly, and/or reduce the need to involve the property tax increments of participating jurisdictions. By enacting this amendment to the Law, Georgia joined nine other states plus the District of Columbia in allowing the use of sales tax increments, along with incremental property tax revenues, to pay redevelopment costs.

As a practical matter, however, measuring the local sales taxes collected, or that may be collected, within a TAD is compromised by other deficiencies in Georgia state law and practices. The chief deficiency is the lack of any means, or legal mandate, by which the State Revenue Department, the State's sales tax collector, can accurately record collections by point of sale. As a result, despite this year's amendment to the Law allowing the pledge of local sales taxes to pay redevelopment costs within a TAD, its actual implementation may be compromised by the existence of conflicting state tax collection procedures.

***Expansion of TAD Boundaries.*** If the geographic boundaries of a TAD are expanded, the Law requires that the base assessed value of a TAD be reset to the TAD's assessed value in the year of expansion. This provision limits an initiating jurisdiction's capacity to make even minor revisions in TAD boundaries. Whatever the requirement's original motivation, its unintended consequence has been to provide initiating jurisdictions an incentive to create larger TADs. Oversized TADs unnecessarily deprive all participating jurisdictions of the incremental tax revenues needed to support general government services.

***Minimum TAD Tax Rates.*** The Law's requirement that initiating and participating jurisdictions may not impose a property tax rate less than that imposed when TAD bonds were issued, while friendly to TAD bondholders, may run afoul of the state constitutional provision requiring uniformity of tax rates throughout a taxing jurisdiction. The risk of running afoul of the constitution may eventually provide a significant disincentive for development within a TAD.

Article VII, Section I, Paragraph III of the Georgia Constitution requires that, except in the case of certain enumerated situations, "all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." The Constitution does allow cities and counties within the State to create "special districts" within which certain services (including "community redevelopment" services) may be provided and taxes, assessments, and fees may be levied to pay for such services (Article IX, Section II, Paragraph VI); however, the Law does not explicitly provide that TADs constitute such special districts. As a result, the Law's provision for minimum tax rates within TADs may be subject to legal challenge and, for this reason or others, has not been complied with by participating jurisdictions thus far. Clarification of this issue in the General Assembly is warranted.

In working to clarify the issue in the General Assembly, local jurisdictions are faced with tax policy choices. If on the one hand, tax rates in TADs were allowed or required to vary and tax rates decrease within a total jurisdiction, TAD bond holders may take legal because as tax rates decrease, tax allocation increments securing their bonds also fall reducing the security and value of the bonds. On the other hand, allowing the remainder of a jurisdiction's tax rates to vary while maintaining fixed tax rates in a TAD could, over time, result in significantly higher tax rates within a TAD than without, creating a disincentive for private investment in the TAD.

***Conflict with "Education Purpose" Clause.*** A final, and potentially significant, legal conflict arises in the Law's provision for school districts to participate in a TAD's redevelopment. The Law clearly anticipates local school districts' ability to consent to the inclusion of their portions of any tax allocation increments created within a TAD to pay TAD redevelopment costs. However, the State Constitution, in Article VIII, Section VI, Paragraph I(b), provides that "school tax funds shall be expended only for the support and maintenance of public schools, public vocational-technical schools, public education, and activities necessary or incidental thereto, including school lunch purposes." Therefore, to allow use of a portion of a local school tax levy to pay costs unrelated to an

educational purpose may put a school district in conflict with this constitutional provision.

On the other hand, to exclude that portion of tax increments attributable to a local school levy, which typically constitutes half or more of such increments, risks gutting an initiating jurisdiction's ability to afford its redevelopment objectives. Participating school districts have attempted to reconcile this conflict by requiring that a portion of tax increments be used for the construction of new schools, improvements to existing schools and the implementation within a TAD of job training or other educational activities and/or that a portion of the increments be returned to the districts as payments in lieu of taxes foregone.

In an opinion dated December 11, 2001, Georgia's Attorney General concluded that these kinds of arrangements essentially comply with the Constitution's "educational purpose" clause.<sup>5</sup> In addition, some legal experts have argued that, because their portions of incremental taxes generated in a TAD are never actually returned to local school districts, but rather are returned by local tax collectors directly to initiating cities or counties, they never truly become "school tax funds," and, thus, their use by such jurisdictions to pay redevelopment costs does not conflict with this constitutional provision. The issue has not been settled.

***Personal Property Taxes.*** Personal property values and the values of utility properties are included in calculation of jurisdictions' total property tax bases, but have often not been included in the calculation of TAD property tax bases or increments. The reason is that it is difficult to tie-down the actual locations of personal and utility property in a jurisdiction. Over 17 percent of Atlanta's property tax base is comprised of personal and utility property. A potential problem arises from the inability to assign personal and utility property to a TAD location. The Law limits TADs to 10 percent of the property tax base. Suppose that a new TAD, combined with existing TADs, would total a reported 9 percent of the total base. It is possible that someone could argue that the City does not comply with the limit specified in the Law because the City has not included personal and utility property in the calculation of the TAD property tax base. The actual property tax base included in TADs may exceed 10 percent of the City's total property tax base, and the city has acted illegally.

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<sup>5</sup> Letter from Attorney General Thurbert E. Baker to Charles S. Johnson, III, Attorney for City of East Point, dated December 11, 2001, regarding City of East Point's Proposed Camp Creek Tax Allocation District.

## Chapter 5 Recommendations

This Chapter presents recommendations for the implementation of a local TAD policy and suggests modifications of TAD policies at the state level. Because each TAD is unique, these recommendations are ones that are sufficiently general that they can apply to TAD policies in general. For a method of avoiding some of the costs and risks of a particular TAD, please see the cost-risk matrix.

The advantage of TAD is that it allows the capture of increments from overlapping taxing governments, a pooling of resources not available with any other tool, and the ability to leverage future revenues. But a TAD does have costs, the most obvious being a diversion of resources, for a while, from provision of day-to-day local government services.

This report shows that TAD projects in some areas appear to have produced important redevelopment benefits; however, we have also seen that state and local governments across the country are continually wrestling with fundamental issues of appropriately structuring TADs. These governments as well as those in Georgia have developed a number of tactics to capitalize on the benefits of TADs while trying to hedge against the costs and risks. With these considerations in mind, we offer the following recommendations:

### **Actions Prior to Initiating a TAD**

**1. Develop TADs as part of an overall planning and economic development strategy. In particular, a locality should identify the areas that should be targeted for redevelopment, the critical public purposes that will be served by TAD, and the types of projects that are appropriate for TAD backing.**

While this should not necessarily preclude the use of TAD to assist with innovative projects that fall outside this framework, fitting TADs into a broader economic development strategy will help 1) ensure that jurisdictions do not use up their TAD capacity on projects that are not priorities; 2) ensure that TAD is appropriately applied and does not conflict with broader policy priorities or with other economic development strategies; and 3) consider overall resources expended for economic development purposes. An economic development budget may be particularly helpful in assessing total resources directed to economic development.

**2. Establish a set of clearly defined economic development goals for which TAD can be used. TADs should be particularly targeted to projects where private sector investment is *unlikely* without public sector stimulus.**

Private sector investments are unlikely when there are unusual costs, for example, for brown field site preparation, or low returns on affordable housing. Thus, TADs may be an important strategy in ameliorating significantly blighted areas, promoting environmental remediation, or stimulating reuse of abandoned industrial properties.

Depending on the priorities of jurisdictions participating in a TAD, TADs may also help promote mixed income development and the development of transit.

**3. Conduct a full and careful feasibility, fiscal impact, and cost-benefit analyses of proposed TAD projects.**

These assessments are the only way to assess the value of the project to the participating jurisdictions, the risks involved, and the amount and form of government investment that is needed and appropriate. Such studies are important because they assess the impact of the project on the fiscal health of the jurisdictions involved and help assess the potential viability of any bonds issued from TAD revenues.

**4. Avoid government-initiated speculative projects.**

The greater the involvement from private sector partners from the beginning the better. All of the successful projects reviewed in the Introduction had significant developer participation and commitment from the outset. By initiating projects with no identified private sector commitment, the government runs the risk of adopting projects based on hope and a prayer rather than market reality.

**5. Work with strong private sector actors.**

Prior to making any contractual commitments, jurisdictions should carefully research the reliability, development experience and capacity, and financial strength of all private parties. Avoid entering into TAD development agreements with private developers who cannot assure performance.

## **Structuring TAD Arrangements**

**6. Shift the risk of TADs to the private sector by minimizing direct government contribution to a project or upfront contribution to a project.**

Good examples of policies to minimize public sector risk include the Atlantic Station policy of developer reimbursement (see Appendix) and San Diego's policy of providing financing to private redevelopers as "gap filling loans," rather than as a direct subsidy.

**7. Clearly specify the public benefits to be produced by the private sector entity receiving TAD assistance and include meaning sanctions for failure to meet agreed upon goals.**

The government should make clear upfront what it expects from the private sector in return for TAD assistance, if the expectation includes more than the mere redevelopment of a property in a distressed area. For example, for a housing project, the government should clearly state the number of affordable units and the price points for those units and

should hold the developer accountable through binding development agreements, claw-back provisions, or other policies.

#### **8. Bound the time-period during which a TAD investment can be made.**

Supporting a developer using TAD financing should be bounded by a particular time period, for instance 5 years. If private sector investments have not been initiated by the end of this period, the jurisdiction should re-evaluate the project and reclaim its TAD capacity, which may then be redirected to other projects or, if the TAD is project-specific, to the general funds of participating jurisdictions.

#### **9. Set clear limits on the duration of the TAD and on the amount of debt that can be issued in a particular TAD.**

Establishing a TAD with no time or debt limit can risk committing excessive resources to a particular area or project and may limit a locality's ability to establish other TADs. California and Minnesota practices both provide examples of project performance deadlines and final project termination deadlines.

#### **10. Size TAD bonds only on the value of real property tax increments.**

Even though Georgia Law provides that TAD bonds can be backed by funding sources in addition to real property tax increments, TAD bonds should be sized as if property tax increments were the only security. Personal property increments, sales tax increments, and other forms of revenue generated within TADs should be used only for debt coverage (i.e., to increase the creditworthiness of the bonds and reduce their cost) and, if not needed to pay debt service or other contractually committed expenses, returned in proportional share to participating jurisdictions each year.

Sources of revenue other than taxes on real property can be volatile. Sales tax revenues, for example, can fluctuate markedly from year to year depending on overall economic trends. Personal property taxes, particularly on inventories, may also fluctuate each year, and taxes on furniture, fixtures, and equipment actually decrease each year as they depreciate. Avoiding use of volatile sources of revenue as primary sources of bond repayment and using them instead as sources of "backup" security is prudent policy.

#### **11. Avoid over-sizing TADs to direct funds arising from natural growth to economic development purposes.**

If an area larger than a project's "benefit area" is needed to generate sufficient tax increments then the project may be of questionable value or TAD may not be the appropriate tool. Including areas that are not going to benefit from a TAD-financed project means that a jurisdiction is simply capturing general fund revenues from natural growth or inflation (from themselves and overlapping jurisdictions) which might otherwise be spent on schools, police, fire, parks, etc. and dedicating it to economic development purposes. Jurisdictions may face some incentive to capture such revenues in order to access a wider pool of revenues to back TAD debt. If jurisdictions decide to

do this as a means of pooling general fund revenues for economic development purposes and/or for backing TAD debt, this strategy should be made explicit in the redevelopment plan and the trade offs evaluated accordingly. Jurisdictions should also consider the implications for the 10 percent ceiling on taxable property that can be dedicated to TADs.

## **12. Consider clustering adjacent projects**

Clustering adjacent compatible projects may reduce the cost and risk of a single project and/or allow the jurisdiction to meet other important public purposes through TAD. Petco Park is a good example. The overall project incorporated several projects into one “action plan.” The projects included a baseball stadium and revitalization of the surrounding neighborhoods. The second part of the plan “guaranteed” the generation of the tax increment needed to support the first component.

## **Evaluation and Audit**

### **13. Develop annual performance audits or evaluations, as well as financial audits, to determine private sector progress towards agreed upon goals and to show how public funds are being used to support the TAD redevelopment plan.**

Regular audits will bring increased transparency to the process for both the public and private sector and will help reassure participating jurisdictions that their incremental tax revenues are used wisely.

## **State Law and Administrative Changes**

### **14. Specify that TADs are Special Districts as authorized by Article IX, Section II, Paragraph VI of the Georgia Constitution and therefore avoid conflict with Constitutional uniformity of taxation provisions.**

While some now argue that TADs already are Special Districts, the law is not clear. If a TAD is not considered a Special District, millage rate differences that arise between frozen bases in TADs and reduced general property tax rates effective throughout a jurisdiction may give rise to constitutional issues of uniformity of taxation.

### **15. Modify state sales tax administration so that the state can identify point of origin of sales taxes.**

Currently, the Department of Revenue does not identify point of sales below the county level. Providing for point of origin of sales tax for smaller areas, i.e., TADs, will allow jurisdictions to use the incremental revenues from the local sales tax to back TAD projects.

**16. Change Redevelopment Powers Law to clarify that when TAD boundaries are expanded, this shift will not “reset” the base property value for the entire TAD. Only the newly added areas will have its property tax base frozen at the time the district is expanded.**

This change is designed to remove an incentive for setting very large initial TADs that is probably an unintended consequence of the current “resetting” requirement.

**17. Clarify the role of state-assessed property (for example utilities) in the calculation of the tax increment for a TAD.**

Utility properties and personal are included in a jurisdiction’s general property tax base, but, including these type properties in TAD property valuations has proven difficult. The State, which assesses utility property does not keep records of their specific locations and most personal property is not taxed at a specific site. The easiest, and probably best, solution is to exclude both utility and personal property values from both the tax allocation increment base and subsequent calculations of tax allocation increments. In making any changes however, state officials will need to make sure that the measure is structured so that it does not create a conflict with the security arrangements of existing debt obligations.

Risks/Costs	Policies to hedge against risks and costs
Loss of fiscal capacity due to cumulative effects of TAD and other economic development policies.	Place TAD in overall framework of economic development policies: <ul style="list-style-type: none"> <li>• Consider TADs during development of local General Plan;</li> <li>• Create unified economic development budget.</li> </ul>
<p>Unnecessarily giving away future fiscal capacity for economic development purposes.</p> <p>Can be caused by:</p> <ul style="list-style-type: none"> <li>• creating conditions where businesses /developments shift from one part of a jurisdiction to another; or</li> <li>• giving businesses/developers subsidies that they don't need, or</li> <li>• private sector partners renege or are unable to provide agreed upon public benefits</li> </ul>	<p>Either establish that development would not have occurred otherwise or public purpose is sufficiently strong to accept risk that development would have occurred otherwise.</p> <ul style="list-style-type: none"> <li>• Establishment of “blight finding” or other clear reasons that property would be unlikely to develop without public sector assistance; or that some broader public purpose is served through the TAD aid.</li> <li>• Establishment that “but for” the subsidy development would not have occurred.</li> <li>• Evaluation of return on investment (ROI) for private sector business to determine importance of subsidy in making profit on investment.</li> </ul> <p>Structuring a TAD to ensure that public sector benefits from private sector profits.</p> <ul style="list-style-type: none"> <li>• Equity kickers: if private sector business/developer makes profit higher than anticipated; public sector receives a return on the investment</li> <li>• Pre-negotiated specific benefits: ensure that public purposes are served such as meeting needs for low to moderate income housing, job creation, etc. <ul style="list-style-type: none"> <li>○ Audit to ensure that private sector follows through on promised benefits.</li> <li>○ Clawback to ensure company pays back any public sector support if promised benefits do not materialize.</li> </ul> </li> </ul>
<p>Investing in development that creates costs that are higher than revenues.</p> <p>Costs may be a result of:</p> <ul style="list-style-type: none"> <li>• Increased service demand (most seriously, more children attending schools, but can be other costs)</li> <li>• Costs of TAD financed project</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct cost-benefit or fiscal impact analysis <ul style="list-style-type: none"> <li>○ Must be done for <i>each overlapping jurisdiction</i> as costs and benefits may be distributed differently</li> </ul> </li> <li>• Reimbursement of school districts some or portion of incremental revenues collected since costs may be unduly borne by school districts.</li> </ul>
Unnecessarily giving away too much future fiscal capacity to TAD.	<ul style="list-style-type: none"> <li>• Review impact of TAD on multi-year budget or create “economic development budget” to assess overall impact of economic development policies</li> <li>• Develop agreements to recapture excess increments of a TAD; limiting the revenues that can be collected from a TAD</li> <li>• Reimbursement of school districts</li> <li>• Time limits on TADs</li> <li>• Bounding the area of TADs</li> </ul>

	<ul style="list-style-type: none"> <li>• Time, amount, or other limitations on TAD-backed debt</li> <li>• Keep inflationary increases in the “base assessed value” of the district</li> </ul> <p><i>(Note: These may conflict with criteria needed to reassure bondholders of the security of TIF bonds.)</i></p>
Equity concerns: TAD is used to displace low to moderate income families.	<ul style="list-style-type: none"> <li>• Finding of blight</li> <li>• Requiring low to moderate income housing to be protected/developed in TAD</li> </ul> <p><i>(Note: This may conflict with desire to keep public service costs low in a TAD district as housing tends to be more service intensive than commercial development because of schooling needs.)</i></p>
<p>Insufficient revenues generated by TAD to cover debt obligations.</p> <p>Can be caused by:</p> <ul style="list-style-type: none"> <li>• public land acquisition,</li> <li>• project failure, downsizing, or delay</li> <li>• private sector firm failure</li> <li>• economic downturn</li> <li>• default on property tax payment by major property owners</li> <li>• changes in law or policy increasing tax exemptions or abatements</li> <li>• unanticipated successful assessment appeals</li> <li>• natural catastrophe</li> </ul>	<p>While TAD debt is not backed by the full faith and credit of an issuing jurisdiction, if TIF revenues are insufficient and a local government allows TIF bonds to default, it may face a lower bond rating, higher costs of issuing debt, and a degradation of its capacity to invest in future economic development projects.</p> <p>Policies to assist with avoiding revenue shortfalls include:</p> <ul style="list-style-type: none"> <li>• Rigorous assessment of feasibility of private sector projects and/or likelihood that public sector investments will generate sufficient future growth!</li> <li>• Use of binding agreements with private sector investor on degree and timing of payments to local government</li> <li>• Reimburse private sector investor rather than pay up front</li> <li>• Use of “pay as you go” to allow TIF funds to accumulate prior to paying for redevelopment expenses</li> </ul> <p>Back TIF debt with other revenues:</p> <ul style="list-style-type: none"> <li>• Use of sales tax increments</li> <li>• Use of all property tax revenues collected in TAD</li> <li>• Expand size of TAD to encompass likely high growth areas</li> <li>• Regular reassessments to capture appreciation in property values</li> </ul> <p><i>(Note: These policies may conflict with efforts to limit the tax base growth and thus fiscal capacity of a jurisdiction captured by TADs.)</i></p>
Risk of future tax policy changes	<p>Georgia State law provides that localities <i>cannot change millage rates in a TAD</i> while debt is still outstanding; however, State law changes and changes that affect the base assessed value can influence tax increments collected.</p> <ul style="list-style-type: none"> <li>• Monitor State laws to assess implications for TAD backed debt.</li> <li>• Prior to issuing TAD debt, localities should assess their future aspirations in terms of property tax policy (i.e., do they think cutting taxes is important economic development policy)</li> </ul>
Risk that TIF debt is not tax exempt	<p>Primarily a risk to bondholders, however the higher the risk the higher the interest rate on TIF debt (and thus the more expensive it may be).</p>

	<ul style="list-style-type: none"> <li>• Initiating jurisdictions and their legal counsel need to carefully consider TIF debt and extent to which falls under rubric of “private activity bonds”</li> <li>• Be conservative in purposes for which TIF bonds are issued.</li> </ul>
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## Appendix

### Current Tax Allocation Districts in Metropolitan Atlanta

Eleven tax allocation districts have been created in metropolitan Atlanta to date. Seven are located in Fulton County – five in the City of Atlanta, one in the City of East Point and one in unincorporated Fulton County. Three are located in Cobb County – one each in the Cities of Acworth, Marietta and Smyrna. One is located in unincorporated Clayton County. These TADs, along with their respective net assessed values for tax year 2004, are listed below.

**Table 2**  
**Current Tax Allocation Districts in Metropolitan Atlanta**

	Year Created	Base Assessed Value	2004 Assessed Value	Incremental Assessed Value	Projected Incremental Assessed Value
<b>Fulton County</b>					
<u>City of Atlanta:</u>					
Westside TAD	1998 <sup>1</sup>	\$ 418,680,920	\$ 610,200,440	\$ 191,519,520	\$ 73,300,000
Atlantic Steel TAD	1999	7,173,240	129,140,720	121,967,480	598,850,000
Perry-Bolton TAD	2002	66,022,880 <sup>2</sup>	85,567,400	19,544,520	120,000,000
Princeton Lakes TAD	2002	826,760 <sup>2</sup>	1,746,000	919,240	131,115,000
Eastside TAD	2003	<u>299,727,400 <sup>2</sup></u>	<u>343,698,050</u>	<u>43,970,650</u>	<u>328,326,900</u>
Subtotal		792,431,200	1,170,352,610	377,921,410	1,251,591,900
<u>City of East Point:</u>					
Camp Creek TAD	2001	<u>4,720,280</u>	<u>25,316,280</u>	<u>20,596,000</u>	<u>92,400,000</u>
Subtotal		4,720,280	25,316,280	20,596,000	92,400,000
<u>Unincorporated Fulton:</u>					
Sandy Springs TAD	2003	<u>321,283,240 <sup>2</sup></u>	<u>350,631,920</u>	<u>29,348,680</u>	<u>632,000,000</u>
Subtotal		321,283,240	350,631,920	29,348,680	632,000,000
<b>Cobb County</b>					
<u>City of Acworth:</u>					
Lakeside TAD	2003	<u>1,017,348</u>	<u>3,384,438</u>	<u>2,367,090</u>	<u>18,480,552</u>
Subtotal		1,017,348	3,384,438	2,367,090	18,480,552
<u>City of Marietta:</u>					
City Center South Renaissance TAD	2003	<u>21,296,708</u>	<u>21,374,750</u>	<u>78,042</u>	<u>40,000,000</u>
Subtotal		21,296,708	21,374,750	78,042	40,000,000
<u>City of Smyrna:</u>					
Atlanta Road Corridor TAD	2003	<u>29,478,740</u>	<u>30,058,898</u>	<u>580,158</u>	<u>60,000,000</u>
Subtotal		29,478,740	30,058,898	580,158	60,000,000
<b>Clayton County</b>					
<u>Unincorporated Clayton:</u>					
Ellewood Town Center TAD	2003	<u>16,116,068 <sup>3</sup></u>	<u>na</u>	<u>na</u>	<u>180,000,000</u>
Subtotal		16,116,068	-	-	180,000,000
Grand Total		\$ 1,186,343,584	\$ 1,601,118,896	\$ 430,891,380	\$ 2,274,472,452

**Notes:**

<sup>1</sup> An expansion and redefinition of the original Techwood Park TAD, created in 1992.

<sup>2</sup> Submitted, but not yet certified by State Revenue Commissioner.

<sup>3</sup> As per Redevelopment Plan.

A brief description of each of these existing tax allocation districts, their redevelopment objectives and achievements to date, the policies that guided their creation, and the constraints placed upon them by their initiating and participating jurisdictions are provided in the following sections.

### **City of Atlanta TADs**

The City of Atlanta has created five tax allocation districts pursuant to the Redevelopment Power Law: the Westside TAD in 1998, the Atlantic Steel TAD in 1999, the Perry-Bolton TAD and the Princeton Lakes TAD in 2002 and the Eastside TAD in 2003. As indicated in Table 2 above, by tax year 2004, the combined assessed value of these five TADs amounted to nearly \$1.17 billion – or approximately 6.84% of the City’s 2004 net tax digest of \$17.11 billion. If redeveloped as planned, their combined assessed value would amount to over \$2 billion – well over 10% of the City’s net assessed value. If and when this happens, the City will be unable, pursuant to the Redevelopment Powers Law, to create any additional TADs.

#### **Westside TAD**

The City of Atlanta created its first tax allocation district in 1992. Encompassing the Techwood Park Urban Redevelopment Area, the City’s Tax Allocation Number One – Atlanta/Techwood Park (“Techwood Park TAD”) was established to bring about the redevelopment of that area immediately west of Atlanta’s central business district, generally between CNN Center and the Georgia World Congress Center (“GWCC”) and the Coca-Cola Company headquarters on North Avenue, and including the old Techwood Homes public housing project. However, before the City’s plan gained any significant momentum, Atlanta was selected to host the 1996 Centennial Olympic Games. Two years later it was announced that a large portion of the district would be purchased by the Georgia World Congress Authority (with funds provided by the Atlanta Committee for the Olympic Games) for the purpose of developing what is now Centennial Olympic Park. As a majority of property within the TAD was thus converted from private to public ownership, assessed values within the district plummeted, creating, overall, a negative amount of incremental *ad valorem* taxes.

The original redevelopment area was significantly expanded in July 1998 to include downtown’s Fairlie-Poplar District, the “railroad gulch” just east of CNN Center and Philips Arena (then under construction), an old commercial and warehouse distribution area south of the GWCC and Georgia Dome, an area around Hendon Homes and certain older commercial warehouse distribution areas north of and including GWCC and the Georgia Dome, and the English Avenue and Vine City residential neighborhoods.<sup>6</sup> This expanded TAD Number One (at nearly 1,000 acres, the City’s largest) was renamed

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<sup>6</sup> The TAD was expanded again in October 1998 to include three parcels bounded on the west by Peachtree Street, on the north by Ellis Street, on the east by Peachtree Center Avenue and on the south by property owned by Georgia Pacific to facilitate the potential development of property just north and east of the Georgia Pacific Building downtown.

Westside, and, effective December 31, 1998, its initial base assessed value (or “tax allocation increment base”) was adjusted to \$418,680,920. The City’s general goals for the Westside TAD were to capitalize on opportunities to revitalize land surrounding Centennial Olympic Park, foster the development and connections between the City’s CBD, Clark Atlanta University Center, Georgia Tech and adjoining neighborhoods by promoting improved transportation corridors, safer streets and pedestrian and greenway trails, and support efforts then underway to remove blighted conditions and expanding redevelopment efforts in the Vine City and English Avenue neighborhoods and certain fragmented commercial/warehouse districts located throughout the expanded district. In essence, it was to induce the redevelopment of these latter areas within the TAD that constituted the “but for” test required by the Redevelopment Powers law. To ensure an equitable distribution of benefits derived from the creation of the TAD, the City provided that 20% of the proceeds of any TAD bonds supported by valuations created in the “downtown area” of the TAD would go to fund projects in the Vine City and English Avenue neighborhoods, while 100% of the proceeds derived from valuations created within the Vine City and English Avenue neighborhoods (as well as certain other Empowerment Zone areas within the TAD) would go toward projects within such neighborhoods. The Atlanta Development Authority (“ADA”) was designated by the City to act as its redevelopment agent for Westside,<sup>7</sup> which is scheduled for termination as of December 31, 2023.

According to Westside’s redevelopment plan, additional taxable development within the TAD was expected to produce \$183,250,000 in incremental assessed values. As of the end of 2004, that goal had been achieved, with the incremental assessed value of real property within the TAD at \$191,519,520. Since the plan’s preparation, additional projects have been announced for the area. Construction of the Georgia Aquarium, though itself exempt from *ad valorem* taxation, will almost certainly spur additional development north of Centennial Olympic Park, as will the Coca-Cola Company’s planned relocation of the World of Coca-Cola Museum to an adjacent 22-acre parcel. Redevelopment of the historic Winecoff Hotel and Glenn Building into a luxury boutique hotels is being planned for the area, as are additional residential and mixed-use developments on Centennial Hill and commercial office space development on and around the site of the former Boomershine automobile dealership.

In December 2001, the City issued \$14,995,000 in TAD bonds to pay redevelopment costs within the district. Projects receiving assistance from the bond issue were the Historic Westside Village development, the Museum Tower Condominium development, the Atlanta Centennial House Condominium development, the 123 Luckie Street residential development, the Northyard Business Park project and a portion (\$1.5 million) of the cost of constructing Centennial Elementary School by the Atlanta Board of

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<sup>7</sup> ADA is an umbrella organization that encompasses three public agencies created by the City to provide community and economic development assistance – the Development Authority of the City of Atlanta, the Downtown Development Authority of the City of Atlanta and the Urban Residential Finance Authority – and one not-for-profit entity – the Atlanta Renaissance Corporation, formerly the Atlanta Economic Development Corporation.

Education.<sup>8</sup> One additional project that was slated for support – the Centennial Market project in Vine City – has not yet been implemented by ADA due to lack of market support. Because the bonds were not issued until after a significant amount of incremental taxes had been generated, the City was able to obtain credit enhancement for them in the form of a bank letter of credit and was thus able to obtain an investment grade credit rating for the bonds of “A+” from Standard & Poor’s Corporation based on the LOC provider’s rating. The City is currently planning a second TAD bond issue for the district of between \$20 million and \$40 million to fund further improvements in the area and support additional redevelopment within it.

The Westside TAD has, by most measures, been a successful undertaking by the City. Both the amount and taxable value of redevelopment that have taken place within the district since its reincarnation as Westside in 1998 have been significant – exceeding in five years that which was originally projected. It is even likely that the second issue of TAD bonds for the district could obtain investment grade credit ratings, based on preliminary indications from Moody’s Investors Service, even without credit enhancement from another creditworthy entity – a stunning achievement for a redevelopment district of its age.

However, Westside’s successes have not been evenly spread throughout the TAD. Despite the City’s requirement that at least 20% of incremental taxes generated in the “downtown” section of the TAD (i.e., the area within the TAD lying east of Northside Drive) go toward inducing redevelopment activity in the “neighborhood” section of the TAD (i.e., the area west of Northside Drive), relatively little such activity has happened there. In fact, virtually all of the completed projects have been located in the area immediately surrounding Centennial Olympic Park, with very little redevelopment activity thus far migrating to adjacent areas and very little of that activity resulting in affordable rental housing other than the Atlanta Housing Authority’s successful redevelopment of the old Techwood/Clark Howell public housing projects under the federal Department of Housing and Urban Development’s Hope VI grant program. While this uneven development trend may change over time, it currently presents a significant challenge to the City and ADA. To the extent the “but for” test in connection with Westside had more to do with the difficulties of redeveloping such low and moderate income neighborhoods as Vine City and English Avenue, and not with the relative ease of creating new development around one of downtown’s newest and most significant public assets, Centennial Olympic Park, Westside has provided little more than public stimulus to redevelopment activities that, arguably, could have taken place anyway.

From an administrative standpoint, Westside, as the City’s first TAD, has also experienced several potentially serious problems. The tax allocation increment generated within Westside has come exclusively from increases in real property assessments, in part because the City’s resolution creating the TAD specified that only real property be used

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<sup>8</sup> In a separate agreement with the Board of Education, the City agreed to apply a minimum of \$1.5 million from each TAD bond issue for Westside, together with 10% of the amount of TAD bonds issued in excess of \$15 million, to reimburse it for the cost of constructing Centennial Elementary on the site of the old Fowler Elementary School.

for computing the increment. However, the Redevelopment Powers Law requires that both real and personal property be taken into account in that computation. The failure by the Fulton County Tax Commissioner to abide by the terms of this higher legal authority, the sheer complexity of compliance, given the past and current difficulty in matching personal property tax returns with real estate parcel identification numbers, and the failure thus far of the City to insist that the problem be resolved, has reduced the amount of tax increments that otherwise would have been available to pay redevelopment costs and TAD bond debt service.

Of greater significance was the inclusion by County tax officials in 1998 of exempt properties (e.g., properties owned by governmental entities, churches, schools and other exempt owners) in Westside's tax allocation increment base (based assessed value) and in subsequent years' assessed value figures. The Redevelopment Powers Law requires that such amounts include only the "taxable values of taxable property" within the TAD. Thus, the implications of this error, though perhaps not immediately apparent, are substantial. For instance, as of the current tax year (2004), the gross assessed value of property within Westside, as determined by County tax officials, is \$610,200,440. Over a third of this total, or \$208,288,040 is represented by the assessed value of wholly exempt property. Remember that the tax allocation increment is calculated by multiplying each year's combined tax levies of the city, county and school board by a fraction, the numerator of which is the growth in assessed value since creation of the TAD and the denominator of which is the total assessed value of property within the TAD. If both the tax allocation increment base of Westside and its 2004 gross assessed value had not included these exempt property assessments, and assuming for the moment that the total value of exempt property within the TAD has not changed since December 31, 1998, the district's 2004 tax allocation increment would be as much as 50% higher than the \$4.7 million estimated for the current tax year, as shown in the following table.

**Table 3**

	1 Increment Base	2 2004 Gross AV	3 Incremental AV (2-1)	Increment Fraction (3/2)	Total Operating Levies	Tax Allocation Increment
W/ Exempt Prop.	\$418,680,920	\$610,200,440	\$191,519,520	31.4%	\$14,984,948	\$4,703,176
W/out Exempt Prop.	210,392,880	401,912,400	191,519,520	47.7%	14,984,948	7,140,636

If Westside's tax allocation increment base were re-certified so as to exclude exempt property, more tax increments could be made available to TAD projects and hasten the day that the TAD could be terminated and incremental taxes returned to the general funds of the City, Fulton County and Atlanta Board of Education.

### **Atlantic Steel TAD**

The Atlantic Steel Brownfield Redevelopment Area and Tax Allocation District Number Two – Atlantic Steel (the "Atlantic Steel TAD") was created by the City of Atlanta in September 1999, to be effective on December 31 of that year. It is scheduled for termination as of December 31, 2024. The TAD includes a 119-acre parcel upon which the former steel-making operations of Atlantic Steel Industries, Inc. were located for one hundred years and a 1.7-acre parcel that was formerly occupied by Tri-Chem Corporation, which manufactured fertilizer. Both parcels were classified as

“brownfields” and required extensive remediation under state and federal environmental laws prior to their planned redevelopment (along with another seven-acre parcel and five single-family residential parcels in the Home Park neighborhood within the TAD) into a mixed-use “mini-city” called Atlantic Station. When completed, Atlantic Station will include, among other improvements, office towers, retail stores, entertainment facilities, restaurants, residential apartments and lofts, condominiums, single-family homes, hotels, public streets, plazas and parking facilities, pedestrian walkways and bike paths. The remainder of the 138-acre TAD includes a 12-acre parcel owned by the Georgia Tech Foundation and used as a golf practice facility and other activities related to the Georgia Institute of Technology, whose long-range redevelopment into a technology office park is currently, and separately, planned by the Foundation.

Remediation of the brownfield area within the TAD, which was completed in late 2001, consisted of four components: (i) excavation and removal of contaminated soils from “potentially impact areas” within the TAD; (ii) installation of a ground water interception and monitoring system that will capture all ground water flowing from the basin in which the TAD is located, evaluate the ground water and, if needed, pre-treat it before it is discharged into the City’s sanitary sewer system; (iii) coverage of the entire brownfield site with either hard cover (e.g., parking decks, streets, sidewalks, roofs, etc.) or at least two feet of clean fill; and (iv) execution of a “conservation easement” to establish permanent restrictions upon the use of, and the permanent interception of all, ground water on or beneath the brownfield area, and ensuring that certain engineering and institutional controls relating to the brownfield sites are maintained in perpetuity.

Unlike the Westside TAD and most of the other TADs created by the City of Atlanta, the Atlantic Steel TAD is a project-specific TAD. General site remediation and infrastructure development (including the construction of a parking deck, providing over 10,000 covered spaces beneath the planned office, retail and residential areas to the north of 17<sup>th</sup> Street and east of the proposed State Street extension) is being managed by Atlantic Station L.L.C. – a joint venture of local developer Jacoby Development, Inc. and AIG Global Real Estate Investment Corp., a wholly owned affiliate of American International Group, one of the world’s largest insurance companies (the “Developer”). The Developer acquired most of the property within the TAD from Atlantic Steel Industries, Inc. in December 1999, with the intent of dividing the site into 38 developable parcels to be developed by affiliates of the Developer and other entities (the “Vertical Developers”). To date, the Developer has either sold or contracted for the sale of several such parcels with the following Vertical Developers (three of which are affiliated with the Developer):

**Table 4**  
**Atlantic Station Vertical Developers and Development Components**

Section	Developer	Component	Units/Sq.Ft.	Status
Home Park North	Beazer Homes, Inc.	Low-rise Townhomes (fee)	94	Under Construction
The Commons	Lane Investment and Development Corp.	Mid-rise Residential (fee/rental)	1,150	Under Construction
The District (residential)	Lane Investment and Development Corp.	Main Podium Lofts (fee)	270	Under Construction
The District (residential)	Novare Group	Condominiums (fee)/Hotel	404/101	Under Construction
The District (retail)	Atlantic District, L.L.C.	Main Podium Retail/Entertainment	1,200,000	Under Construction
The District (office)	Atlantic District, L.L.C.	Main Podium Office	500,000	Completed
Tech Village (residential/rental)	Lane IDC/Flagstone Holdings	Residential (elderly/student)	216	Begin Construction 2005
Tech Village (retail)	IKEA, Inc.	Retail (home furnishings)	400,000	Under Construction
District North (retail)	Target Stores	Retail (general)	175,000	Begin Construction 2004

Development of Atlantic Station was contingent upon the construction of a bridge across Interstates 75/85 (the “Downtown Connector”) at 17<sup>th</sup> Street by the Georgia Department of Transportation, in order to connect the relatively isolated site to the bulk of midtown Atlanta, and the extension of 17<sup>th</sup> Street through the TAD to Northside Drive. Construction of the bridge, which was funded primarily by federal highway grant funds, was completed in April 2004; and completion of the 17<sup>th</sup> Street extension, which was funded by the Developer, was completed in August 2004.

The tax allocation increment base assessment for the Atlantic Steel TAD was initially set, and confirmed by the State Revenue Commissioner as being, \$1,905,480. However, it was later discovered that the ADA, in its initial submission to the State Revenue Department, had omitted a number of the highest value parcels in the TAD (including the Atlantic Steel Industries site itself); and the assessment base was officially changed to \$7,173,240 in 2001. The Redevelopment Plan for the TAD projected total assessed value within the district to increase by nearly \$592 million over the course of Atlantic Station’s development period. As of tax year 2004, with all environmental remediation and most site and infrastructure development completed and significant vertical development on the assessment rolls, assessed values within the TAD had grown by over \$126.5 million.

The Redevelopment Plan calls for the City to reimburse the Developer its cost of remediating the brownfield sites, installing all public infrastructure and preparing properties within the TAD for vertical development from the net proceeds of tax allocation bonds issued over the initial ten-year development period. All such horizontal development has been completed, with well over \$200 million in costs having been incurred. In October 2001, the City issued its first series of tax allocation bonds for this purpose – sold on a non-rated basis in a limited offering to nine institutional investors. The total principal amount of bonds issued amounted to \$76,505,000, of which about \$46.2 million went toward covering these site development costs<sup>9</sup>, with another \$19 million contributed from City water and sewer funds. The City is currently planning a second TAD bond offering, in an amount ranging from \$50 and \$100 million to reimburse an additional amount of these costs.

The Atlantic Steel TAD, as one of the City’s early such districts, fell victim to some of the same administrative errors that beset Westside. However, their effects are less significant and much easier to resolve. For instance, exempt property also was included in Atlantic Steel’s base assessed value, but it constituted just the Georgia Tech Foundation property mentioned above, can easily be isolated and thus removed if County tax officials agree to do so. Similarly, personal property values were not included in the base assessment and have not been included in subsequent AV calculations. However, as a largely vacant brownfield in December 1999, there was no appreciable amount of

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<sup>9</sup> The remaining bond proceeds were used (i) to pay interest on the bonds until sufficient tax increments became available to do so (\$10.8 million), (ii) to repay the City a \$10 million loan used to separate the combined stormwater/sanitary sewer that ran through the site, (iii) to establish a debt service reserve fund equal to maximum annual debt service on the bonds (\$7.6 million), and (iv) to pay the costs of issuing the bonds (\$1.9 million).

personalty within the TAD and, until the SouthTrust office building was completed in April 2004, there has not been an appreciable amount of new such property to be included in the district's assessed valuations.

The Atlantic Steel TAD, and the Atlantic Station project for which it was created, have been very successful thus far in accomplishing their purpose and offer an excellent case study in the appropriate use of local tax incentives to stimulate private development that, without such incentives, could not or would not occur. For decades, the cost of purchasing and remediating the Atlantic Steel site, as well as the cost of installing the public infrastructure almost totally lacking on the site and of connecting it to similarly developed parts of midtown Atlanta on the east side of the Downtown Connector, had prevented the private sector from seriously considering it, despite its central location and otherwise exceptionally good redevelopment potential. The use by the City of tax base that otherwise would not have been created to incentivize that redevelopment could recapture a lost part of the City's center, as well as expand considerably the tax base needed to support future city, county and school district operational needs.

### **Perry/Bolton TAD**

The Northwest Atlanta Redevelopment Area and Tax Allocation District Number Three – Perry/Bolton (the “Perry/Bolton TAD”) was the third such district created by the City of Atlanta, with an effective date of December 31, 2002. Unlike the Westside and Atlantic Steel TADs, Perry/Bolton's termination date, while estimated to be 25 years from its creation, will not occur until “all redevelopment costs have been paid” – including debt service on any TAD bonds issued to cover such costs, regardless when they may be issued.

The district's boundaries are quite serpentine (requiring a three-page description in the City's Redevelopment Plan), but the TAD generally is bounded by Marietta Street on the north and east, Bolton Road on the north and west, and Bankhead Highway on the south. Perry Boulevard (named for Herman E. Perry, founder of Standard Life Insurance Company and Citizens Trust Bank) is the major thoroughfare within the district, generally running northwest to southeast, parallel and just south of Norfolk Southern Railroad's Inman Yards and the CSX Railroad terminals, which, along with certain adjacent industrial land uses, are not included within the TAD. For reasons that are not clear, Perry/Bolton's redevelopment area is larger than the TAD itself.<sup>10</sup>

The goals of the TAD are to make general public infrastructure improvements within the district and throughout the larger redevelopment area that will attract private investment in mixed income, mixed-use residential developments and serve as a catalyst for additional private commercial and residential investments in Northwest Atlanta. The animating force behind, and initial focus of the district's redevelopment plan, as well as the likely recipient of initial City TAD bond proceeds, is the Atlanta Housing Authority's planned redevelopment of the former Perry Homes and Perry Homes Annex public

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<sup>10</sup> The TAD itself, at 550 acres, is the City's third largest in size after the Westside TAD and the Eastside TAD.

housing projects into a 50-acre mixed-use development initially planned to consist of nearly 1,200 new homes, 46,000 square feet of commercial development, a 65,000 square foot YMCA, 18,000 square foot public library and 85,000 square foot elementary school in the central area of the development. The plan also includes the conversion of the City's old Gun Club landfill site into a 13-acre public golf course accessible to all residents in the development. The plan asserts that implementation of this so-called "West Highlands" project, could not happen without the establishment of the TAD but, with it, could result in \$340 million in private investment. Public investment will be in the forms of revitalization and demolition grants received by the AHA under the U.S. Department of Housing and Urban Development's HOPE VI program, federal and state transportation funds, and TAD bond proceeds.

The resolution of the City creating the Perry/Bolton TAD and surrounding redevelopment area provides that all tax allocation increments created within the West Highlands master plan area shall be allocated first to West Highlands-related redevelopment costs. All tax increments created within the Bolton/Marietta Street Livable Cities Initiative ("LCI") planning area within the TAD shall be allocated to redevelopment costs within that area. And any tax increments in excess of those needed to pay redevelopment costs in these two areas shall be allocated to the area south of the CSX railroad tracks outside the West Highlands master plan area.

While not yet certified by the State Commissioner of Revenue, the tax allocation increment assessment base for the Perry/Bolton TAD, as submitted by the City for certification, is \$66,022,880. Due primarily to property reassessments within the District, the value of taxable property within Perry/Bolton for tax year 2004 stands at \$85,567,400, resulting in over \$19.5 million in incremental assessed value.

The Atlanta Board of Education's resolution consenting to the inclusion of its portion of tax increments generated within the TAD was conditioned on the execution of an intergovernmental agreement with the City providing for certain "infrastructure improvements to schools" located in the TAD and certain "redevelopment cost payments" to the school district, the terms of which have yet to be negotiated. Similarly, Fulton County's consent to its financial participation in Perry/Bolton was conditioned on at least 40% of any new housing developed in the TAD be "affordable" to low and moderate income families – not the 20% level required in the City's resolution creating the TAD – creating a conflict that has to be resolved before planned development may proceed.

Updated plans for the West Highlands project have site development and remaining site acquisition commencing in 2004, with vertical construction commencing either in late 2004 or early 2005. Those plans call for approximately \$22.3 million in net TAD bond proceeds – probably from two separate bond issues, given the expected pace of development.

The Perry/Bolton TAD has not experienced at least one of the administrative errors that has adversely affected the Westside and Atlantic Steel TADs – the inclusion of exempt property within the district's base assessed value – due to cooperative efforts between the

ADA and County tax officials. However, the identification and incorporation of personal property tax values has been a challenge and will be until changes are made in the Board of Assessors systems that will allow, starting in tax year 2006, it to match personal property tax returns with real property valuations.

Of perhaps greater significance, Perry/Bolton appears to have marked somewhat of a turning point in local public policy regarding tax allocation districts in at least four respects. While essentially project-driven – in this case, the West Highlands project – Perry/Bolton continued the City’s trend, established initially in Westside, toward large TADs. Moreover, by encompassing neighborhoods with significantly different redevelopment prospects, it tended to reinforce a corollary policy trend, established in Westside, toward providing public improvements to surrounding neighborhoods from tax increments generated elsewhere – if not for the stated purpose of stimulating private investment in those neighborhoods, then at least, while the City has access to county and school district taxes, to put those improvements in place.

Second, and perhaps more importantly, Perry/Bolton marked the first time a City TAD was created primarily, if not specifically, to fund at least a portion of the costs of redeveloping a former public housing project. With the future of federal HOPE VI funding in jeopardy, the use of tax allocation increments may sustain AHA’s heretofore successful public housing redevelopment efforts. However, the controversy those efforts have generated, related to the displacement of former public housing tenants in favor of the establishment of “mixed income” communities in town, was reflected in the third important policy response – Fulton County’s requirement that a significantly higher amount of “affordable” housing be built within the TAD than that required by the City

Finally, and perhaps most importantly, creation of the Perry/Bolton TAD marked the first time participating jurisdictions in the City of Atlanta – both Fulton County, as mentioned above, and, significantly, the Atlanta Board of Education – balked at providing unconditional consent to the inclusion of its portion of any tax increments created within a TAD.<sup>11</sup> Although the precise conditions placed on the School Board’s consent to Perry/Bolton have yet to be completely defined, its willingness to question the need for a TAD could spell (and in instances involving other metro Atlanta TADs has spelled) a dramatic public policy complication for an initiating jurisdiction.

### **Princeton Lakes TAD**

The Princeton Lakes Redevelopment Area and Tax Allocation District Number Four – Princeton Lakes (the “Princeton Lakes TAD”) was the fourth district created by the City of Atlanta, effective, like Perry/Bolton, as of December 31, 2002. Also like Perry/Bolton, Princeton Lakes’ scheduled termination date, while estimated to be in 2027, will occur only when all redevelopment costs within the TAD have been paid. The district encompasses approximately 475 acres of undeveloped land just west of the new Camp Creek Marketplace development (see summary of City of East Point’s Camp Creek

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<sup>11</sup> Although, as summarized in the discussion below regarding the City of East Point’s Camp Creek TAD, it was certainly not the first time a local board of education placed significant conditions on its financial participation in a TAD.

TAD below) on the northwest corner of Camp Creek Parkway and Interstate 285 in southwest Atlanta. The land had been held since the mid-1980s by owners who planned to develop a private golf club.

The redevelopment plan for the Princeton Lakes TAD calls for the development of over 1,000 single family homes, an approximate 500,000 square foot shopping center (essentially, an extension of Camp Creek Marketplace), 225 hotel rooms, five restaurants, two banks branch offices and an 8,000 square foot child care center. The plan asserts that, but for the creation of the TAD, the costs of preparing the site for development, because of its challenging topography and the lack of any useable public infrastructure – e.g., streets, bridges (Camp Creek winds through the site), traffic control devices, sanitary or storm sewers, water supply or storm water detention facilities. The TAD is a project-specific district in which the site is controlled by one developer, the Bentley Group, Ltd, who, along with Pulte Homes and North American Properties, will provide all vertical development. The estimated value of planned private investment within the TAD is approximately \$366 million in consideration of approximately \$26 million in public incentives, to be derived from TAD bond proceeds.

The City resolution creating the Princeton Lakes TAD provided no special conditions, other than to use “excess” tax allocation increment to pay down any TAD bonds issued or other required redevelopment costs early; nor did the Fulton County resolution consenting to the inclusion of its portion of any incremental taxes generated within the TAD. However, the Atlanta Board of Education has refused to give such consent with respect to its portion of tax increments created within the TAD, citing the need for such tax revenues to provide educational services to the new public school students expected to be generated by the large single-family housing development planned for the district. The Board also expressed doubt that planned development within the TAD required the level of public assistance requested in order to make it financially feasible. This marked the first time a school district in metropolitan Atlanta refused to participate in a newly created tax allocation district. Although the developers involved continue to pursue the various permits that will be necessary to allow the planned development to proceed, no ground has been broken as of the date of this report.

The tax allocation increment base of the Princeton Lakes TAD, as submitted by the City for state certification, is \$826,760. Based on the redevelopment plan’s estimated value of new development within the TAD of \$366 million, it is expected that approximately \$131 million in incremental assessed value will be created (net of homestead exemptions). With site preparation having begun in the TAD, the total assessed value for tax year 2004 stands at \$1,746,000.

### **Eastside TAD**

The fifth and newest tax allocation district created by the City of Atlanta is the Eastside Atlanta Redevelopment Area and Tax Allocation District Number 5 – Eastside (the “Eastside TAD”). The Eastside TAD’s creation was effective on December 31, 2003 and will terminate when any and all tax allocation bonds issued by the City for the district have been fully paid. At 840 acres, it is the second largest of Atlanta’s TADs, being

generally bounded by North Avenue, Piedmont Avenue and Freedom Parkway on the north, the Southern/CSX Railroad lines and Berean Avenue on the east, and Memorial Drive and Interstate 20 on the south. Eastside's western boundary generally includes Cooper Street, Forsyth Street, Peachtree Center Avenue, Baker Street, Courtland Street, Spring Street, Alexander Street and Williams Street. Generally bisected by the Downtown Connector, it, together with the Westside TAD, covers virtually all of Atlanta's Central Business District, along with certain blighted residential neighborhoods to the east and west of downtown.

Planned redevelopment in Eastside is as spread out and as diverse as the neighborhoods within the TAD, although its general goals are to make public infrastructure improvements in the district that will precipitate private, tax-paying developments and thereby mitigate "conditions that have led to disinvestment, urban blight and marginal uses of property." The redevelopment plan projects an estimated \$1.5 billion in private and public investment, comprising at least 18 projects that would add approximately 6,200 new housing units, more than 400,000 square feet of retail space and 2.45 million square feet of new office space in and around downtown Atlanta. Such projects, which are listed in Table 5 below, generally are centered either in the traditional downtown area west of I-20, in or around the historic Auburn Avenue Business District, or in or around the Atlanta Housing Authority's Capitol Homes and Grady Homes public housing projects (including the Old Fourth Ward neighborhood and the areas surrounding the MLK MARTA station).

Similar to City policy regarding Westside, the City resolution creating Eastside requires that at least 20% of the proceeds of any TAD bonds generated from tax increments created in the TAD will be set aside for improvements in those commercial and residential areas east of the Downtown Connector (the "non-downtown area"). No conditions were placed by Fulton County consent to participate financial in the TAD, but the Atlanta Board of Education did condition its consent on its being paid 5.5% of the proceeds of all tax allocation bonds issued for the district, as well as an additional sum each year to the extent the Board is required by the State to levy more than the five mills otherwise required in order to receive State Quality Basic Education funding due to its inability to levy such taxes in the TAD.<sup>12</sup>

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<sup>12</sup> The issue of whether this "QBE Make-Whole" payment will be required has not yet been resolved by the State Revenue Department.

**Table 5**  
**Proposed Private and Public/Private Developments in the Eastside TAD**

<b>Downtown Projects</b>	<b>Non-Downtown Projects</b>
Peachtree Portal Condominiums	Auburn-Butler Street Village Mixed-Use Project
SunTrust Plaza, Phase III	Memorial Drive Corridor Redevelopment
RCG Mixed-Use Project	Capitol Homes Redevelopment
Taylor Simpson Office Tower	Grady Homes Redevelopment
SoNo Tower	Wheat Street Gardens Project
GSU/Beaudry Ford Student Housing Project	MLK Memorial MARTA Station Development
First Congregational Housing Development	Historic Oakland Cemetery Redevelopment
Sheraton Atlanta Hotel Expansion	
Downtown Health and Bioscience District	
DeFoor's Mixed-Use Project	
South Company Headquarters Project	

Although not yet certified by the Georgia State Revenue Commissioner, the tax allocation increment base that has been submitted for certification is \$299,727,240. (This figure excludes exempt property values in compliance with the Redevelopment Powers Law, and also excludes personal property values in contravention of it.) The estimated \$1.5 billion in improvements planned for the TAD are estimated to result in approximately \$893 million in additional taxable value and, at stabilization, about \$13.9 million in annual tax allocation increment. Eastside's redevelopment plan calls for public investments of between \$29 and \$91 million within the TAD and, while it cites such other sources of such investments as federal and state planning and transportation funds and "other federal, state and local grant funding sources as appropriate and available," it would appear to depend primarily on the proceeds of City TAD bonds for most these funds. Under current market conditions, it is estimated that as much as \$120 million could be generated from tax increments derived from private development planned within the TAD.

In many ways, Eastside is the culmination of one set of evolving City policies regarding tax increment financing – the creation of large mega-TADs containing areas where blight and disinvestment have made private sector intervention difficult, combined with adjacent areas where private development interest is relatively keen. Such TADs use incremental taxes generated largely in these latter areas to subsidize the cost of needed public improvements in the former areas in the hope that eventually such improvements will induce private interest there. With termination dates set at such time as all redevelopment costs have been paid, but without specificity as to what those costs are or when they all will have been paid, such TADs potentially provide significant incremental taxes to provide public improvements and, hopefully, stimulate additional private investment. If such TADs succeed in this latter objective, then they may be worthwhile and, in fact, be the only feasible way to effect desired redevelopment in such areas. If they fail, however, they merely expose participating jurisdictions to the risk that their tax dollars will go toward subsidizing the cost of public improvements that otherwise would be the City's responsibility alone, without generating any return on their investment other than that which they would have experienced without the TAD – and to do so for many, many years into the future. Unlike the Atlantic Station TAD, for instance, or the

Princeton Lakes TAD, for that matter, where specific developments within well-defined areas are proposed to occur within relatively well-defined timeframes, such mega-TADs will require management attention and development savvy from the City and its redevelopment agent, ADA.

### **City of East Point TAD**

The City of East Point was the second municipality within Fulton County to create a tax allocation district and, in the process of so doing, set a number of interesting precedents for subsequent initiating jurisdictions to consider.

### **Camp Creek TAD**

The Camp Creek Redevelopment Area and Tax Allocation District Number One – Camp Creek (the “Camp Creek TAD”) was created by the City of East Point to be effective as of December 31, 2001. It was the third tax allocation district created in metropolitan Atlanta and the first and, thus far, only TAD created in south Fulton County. The City scheduled the Camp Creek TAD to terminate at such time as all redevelopment costs have been paid; however, by subsequent agreement with the Fulton County Board of Education, it will terminate not later than December 31, 2026. The district includes 831 acres of previously undeveloped land located at the southeast and northwest corners of the intersection of Camp Creek Parkway and Interstate 285 in southwest Fulton County.

Camp Creek is a project-specific TAD. Planned development includes the Camp Creek Trade Center, 4 million square feet of planned office and distribution/warehouse space to be developed south of Camp Creek Parkway (and west of I-285) by Duke Realty Corporation, one of the largest real estate companies in the country, and Camp Creek Market Place, a 650,000 square foot open-air shopping center (so-called “power center”) that has been developed to the north of Camp Creek Parkway by North American Properties, a privately held shopping center developer based in Atlanta. Private investment within the TAD is estimated at \$185 million, but will require a public investment (from TAD bond proceeds) of approximately \$20 million in order to install public infrastructure on the two development sites (e.g., new roads and bridges, intersection improvements, water and wastewater facilities, etc.) needed to allow the developments to occur. (As mention above, the North American Properties development site within the TAD is adjacent to and just east of the City of Atlanta’s Princeton Lakes TAD.) Camp Creek’s tax allocation increment base was certified at \$4,720,280 as of December 31, 2001, and as of tax year 2004, assessed value within the TAD stands at \$25,316,280. Neither figure includes personal property.

The City of East Point issued \$22,00,000 in tax allocation bonds for the TAD in May 2002, which, net of \$3.68 million in capitalized interest and \$510,000 in issuance expenses, provided approximately \$17.81 million toward infrastructure costs. Since Duke Realty’s development schedule was to be based exclusively on market demand, reasonably accurate projections of the amount and timing of tax allocation increments could not be made. Thus, the bonds were privately placed with Duke Realty.

The resolution creating the TAD contained no particularly special conditions, nor did Fulton County's consent resolution. However, the Fulton County Board of Education imposed three significant conditions to its consent to participate financially in the TAD, some of which have been embraced by other school boards facing similar circumstances within their jurisdictions. Initially, the School Board maintained, on the advice of legal counsel, that any participation by it in funding redevelopment costs within the TAD would violate with the "educational purposes" clause of the Georgia Constitution. As discussed above, that clause, contained in Article VIII, Section VI, Paragraph I (b), provides that "school tax funds" shall be expended only for public education purposes; and the Fulton County School Board could see no such purposes being served by the development of a business/industrial park and adjacent shopping center. However, based on an opinion from the state's Attorney General, the Board ultimately agreed to participate on the condition that a long-term intergovernmental contract be executed between the Board and the City providing, among other things, the following:

1. that no TAD bonds, over and above the initial \$22 million, would be issued by the City (excepting only bonds issued to refinance that initial issue);
2. that such TAD bonds would mature, and the TAD itself would terminate, not later than December 31, 2026; and
3. that any tax allocation increment in excess of TAD bond debt service in any year be used by the City as follows:
  - (a) 45.3% of any such excess would be reimbursed to the Board to compensate it for taxes foregone (as mentioned earlier, an allowable "redevelopment cost" under the Redevelopment Powers Law); and
  - (b) the remaining 54.7% would be used by the City to redeem TAD bonds prior to their maturity.

The Camp Creek TAD was significant, from a policy standpoint, for at least two reasons. Most significantly, it was the first time a local school board objected to, and ultimately placed significant conditions on its financial participation in, a tax allocation district. These conditions included the concepts of capping the assistance to be provided TAD development projects, of sharing excess tax increments with a participating jurisdiction prior to a TAD's termination, and of requiring that a TAD be terminated within a pre-established, precise, not-to-exceed period of time. As is discussed above, and more fully below, it was not to be the last time participating jurisdictions in metro Atlanta have asserted themselves in the exercise of local redevelopment powers. Additionally, by placing TAD bonds with that development entity most knowledgeable about and responsible for the creation of sufficient incremental taxes to meet TAD bond debt service requirements, when due, Camp Creek created a template that, in similar circumstances, could reduce default risk to an initiating jurisdiction.

In addition to participating financially in six tax allocation districts created by the cities of Atlanta and East Point, Fulton County created its own TAD in the unincorporated area of Sandy Springs in north Fulton County.

### **Sandy Springs TAD**

Effective as of December 31, 2003, the Sandy Springs Redevelopment Area and Tax Allocation District Number One – Fulton County/Sandy Springs (the “Sandy Springs TAD”) was created by the Fulton County Commission to address the grinding traffic congestion and deteriorating business district along, as well as the deleterious effects such conditions have had on neighborhoods on either side of, Roswell Road from the Atlanta City limits on the south to just north of Dalrymple road on the north. At approximately 1,200 acres, it is the largest tax allocation district yet created in metropolitan Atlanta. By agreement with the Fulton County Board of Education, the TAD will terminate on or before December 31, 2028.

Sandy Springs’ redevelopment plan calls for several projects whose primary goals are to overcome historic deficiencies in public investment within the TAD, which have served to divert private development to the Central Perimeter area between and along the newer north-south corridors of Ashford-Dunwoody Road and Georgia Highway 400 north of Interstate 285, and to stimulate private investment within Sandy Springs as a result. Such projects fall into one or more of five general categories:

- Circulation system improvements, including vehicular, pedestrian and transit
- Public spaces
- Public facilities
- Public-private partnerships
- Land assemblage

Selective street segment extensions to remove vehicular traffic from congested Roswell Road, pedestrian streetscape improvements, a Sandy Springs shuttle, the development of parks, open space and public parking in the historic heart of Sandy Springs, and a land assemblage revolving fund to help overcome redevelopment barriers caused by multiple small property owners are expected to require approximately \$23.5 million in TAD bond proceeds and approximately \$43.3 million in state and federal transportation funds and foundation grants. The plan projects that, with such public investments, nearly \$270 million in direct private investments in four new mixed-use developments, and as much as another \$500 million in new investment and natural appreciation in property values on adjacent parcels and in the numerous neighborhoods along the Roswell Road corridor.

The tax allocation increment base assessment within the district, as submitted by the City for state certification, is \$321,283,240, excluding personal property, but is still awaiting certification by the State Revenue Commissioner. That assessment base is projected to more than double, with the creation of approximately \$317.7 million in additional assessed valuation in the TAD over the plan’s 10-year implementation period. For tax

year 2004, total assessed values have increased over \$29 million, due largely to property reassessments, to \$350,631,920.

Fulton County imposed no special conditions on the TAD in creating it, although the County Board of Education, following the precedent it established in connection with the Camp Creek TAD, did. As with Camp Creek, school board consent to the inclusion of its portion of any tax increments created within the Sandy Springs TAD was conditioned on three general conditions:

4. that TAD bonds would be limited in amount to \$24 million or less (excepting only additional TAD bonds issued to refinance outstanding bonds);
5. that such TAD bonds would mature, and the TAD itself would terminate, not later than 25 years from the their date of issuance; and
6. that any tax allocation increment in excess of TAD bond debt service in any year be used by the City as follows:
  - (a) 52.1% of any such excess would be reimbursed to the Board to compensate it for taxes foregone (as mentioned earlier, an allowable “redevelopment costs” under the Law); and
  - (b) the remaining 47.9% would be used by the City to redeem TAD bonds prior to their maturity.

However, in addition to these conditions, the school board provided that its portion of tax increments could be spent only on redevelopment costs associated with specific projects, and that those projects had to have received prior approval of the board. It also required that the TAD be terminated if TAD bonds had not been issued for such specific projects by December 31, 2008.

### **Tax Allocation Districts in Cobb County**

Cobb County, along with three of its incorporated municipalities, Acworth, Marietta and Smyrna, received voter approval in November 2002 of a local act allowing them to operate under the Redevelopment Powers Law. All three of the municipalities created tax allocation districts in 2003. Although Cobb County itself has not yet created any TADs, it did develop the first written set of public policies and guidelines in early 2003 that, along with refinements generated later by the Cobb County Board of Education, guided its decision-making concerning the three municipal TADs seeking its financial participation. In the process, public policies regarding the creation and support of TADs, particularly suburban TADs, in metropolitan Atlanta evolved yet another step.

#### **Lakeside TAD**

The City of Acworth created the Lakeside Redevelopment Area and Tax Allocation District Number One – Lakeside (the “Lakeside TAD”) to be effective as of December 31, 2003. A project-specific TAD, Lakeside’s sole purpose was to redevelopment a 40-acre site that had been operated for years as an inert construction and demolition

(“C&D”) landfill and flea market on U.S. 41 Highway just inside Cobb County at the Paulding County line. Working with North American Properties (also involved in Atlanta’s Princeton Lakes TAD and East Point’s Camp Creek TAD), the City sought to develop a 370,000 square foot retail “power center,” anchored by a Target Superstore, on the site, remove a blighting influence in this otherwise developing corridor, and capitalize on a large and rapidly growing customer base in Paulding County.

At an estimated value of \$46.2 million, the proposed development is projected to add over \$17.5 million in assessed value to Lakeside’s tax allocation increment base (as of the end of 2003) of \$1,017,348 (which includes personal property values). With Cobb County and County Schools financial participation, it is estimated that this incremental assessed value will support as much as \$7.5 million in City TAD bonds, the net proceeds of which would go toward covering North American Properties’ cost of site preparation. Due to the site’s use for years as a C&D landfill, foundation pilings had to be set, in some areas, as deep as 95 feet to support the vertical construction planned for the site. The additional costs of preparing such a site for redevelopment, including the collection and release of methane gases that had built up over the years, served as the primary justification for providing TAD bond assistance to the project.

Virtually all other terms and conditions related to the administration of the TAD were dictated by an intergovernmental agreement with Cobb County and the Cobb County Board of Education pursuant to which the County and the School District consented to the inclusion of their respective portions of any tax increments generated in the TAD to pay TAD redevelopment costs. That agreement required the City to comply with the following conditions:

1. That any and all TAD bonds issued would not in the aggregate exceed \$7.5 million;
2. That any such TAD bonds shall mature, and the TAD shall be in existence, not later than December 31, 2030;
3. That if all or a portion of such TAD bonds have not been issued by December 31, 2006, the County and School Board’s consent would terminate;
4. Though personal property tax increments would go toward securing the TAD bonds, that any and all such bonds be sized based solely on the real property tax increments projected for the TAD; and
5. That all tax increments generated in excess of TAD Bond debt service and certain other “contractually committed expenditures” be paid over to the County and the School District each year in amounts proportionate to their annual contributions.

### **City Center South Renaissance TAD**

The City of Marietta created the City Center South Renaissance Redevelopment Area and Tax Allocation District Number One (the “CCSR TAD”) effective as of December 31, 2003. The 270-acre TAD is centered on, and includes the neighborhoods surrounding, the intersection of Powder Springs Road, South Marietta Parkway and Atlanta Street, just

south of the downtown Marietta square (including, oddly enough, the Confederate Cemetery on Powder Springs Road). It also includes the Marietta Golf Course and Conference Center to the immediate southwest of these neighborhoods. The TAD is described as a project-specific effort, focusing on the redevelopment of one former public housing site (Johnny Walker Homes) and one current public housing site (Clay Homes) into mixed-use residential and convenience retail developments. (Some of the express purposes of the redevelopment plan are to increase home ownership and family incomes and decrease crime, unemployment and poverty within the TAD.) However, future projects within the TAD are anticipated in the redevelopment plan. (While it is a standing question as to why the City-owned, and thus tax-exempt, Marietta Golf Course and Conference Center was included within the TAD, it would appear at this point that the TAD was drawn broadly – like Atlanta’s Eastside and Westside TADs – so as to collect enough tax increments to subsidize these relatively high-risk undertakings.

The tax allocation increment base of the CCSR TAD is estimated in the redevelopment plan at \$21,296,708, and it is projected that the Johnny Walker Homes redevelopment would generate between \$8 million and \$19 million in incremental assessed value, depending upon the density level of its development. This is estimated to support between \$3 million and \$5.9 million in City tax allocation bonds and, although the City initially insisted that it had no plans to issue any such bonds, Marietta insisted on keeping the option of issuing up to \$20 million in TAD bonds over the life of the TAD.

Cobb County insisted on essentially the same conditions that it imposed on Acworth’s Lakeside TAD in consenting to the inclusion of its portion of incremental taxes generated to pay TAD redevelopment costs. The Marietta City School Board imposed no such conditions on its financial participation in the TAD.

Marietta currently is seeking County and City School Board consent to participate in a significantly expanded CCSR TAD, to include residential neighborhoods to the west and south and may be seeking the creation of a new TAD on either side of Interstate 75 at Hwy, 120S. The City appears to be expanding TADs to certain areas less for the prospect of additional increment-producing development than for the opportunity to use eminent domain powers to replace deteriorated rental housing complexes with owner-occupied housing and complementary commercial development.

### **Atlanta Road TAD**

The City of Smyrna created the Atlanta Road Corridor Redevelopment Area and Tax Allocation District Number One (the “Atlanta Road TAD”) effective December 31, 2003. This 140-acre TAD is centered on Atlanta Road from Windy Hill Road on the north to Spring Road on the south. It includes the Belmont Hills Shopping Center on the north side of the TAD, Jonquil Plaza shopping center on the south side and the newly redeveloped Smyrna city government complex and adjacent Market Village (“City Center”) in the center of the TAD. The overall goal of the Atlanta Road TAD is fairly general: to encourage private investment in Smyrna’s northern sector by offering financing incentives that will help ameliorate current conditions that have contributed to

disinvestment and marginal use of property. The projects planned for the TAD, however, are somewhat more specific:

1. Redevelopment of the Belmont Hills Shopping Center;
2. Redevelopment of the apartment communities immediately adjacent to the Belmont Hills Shopping Center;
3. Development of a condominium project near City Center;
4. Redevelopment of retail and office space between the Atlanta Road/Spring Road intersection and Market Village; and
5. Mixed-use redevelopment, including retail and residential, of the existing Jonquil Plaza shopping center.

As of the date of the TAD's creation, however, the City had not obtained commitments from the owners of the properties to be redeveloped, other than the City itself for the condominium project mentioned above. Thus, while planned projects are estimated to add over \$70 million in net assessed values to the TAD's tax allocation increment base of \$29,478,740 – values that would support nearly \$23 million in City TAD bonds – the City has not yet developed specific plans for the use of bond proceeds.

In reviewing the Atlanta Road TAD, both Cobb County and the County Board of Education were uncomfortable with the apparent lack of any ready-to-go projects, other than the further enhancement of City Center, or specific plans for the use of TAD bond proceeds. Thus, while both governments agreed to participate financially, they did so under essentially the same conditions as those imposed on the Acworth and Marietta TADs, plus the condition that specific projects, if, as and when developed by the City, would have to receive their prior approval. After the fact, County and School Board discomfiture with the Smyrna plan occasioned a change in their policies regarding tax allocation districts expressing a strong preference for project-specific TADs and indicating that only under rare circumstances would they again agree to participate in any other type.

### **Unincorporated Clayton County**

The Clayton County Commission also went into the tax increment financing business in 2003, but did so in a way different from other metro Atlanta governments – a way more of them may have to emulate in the future – the “go-it-alone” TAD.

#### **Ellenwood Town Center TAD**

Clayton County created the Ellenwood Town Center Redevelopment Area and Tax Allocation District Number One – Ellenwood Town Center (the “Ellenwood Town Center TAD”) effective December 31, 2003 and terminating once all redevelopment costs, including TAD bond debt service, have been paid. The TAD is a project-specific

TAD, created to induce the development, by Ellenwood Partners LLC<sup>13</sup>, of a new mixed-use community on approximately 400 acres at the intersection of Interstate 675 and Anvil Block Road, just south of I-285 in unincorporated Clayton County. This Ellenwood Town Center will contain more than 1.4 million square feet of specialty retail shops and stores, restaurants and entertainment facilities, three hotels, professional and medical office space and mini-storage facilities. This “lifestyle center” will be developed on approximately 270 acres of largely undeveloped land along Anvil Block Road and will serve the Villages of Ellenwood, which will include over 1,000 new homes, townhomes, condominiums and apartments, to be developed in conjunction with the Town Center – as well as the more than 12,000 new homes currently planned, zoned or under construction within a five-mile radius, more than half of which are outside Clayton County.

Justification for the TAD, and the reason given in the TAD’s redevelopment plan for the property not having been heretofore developed, is the site’s challenging topography, characterized by extensive rock deposits, and the resulting lack of sanitary and storm sewer and water supply infrastructure needed to connect with existing public systems. The cost of overcoming these challenges, and of installing “an integrated system of sidewalks, trails, streets, landscaping, parks and a town center”, is estimated in the plan at \$29.5 million – to be derived from County TAD bond proceeds. Such bonds are to be supported by the estimated \$248 million in additional private investment associated with the project that is contemplated, which is estimated to contribute approximately \$99 million in assessed values over and above the TAD’s estimated tax allocation increment base of \$16.1 million.

In order to support the \$25-30 million in TAD bonds required to support the project, however, the County would need more than the incremental taxes derived by it from these incremental values. Rather than request that the Clayton County Board of Education participate financially in the TAD, the County chose to earmark the estimated \$1.37 million in incremental local option sales taxes that it would derive as a result of the Town Center retail development – contingent on an amendment to the Redevelopment Powers Law allowing the direct pledge of such tax revenues. As mentioned above, that amendment was enacted this year by the Georgia General Assembly. Thus, the Ellenwood Town Center TAD became the first tax allocation district in metro Atlanta supported solely by the initiating jurisdiction and supported by both incremental *ad valorem* taxes and incremental local sales taxes generated by development within the TAD.

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<sup>13</sup> Ellenwood Partners LLC is comprised of Liberty Development Corporation, an Atlanta-based residential real estate developer, and National Retail Real Estate Services, Inc., a local commercial real estate development firm.

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# Georgia's Redevelopment Powers Law: A Policy Guide to the Evaluation and Use of Tax Allocation Districts

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