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GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

Defining The Terms

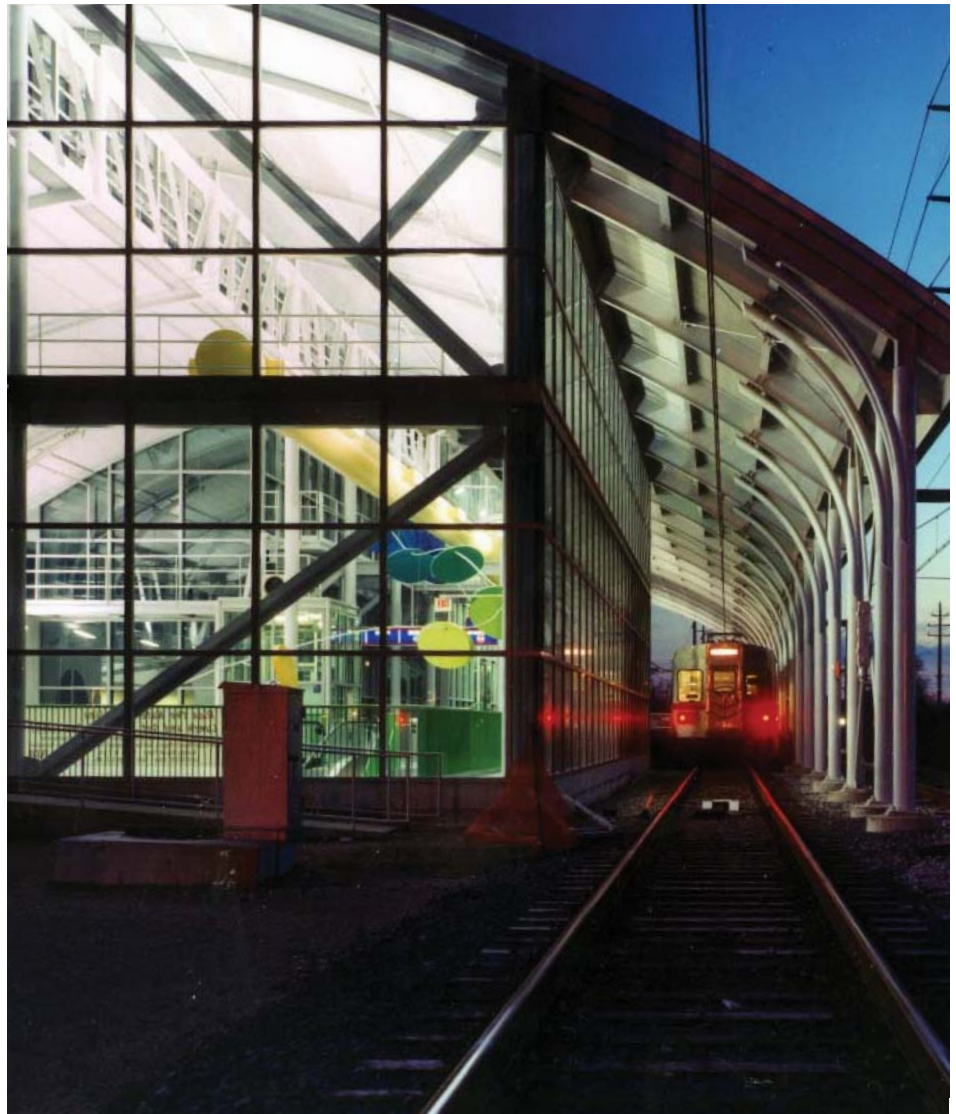
Transit Oriented Development
Joint Transit Oriented Development.

Recommended Guidelines

Land Use Keys
Transportation Keys

FTA Guidance and Regulations

FTA Policy
Grant Application Instructions
Eligibility for FTA funding



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TRANSIT ORIENTED DEVELOPMENT GUIDELINES



2007

**Greater Cleveland
Regional Transit Authority**

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Introduction

In a proactive planning effort, the Greater Cleveland Regional Transit Authority (RTA) is developing guidelines for Transit Oriented Development (TOD) projects within their service area. The ultimate goal of these guidelines is to promote vibrant and livable station areas that benefit RTA customers and the surrounding community, as well as promote the use of RTA as a primary means of transportation.

These guidelines are intended to serve as an important step in an evolving process for proactive planning around RTA stations resulting in TOD projects that support the goals of the community. The guidelines establish an avenue for public involvement in the planning process, allowing citizens, decision makers, developers, and the RTA to collaborate on community objectives, understand the planning tools available to meet those objectives (including zoning and joint development opportunities), and develop ownership from all stakeholders in TOD projects.

This report presents generally accepted definitions for TOD and joint-development TOD. If you are involved in a TOD project at a RTA station, taking these guidelines into consideration can help create very successful communities.

What is RTA?

The Greater Cleveland Regional Transit Authority (RTA) operates transit services for a 458-square-mile service area (see Figure 1 and Figure 2), including 59 municipalities and 1.4 million people. The services include buses, circulators, light rail, heavy rail, paratransit, and parking facilities, providing a total of 57 million passenger trips in 2005.

RTA connects the residents, employees, shoppers, and visitors of the Greater Cleveland region to the key trip generators within the City of Cleveland and throughout the area. The result is a mobile population that has choices for which travel mode to take to work downtown, to shop at more than 30 major commercial destinations, to explore at the Rock N Roll Hall of Fame, to travel from Cleveland Hopkins International Airport, or to see the Indians play at Jacobs Field. This modal choice supports the RTA's overall mission to "enhance the quality of life in Greater Cleveland by providing outstanding, cost-effective public transportation services."





Figure 1 RTA System Map

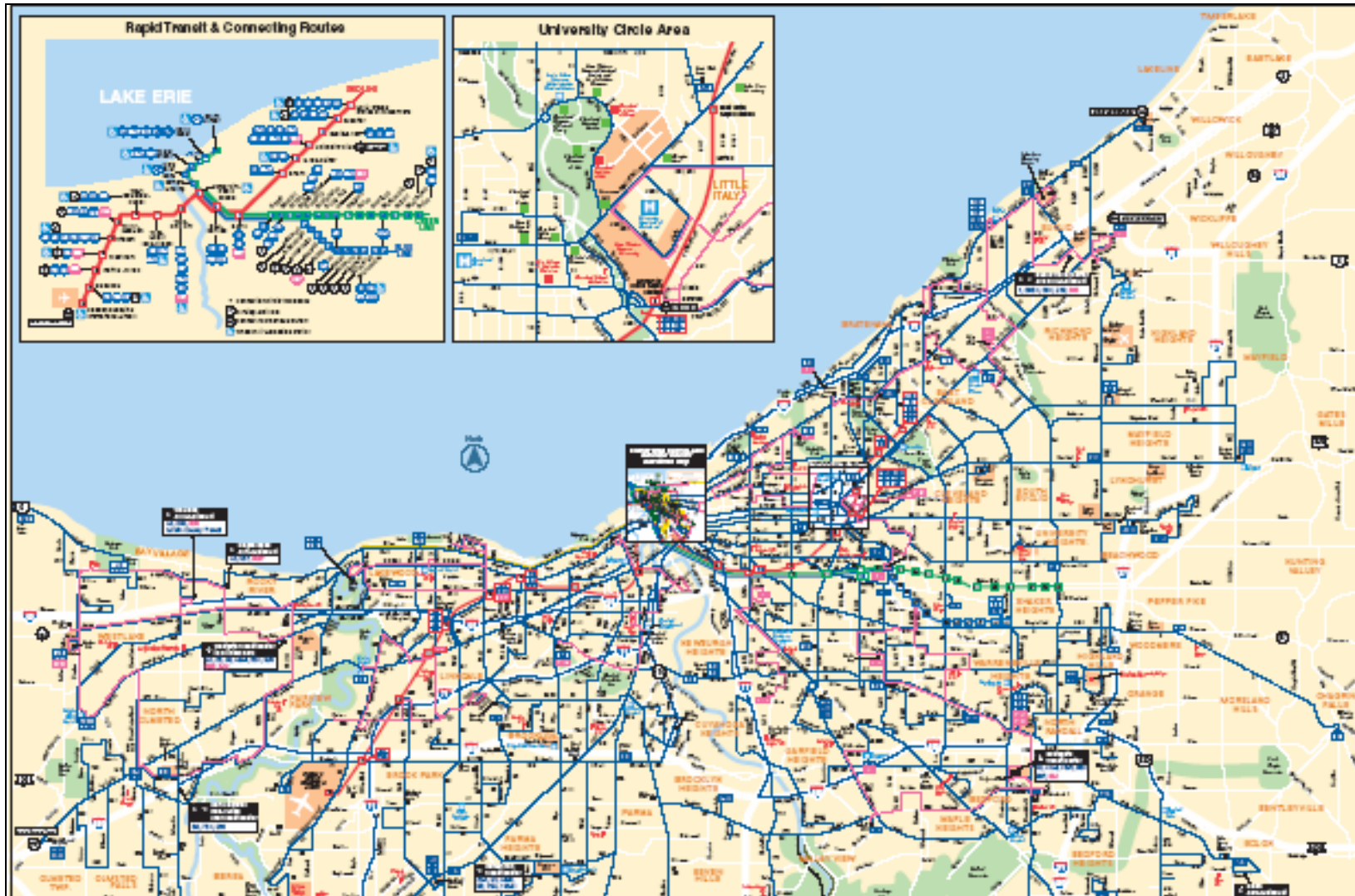


Figure 2 RTA Downtown Cleveland System Map



What is Transit Oriented Development?

Transit Oriented Development (TOD) is commonly defined as mixed-use development designed to maximize access to, and promote use of, public transportation, with an emphasis on pedestrian circulation and accessibility. Typical elements of this design strategy include:

- Elevated densities – Increased population and employment densities place more potential riders within walking distance of transit stations/stops;
- Mixed-uses – Retail, office, residential, and public space promote concentrations of public activity around transit station/stops, increasing the physical and cultural prominence of transit in the community, as well as facilitating trip chaining linked to transit (i.e., stopping at a dry cleaners or day care facility on the way to the train during a morning commute, instead of making separate trips); and
- Pedestrian orientation – Placing daily goods and services, as well as recreational destinations, within walking distance of residents reduces incentives for car ownership and use, supporting transit use for commuting and other regional travel; orienting building entrances toward transit stops.

TOD has been promoted for decades in the United States as a means of promoting smart growth, expanding lifestyle options, boosting transit's share of trips (especially commuter trips), and revitalizing neighborhoods. It is promoted as a means of redressing a number of the ill effects attributed to urban and suburban sprawl, including traffic congestion, air pollution, open space consumption, and a diminishing sense of civic connection in modern residential communities.

TODs clustered mixture of land uses and elevated density levels, all in close proximity to transit options, offer a stark alternative to the traditional forms of development associated with sprawl. Its unique combination of dense, walkable surroundings and mobility options beyond private automobile use, has proven appealing to a number of growing demographic segments in the United States, especially singles, childless couples, "empty-nesters," and the soon-to-be-retiring "baby-boom" generation.

More recently, steady increases in both fuel costs and commute times across the country have increased interest in mobility options among all demographic groups. Several recent Federal initiatives have explicitly sought to promote TOD:

- New transit joint development policies, including a more permissive interpretation of Federal common-grant rules;
- Criteria for the Federal Highway Administration's "New Starts" program that explicitly favor coordinated transit and land use in evaluating proposals for major capital investments in transit; and

- The Location Efficient Mortgage (LEM) program, underwritten by Fannie Mae, that makes it easier to qualify for a loan to purchase a home situated near transit.

Today, TOD projects are becoming more and more common throughout the country. A recent survey of transit authorities¹ identified more than 100 TOD projects that have been developed, or are in the planning stages. The vast majority of these are located in or around large cities with rail transit service, with San Francisco, Washington, D.C., and Portland among the cities with the greatest amount of active or completed TOD projects.

Expansion of existing transit systems and implementation of new systems across the country has added further momentum to the TOD movement, often by allowing cities to place transit services within districts where residential growth is strongest. New rail or bus rapid transit (BRT) systems are planned or under construction in all but three of the 30 largest U.S. metropolitan areas, including the Euclid Corridor Transportation Project Silver Line in Cleveland.

TOD is commonly located outside of city centers, in both inner-ring and outer suburbs. TOD tends to produce development of modest scale, though with residential densities well above suburban norms (20-30 dwelling units per acre compared to 5-6). These projects also incorporate a mixture of land uses, the most common components of which include:

- Mid-rise office buildings with street-level retail;
- Residential townhouses and condominiums;
- Restaurants and entertainment destinations; and
- Civic spaces and buildings such as plazas and libraries.

¹ Transportation Cooperative Research Program, *Report 102: Transit-Oriented Development in the United States: Experiences, Challenges, and Prospect* (2004).

Figure 3 Bethesda Row Station Area Project, Bethesda, Maryland



What is Joint-Development TOD?

One of the most highly touted strengths of TOD is its potential for supporting increased transit use and compact land use patterns. The most direct means for capturing this potential is joint-development TOD – private development on, above, or adjacent to a transit authority’s property.² The basic strength of this public-private coordination is that direct public investment and support makes TOD more attractive to profit-reliant developers, while direct involvement allows public authorities to shape projects around civic goals.

Just as importantly, joint-development offers tremendous potential to capture some of the value that transit services add to adjacent and surrounding real estate. Competition for public money is, and will likely always be, intense. TOD value capture can provide the means to help fund transit projects, by sharing in the real estate benefits of transit access.

The most common form of joint-development is the leasing of ground space or air rights on or above authority property. Following changes to FTA rules in 1997, sales of such rights and space have gained favor as well. Prior to 1997, authorities entered into unsubordinated long-term leases because they would have had to repay the federal treasury upon the sale of land purchased with FTA funds. Lease revenues, on the other hand, could be retained by the authority.

² *Ibid.*

Figure 4 Joint Development at Mockingbird Station, Dallas, Texas

Many developers and investors, however, strongly preferred outright ownership to lease agreements. The FTA's new joint development policies allow an authority to sell land and keep the proceeds, so long as they are used to support the authority's mission of providing transit service. Since this change, many authorities have shifted to fee-simple sales, attracting stronger developer interest as a result. This has increased the pool of developers responding to RFPs and has made recent joint development deals generally more remunerative. In addition to service improvements and maintenance, the new FTA policies allow transit authorities to place property/air rights sales revenue into a revolving fund to support additional TOD activity.³

Other forms of joint-development include:

- Sharing of operating costs such as ventilation systems, utilities, and parking facilities between a transit station and adjacent development;
- Station connection fees; and
- Sharing construction costs (foundations, parking facilities, and construction staging areas) between station and adjacent development.

³ Dittmar, Hank and Gloria Ohland. *The New Transit Town*; Island Press, 2004.

A large number of players are often involved in many TOD projects. At a minimum, joint development involves one transit authority, one local government, and one developer. Overlapping jurisdictions and service areas can add additional parties, as can the need for multiple lenders and investors beyond those directly involved. Comprehensive public involvement, a crucial component of TOD planning that should be initiated as early as possible, adds local advocacy groups, business organizations, neighborhood associations, and other stakeholders to the mix.

This large number of players in TOD projects creates numerous logistical challenges, first and foremost of which is creating a coherent vision and effective program for its achievement. No single player can, or should, completely set the agenda. Consequently, parties frequently focus narrowly on their perceived role and, even when a broad coalition of direct and indirect participating parties is engaged, the collective thinking fails to comprehensively address the many mutually supportive benefits offered by TOD. Figure 5 illustrates the variety of sometimes conflicting priorities that stakeholders bring to the table of a potential TOD project.

Figure 5 Stakeholders and Their Priorities

		Stakeholders					
		Transit Authority	Riders	Local Residents	Local Government	Federal Government	Developer/Lender
Priorities	Maximize Fiscal Return on Land		Ample Free Parking	Real Property Values	Maximize Tax Revenue	Protect Public Interest	Maximize Return on Investment
	Maximize Ridership		Improved Service and Access	Minimize/ Reduce Traffic	Foster Economic Growth	Control Use of Investments	Minimize Risk
	Capture Long Term Value		Mobility Choices	Mobility Choices	Serve Constituents		Ensure Long Term Value
			Pedestrian Access	Access to Transit, Services, and Jobs	Expand Tax Base		
			Increase Local Destinations	Community Livability			
				Expand Tax Base			

Source: Dittmar, Hank and Gloria Ohland. *The New Transit Town*, Island Press, 2004.

Why Transit Oriented Development?

Transit Oriented Development has enormous potential to help the Greater Cleveland area redevelop as a more economically vibrant, livable community, while increasing transit ridership, and reducing vehicular congestion on area roadways. Increasing the number of people who live and work within walking distance of RTA service is one of the most effective ways to increase ridership. TOD also brings broader benefits to the community, including other public sector entities, citizens, private enterprises like employers and developers, and the regional and global environment. These benefits have been studied extensively, and some of the most important advantages include:

Benefits to citizens of the region

- Increased mobility choices, including the option to walk, bicycle, drive and take transit more easily to more destinations;
- Reduced household transportation costs, including the option to own fewer cars and take more trips by cheaper modes such as walking;
- Improved access to shopping, services, and recreational and cultural opportunities;
- Ability to live, work and shop within the same neighborhood;
- Increased homeownership rates or more adequate housing, especially among lower income groups;
- Improved access to public spaces, including parks and plazas;
- Better health and public safety, including reduced pollution-related illnesses, increased physical activity, and reduced traffic accidents;
- Choice among a diversity of housing types that reflects the regional mix of incomes and family structures;
- Improved air quality; and
- Higher productivity of employees through reduced stress factors and useable commute time.

Benefits to public authorities, local governments, and RTA:

- Increased transit ridership;
- Reduced auto use and auto ownership, and the resulting lower demand for parking and roadway expansions;
- Reduced community spending on streets and highways, and therefore lower taxes or increased community services;
- Higher tax revenues from increased retail sales and property values;
- Increased farebox, ground lease and/or joint development revenue;

- Increased transit service resulting from these stable, on-going revenue sources;
- Enhanced local community environment;
- Station areas that can serve as destinations as well as origins, thereby balancing peak loads;
- Spatial and financial efficiencies of shared facilities; and
- Increase transit network efficiency by generating reverse-commute and off-peak trips.

Benefits to private entities (e.g. employers, developers):

- Shorter and more predictable commute times, increasing the attractiveness of a work site to employees and improving employee morale;
- Decreased congestion;
- Better economic health related to employment and income generated at TODs;
- Higher return on investment for developers;
- Lower development risk and costs resulting from mix of uses and variety of housing types (affordable housing, rental units etc.); and
- Improved housing availability attracts wider range of employees to work in the Cleveland region.

Benefits to the regional and global environment:

- Improved air quality and reduced gasoline consumption;
- Preservation of farmland and open space;
- Reduced traffic and air pollution;
- More suitable regional and subregional balance between jobs and housing; and
- Enhanced regional identity.

Planning Initiatives at RTA

RTA's Community Planning Initiatives

The first and foremost way to achieve transit goals in development is by the use of solid design principles. Most RTA transit issues are those of connectivity and form. If those are part of the design effort, there will be integration. Items such as sidewalks, where the building front door exists, and how pedestrians or heavy vehicles (e.g., buses) can use the site are essential items.

In that vein, RTA relates to communities in a myriad of ways. When designing an RTA passenger facility such as a rapid station or transit center, RTA engages the community stakeholders in the design of the building. This process includes residents, neighborhood groups, and stakeholders in a number of meetings and charrettes to meet community needs. The facilities include good design elements that complement the built environment and also connect pedestrians and bicycle riders to it.

Rapid transit stations provide an additional opportunity for RTA to engage the community in preparing a station area plan that locates the station elements such as parking, building entrance, and related amenities along with addressing land use issues in the surrounding area. In those cases RTA, in cooperation with the community, can promote land uses around the station that complement the community and maximize the transit connection. RTA is actively working on such plans at the Lee/Van Aken Rapid Transit Station, the E. 120 Station, the Puritas Station and will soon begin planning at the University-Cedar Station.

RTA's Transit Waiting Environments initiative (TWE) offers guidance to project sponsors on the types of amenities that could possibly be incorporated into existing bus stops. This initiative seems to be particularly useful when communities are undertaking streetscape projects. It provides a list of amenities that can be installed during improvement projects to enhance the public realm and makes the transit stop a more attractive and functional place in the community. RTA has worked with the City of Lakewood, Euclid, and Cleveland along Detroit and Lorain Avenues to encourage transit orientation. For more information on TWE visit <http://www.cudc.kent.edu/d-Service-Learning/PDFs/TWE%20screen%20short.pdf>.

For areas having less public transit service, usually the less-densely populated outlying areas of Cuyahoga County, RTA hopes that project sponsors will invite its participation. Jointly discussing in advance how new development and possible transit service enhancements can best be coordinated, is the most effective way in order to encourage the use of public transit. To the greatest extent possible, transit-supportive land use planning and zoning is encouraged, but RTA believes local officials must initiate this. RTA also welcomes any opportunity to comment on draft plans and zoning and advise public officials on ways that public transit can best be incorporated into them.

Figure 6 Lee/Van Aken Blue Line Rapid Transit Station

RTA's TOD Goals and Initiatives

RTA's has initiated planning for TOD projects, most notably at 6611 Euclid Avenue and 1950 E. 66th Street in the Midtown area of the City of Cleveland (Figure 7 and Figure 8), and is also preparing a site at 4501 – 4701 Euclid Avenue for a future TOD initiative (Figure 9 9).

TOD Goals

RTA has established goals for pursuing this type of development which include, but are not limited to, creating:

- High quality private or public development that is sensitive to the existing built environment;
- Development that promotes and enhances transit ridership by planning uses that are “transit-oriented” and that provide maximum linkages between transit stations and the development for transit patrons, pedestrians, and bicycles;

- Reduction in auto use and congestion through encouragement of transit-linked development;
- Value to RTA based on a fair market return on public investment, future revenue streams, additional taxes, and reduction in the cost of the site construction for RTA;
- Development that maximizes the highest and best use of the real estate based on land use and economic development goals of the surrounding community and conforming to local and regional development plans; and
- Value to the neighborhood, the developer and RTA through intensive, high quality development.

Figure 7 Proposed RTA TOD Site, 6611 Euclid Avenue



Figure 8 Euclid Avenue Corridor



Figure 9 Future RTA TOD Site at 4501-4701 Euclid Avenue



Strategies

To achieve these goals, RTA will undertake the following strategies:

1. During the station and facility planning efforts RTA will work collaboratively with the stakeholders and local jurisdictions as appropriate adjacent its transit facilities to proactively promote and develop locations, plans and designs that maximize the benefits of the transit linkage. This effort will include community involvement and participation in the planning process.
2. Work collaboratively with adjacent landowners and stakeholders to maximize uses and linkages to transit facilities.
3. Solicit proposals for transit-oriented joint development through a competitive selection process where feasible in terms of the market and availability of land. These must solicitations and projects must meet all FTA federal requirements and State, RTA regulations. The attachment lists requirements for the solicitation package.
4. Accept proposals for joint development projects as received. These proposals must meet all applicable joint development requirements including those of RTA, the State of Ohio, and FTA.
5. Request funding for Joint Development activities as part of RTA capital program as appropriate. These activities must be consistent with FTA regulations and requirements.
6. Complete an assessment for RTA owned facilities to maximize development opportunities through adjacent development activities and leasehold interests within RTA facilities. RTA real estate will be viewed as the asset it is in facilitating the goals of this policy.

The Euclid Corridor project will involve a complete building-face-to-building-face reconstruction of Euclid Avenue between Public Square and University Circle that includes:

1. Exclusive bus lanes;
2. One lane in each direction for auto traffic;
3. Pedestrian zone enhancements which encourage transit usage (new sidewalks, passenger shelters at center median stations, pedestrian lighting, street trees and tree lawns);
4. Roadway reconstruction and design to create consistent curb lines and numbers and widths of travel lanes, upgraded street lighting, and crosswalks at intersections designed to clearly identify pedestrian zones;

5. Traffic signal equipment installation on Euclid Avenue and on intersecting streets, as necessary, to provide priority to RTA vehicles operating on Euclid Avenue; and
6. The installation of pedestrian and vehicular signage to clearly identify the availability of transit service.

RTA Support of Community-Based TOD Initiatives

RTA recognizes that throughout northeastern Ohio, most communities take the lead in land use planning and guiding development. Where RTA already has a major presence (i.e. busy bus or rapid transit lines with stops and stations located near major activity centers), RTA offers to participate in the planning for the revitalization of the areas surrounding the transit facilities.

Examples include improving selected transit waiting areas in Cleveland, Shaker Heights and Cleveland Heights as part of streetscape projects initiated by those municipalities. In Euclid, RTA has been invited to participate in the City's downtown revitalization planning efforts, where new street patterns will affect bus routes and new development offers a chance to coordinate a more efficient bus layover location and more convenient and comfortable passenger boarding locations. Another example is the City of Westlake, a suburban municipality focused on developing a new shopping mall. The City and developer created Crocker Park, a "lifestyle center" reminiscent of a traditional small town downtown district. Provisions were made for RTA buses to easily access Crocker Park, along with developer-designed/funded bus shelters.

RTA is also a willing partner/stakeholder in community planning and corridor planning processes. RTA will partner and participate as communities continue to plan for the future. Often times, RTA can assist in supporting these efforts. The county municipality or community development organization will, on its own and/or with funding from the region's metropolitan planning organization, NOACA, plan to redevelop an area or travel corridor. When that area or corridor contains public transit bus or rapid transit lines and stops that could be affected, RTA prefers to jointly explore with the project sponsor, in advance of design and construction, how transit services and stops could be enhanced. This could involve short-term improvements like upgrading existing transit waiting areas or long-term improvements like focusing newly-developed or redeveloped around transit lines.

Where new TOD planning initiatives are being undertaken, RTA encourages adoption of zoning regulations that support TOD development. In 2004, MidTown Cleveland, Inc. and the City of Cleveland Planning Commission initiated planning for a Midtown Cleveland Mixed Use zoning overlay district. RTA offered technical assistance to help make the overlay zone more transit friendly around advanced transit facilities. The result is the Midtown Mixed Use District which is Transit Oriented Zoning overlay, a compact, high to

medium density/intensity, mixed-use, transit and pedestrian oriented activity center that promotes local economic activity in developments that are diverse, livable, sustainable, and enhance and maintain quality of life. The specific elements of the PTD District conform to the TOD Guidelines (discussed later in this report), including:

- A concentration of retailing, personal and business services, as well as residential and cultural uses at a necessary intensity to efficiently be served by a mass transit system;
- Continuous, direct, convenient transit and pedestrian linkages, including walkways between principal entrances of buildings and to adjacent lots;
- Increased density/intensity by varying the types of residential and commercial units provided;
- Encouragement of the use of public transit by reducing parking requirements within the PTD and the provision of park and ride lots near advanced transit facilities where appropriate;
- Improved pedestrian environment with amenities, such as pedestrian lamps, awnings, canopies, benches, trees, and shrubbery;
- Protected pedestrians and cyclists from traffic using clearly designated crosswalks, buffering, shelters, lighting, and grade separations;
- Buildings oriented to make pedestrians comfortable, by minimizing walking distances, enhancing visibility and by clustering buildings;
- Attractive building facades including street-level display windows and varying setback;
- Parking situated to the rear of the structure with proper screening, or in a parking garage, which possesses storefronts on any side facing an urban corridor; and
- A minimized number of curb cuts/driveways.

In addition to the Midtown Mixed Use District, the Cleveland Zoning Code describes three other regulations which are consistent with TOD planning:

- Planned Use Development, which permits development of zones with greater flexibility for mixing uses than traditional requirements⁴;
- Live-Work Overlay Districts, which allow shared occupancy of space by residential uses in combination with work activities in suitable locations. These districts are intended to assist in revitalizing areas impacted by the presence of under-utilized and deteriorated buildings suitable for re-use as live-work space⁵; and

⁴ http://caselaw.lp.findlaw.com/clevelandcodes/cco_part3_334.html

⁵ http://caselaw.lp.findlaw.com/clevelandcodes/cco_part3_346.html

- Pedestrian Retail Overlay (PRO) District, which supports the economic viability of older neighborhood shopping districts by preserving and emphasizing the pedestrian-oriented character of those districts⁶.

RTA is fully supportive of these community planning efforts and wishes to work with communities to create more of these districts throughout the region.

⁶ http://caselaw.lp.findlaw.com/clevelandcodes/cco_part3_343.html (See 343.23)

Recommended TOD Guidelines

The results of successful Transit Oriented Development are complete communities where land uses and transportation are mutually supportive, and populations that can live, work, play, and thrive in their neighborhood while still being connected to the opportunities throughout the region. For TOD to be successful, it must effectively and efficiently coordinate the various land use and transportation components. This section describes 14 guidelines for TOD projects; the following section describes these guidelines in more technical detail.

Land Use Keys

The simplest way to think about Transit Oriented Development is a lot of people comfortably living and working nearby each other, with lots of opportunities to interact each day. The first element of a TOD neighborhood is therefore a land use plan that allows many people to accomplish many, varied activities.

Mixed Uses Coupled with Density

By providing residential, commercial, recreational, and municipal space within a compact district, TOD neighborhoods offer people easy access to all the things they do every day: live, shop, work, and play. This proximity also offers the opportunity not to drive for each trip, which translates into fewer parking spaces needed, and more room for destinations that serve people instead of their cars.

The perfect mix and density of land uses around a transit station is not the same for every station; it depends on the needs and preferences of the surrounding neighborhood. A community-focused planning process should be used to identify these needs and preferences. A TOD project should include some mix of the following uses:

1. A wide variety of residential choices, ranging from apartments and studios to single-family homes, with both rentals and owner-occupied units. Residential density within a half-mile radius of the station should be high enough to support healthy ridership.
2. Small-scale commercial and office space throughout the neighborhood, with any large office buildings as close to the station as possible.
3. Community services, including libraries, schools, childcare, and museums, especially with pedestrian connections to transit and other land uses.

4. Public gathering spaces, including parks, plazas, and courtyards attract people and change a street to an active place. Ideally, these spaces should be versatile to accommodate different activities and groups. These places must be maintained and safe.
5. Transit and parking facilities should accommodate retail or other active uses at the ground floor.
6. No matter what uses are included, architectural character and a consistent scale are needed for new development to harmonize with existing buildings.
7. Densities should be highest closest to the transit station and gradually step down further away. Parking provisions should be lower closer to the station.

Figure 10 Provide Public Gathering Places to Create an Active, Vibrant Location



Transportation Keys

Pedestrian Orientation

Whether a commuter is riding the train, a shopper is driving to a store, or a student is bicycling to school, every trip starts and ends as a walking trip. A TOD should provide a safe, welcoming pedestrian environment throughout the community, so that all travelers can walk along an interesting and safe route between their homes, offices, transit stops, or other destinations.

Figure 11 Building Frontages with Active Streetwalls and No Street-Facing Parking (Cambridge, MA)



1. On main pedestrian routes, minimize the number of driveways, garage entrances, and dedicated turning lanes.
2. Pedestrians need to feel safe when walking. Install bollards, trees, and other street furniture to protect pedestrians and buildings from errant drivers.
3. Minimize streets widths in the station area to the smallest width needed to accommodate local travel speeds and emergency vehicle access.

Access and Circulation

One of the defining characteristics of TOD is availability of transportation options; this is what lets people to do all daily activities, without needing a car for every trip. Whether the neighborhood is served by train, bus, or light rail, service needs to be frequent and reliable. In addition, people need to be able to circulate within the area, so TODs must prioritize the needs of non-motorized modes.

1. Frequent, reliable, all-day transit services must be provided along key corridors and serving key destinations, where population and job densities permit this.
2. Bicycle networks should run throughout the TOD and directly to transit stations, with clear signage leading the way, and bicycle parking available throughout.
3. Parking facilities should feed pedestrians onto primary pedestrian routes, should be located to promote retail opportunities along these routes, and should provide parking for both autos and bicycles.
4. Sidewalks should be designed to exceed the requirements of the Americans with Disabilities Act and include street furniture (e.g., benches) and design features (e.g., human-scale street lights).

Figure 12 Parking Facilities Feeding Pedestrians Directly to Pedestrian Routes and Serving Both Autos and Bicycles



Technical Discussion of Recommended TOD Guidelines

Transit authorities play a crucial role in broadening the vision for, and raising the expectations from, TOD. This role includes, not only proactively seeking TOD opportunities at transit stations, but becoming, and remaining, directly involved in the planning and development process in order to extract the full spectrum of benefits TOD offers. The following design lessons provide valuable guidelines for framing future TOD projects.

Density

TOD generally requires a minimum of seven to fifteen residential units per acre in residential areas and 25 employees per acre in commercial centers, and about twice that for higher frequency transit, such as rapid transit or loop buses. Increased population and employment densities place more potential riders within walking distance of transit stations/stops and higher densities, especially residential densities are recommended depending on the type of transit serving the area (see Figure 13). Minimum residential densities of 12-25 dwelling units per acre are becoming for common. These densities create adequate transit ridership to justify frequent service, and help create active street life and commercial activities, such as grocery stores and coffee shops, within convenient walking distance of homes and worksites. The greatest increase in ridership occurs when densities reach approximately 30 dwelling units per acre, which allow for premium services, like bus or rail rapid transit.

Figure 13 Minimum Residential Density Thresholds for TODs

Transit Mode		Minimum Dwelling Units per Acre
Basic Bus Service		7-15
Premium Bus Service		15-18
Light Rail Transit		
Distance:	0-1/8 mile	30
	1/8-1/4 mile	24
	1/4-1/2 mile	12

Source: Transportation Cooperative Research Program, Report 102: Transit-Oriented Development in the United States: Experiences, Challenges, and Prospect (2004).

Commercial land uses require acknowledgement of employment density as well as Floor to Area Ratio (FAR). Recommended FAR's start at 0.35 for nonresidential activities in TODs, but are more frequently recommended at minimums of 0.5 to 1.0 for commercial developments without structured parking and at least 2.0 for developments with structured parking. Employment density of 25 jobs per gross acre (15,000 jobs within one half-mile) will support frequent, high capacity transit service. For light-rail service, employment densities of 50 jobs per gross acre are recommended.

High-frequency transit supports the development of high-density centers, which can provide accessibility and agglomeration benefits (efficiencies that result when many activities are physically close together), while automobile-oriented transportation conflicts with urban density because it is space intensive, requiring large amounts of land for roads and parking facilities. Large-scale park-and-ride facilities tend to conflict with TOD, since a rail station surrounded by large parking lots and arterials with heavy traffic is unlikely to provide the densities needed to generate sufficient transit demand. It is therefore important that such facilities be properly located, designed, and managed to minimize such conflicts.

Mixed-Uses

Traditional, or Euclidean, zoning separates land uses, sets density thresholds and minimum lot sizes, and usually contains explicit regulations such as bulk and height controls and minimum parking. With TOD, however, traditional zoning is often turned on its head (i.e., uses are intermixed, not excluded, and parking caps, rather than parking floors, are sometimes set).

To allow for TOD, a municipality can create a special TOD zone or change existing classifications. More common than either rezoning or new designations, however, is the creation of an *overlay zone*. As its name implies, an overlay zone is placed on the zoning map over a base zone. The overlay modifies, eliminates, or adds regulations to the base zone. Overlays provide for effective land-use control without increasing the complexity of the regulations. An example of this is the overlay zoning by the City of Cleveland in the Euclid Corridor.

Besides identifying unwelcome land uses, like automobile repair shops, TOD zones often specify activities that are permitted as-of-right. According to the Federal Transit Administration, joint development TOD projects are “commercial, residential, industrial, or mixed use developments that are undertaken in concert with transit facilities.”⁷ The uses included in a TOD community should generate trips throughout the day. This strategy takes advantage of unused transit supply in off-peak hours and results in routes that are more productive than in areas with traditional rush-hour peaks.

⁷ Federal Transit Administration, *Policy on Transit Joint Development, Number 62 12266, Federal Register: March 14, 1997* (Volume 62, Number 50)

The following list presents a sample of land uses appropriate for inclusion in a TOD:

- Mid- to high- density residential;
- Retail stores;
- Banks;
- Private offices/professional businesses;
- Government offices;
- Schools (especially higher education);
- Child-care centers;
- Community facilities;
- Public space; and
- Entertainment complexes.

Pedestrian Orientation

Pedestrians who can access the land uses within a neighborhood are more likely to utilize those sites, including retail, parks, and transit. Placing daily goods and services, as well as recreational destinations, within walking distance of residents reduces incentives for car ownership and use, supporting transit use for commuting and other regional travel. The following recommendations outline the key design factors that focus development to pedestrians:

- Locate active uses that generate a higher number of daily trips on the first two floors. These should include retail and open space located in the first 15-20 feet of building height. Land uses that generate fewer trips should occupy higher floors (see Figure 14).
- Bring sidewalks up to the building line and prohibit parking from being located between the sidewalk and the building.
- Curb cuts are extensions of sidewalks. Design sidewalk-driveway interfaces to be identical to sidewalks (e.g. the sidewalk material and level should continue across the driveway). This alerts both pedestrians and drivers that they are traveling on a portion of the sidewalk.
- Install bollards, trees, and other street furniture to protect pedestrians and buildings from errant drivers.
- Sidewalks connecting the station or bus stop to key nearby intersections and destinations should be as short, direct, and visually unobstructed as possible.
- Sidewalks to the station or bus stop should be wide and smooth enough for wheelchairs and strollers, and lined with trees, lights and wayfinding signs.

- When designing pedestrian paths, remember that unlike cars, pedestrians can and do walk the shortest routes to their destinations (known as desire lines). If pedestrianways are not provided, walkers will create their own desire lines. Planners should anticipate the need for direct pedestrian paths.
- The less that pedestrians must go up and down (by staircase, elevator bridge, and tunnel), the more likely they will choose to walk.
- Buildings along sidewalks should open directly onto the sidewalk, with transparent ground floors and good views of the path from the upper floors.
- Continuous building frontages should be maintained along sidewalks by avoiding front and side setbacks, blank walls, and surface parking lots that face the sidewalk.
- Building entrances should be conveniently situated relative to transit stations/ stops.

Figure 14 Active Uses on Ground Floor; Less Active Uses Above



- Sidewalks should be to at least five feet wide at all points.
- Install curb extensions (wider sidewalks) at all corners with on-street parking.
- Install pedestrian signals at all traffic signals.
- Actuate pedestrian phase at all times with traffic phase, e.g. not pedestrian actuated.
- Include Leading Pedestrian Intervals at all signals, thus allowing pedestrians to start ahead of traffic.

Access and Connections

Pedestrians must be able to easily access and traverse a site, for it to encourage pedestrian activity and, economic vitality. In order to discourage vehicular trips, TODs must prioritize the needs of non-motorized modes. The following provides a menu of options for promoting non-motorized transportation:

- Reduce vehicular roadway lane widths and rededicate the reclaimed space to provide or widen sidewalks, crosswalks, paths, and bike lanes.
- Reduce the number of conflict points between motorized and non-motorized modes. Where conflict points are unavoidable, ensure non-motorized modes have clearly delineated pathways and drivers are aware of their responsibility to share the road.
- Increase road and path connectivity, with special non-motorized shortcuts, such as paths between cul-de-sac heads and mid-block pedestrian links.
- Adhere to and exceed the requirements of the Americans with Disabilities Act.
- Include street furniture (e.g., benches) and design features (e.g., human-scale street lights) without blocking traveler's "desire lines" (paths which travelers use, whether designated or not).
- Guide motorized modes to operate at appropriate speeds and along appropriate routes for each location the community character.
- Provide bicycle parking and amenities (lockers, showers, access routes) to connect with all transit facilities.
- Create a *Multi-Modal Access Guide*, which includes maps and other information on how to walk and cycle to a particular destination.

Figure 15 compares various modes in terms of their priority (based on whether they help provide basic mobility or tend to be more recreational uses) and performance (size and speed). TOD accessways should be prioritized based on the performance and value of each mode. Below are examples:

- Higher-priority modes should have priority over lower-priority modes. For example, recreational modes (such as skateboards) should yield to modes that provide basic mobility (such as walking and wheelchair users) if conflicts exist.
- Lower-speed, smaller modes should be given priority over higher-speed, larger modes. For example, bicycles should yield to scooters, and scooters should yield to walkers.
- Maximum speeds should be established for each mode, based on the physical design of the facility (i.e., some facilities may only accommodate 10 mph cycling, while others can accommodate 15 mph cycling). Maximum allowable speeds should decline as a pedestrian facility becomes more crowded or narrower.

- If facilities cannot accommodate all potential modes, higher-priority modes should be allowed and lower-priority modes should be required to use roadways. For example, cycling and skating may be allowed on pedestrian facilities at uncrowded times and locations, but not at busy times and locations.
- Special efforts should be made to accommodate a wide range of users (including cyclists, skaters, and runners) where there are no suitable alternative routes (e.g., adjacent roadways are unsuitable for such modes).

Figure 15 Non-Motorized Facility Users Compared

User Type	Speed	Size (Width)	Maneuverability	Risk to Others	Priority
People standing or sitting	None	Low	None	Minimal	High
Walkers	Low	Narrow	High	Minimal	High
Walkers with children	Low	Medium to large	Medium to low	Moderate	High
Walkers with pets	Low	Medium to large	Medium to low	Moderate to High	Medium
Human powered wheelchairs	Low	Medium	Low to medium	Minimal	High
Motor powered wheelchairs	Medium	Medium	Medium	Moderate	High
Joggers and runners	Medium to high	Narrow	Medium	Moderate	Medium
Skates, skateboards and push-scooters	Medium	Medium	Medium	Moderate to High	Low
Powered scooters	Medium	Medium	Medium	Moderate to High	Medium
Handcarts, wagons and pushcarts	Low	Medium to large	Low to medium	Moderate to High	Medium
Human powered bicycle	Medium to high	Medium to large	Medium to low	Moderate to High	Medium
Motorized bicycle	High	Medium to large	Medium to low	Moderate to High	Low
Equestrians	Medium to high	Large	Low	Moderate to High	Low

Source: Victoria Transport Policy Institute, 2005

TOD Site Survey Worksheet

While TOD guidelines are valuable resources, RTA recognizes that they are limited if they cannot be applied to site-specific locations. In an effort to provide the community with a mechanism for applying the guidelines, Figure 16 outlines the existing conditions for each site will need to be documented. These conditions can then be applied to the minimum requirements and ideal conditions, to determine what is lacking in implanting a TOD project. The categories of conditions to be determined are based on the guidelines described above: density, land uses, pedestrian orientation, accessibility, and connectivity. In addition, the zoning framework guiding site development is also addressed.

Figure 16 TOD Site Survey Worksheet

Question		Actual	Minimum required	Ideal Condition	Meets Minimum?
How many residential units per acre?	for Basic Bus		7	14	
	for Premium Bus		15	18	
	for LRT 1/4-1/2 mile		12		
	for LRT 1/8-1/4 mile		24		
	for LRT 0-1/8 mile		30		
What is the employment density per acre?			25	50	
What is the FAR in non-residential areas <i>without</i> structured parking?			0.5	1.0	
What is the FAR in non-residential areas <i>with</i> structured parking?			1.0	2.0	
Is a large-scale park & ride facility located adjacent to the transit station (if applicable)?			N	N	
How many parking spaces per residential unit?			1.3 max	1.0 or fewer	
How many parking spaces per 1,000 sq ft non-residential uses?			3.0 max	2.0 or fewer	
Is the price of residential parking unbundled from residential leases or sales prices?			Y	Y	
Are all non-residential parking spaces shared among different uses?				Y	
Are all non-residential parking spaces charged for by the hour, or do employers offer parking cash-out?				Y	
Has the site been nominated for rezoning or overlay zoning to modify base zoning?			Y	Y	
In general, does the area contain a mix of residential, retail and office uses?			Y	Y	
Does the site contain three or more of the following land uses:				Y	
Mid to high-density residential				Y	
Retail stores				Y	
Banks				Y	
Private offices/professional businesses				Y	
Government offices				Y	

Question	Actual	Minimum required	Ideal Condition	Meets Minimum?
Schools			Y	
Child care centers			Y	
Community facilities			Y	
Public space			Y	
Entertainment complex			Y	
Percentage of frontage dedicated to openings (windows and doors) compared to blank space?		50%		
Percent of space used for active uses (i.e. retail and open space) between 0' and 20'?		75%	100%	
What is the average block perimeter?		1600' max	1000' - 1200'	
Do sidewalks extend up to building line and an greenspace?			Y	
Is surface parking located between sidewalk and building?			N	
Do curbcuts prioritize pedestrian movements?			Y	
Percent tree canopy at full growth over street area or minimum tree spacing standard?		40% or 40'	75% or 25'	
How many feet wide are sidewalks at narrowest point?		5	16	
Does the sidewalk widen at corners with on-street parking through use of curb extensions?			Y	
Are pedestrian signals present at all traffic signals?			Y	
Are pedestrian signals actuated with regular auto traffic cycles?			Y	
Are leading pedestrian intervals present at all traffic signals?			Y	
Are there non-motorized paths connecting site destinations?			Y	
How wide are roadway lanes?		12' max	10	
At conflict points between pedestrians, bicycles, and cars, are pathways clearly delineated?			Y	
Do pedestrian facilities adhere to Americans with Disabilities Act requirements?		Y	Exceed required	
Are design speeds set at or below 30 mph?			Y	
Are bicycle parking and amenities located at transit facilities?			Y	
Does the site accommodate a variety of non-motorized users, from pedestrians to recreational activities like cycling and skateboarding?			Y	

References and Bibliography

Books, Reports, and Documents

The New Transit Town, Hank Dittmar and Gloria Ohland, Island Press, 2004.

Report 102: Transit-Oriented Development in the United States: Experiences, Challenges, and Prospect, Transportation Cooperative Research Program, (2004).

Policy on Transit Joint Development, Number 62 12266, Federal Transit Administration, Federal Register: March 14, 1997 (Volume 62, Number 50).

Informational Resources

Victoria Transport Policy Institute - www.vtpi.org

Transit Cooperative Research Program - www.tcrponline.org/index.cgi

Urban Land Institute, *Development Case Study Library* - casestudies.uli.org

Transit Authorities

Boston: Massachusetts Bay Transportation Authority - www.mbta.com

Dallas: Dallas Area Rapid Transit - www.dart.org

District of Columbia: Washington Metropolitan Area Transit Authority- www.wmata.com

Portland: Tri-County Metropolitan Transportation District of Oregon - www.trimet.org

San Jose: Santa Clara Valley Transportation Authority - www.vta.org/projects/tod.html

APPENDIX

FEDERAL TRANSIT ADMINISTRATION
GUIDANCE AND REGULATIONS FOR
TRANSIT ORIENTED DEVELOPMENT
AND FEDERALLY FUNDED JOINT
DEVELOPMENT IMPROVEMENTS

Federal Transit Administration's Policy on Transit Joint Development

Number 62 12266, 03-14-97, Federal Register: March 14, 1997 (Volume 62, Number 50)

SUMMARY: FTA is revising and clarifying its Joint Development policies with respect to program income in relation to real estate acquired with funds under Federal transit law, 49 U.S.C. 5301 et seq. This Notice supplements the guidance contained in Appendix B of FTA Circular 9300.1

“Joint Development Projects.” All joint development projects undertaken in conformance with this policy will be considered “mass transportation projects” eligible for funding under FTA capital programs. This policy is applicable to development of properties acquired under previous grants as well as new grants, as specified in the FTA Master Agreement dated October 1, 1996. All such projects must generate a one-time payment or revenue stream for transit use, the present value of which equals or exceeds the fair market value of the property. In determining the fair market value, FTA will consider appraisal methods which factor in the “highest and best transit use” of the property as defined in the body of this notice. Where the grantee retains continuing control and use of the joint development for mass transportation purposes, all proceeds will be considered program income. Proposals that meet the criteria described below may be submitted at any time to the appropriate FTA regional office, listed in Attachment A.

Introduction

Transit systems have long been encouraged to undertake joint development projects in connection with their rail transit stations. However, apparent inconsistencies between transit laws, the Common Grant Rule and FTA policy may have dissuaded some transit authorities from initiating joint development projects. This notice clarifies the relationship between transit laws and regulations and FTA policy regarding property disposition, leases of property, and sale of property for joint development. This FTA policy statement affects primarily the treatment of program income with regard to joint development and the definition of “highest and best transit use” in joint development.

Transit systems are permitted in 49 U.S.C. 5309 (a)(1)–(5) and (7) [former Section 3(a)(1)(D) of the Federal Transit Act] to use grant funds to also support “transportation projects which enhance the effectiveness of any mass transportation project and are physically or functionally related to such mass transportation project or which create new or enhanced coordination between public transportation and other forms of transportation, either of which enhance urban economic

development or incorporate private investment including commercial and residential development.” The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) added Section 3 (a)(1)(F), now codified at 49 U.S.C. 5309(a)(7), to the Federal transit laws. This section allows FTA grant funds to support any “other nonvehicular capital improvements that the Secretary may decide would result in increased mass transportation usage in the corridor.”

FTA is encouraging transit systems to undertake transit-oriented Joint Development projects either under new grants or with property acquired under previous grants, whether the property is associated with a rail, bus or other transit facility. The purpose of this Joint Development should be both to secure a revenue stream for the transit system and to help shape the community that is being served by the transit system. Where the grantee retains effective continuing control over the joint development for mass transportation purposes (such as an easement, or a contractual arrangement), all proceeds of sale, lease or other encumbrance of the property will be treated as program income for use by the transit system to meet capital and operating needs. This is a departure from previous policy in two areas. First, FTA will now define all revenue derived from such joint development to be program income as defined in the Common Grant Rule at 49 CFR, Subtitle A, Sec. 18.25.

Second, grantees may use the new concept of “highest and best transit use”, as an alternate to “highest and best use”, in valuing real property for transit-oriented joint development. To accomplish this change, the FTA Master Agreement has been expressly modified to include joint development as an eligible activity in all capital grants to which it applies. Further, grantees may request amendment of grants issued prior to FY 1997, as desired, to expressly include joint development within the scope of such grants.

In accordance with this new policy, transit agencies have three options: they can sell property as excess for non-transit use; they can lease the property for incidental, non-interfering use by others while the property is held for a future identified transit use; or they can undertake a transit-oriented joint development on the property. In the case of a sale without a continuing transit use, property disposition rules under the Common Grant Rule at 49 CFR, Subtitle A, Sec. 18.31 apply. That is, the pro-rata Federal share of the net proceeds of a sale at fair market value is returned to the U.S. Treasury.

Transit-oriented joint development can be accomplished through a sale or lease of federally funded property, or through direct participation of the transit agency in the development e.g., as a general partner, depending upon the needs of the project. To qualify as a “transportation project”, the transit agency must retain sufficient continuing control over the property to ensure its continued physical or functional relationship to transit. This control may be exerted through any number of legally

enforceable contractual arrangements, ranging from a simple easement to ensure unimpeded access between the development and the transit facility by transit patrons, or perhaps some form of reverter clause to take effect in the event access becomes unreasonably curtailed. Any legally enforceable arrangement between the transit system and the developer that preserves the defined physical or functional relationship between the development and the transit facility should satisfy this requirement¹.

As long as such control is maintained, the transit agency may retain all revenues from such joint development as program income.

Policy: FTA encourages transit systems to undertake joint development projects at and around transit stations, bus terminals, intermodal facilities and other transit properties, where such projects are physically or functionally related to the provision of transit service, and where they increase transit revenues through proceeds from the joint development. FTA will do this by: making grants under the authority to support Joint Development provided by 49 U.S.C.5307, <SUP>² 5309 (a) (1)-(5), 5309 (a)(7), and 5309 (f), and by allowing the proceeds from sale, lease or other encumbrance of property for transit-oriented joint development to be retained by the transit system for transit operating and capital expenses.

FTA considers transit-oriented joint development already to be within the scope of nearly all capital grants involving real property unless expressly prohibited by a special term or condition of the grant. This is due to a term in most, if not all, capital grants requiring the grantee to follow FTA's most recent policies and procedures in administering its grants. Notwithstanding, FTA will modify existing grants at the request of the grantee, when this step is desired to expressly reflect transit-oriented joint development in the grant purpose. In the case of a section 5309 grant made between 1978 and 1983, and certain section 5307 grants, FTA will review joint development proposals on a case-by-case basis, and will work with the grantee to achieve the purposes of this policy. The FTA Master Agreement dated October 1, 1996 expressly includes transit-oriented joint development as an authorized grant purpose³.

This policy applies to projects funded under the following transit programs: Section 5309, Capital; Section 5307, Urbanized Area Formula; Section 5310, Elderly and Persons with Disabilities; and Section 5311, Nonurbanized Area Program FTA realizes that properties supported with Nonurbanized Area or Elderly and Persons with Disabilities program funds are unlikely candidates for joint development.

¹ Effective, continuing control of the property for transit purposes does not substitute for the grantee's obligation to ensure ongoing access by the general public to the transit facility.

² FTA has determined that joint development authority under section 5309(a) is coextensive with section 5307.

³ Funding for certain grants may have lapsed which could prevent their reopening should a change in scope be necessary to carry out transit oriented joint development.

However, FTA wishes to make it clear that the source of funding is not to be regarded as an impediment to a joint development proposal under this policy. The policy will not affect leases of real property for non-transit purposes or disposition of property that is no longer needed for transit purposes.

Criteria

To be eligible for consideration as a transit-oriented joint development project under this policy, the project must have the following characteristics:

- It includes a transit element; and
- It enhances urban economic development or incorporates private investment including office, commercial, or residential development; and
- It enhances the effectiveness of a mass transit project, and the non-transit element is physically or functionally related to the mass transit project; or
- it creates new or enhanced coordination between public transit and other forms of transportation; or,
- it includes nonvehicular capital improvements that result in increased transit usage, in corridors supporting fixed guideway systems.

Financial criteria that FTA will use in assessing joint development projects using land acquired with FTA funds are as follows:

It is FTA's intent that the transit system be able to negotiate its project benefit whenever possible, on the basis of the value added to the property by the planning, design and construction of transit-oriented joint development around the transit facility. Therefore the project shall generate either a one-time payment or a revenue stream, the present value of which equals either the current market value or the appraised value of the property, taking highest and best transit use into account (the proposer must make a convincing case that the transit oriented joint development will be more beneficial to the transit system than an outright sale of the property for non-transit purposes. For example, "Highest and best transit use" of a property for a day care center produces less income than "highest and best use" as a coin-operated laundry, but market surveys show it would attract and serve a greater number of transit riders and is better suited to the overall plan for the area. This would be an appropriate trade-off.)

- When the joint development project is one of several being undertaken in a program of joint development projects, the combined revenue streams from all of the projects may be balanced against the cumulative appraised value of the combined real estate on a portfolio basis. In such an approach, one project could be carried forward at a nominal loss, provided other projects in the same portfolio produced a proportionally greater revenue for the transit system, resulting in a net present value benefit equal to the appraised value of the property used, taking highest and best transit use into account.

- As long as the grantee retains effective continuing control of the joint development project we do not consider this a disposition of property. Thus, the grantee may retain all revenues from the project as program income. However, if the grantee cedes effective continuing control of the property for transit use the grantee could be liable for repayment of the Federal share of the current market value of the property.

Local Supportive Actions

While the preceding criteria are mandatory, the following are factors that will directly affect the successful implementation of any transit-oriented joint development, and warrant consideration in a joint development proposal. To ensure a transit-supportive environment in the community served by the transit system, FTA encourages local governments, transportation agencies, employers, building owners and managers, and public and private developers to work together to implement policies and strategies that will support transit use in daily activities. Supportive land use policies include promoting mixed use and high-density development around transit facilities. Urban design enhancements include landscaping, pedestrian and bicycle amenities, safety and security improvements, and improved access to transit services. Transportation management actions include parking management strategies to increase the cost and reduce the number of non-transit parking spaces for single occupant vehicles, priority treatment for transit vehicles, and transit pass programs. Also included would be activities that extend the hours of operation of transit facilities and thereby enhance the perception of safety in the surrounding areas.

Definitions

Joint Development

Joint development projects are commercial, residential, industrial, or mixed-use developments that are undertaken in concert with transit facilities. They may include private, and non-profit development activities usually associated with fixed guideway (Rail or Busway) transit systems that are new or being modernized or extended. Joint development projects may also be associated with bus facilities, intermodal transfer facilities (e.g., bus to rail), transit malls, and Federal, State or local investments in local facilities (such as a bus terminal and tourist facility). FTA funds may be used to facilitate development that enhances transit; they may not be used for purely private development such as construction and permanent financing costs related to the design or construction of purely retail, residential, or other commercial public and private revenue-producing facilities.

Highest and Best Transit Use

The highest and best transit use is that combination of residential, retail, commercial and parking space that results in the highest level of transit support from a combination of project revenues and increased ridership. The term is intended to combine the concepts of highest and best use in real estate assessment with transit-oriented development. In some circumstances, the highest and best use for a property, i.e., that use resulting in the greatest cash price for the property, may not be transit-oriented. Secure storage for construction equipment, or a coin-operated car wash would be examples of non transit-oriented developments. FTA does not intend to limit the local community's ability to define social or other benefits that it wishes to achieve through a transit-oriented development. Thus, locally preferred plans for "highest and best transit use" may be acceptable even if they do not generate the highest possible level of financial return. The Joint Development proposal will indicate the extent to which the highest and best transit use value varies from the traditional highest and best use assessment, and the basis for this variation.

Physically or Functionally Related

Each project must establish the link between transit and the proposed joint development project. Issues to be addressed should include travel time between the joint development and the transit facility, reasonable access between the development and the transit facility, trip generation rates of the proposed development, and the transit system's share of those trips. Functional relationships should not extend beyond the distance most people will reasonably walk to use a transit service—about 1,500 feet.

Revenue Stream

Research has shown that the siting and development of transit service adds to property values near transit stations, and that collocation of residential, commercial and retail establishments with the transit system enhances social and economic returns for the community. Therefore, a joint development project should be planned to generate revenue for the transit system from this added value. This revenue may take the form of a one-time cash payment for the sale of land, air rights, or some other form of property rights. Or it may be a revenue stream from an installment sale, lease, ground rent, or other compensation as agreed between the transit system and the developer, including but not limited to in-kind services such as construction or maintenance. The payment or revenue stream may be delayed for a time to support the project purpose, but the present value of all revenues must equal the current market value based on the highest and best transit use.

In the case of a program of joint development, conducted on a corridor or system wide level, FTA will evaluate the revenue stream on a portfolio basis, requiring that the sum of revenue streams for all developed properties be equal to the combined

appraised value of the land used to generate the revenues, taking into account the highest and best transit use. There may be instances where the transit system's participation in a joint development project adds value to that project above the value of the land itself. This additional value will allow the transit system to attract development at other, more "difficult" properties along the same corridor by making some revenue concessions on these properties.

(Within reason, the grantee may also postpone development of some properties along the corridor, to enhance their final development value. This should be declared in the joint development proposal.)

As long as the grantee can demonstrate that it has the ability to retain effective continuing control of the joint development for transit use, i.e. its physical or functional relation to transit, it may retain any proceeds from the project as program income. However, if the grantee cedes effective control over the property for transit use it may be liable for reimbursement of the Federal interest in the property.

Procedures

Joint Development proposals that meet the criteria in this notice may be submitted at any time to the appropriate FTA regional office, listed in attachment A. They should include, at a minimum, the Joint Development agreement, a market and financial assessment of the Joint Development and its impact on the transit system, and a statement of the outcome of planning and coordination between the Joint Development and the transit facility. The proposal should document the projected benefits for the transit system as well as the effective continuing control of the Joint Development project for transit purposes, as outlined in the definition section above.

FTA Circular 9300.1A: Capital Program: Grant Application Instructions (10-01-98)

Joint Development Projects

INTRODUCTION. This appendix contains guidelines for undertaking joint development projects. It also contains a set of questions most frequently asked about the concept of joint development and provides responses to those questions, with examples. This appendix implements the joint development policy announced in the [Federal Register on March 14, 1997](#), which is available at <http://www.fta.dot.gov/> on the FTA Home Page.

JOINT DEVELOPMENT PROJECTS. Joint development is any income-producing activity with a transit nexus related to a real estate asset in which FTA has an interest or obtains one as a result of granting funds (the "Assisted Real Estate Asset"). Joint development projects must meet three tests: statutory definition, financial return, and highest and best transit use. These tests are discussed in the paragraphs below.

Joint development projects are commercial, residential, industrial, or mixed-use developments that are induced by or enhance the effectiveness of transit projects. Joint development projects include private, for-profit, and non-profit development activities usually associated with fixed guideway transit systems that are new or being modernized or extended. Such projects can also be associated with new intermodal transfer facilities, transit malls, and Federal, state, or local investments in existing transit facilities. FTA capital funds may be used to facilitate private development that enhances transit; these funds may not be used for purely private development such as construction and permanent financing costs related to the design or construction of residential, retail, or other commercial, public, and private revenue-producing facilities not associated with transit-related development.

REQUIREMENTS RELATED TO STATUTORY DEFINITION. A joint development transportation project must be compatible with the statutory definition of a capital project:

- It is a transportation project that enhances economic development or incorporates private investment including commercial and residential development, pedestrian and bicycle access to a mass transportation facility, and the renovation and improvement of historic transportation facilities, because the project -
- Enhances the effectiveness of a mass transit project, and is related physically or functionally to that mass transit project; or

- It establishes new or enhanced coordination between mass transportation and other transportation; and,
- It provides a fair share of revenue for mass transportation use.

OTHER DEFINITIONS RELATED TO THE CAPITAL PROJECT DEFINITION.

Physically Related.

A project is physically related to a capital project if it provides a direct physical connection with transit services or facilities. This includes projects using air rights over transit stations or projects built within or adjacent to transit facilities.

Functionally Related.

A project is functionally related to a capital project if it is related by activity and use, and it is functionally linked (with or without a direct physical connection) to transit services or facilities. Also, a project is functionally related to a capital project if it provides a beneficial service to the public (or community service) and enhances use of or access to transit. Functional relationships do not extend beyond the distance most people reasonably can be expected to walk to use a transit service. The eligible project area for a functionally related project is estimated to be within a radius of approximately 1,500 feet from the center of a transit facility. The eligible project area for a functionally related project will be identified by the grantee in consultation with FTA's Regional Office on a case-by-case basis.

FINANCIAL RETURN REQUIREMENTS.

- Each grantee must negotiate a fair and equitable return in the form of cash and other benefits to be generated as a result of the FTA investment.
- All projects must generate a one-time payment or ongoing revenue stream for transit use, the present value of which equals or exceeds the fair market value of the property. See paragraph 6 for discussion of fair market value.
- After October 1, 1996, all FTA Master Agreements allow the use of real property for appropriate project purposes "including joint development purposes that generate program income to support transit purposes;" this is the Federal agency authorization required by 49 C.F.R. 18.25(g)(2) by which the revenues are brought within the definition of program income and can be used for transit capital, planning, and operating purposes. While a grant is still open, the transit agency must apply all revenues from any sale of real property (which does not qualify as a joint development transfer) to the grant purposes, or must return the revenues to FTA, or must obtain FTA approval to use the revenue to reduce gross project costs in another capital project. If

the transit agency transfers an Assisted Real Estate Asset from an open grant and maintains continuing control and otherwise meets the three joint development program tests, the transit agency may retain as program income all the revenues that accrue.

- For open grants predating October 1, 1996, all the terms of the current Master Agreement apply, so subparagraph c above controls.
- Closed grants made in 1983 or thereafter may be reopened to allow for the use of Assisted Real Estate Assets in joint development projects. However, for those closed grants made between 1983 and October 1, 1996, the grant purpose and terms, as necessary, must be amended to allow for joint development. Aside from the requirement that the income be used for transit capital, planning, or operating expenses, FTA generally sets no further conditions on income from a closed grant.
- Program income includes current or future returns generated from, but not limited to, transfer or lease of property, mortgage proceeds, or returns stemming from participation in distribution of project revenues.
- Agreements which transfer title or rights in land or facilities acquired as part of the FTA project must contain provisions which--
- Extend the requirements, as appropriate, of the FTA Grant Agreement; (see paragraph 9) and,
- Ensure that the grantee retains continuing control of the assets as long as they are needed for mass transit. This continuing control may be demonstrated by an easement, by a reversionary interest, by a covenant running with the land, by a contractual clause in the joint development agreement, or more commonly, by some combination of these assuring the transit agency that the joint development project will maintain its physical or functional relationship to transit, will continue to enhance coordination between modes, or will in fact result in increased mass transportation usage.
- Ensure that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means.

HIGHEST AND BEST TRANSIT USE REQUIREMENT.

- The calculation of equitable return required in paragraph 5 must be based on the appraised market value as represented either by highest and best use of the property or by highest and best transit use of the property, taking into account in either valuation the local transportation, land use, and economic

development plans. Highest and best transit use is that combination of residential, commercial, retail, public, and/or parking space and amenities to be included in the joint development, which is calculated to produce the greatest level of social, economic, and financial benefit to the transit system and the community that it serves.

- If the grantee structures a joint development project to include the transfer of an Assisted Real Estate Asset, then the final transfer value must be based on competition to the extent practicable, and FTA concurrence in the final transfer value is required.

ELIGIBLE COSTS FOR JOINT DEVELOPMENT PROJECTS. Eligible project costs for joint development projects include, but are not limited to, the following:

- Design, engineering, and environmental analyses, as appropriate. (Formula program funds are more appropriate for planning and feasibility analysis.)
- Real estate packaging for a specific joint development project including preliminary design and engineering; estimates of operating income and expenses and capital costs; and negotiations to secure financing, developers, and prime tenants.
- Land acquisition, relocation, demolition of existing improvements, and site preparation, as appropriate.
- Foundations and substructure improvements for buildings over transit facilities.
- Open space, and pedestrian connections and access links between transit services and related development.
- Other facilities and infrastructure investments needed to induce significant private investment and to improve access between new or existing development and transit facilities.
- Utility work. The eligibility of costs of utility work associated with private investment will be considered on a case-by-case basis. FTA grant funds will pay for costs of utility work that are attributable to non-FTA project purposes only when—
 - The utility services a joint private and transit use; or
 - The utility lines will be located under a co-located street or sidewalk or within other common elements so that it would benefit the project to provide adequate capacity at the outset of the project.

- Safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications).
- Facilities that incorporate community services such as daycare or health care.
- Parking elements. All FTA participation in financing parking improvements must have a public transit justification and use. Parking elements of joint development projects that meet this general rule will be considered on a case-by-case basis.
- Professional Services Contracting Costs. Grantees may incur reasonable and necessary costs for consultants to prepare or perform items a through j above, or to assist the grantee in reviewing the same.

FUNDS THAT MAY BE USED IN JOINT DEVELOPMENT PROJECTS. No dedicated funding has been established for joint development projects. Joint development activities are eligible for funding under all Title 49 capital programs, including the Capital Program (Section 5309), the Urbanized Area Formula Program (Section 5307), the Non-urbanized Area Formula Program (Section 5311), and the Elderly and Persons with Disabilities Program (Section 5310). CMAQ and STP funds transferred from the Federal Highway Administration to be administered by FTA may also be used to support joint development projects. (See Chapter III, paragraph 2a for a discussion of flexible funds.)

APPLICATION OF OTHER FEDERAL REQUIREMENTS TO PRIVATE SECTOR PROJECTS. In a joint development project, FTA must determine whether, and to what degree, various Federal rules apply to the privately funded, non-transit portion of the project. The applicability of Federal requirements (such as those of the National Environmental Policy Act (NEPA), the Davis-Bacon Act, third party procurement requirements, and Buy America) will be resolved on a case-by-case basis for joint development projects involving the transfer of real property. FTA will work with the grant applicant to determine whether, and the extent to which, such Federal requirements apply, particularly to any private development, and the most appropriate procedures for satisfying the requirements. Proposals should be submitted as early as possible in the joint development process. This will allow FTA staff to help the grantee structure an approvable proposal in the least time possible and determine which cross-cutting requirements must be applied to the particular project. Nevertheless, the following cross-cutting requirements are expected to apply in the indicated circumstances:

- If the joint development involves a ground lease or transfer of federally assisted real estate and there is no Federal assistance for new improvements, then the following requirements apply to the lessee or transferee and must be incorporated into the lease or the conveyance instrument:

- language found at 49 C.F.R. 23.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;
- language found at 49 C.F.R. 27.7 and 49 C.F.R. 27.9(b) binding the lessee or transferee not to discriminate based on disability and binding the same to compliance with the Americans with Disabilities Act with regard to any improvements constructed;
- language contained in the FTA MA(4), dated October 1, 1997, and found in Section 3 Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interest and debarment.
- If the construction of improvements is also federally assisted, then in addition to paragraph 9a above, at least the following requirements also will apply and must be incorporated into the lease or the conveyance instrument:
- Buy America - language making it clear that the steel, iron, and manufactured goods used in the joint development project are produced in the United States, as described in 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661. The reader is referred to Chapter VI, paragraph 15 of this circular for further information about Buy America requirements.
- Planning and Environmental Analysis - language making it clear that the grantee must comply with, and the joint development project is subject to the requirements of: the FHWA/FTA metropolitan and statewide planning regulations at 23 C.F.R. Part 450; the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et seq. ("NEPA"); Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C.5324(b); Council on Environmental Quality regulations on compliance with the NEPA, 40 C.F.R. 1500 et seq.; FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771; Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation; Advisory Council on Historic Preservation regulations on compliance with Sec. 106, "Protection of Historic and Cultural Properties," 36 C.F.R. 800; and restrictions on the use of certain publicly owned lands unless the FTA makes the specific findings required by 49 U.S.C. 303.
- Cargo Preference - language making it clear that items imported from abroad and used in the joint development were shipped predominantly on U.S.-flag ships and that the project complies with 46 C.F.R. Part 381, to the extent these regulations apply to the joint development.

- Seismic Safety - language certifying that a structure conforms to seismic safety standards, as contained in 49 C.F.R. Part 41.
- Energy Conservation and Recycled Products - Transferee(s) or joint developer agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.
- Lobbying - 49 C.F.R. Part 20.
- Labor Protection—Language making it clear that the transferee or joint developer will adhere to labor protection requirements applying to Federal projects, such as Davis-Bacon - 49 U.S.C. § 5333(a) and 40 U.S.C. 276a through 276a(7) and 29 C.F.R. Part 5; Copeland "Anti-Kickback " Act as amended, 18 U.S.C. 874 and 40 U.S.C. 276c and 29 C.F.R. Part 3; and Contract Work Hours and Safety Standards Act, 49 U.S.C. 327 through 332 and 29 C.F.R. Part 5 and 40 U.S.C. 333 and 29 C.F.R. Part 1926; as well as 49 U.S.C. 5333 (b) concerning protection of transit employees.
- Civil Rights Requirements - 49 U.S.C. § 5332.
- Program Fraud - Transferee(s) or joint developer agrees to comply with Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and 49 C.F.R. Part 31. Penalties may apply for noncompliance. Language making it clear that the level of Federal participation in the joint development provides no U.S. Government obligation to third parties in the project.
- Uniform Relocation - If the federally assisted site to be improved is occupied by other than the grantee and the occupant is displaced, the transferee(s) or joint developer must comply with 42 U.S.C. 4601 et seq. and the regulations at 49 C.F.R. Part 24.

In any instance in which FTA determines that NEPA applies to the joint development, the level of environmental analysis will depend upon the complexity of the project and its likely impacts. In some instances, minimal review will be necessary, in which case FTA will issue a Categorical Exclusion. Joint development activities that portend significant environmental impacts, however, will necessitate the preparation of an Environmental Assessment or an Environmental Impact Statement. See generally the FTA Environmental Impact and Related Procedures at 23 C.F.R. Part 771.

NOTES TO READER. Before undertaking a new joint development, a grant applicant is encouraged to turn to Chapter X, "Regional Offices," select the FTA Regional

Office responsible for the grant applicant's locality, and telephone that office to discuss the kind of project planned. Such a dialogue, early in the project planning process, will ensure that the joint development proposal will be reviewed on a timely basis.

The statements included in this appendix reflect typical project situations. Instructions given and policy statements appearing in the circular are not intended to be read as inflexible FTA mandates. They are instead set forth as guidelines which FTA generally applies to typical projects. Early dialogue with the FTA Regional Office will clarify the degree to which a new joint development project conforms to, or differs from, previous FTA experience.

FREQUENTLY ASKED QUESTIONS AND SOME PRACTICAL EXAMPLES.

- What is joint development? It is an income-producing activity involving a third party, taking place on or with an Assisted Real Estate Asset (described in paragraph 2 above). The third party is the source of the income to the grantee; the third party is the party to whom the property is transferred or the lessee who leases the space.
- What is the limitation on new improvements for joint development? The purpose of the Joint Development Policy is to facilitate the use of an Assisted Real Estate Asset for transit oriented joint development. Thus, FTA will support, or allow the use of grant funds for, the construction of a structure that includes a transit facility. However, FTA is unlikely to allow FTA grant funds to support a free-standing facility (such as an apartment building or an office tower) that is not part of a transit facility. (See question 11f for the definition of a shell for joint development.)
- Does joint development require a private or nonprofit developer? Not really. The third party's role need not be that of developer; it may be that of a lessee. For example, the transit agency can lease out its excess space to a senior care or day care provider, in which case the transit agency is the "developer" under FTA's policy. If, however, the project is to build an office/retail complex in the air space above a transit station, only a very large transit agency will have the means to borrow the sums necessary to build and finance the structure. It will be much easier (though not absolutely necessary) to have a private partner who builds and manages the development.
- One transit authority has created a private subsidiary (limited partnership) to assist it in developing property around an historic central station. This project will create six floors of multi-family rental housing. The project will be financed with a combination of historic preservation tax credits, low-income

housing tax credits, and mortgage revenue bonds issued by the city. The transit operator is also a partner in the joint development. The transit operator will receive a share of the project revenues for the life of the limited partnership.

- What is highest and best transit use? A property's highest and best use is the use—from among reasonably probable and legal alternative uses that are physically possible, appropriately supported, and financially feasible—that results in the highest anticipated selling price. The way highest and best transit use differs from highest and best use is through recognition that value to the transit system is not in the selling price alone.

Highest and best transit use is that combination of financial return and other transit benefits, such as increasing ridership, reducing trip durations or improving connections between trips, that maximizes the value of the asset to transit. For example, a transit agency identified several properties adjoining existing or planned transit stations that it wished to use for joint development. One particular property was oddly shaped, but with substantial road frontage. A request for development proposals resulted in offers to build 8 or 10 townhouses with garages. This option would produce the highest immediate cash proceeds to the transit system. However, the transit agency sought and was granted revised zoning on the property, allowing up to 160 moderate-income apartments to be offered for rent. The moderate-income rental use will take a long time to produce cash flow and proceeds to the grantee, but in the interim, the moderate-income rental use is projected to increase transit ridership by (conservatively) 32,000 trips per year, which are estimated to be worth between \$18,000 and \$24,000 per year in additional farebox revenues. It is anticipated that these residents will also provide economic support for new retail space in the surrounding community. FTA regards this decision as satisfying the "highest and best transit use" criterion.

- How much land may be purchased by a grantee? A town is currently planning improvements to its bus transit system, including a downtown transfer center. The center is being planned as a multi-use facility, which will include a tourist information center, small retail businesses, and possibly a bank. To make this eventual development a reality may require that the transit agency acquire a larger amount of land than is necessary for the transit center alone. FTA will assist the transit operator's land acquisition activities with grant funds, as described in paragraphs 7a through 7e of this appendix. Generally, FTA will not support land purchases more than 1,500 feet from the center of the transit facility.

- What is an "envelope" or "building shell" for a joint development? The transit agency may wish to encourage local economic activity at its facilities. Under the Joint Development policy, the transit agency may build an "envelope," or rehabilitate an existing transit owned facility. Envelope or building shell means (but is not limited to) load bearing walls, roof, foundation, substructure improvement, site design, and engineering. "Tenant finishes," however, are not eligible for FTA reimbursement. These include partition walls, furniture, equipment, shelving, lighting, drapes, floor coverings, and other items specific to the business intended to be operated. A Neighborhood Travel and Jobs Center involved just such a development. There, the local transit authority was allowed to convert an existing office building into a \$3 million Neighborhood Travel Center. The center will serve as a terminal for bus lines to industrial jobs and will provide the focus for a downtown redevelopment "campus" including jobs training, childcare facilities, and a privately-financed development bank. The tenant finishes for each of these ancillary activities will be paid for with non-grant funds, though grant funds were used to rehabilitate the building itself. The tenants will pay market rate rent to the transit authority.
- What is the difference between a sale and a joint development transfer? A sale does not involve continuing control of the real property by the grantee and fails to establish a nexus between the Assisted Real Estate Asset and an ongoing transit purpose as outlined in paragraph 3 of this appendix. Proceeds from a sale are not program income and must be returned to FTA pursuant to 49 CFR 18.31(c)(2).
In contrast, a joint development transfer meets the statutory definition test outlined in paragraph 3 of this appendix, the grantee exercises continuing control over the transferred real estate, and the financial and highest and best use tests of the Joint Development Policy are met. The proceeds from a joint development transfer are considered program income, which may be retained by the grantee. (See paragraph 5c.)
Here is an example of a joint development transfer: a rapid rail station includes 6.3 acres for a "park and ride" area. A developer has been approved to build 160 residential units and 17,000 square feet of service retail space on a portion of this area. The transit operator transfers 3.4 acres to the developer for use in the joint development. The development will generate more transit trips and more non-fare revenue than the displaced parking spaces provided. The transit agency will retain the income generated from this land transfer as program income and will be assured of satisfactory continuing control through covenants running with the land. Should the developer re-sell the land in the future, the covenants bind the next owner to a transit-oriented use of the land.

- Will NEPA and other Federal cross-cutting requirements discourage private participation? It is the will of the Congress that the Federal cross-cutting requirements govern grantees' use of FTA's financial assistance. To the extent that a grantee joins with a private or nonprofit developer to undertake joint development using FTA grant funds in whole or in part for the improvements to the site, it is that grantee's role to obtain the grant funds necessary to make the joint development financially feasible and to supply its expertise in meeting the applicable Federal requirements. For example, if the proposed land use is known from the outset, a grantee can reduce the risk to the private or nonprofit developer by using transit resources to perform the necessary environmental studies before choosing a partner. Alternatively, a project may be structured so that the grantee selects a development partner, the grantee and the partner jointly determine the highest and best transit use, and the grantee then performs the necessary environmental studies before its private or nonprofit partner becomes responsible for any costs. Such incentives can attract new participants to transit joint development.
Are all incidental uses joint development? No, not all incidental uses are joint development. (FTA permits the incidental use of transit equipment and property for purposes other than provision of transit service, provided the use is compatible with the approved purposes of the project and does not interfere with intended uses of project assets.) Allowing nearby theaters and restaurants to use transit parking spaces during the transit system's off hours is an incidental use. So is temporary use of transit property as a staging area for nearby construction. These uses, however, are not joint development. In contrast, the acquisition of land or the redesign of space to allow for additional parking to be used by local theaters and restaurants could be considered as a joint development project - to the extent the acquisition or redesign is justified by a transit use - and should be discussed with the Regional Office.
- What is the difference between "joint development" and "transit-oriented development?" The term joint development is a subset of transit-oriented development. While all joint development is transit-oriented development, not all transit-oriented development meets the three tests of statutory definition (transit nexus), financial return, and highest and best transit use. Some transit-oriented development undertaken by private parties benefits from its proximity to transit without the use of an Assisted Real Estate Asset and/or without the use of FTA funds for new improvements. Such totally private projects are simply not governed by this circular.

Federal Transit Authority, Dear Colleague Letter: Transit Oriented Development

Number: C-07-04, 09-09-04

Dear Colleague:

It is with great excitement and anticipation that we issue this report on the potential for transit oriented residential development.

With the recent surge in interest in and construction of rail transit systems, families and communities are seeking ways to take full advantage of their promise - seeking improved mobility, environmental benefits, and economically thriving neighborhoods.

In this report, the Center for Transit-Oriented Development has estimated the demand for housing within a half-mile of 27 existing rail systems and 15 planned extensions or new systems over the next 20 years. The findings are nothing short of astonishing.

Over 14.8 million households are expected to want housing within a half-mile of these rail systems by 2025 - more than double the number of households living there today. Meeting this demand would require building an average of 2,100 residential units near each of the 3,391 transit stations that was studied. For communities, transit systems, real estate developers, and financial institutions, this potential demand for housing presents not only a tremendous opportunity, but a challenge as well. To fully capture the benefits of our transit investments:

The Federal Transit Administration (FTA) has worked hard over the last several years to reduce administrative burdens on grantees in areas such as procurement and to improve the timeliness with which FTA processes grant applications. Therefore, it is with careful consideration of the impact on our transit agency customers that I write today to ask for your help regarding two important matters of concern:

- Our communities must adopt policies to support the attractive, higher-density housing that families and individuals are seeking -- revisiting zoning rules, parking policies, and infrastructure investments;
- Our transit systems must make continued improvements, not only to the operations of the systems themselves, but to the surrounding plazas, streetscapes and other amenities that make transit attractive; and

- Real estate developers and financial institutions must fully embrace the economic potential of urban development.

We hope you will read this report with an eye toward your role in creating attractive, vibrant, and economically thriving communities for ourselves and our children.

Sincerely,
Jennifer L. Dorn

Hidden in Plain Sight: Capturing the Demand for Housing Near Transit

“These demographic profiles are critical to the success of our business” — Brad Syverson, Director of Real Estate, Target Corporation.

“Reconnecting America and the Center for Transit-Oriented Development have given all of us some amazing tools. First, they have produced both national and local estimates of demand – estimates that all of us can use to create interest in the potential of transit-oriented development – interest from beyond its traditional supporters, including real estate developers and institutions. But, perhaps even more importantly, they have created a database that can be accessed and used by the 42 metropolitan regions they studied. The database utilized Geographic Information System (GIS) technology and data from the 2000 U.S. Census to create a snapshot of the population living within 1/2 mile of the 3,341 existing and 630 proposed rail stations. With this database, city planners, local real estate developers, and others can identify the potential and make plans for transit-oriented development. It is a truly remarkable tool – and I want to acknowledge both Hank Dittmar, of Reconnecting America, and Shelley Poticha, of the Center for Transit-Oriented Development, for their tremendous contribution.” — Jennifer Dorn, Administrator, Federal Transit Administration Speaking at Railvolution Conference, Los Angeles California, September 21, 2004.

A study by Reconnecting America’s Center for Transit Oriented Development shows that demand for compact housing near transit is likely to more than double by 2025. “Hidden in Plain Sight: Capturing the Demand for Housing Near Transit” finds that across the U.S. more than 14.6 million households are likely to want to rent and buy housing near transit by 2025, double the number that live in these neighborhoods today. Meeting this demand would require building 2,100 residential units near each of the 3,971 stations included in the study. CTOD Director Shelley Poticha calls this, “a staggering figure considering that only a small portion of housing is being constructed in these locations today. It means that transit could become the armature for a significant amount of regional growth and help increase transit ridership.”

The TOD market study was conducted for the Federal Transit Administration, and rolled out at the tenth annual Railvolution conference in Los Angeles on September 21, 2004 by Federal Transit Administrator Jennifer Dorn.

Federal Transit Administration's Policy on Transit Joint Development

Number 71 FR 5107, 01-24-06, Federal Register: January 31, 2006 (Volume 71, Number 20)

SUMMARY: This guidance would implement additional authority provided in the Safe, Accountable, Flexible and Efficient Transportation Equity Act, a Legacy for Users (SAFETEA-LU) for public transportation agencies undertaking joint development projects. In addition, this notice seeks comment on two issues: a clarification of what is "physically or functionally related" to a transit project; and a proposed limitation on the amount of space that might be leased under "incidental use." Finally, this guidance would provide additional information in a question-and-answer format to assist grantees in developing and submitting project proposals for FTA review.

DATES: Comments should be received on or before March 2, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Paul Marx, 202-366-1675, or Paula Schwach, 816-329-3935. FTA is located at 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 or later), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 9). The DMS is available 24 hours

each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the FTA Web site: <http://www.fta.dot.gov> Internet users may also reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg>. and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

Background

The Federal Transit laws have included joint development authority since the Urban Mass Transit Act of 1974. In the Transportation Equity Act for the 21st Century (TEA-21), the joint development authority was incorporated into the definition of a transit capital project, at 49 U.S.C. 5302(a)(1)(G). This made joint development activities eligible for reimbursement under formula and discretionary transit grant programs. SAFETEA-LU added intercity bus and rail terminals to the joint development authority, and excepted them from the prohibition on supporting the construction of space for commercial, revenue-producing activities.

The definition of "capital project" reads, in pertinent part, as follows:

- (1) Capital project. --The term "capital project" means a project for * * * (G) a mass transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a mass transportation facility, and the renovation and improvement of historic transportation facilities, construction, renovation, and improvement of intercity bus and intercity rail stations and terminals, because the improvement enhances the effectiveness of a mass transportation project and is related physically or functionally to that mass transportation project, or establishes new or enhanced coordination between mass transportation and other transportation, and provides a fair share of revenue for mass transportation that will be used for mass transportation-
 - a. Including, property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as daycare or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means; and
 - b. Excluding construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to mass transportation;"

Emphasis on additions added.

FTA has implemented the joint development authority as part of its grant program circulars, inserting guidance as Appendix A to Circular 5010.1, guidance for new Major Capital Investments, and as Appendix B to the Grants Management and Formula Capital Grants circulars, 9300.1 and 9030.1. The proposed revision incorporates the new authority provided in SAFETEA-LU, and it seeks to clarify how FTA will review and approve specific activities involving the use of federally-assisted real property. These include transfer of real property for joint development, incidental use and shared use of transit property, as well as property disposition. The following are changes made to the original Appendix, for each of Circulars 5010.1, 9030.1 and 9300.1. The revised Appendix, as a substitute for the existing Appendices, is accessible on the FTA Web site, at <http://www.fta.dot.gov/>; as well as in the DOT.

Docket, at FTA-2006-23511.

Page 1--Reorganized the beginning of the Appendix to focus on the three tests defining a joint development: Statutory Definition; Financial Return; and Highest and Best Transit Use.

Page 5--Eligible Costs--Added element f., "including integrity bus and rail facilities." This item reflects the new authority in SAFETEA-LU.

Page 10--Added a new Section 9: Process for Submitting a New Joint Development Proposal.

Page 12--Revised Frequently Asked Questions, to include new examples on low and moderate-income housing (Question 11), Parking for Community Service Activities (Question 13), the difference between Joint Development Transfer and Disposition (Question 14), and the difference between Joint Development and Shared Use (Question 15).

Page 25--Added Questions 18, 19, and 20 to clarify the treatment of property disposition, sharing common walls, and intercity bus and rail stations.

Attachment 1--FTA has developed a Joint Development checklist defining what is to be included in a project proposal submitted for FTA review.

FTA seeks comment on these revisions to the joint development appendices to the respective FTA Circulars. In addition, FTA seeks comment on two basic issues that arose during the development of this Appendix.

Physically or Functionally Related—A joint development project must be a mass transportation improvement that is physically or functionally related to the transit project. Based on the implementation of this authority over the last twenty years, FTA has taken this to mean that: either the joint development must be integrated into the transit project—i.e., share its common walls, floor, and/or roof—or that the joint development must be related to the transit project by function, as evidenced by connecting pathways, joint use of parking, bicycle and related amenities, and enhancement of the transit system by the joint development. FTA has tended to prefer projects where the joint development was fully integrated into the overall transit project, thus ensuring physical relationship.

However, the addition of intercity bus and train stations to the definition of a joint development project raises some questions regarding functional relationship. The joint development is intended to enhance the effectiveness of public transit, and this may occur optimally if the intercity bus or rail station is in a nearby but separate facility from the transit station. FTA seeks comment on whether a direct (short distance) pedestrian or bicycle pathway is sufficient to establish a functional relationship between two stand-alone structures that are defined as a transit capital project, or whether FTA should require that a joint transit/intercity terminal project share a common wall and roof in order to conform to the requirements of SAFETEA-LU.

Parking is a related issue in this regard. FTA generally will not support parking in excess of transit need. However, both intercity bus and rail terminals will have a need for parking (and taxi access) even if most of their customers come to the terminal on public transportation. FTA seeks comment on how to incorporate intercity bus and rail terminal parking requirements into the overall transit project.

Maintenance cost is also a related issue in this regard. Unlike other joint development projects, intercity bus and rail stations are not required to pay “a reasonable share of the costs of the facility through rental payments and other means; * * *” FTA has interpreted this exception as applying to the construction cost of these facilities, not their ongoing reasonable costs of maintenance. FTA will encourage public transportation agencies to negotiate shared maintenance agreements to ensure satisfactory condition and usefulness of the joint development project over its full term.

Proportion of Incidental Use—FTA is considering establishing a percentage of additional space that may be supported with transit grant funds for joint development and/or incidental use purposes. Taking as given that the primary purpose of the expenditure is a transit project—say, a bus transfer facility—how much more space would be reasonable to include for a joint development activity such as a day care center, congregate meal facility, or health care facility? Is it reasonable for the physical capacity of the jointly developed improvement to exceed the transit

facility in size and/or cost? This question arises particularly in the context of an intercity bus or rail station which, since its service area is likely to be considerably larger than the transit agency's, may require even more "peak" than the transit agency does.

Related to this issue is the question of how to treat changes in the use of joint development space after the project is complete. For example, if space was made available for a day care center but three years after the project is complete, the day care center manager moves the operation to another location. FTA seeks comment on whether the transit agency should be required to replace the day care center only with another eligible transit activity (such as a senior care or public health activity), or whether the space might be made available for lease by a public or private sector activity. FTA is considering requiring the transit agency to perform a new market analysis on the basis of replacing the initial joint development activity with a market-based joint development activity.

Finally, the public transit agency may reasonably seek to build a large enough facility to allow for future expansion. Given that such facilities may have a useful life of 40 years or more, it is reasonable to anticipate some growth in the transit agency and its service over that term. The transit agency may then wish to offer this additional space for rent on a non-interfering basis until it is needed for transit operations. FTA seeks comment on a method for determining what growth is "reasonable" to project in this instance. FTA is considering linking this projected growth to population forecasts for the region, as used by the Metropolitan Planning Organization for its long range plans.

Supplemental Request for Comments on Issues Relating to "Joint Development" of Intercity Bus and Intercity Rail Stations and Terminals and Extension of Comment Period

Number 71 FR 15513, 03-22-06, Federal Register: March 28, 2006 (Volume 71, Number 59)

SUMMARY: The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU) enacted certain amendments to the definition of the term "capital project" as used in 49 U.S.C. 5301 et seq. (Federal Transit Law) relating to "joint development" activities by recipients of Federal funds under Federal Transit Law. In order to assist the Federal Transit Administration (FTA) in developing a proposed guidance document concerning the implementation of such amendments, FTA published a proposed guidance document on January 31, 2006 (71 FR 5107). Since publication of that document, FTA identified several other issues on which we would like to receive public input, and, thus, we are extending the comment period for an additional thirty days. Also, please be advised that the previously published guidance on joint development will not operate as interim or final guidance for FTA unless and until otherwise stated by FTA, in writing.

DATES: Comments should be received on or before April 27, 2006. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FTA-2006-23511] by any of the following methods:

Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 202-493-2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, D.C., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration) and the docket number (FTA-2006-23511). You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to the Department's Docket Management System (DMS) Web site located at <http://dms.dot.gov>. This means that if your comment includes any personal identifying information, such information will be made available to users of DMS.

FOR FURTHER INFORMATION CONTACT: For program questions, please contact Robert Tuccillo at (202) 366-4050. For legal questions, please contact Jayme Blakesley at (202) 366-0304. The principal office of FTA is located at 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Federal Transit Law has included joint development authority since the Federal Public Transportation Act of 1978. In the Transportation Equity Act for the 21st Century, the joint development authority was incorporated into the definition of a public transportation "capital project" at 49 U.S.C. 5302(a)(1)(G). This made joint development activities eligible for reimbursement under formula and discretionary public transportation grant programs.

New Authority

SAFETEA-LU adds intercity bus and rail stations and terminals to the joint development authority and exempts such facilities from the prohibition on funding the construction of commercial, revenue-producing facilities.

As amended by SAFETEA-LU, the definition of "capital project" provides, in pertinent part, as follows:

Capital project. —The term "capital project" means a project for—

- (1) a public transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a public transportation facility, construction, renovation, and improvement of intercity bus and intercity rail stations and terminals and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a public transportation project and is related physically or functionally to that public transportation project, or establishes new or enhanced coordination between public transportation and other

transportation, and provides a fair share of revenue for public transportation that will be used for public transportation—

- a. including property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as daycare or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means; and
- b. excluding construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation . * * * [emphasis added]

FTA proposes to implement the joint development authority by providing guidance in Appendix A to Circular 9300.1A (Capital Program: Grant Application Instructions) and in Appendix B to Circulars 5010.1C and 9030.1C (Grants Management Guidelines and Urbanized Area Formula Program: Grant Application Instructions). In addition to the proposed guidance document published on January 31, 2005, and before issuing the appendices for public comment in accordance with 49 U.S.C. 5334(l), FTA is soliciting additional comment on the issues identified below and we invite those reviewing this document to bring to our attention issues we might not have identified, due to state law or local share issues that may affect how this new authority can be implemented.

1. Interpretation of “Capital Project”

FTA proposes to interpret the definition and operation of the term “capital project” set forth at 49 U.S.C. 5302(a)(1)(G) with respect to “construction, renovation and improvement of intercity bus and intercity rail stations and terminals” as follows: To be eligible for funding pursuant to a program established by Federal Transit Law, the “construction, renovation and improvement of intercity bus and intercity rail stations and terminals” must be “a public transportation improvement” that (A) “enhances economic development or incorporates private investment” and (B) that either (i) “enhances the effectiveness of a public transportation project and relates physically or functionally to that public transportation project” or (ii) “establishes new or enhanced coordination between public transportation and other transportation.” FTA requests comment on the above interpretation of 49 U.S.C. 5302(a)(1)(G).

2. “Enhances Economic Development or Incorporates Private Development”

As noted above, it is a threshold requirement for Federal funding of “construction, renovation and improvement of intercity bus and intercity rail stations and

terminals” that such construction, renovation and improvement enhance economic development or incorporate private investment. FTA invites recommendations of criteria by which FTA may determine whether the construction, renovation and improvement of an intercity bus or intercity rail station or terminal enhance economic development or incorporate private investment.

3. “Enhances the Effectiveness of Public Transportation Project”

The construction, renovation and improvement of intercity bus and intercity rail stations and terminals may receive Federal funding if, among other things, such construction, renovation and improvement “enhances the effectiveness of a public transportation project.” FTA invites recommendations of criteria by which FTA may determine whether the construction, renovation and improvement of an intercity bus or intercity rail station or terminal “enhances the effectiveness of a public transportation project.”

4. The Meaning of “Related Physically or Functionally”

The construction, renovation and improvement of intercity bus and intercity rail stations and terminals may receive Federal funding if, among other things, such construction, renovation and improvement are “related physically or functionally” to a public transportation project. Based on the implementation of this authority over the last twenty years, FTA has construed “related physically or functionally” to require, as a threshold matter, that such construction, renovation and improvement be located on land used for a transit purpose. Within this framework, FTA has previously preferred projects where the joint development was fully integrated into the overall structural envelope of the public transportation project, thus ensuring a physical relationship.

However, the addition of intercity bus and train stations to the definition of a public transportation capital project raises some questions regarding functional relationship. The disjunctive requirement of physical “or” functional relation suggests that such a facility could be built separately from—but in functional relation to—a public transportation facility and located on land not used for a transit purpose, so long as such facility bore a functional relation to public transportation. FTA invites recommendations of criteria by which FTA may determine whether the construction, renovation and improvement of an intercity bus and intercity rail station or terminal relate “functionally” to a public transportation project. In particular, FTA solicits examples of joint development projects that are functionally related to a public transportation facility without being physically related (that is, without being contiguous or structurally integrated). In addition, FTA invites responses to the following related questions:

- Should FTA consider any other indicators of functional relationship, such as facility design, presence or function of pedestrian improvements?

- May the functional relationship extend across an intervening street, major thoroughfare or unrelated property? For example, is a public transportation facility on one side of the street still functionally related to an intercity bus station on the opposite side of the street?
- What is sufficient to establish a functional relationship that does not involve physical proximity to and/or physical connection to a public transportation facility? Please provide examples that illustrate such a relationship.
- If FTA determines that a free-standing facility is functionally related to a public transportation facility or system, how should it determine the amount of parking that is an eligible cost?

5. Meaning of “New or Enhanced Coordination between Public Transportation and Other Transportation”

A joint development project may be eligible for Federal funding if, among other things, it establishes “new or enhanced coordination between public transportation and other transportation.” FTA invites recommendations of criteria by which FTA may determine whether the construction, renovation and improvement of an intercity bus or intercity rail station or terminal establishes “new or enhanced coordination between public transportation and other transportation.” In addition, FTA invites responses to the following related questions:

- Is there a minimum or basic standard to estimate “new or enhanced coordination”? That is, by what metric should the new or enhanced coordination be assessed—increased trips, increases in certain kinds of trips, revenue generated or revenue shared?
- What level of public transportation service should there be with which the joint development project might establish “new or enhanced coordination”? Is an hourly scheduled service bus stop sufficient, or does it require at least a main line route or terminal?

FTA seeks practical, recent examples of new or enhanced coordination between public transportation and other transportation, particularly where multiple modes are involved, such as public transportation with intercity rail and/or bus, or airports, or taxi.

6. Requirements Regarding “Satisfactory Continuing Control”

The law provides significant flexibility to public transportation grantees to encumber their federally supported assets for public transportation purposes, with prior FTA approval. Sections 5307(d)(1)(B) and 5309(c)(1)(B) of Title 49 require that the grantee has or will have (or certify that it has or will have) “satisfactory continuing control over the use of the equipment [and/or] facilities. *

* *’ FTA has allowed public transportation grantees to transfer the title to their federally-funded rolling stock to facilitate lease financing or to transfer real property to a third party to facilitate a joint development, again, with prior FTA approval. In addition, FTA invites responses to the following related questions:

- In the case of an intercity bus or rail terminal, how should the grantee demonstrate satisfactory continuing control?
- If FTA allows a free-standing intercity bus terminal to be built with FTA funds, should FTA record its interest in the real estate as allowed for in the Master Agreement? Should the grantee? If no interest is recorded, how and who will be responsible for monitoring future encumbrances of the asset as required by the common grant rule?
- Once an intercity bus or rail terminal is constructed with FTA funds, should the grantee or the intercity bus or rail operator control the quality of maintenance, the hours of facility operations, or the manner of functional relationship to public transportation?

7. Requirements Regarding Maintenance

Section 5309(c)(1) of Title 49 provides that “[t]he Secretary may not approve a grant for a project under [49 U.S.C. 5309] unless the Secretary determines that * * * the applicant has, or will have the capability and willingness to maintain the equipment or facilities.” Similarly, 49 U.S.C. 5307(d) provides that “[a] recipient may receive a grant in a fiscal year only if * * * the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (c) of [49 U.S.C. 5307] and a certification for that fiscal year that the recipient * * * will maintain equipment and facilities. * * *’ FTA invites recommendations of criteria by which FTA may determine whether a recipient has the capability and willingness to maintain (or that the recipient will maintain) the construction, renovation and improvement of an intercity bus and intercity rail stations and terminals funded pursuant to 49 U.S.C. 5309(c)(1) or 49 U.S.C. 5307(d). FTA also invites comment on to what degree, if any, FTA should investigate the quality of certification by a recipient that it “will maintain equipment and facilities” pursuant to 49 U.S.C. 5307(d)(1)(C), given that in most cases the recipient will be a public body such as a transit authority. In addition, FTA invites responses to the following related questions:

- Once an intercity bus or rail terminal or station is constructed with FTA funds, what should be the permissible use of program income generated by the intercity bus or rail terminal or station?
- Should FTA allow program income to be used for debt service, return on investment of any private person financing the facility, or operation and

- maintenance costs, with excess revenues used for purposes allowable under Federal Transit Law?
- Should FTA ensure that there is an enforceable maintenance agreement between the transit authority and private company as a pre-requisite to grant approval?
 - Do transit authorities have funding and legal authority to assume the maintenance responsibility for private facilities?
 - Rules Concerning Cessation of Use of a Federally-Funded Intercity Bus or Rail Terminal or Station for Purposes Allowable Under Federal Transit Law
 - The construction of an intercity bus or rail terminal with Federal grant funds establishes a “Federal Interest” in the resulting project, such that the project is governed by the real estate disposition requirements of the common grant rule at 49 CFR 18.31 and Circular 5010.1C, as well as by disposition rules at 49 U.S.C. 5334(h) and the common grant rule set forth at 49 CFR 18.32. (See also Section 19 of the Master Agreement.) If the property ceases to be used for a public transportation purpose, including an intercity bus or rail purpose, then the property may be disposed of as “excess property.” In such instance, the grantee or sub-grantee must request disposition instructions from the granting agency. These instructions may include requiring a pro-rata return of disposition proceeds to the U.S. Treasury, or the grantee may be allowed to apply the proceeds to reduce the net capital cost of a future public transportation project. The property may also be transferred to another public use with prior FTA approval, without having to return the Federal investment. In addition, FTA invites responses to the following related questions:
 - How should this provision be implemented for intercity bus or rail terminal projects undertaken on land not owned by the public transportation agency?
 - On what basis might non-transportation joint development activities be considered in this context, particularly with regard to the generation of program income and joint development transfer of real property? FTA seeks practical examples of intercity bus or rail terminal reuse, after cessation of intercity service.
 - Eligibility of Furniture, Fixtures and Equipment as a “Capital Project”
 - Generally, FTA has funded transportation-related furniture, fixture, and equipment (FFE) as eligible costs for public transportation projects. FFE related to community services and private, profit-making activities has never been considered eligible, even in the context of joint development. For

example, when FTA provided funding for the Linden Center day care in central Ohio, this did not extend to lighting fixtures, tables, chairs, blackboards, or other items required for the day care, even though many of these items were permanently affixed or built into the facility. These items were paid for by the tenant. FTA is considering applying this same standard to intercity bus and rail terminals that are qualified as public transportation capital projects. Because, to date, these items are not considered eligible for Federal funding, they have also not been previously allowed as local match for Federal grant dollars. In addition, FTA invites responses to the following related question:

- How should FTA treat FFE related to lunch counters, vending kiosks, and miscellaneous retail activities, such as those found in many intercity bus and rail terminals?

Notice of Proposed Agency Guidance and Request for Comments on the Eligibility of Joint Development Improvements Under Federal Transit Law

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Docket No: FTA-2006-23511

SUMMARY: The Federal Transit Administration (FTA) seeks public comment on the following proposed guidance on joint development capital projects funded by the Federal Transit Administration. The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU) enacted certain amendments to the definition of the term “capital project” as used in 49 U.S.C. 5302(a)(1)(G) relating to “joint development” activities by recipients of Federal funds under 49 U.S.C. 5301 et seq. (Federal Transit Law). The Federal Transit Administration (FTA) proposes to adopt the following guidance in accordance with the procedures for notice and an opportunity for the public to comment set forth at 49 U.S.C. 5334(l) and FTA's Notice of Final Policy Statement for Implementation of Notice and Comment Procedures for Documents Imposing “Binding Obligations,” as published in the Federal Register on June 5, 2006.

The following proposed guidance seeks to ensure maximum benefit to the people who ride public transportation, to FTA grantees that choose to sponsor joint development improvements (the project sponsor), and to their joint development partners by (i) Affording FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, (ii) generally deferring to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties, to utilize Federal Transit funds and program income for joint development purposes, and (iii) promoting transit-oriented development, subject to the broad parameters set forth herein.

Statement of Policy

Through this guidance, FTA interprets the definition and operation of the term “capital project” as defined at 49 U.S.C. 5302(a)(1)(G), and as amended by Section 3003(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”). This amendment permits FTA to issue public transportation grants “for the construction, renovation, and improvement of intercity bus and intercity rail stations and terminals,” including the construction, renovation, and improvement of commercial revenue-producing intercity bus stations or terminals. In doing so, it modifies the underlying policy of joint development improvements, and therefore enhances the ability of FTA grantees to work with the private sector and others for purposes of joint development. To ensure maximum benefit to the people who ride public transportation, to

FTA grantees that choose to sponsor joint development improvements (the “project sponsor”), and to their joint development partners, the following guidance (i) seeks to afford FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, (ii) generally will defer to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties, to utilize Federal transit funds and program income for joint development purposes, and (iii) aims to promote transit-oriented development, subject to the broad parameters set forth herein.

Proposed Guidance Text

1. Eligibility Criteria

a. Definition of “Capital Project”

Federal Transit Law defines a “capital project” for joint development as follows:

A public transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a public transportation facility, construction, renovation, and improvement of intercity bus and intercity rail stations and terminals, and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a public transportation project and is related physically or functionally to that public transportation project, or establishes new or enhanced coordination between public transportation and other transportation, and provides a fair share of revenue for public transportation that will be used for public transportation.

This definition establishes the following criteria for determining whether a joint development improvement is eligible for funding pursuant to a program established under 49 U.S.C. 5301 et seq. (the “Federal Transit Law”): The public transportation improvement must (i) Enhance economic development or incorporate private investment; (ii)(a) Enhance the effectiveness of a public transportation project and relates physically or functionally to that public transportation project, or (b) establish new or enhanced coordination between public transportation and other transportation; and (iii) provide a fair share of revenue for public transportation that will be used for public transportation. In addition, a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means.

Joint development improvements will be eligible for FTA funding only if they satisfy the criteria set forth above, and do not fall within the exclusion detailed at 49 U.S.C. 5302(a)(1)(G)(ii), which excludes the construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation.

b. “Enhances Economic Development or Incorporates Private Investment”

As noted above, it is a threshold requirement for Federal funding of a public transportation improvement as joint development that such improvement either (i) Enhance economic development or (ii) incorporate private investment⁴.

i. "Enhances Economic Development"

This criterion requires that a joint development improvement enhance economic development. A grantee may satisfy this criterion by demonstrating that the joint development improvement will add value to privately-or publicly-funded economic development activity occurring in close proximity to a public transportation facility.

ii. "Incorporates Private Investment"

Any joint development improvement that incorporates private investment will satisfy this criterion. Private investment need not be monetary; it may take the form of cash, real property, or other benefit to be generated initially or over the life of the joint development improvements. FTA will not set a monetary threshold. The amount and form of private investment shall be negotiated by the parties to the joint development improvement.

c. "Enhances the Effectiveness of a Public Transportation Project"

Any reasonable forecast of joint development impacts that enhance the effectiveness of a public transportation project will satisfy this criterion. These impacts may include, but are not limited to, any of the following: increased ridership, shortened travel times, and lessened or deferred transit operating or capital costs.

d. "Related Physically or Functionally"

The disjunctive requirement of physical "or" functional relationship provides that a joint development improvement may be built separately from, but in functional relationship to, a public transportation project. Therefore, a joint development improvement satisfies this element if it is related physically or functionally to a public transportation project.

i. "Physically Related"

A joint development improvement is "physically related" to a public transportation project if it provides a direct physical connection to public transportation services or facilities. Illustrative, but not exhaustive, examples of physical relationships include (i) projects built within or adjacent to public transportation facilities and (ii) projects using air rights over public transportation facilities.

ii. "Functionally Related"

A joint development improvement is "functionally related" to a public transportation project if by activity and use, with or without a direct physical connection, it (i) enhances the use of, connectivity with or access to public transportation; or (ii) provides a

⁴ In accordance with the statute's use of the disjunctive "or," rather than the conjunctive "and," FTA shall determine that a transportation improvement satisfies the threshold requirement for funding as joint development if the transportation improvement either (i) enhances economic development or (ii) incorporates private investment (the disjunctive), and shall not require that the transportation improvement satisfy each of (i) and (ii) (the conjunctive).

transportation-related service (such as, but not limited to, remote baggage handling or shared ticketing) or community services (such as daycare or health care) to the public. Considerations include a reduction in travel time between the joint development project and the public transportation facility, reasonable access between the joint development project and the public transportation facility, and increased trip generation rates resulting from the relationship between the joint development project and the public transportation facility.

While the functional relationship test of activity and use permits the use of FTA funds for joint development improvements located outside the structural envelope of a public transportation project, and may extend across an intervening street, major thoroughfare or unrelated property, functional relationships should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service (in certain cases, for example, within a radius of 1,500 feet around the center of the public transportation project).

e. "Establishes New or Enhanced Coordination Between Public Transportation and Other Transportation"⁵

Any reasonable forecast of joint development impacts that establish new or enhanced coordination between public transportation and other transportation will satisfy this criterion. FTA will accept any reasonably supported judgment of new or enhanced coordination from the project sponsor.

i. "New or Enhanced Coordination"

To establish new or enhanced coordination, a joint development improvement must create or enhance the physical or functional connections between public transportation and other transportation.⁶ Examples of physical connections that establish new or enhanced coordination include, but are not limited to, proximate or shared ticket counters, termini, park-and-ride lots, taxicab bays, passenger drop-off points, waiting areas, bicycle paths and sidewalks connecting public transportation to non-transportation facilities. Projects that shorten the distance between public transportation termini and other transportation shall be presumed to enhance coordination. Examples of functional connections that establish new or enhanced coordination include, but are not limited to, shared or coordinated signage, schedules, and ticketing.

ii. "Public Transportation"

⁵ Subsection (e), "New or Enhanced Coordination," explains the second method for complying with a disjunctive requirement. As explained in section (l)(d) of this document, a joint development improvement may satisfy this requirement by (i) Relating physically or functionally to a public transportation project or (ii) establishing new or enhanced coordination between public transportation and other transportation.

⁶ This requirement is similar to, but not the same as, the requirement of physical or functional relationship described at subsection (d)(i) and (ii). The two are distinct, disjunctive requirements, but they share common criteria. A project could satisfy both requirements, but need only satisfy one to qualify for funding as a joint development improvement. Visualized as such, the disjunctive requirement would appear as a Venn diagram--separate requirements with overlapping criteria.

Section 5307(a)(7) of Title 49 defines “public transportation” as “transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 2437 (or a successor to such entity).”

iii. “Other Transportation”

FTA interprets the term “other transportation,” as used in 49 U.S.C. 5307(a)(1)(G), to mean all forms of transportation that are not public transportation, including, but not limited to, airplane, school bus, charter bus, sightseeing vehicle, intercity bus and rail, automobile, taxicab, bicycle and pedestrian transportation.

f. “Provides a Fair Share of Revenue for Public Transportation That Will Be Used for Public Transportation”

The third criterion for determining whether a joint development improvement is eligible for funding pursuant to a program established under the Federal Transit Law is that the improvement “provides a fair share of revenue for public transportation that will be used for public transportation.”⁸

49 U.S.C. 5302(a)(1)(G). FTA will not define the term “fair share of revenue,” nor will it set a monetary threshold. What is a fair share of revenue, and what form it should take,⁹ shall be negotiated between the parties involved in the joint development improvement. The only requirements are (i) That the public transportation provider receives a fair share of revenue, (ii) that such revenue be used for public transportation, and (iii) that the project sponsor obtain a written opinion of counsel or other advisor (or FTA's agreement) that the share of revenue to public transportation is fair. This allows a public transportation provider to negotiate for financial benefits in exchange for the benefits it will convey through the joint development improvement.

g. “Reasonable Share of the Costs of the Facility”

While not a criterion to determine eligibility, as noted above, it is nonetheless required that any “person making an agreement to occupy space in a facility under [49 U.S.C. 5302(a)(1)(G)] shall pay a reasonable share of the costs of the facility through rental payments and other means.” FTA shall not require a specific valuation methodology and

⁷ National Railroad Passenger Corporation (“Amtrak”)

⁸ This criterion should not be confused with the requirement of 49 U.S.C. 5302(a)(1)(G)(ii) that “a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means.”

⁹ For example, “fair share of revenue” need not be a direct payment of revenue by an intercity bus provider to a transit agency but may take the form of an increase in revenues received by a transit agency, whether in its capacity as landlord or otherwise, as a result of enhanced passenger traffic created by the service of a jointly developed facility by an intercity bus provider, provided that the transit agency and intercity bus provider together designate and report to FTA the source of such “fair share of revenue.” FTA grantees shall expend the “fair share of revenue” in accordance with the common grant rule of 49 CFR 18.1-18.52.

shall accept any reasonable valuation methodology used by the grantee to determine a reasonable share of the costs of the facility.

II. Eligible Activities

Subject to the eligibility criteria detailed at section (II) above, joint development improvements expressly include the following:

- Commercial and residential development;
- Pedestrian and bicycle access to a public transportation facility;
- Construction, renovation, and improvement of intercity bus and intercity rail stations and terminals; and
- Renovation and improvement of historic transportation facilities.

49 U.S.C. 5302(a)(1)(G). These and other joint development improvements will be eligible for FTA funding if they satisfy the criteria set forth above, and do not fall within the exclusion detailed at 49 U.S.C. 5302(a)(1)(G)(ii), which excludes the construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation.¹⁰

Costs related to a joint development improvement are only eligible for Federal Transit funding pursuant to a budget contained in an approved grant. FTA cannot approve funding for costs associated with a joint development improvement that are not contained in an approved grant budget. FTA Regional Administrators approve joint development proposals as part of the grant approval process. Eligible costs for joint development improvements include, but are not limited to, the following:

¹⁰ Many aspects of commercial and residential development will be excluded by 49 U.S.C. 5302(a)(1)(G)(ii), which makes ineligible for FTA financial assistance the "construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation." It is important to note, however, that commercial and residential development is not excluded wholesale. For example, space in an FTA-funded facility may be made available for commercial revenue-producing activities and for connections to revenue producing activities. Similarly, non-commercial, non-revenue-producing aspects of commercial and residential developments may be eligible for FTA financial assistance, subject to the criteria detailed at section (II).

- a. Real Estate Acquisition, including the acquisition of real property and structures thereon;¹¹
- b. Demolition of Existing Structures;
- c. Site Preparation;
- d. Building Foundations, including substructure improvements for buildings constructed over transit facilities;
- e. Utilities, including utility relocation and construction;
- f. Walkways, including bicycle lanes and pedestrian connections and access links between public transportation services and related development;
- g. Open Space, including site amenities and related streetscape improvements such as street furniture and landscaping;
- h. Safety and Security Equipment and Facilities, including lighting, surveillance and related intelligent transportation applications;
- i. Construction, renovation, and improvement of bus and intercity rail stations and terminals;
- j. Facilities that Incorporate Community Services such as daycare or health care;
- k. Capital Project, and Equipment, for an Intermodal Transfer Facility or Transportation Mall, including acquisition of facilities and equipment, roadbeds, tracks and bus ramps, pedestrian concourses, loading shelters, parking facilities, park-and-ride services, improvements of existing bus or rail transit terminals, stations, major transfer points, and shelters as well as other facilities directly related to the linking of public transportation facilities with other modes of transportation;
- l. Furniture, Fixtures and Equipment (FFE): Transportation-related FFE are eligible costs in all cases. However, due to the exclusion of commercial revenue-producing facilities (other than an intercity bus station or terminal) and public facilities not related to public transportation at 49 U.S.C. 5302(a)(1)(G)(ii), FFE related to commercial revenue-producing facilities (other than an intercity bus station or terminal) or public facilities not related to public transportation are considered ineligible;
- m. Parking, including parking improvements with a public transportation justification and use or an intercity bus or intercity rail justification and use in connection with joint development; and
- n. Project Development Activities, including design, engineering, construction cost estimating, environmental analysis, real estate packaging and financial projections (operating income and expenses, debt service and cash flow analysis), and negotiations to secure financing and tenants;
- o. Professional Services, including reasonable and necessary costs incurred to hire professionals to prepare or perform items a through n above, or to assist the grantee in reviewing the same.

III. Ineligible Activities

- a. Construction of a Commercial Revenue-Producing Facility

¹¹ Note that certain costs in connection with real estate acquisition (such as costs associated with eminent domain and relocation assistance) shall be eligible, as provided by the respective statutes and regulations.

Eligible costs do not include construction of commercial revenue producing facilities (other than an intercity bus station or terminal) or part of a public facility not related to public transportation.

VI. Federal Requirements

FTA's Master Agreement contains the standard terms and conditions governing the administration of a project supported with Federal assistance awarded by FTA through a grant agreement or cooperative agreement with the recipient, or supported by FTA through a Transportation Infrastructure (TIFIA) Loan, loan guarantee, or line of credit with the recipient. Not every provision of the Master Agreement will apply to every project for which FTA provides Federal assistance through a grant agreement or cooperative agreement. The type of project, the Federal laws and regulations authorizing Federal assistance for the project, and the legal status of the recipient as a State or local government, private non profit entity, or private for profit entity will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. The recipient shall comply with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Any violation of a Federal law, regulation, or directive applicable to the recipient or its project may result in penalties to the violating party. Applicable crosscutting requirements likely to apply to joint development improvements include, but are not limited to, the following:

a. Ground Lease or Transfer of Federally Assisted Real Estate

If the joint development improvement involves a ground lease or transfer of federally-funded real estate and there is no Federal assistance for new improvements, then the following requirements apply to the lessee or transferee and must be incorporated into the lease or the conveyance instrument:

- Language found at 49 CFR 26.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;
- Language found at 49 CFR 27.7; 27.9(b) and 37 binding the lessee or transferee not to discriminate based on disability and binding the same to compliance with the Americans with Disabilities Act with regard to any improvements constructed; and
- Language contained in FTA's Master Agreement, updated annually in October, particularly relating to conflicts of interest and debarment and suspension.

b. Federally Assisted Construction of Joint Development Improvements

If the construction of improvements is also federally assisted, then the following requirements will apply and must be incorporated into the lease or the conveyance or encumbrance instrument:

- Buy America—language making it clear that the steel, iron, and manufactured goods used in the joint development project are produced in the United States, as described in 49 U.S.C. 5323(j) and 49 CFR part 661;

- Planning and Environmental Analysis—language making it clear that the grantee must comply with, and the joint development project is subject to the requirements of:
 - A. The FHWA/FTA metropolitan and statewide planning regulations at 23 CFR part 450;
 - B. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.;
 - C. Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 59 FR 7629, Feb. 16, 1994;
 - D. FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the NEPA, 40 CFR part 1500 et seq.;
 - E. FHWA/FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR part 771;
 - F. Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation; Advisory Council on Historic Preservation regulations on compliance with Sec. 106, “Protection of Historic and Cultural Properties,” 36 CFR part 800; and
 - G. restrictions on the use of certain publicly owned lands and historic resources unless the FTA makes the specific findings required by 49 U.S.C. 303.
 - Cargo Preference—language making it clear that items imported from abroad and used in the joint development were shipped predominantly on U.S.-flag ships and that the project complies with 46 CFR part 381, to the extent these regulations apply to the joint development;
 - Seismic Safety—language certifying that a structure conforms to seismic safety standards, as contained in 49 CFR part 41;
 - Energy Assessments—Language making it clear that the transferee(s) or joint developer agrees to perform a mandatory, energy assessment as prescribed by 23 CFR part 771 and 42 U.S.C. 8373(b)(1) for any buildings constructed, reconstructed or modified with FTA assistance. The assessment shall be incorporated into the Environmental Impact Statement or Environmental Assessment, if the project has one; otherwise the assessment shall be provided with the application for FTA assistance;
 - Lobbying—49 CFR part 20;
 - Labor Protection—Language making it clear that the transferee or joint developer will adhere to labor protection requirements applying to Federal projects, such as Davis-Bacon—49 U.S.C. 5333(a) and 40 U.S.C. 3141 et seq., and 29 CFR part 5; Copeland “Anti-Kickback” Act as amended, 18 U.S.C. 874

and 29 CFR part 3; and Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 et seq, and 29 CFR part 5 and at 40 U.S.C. 3704; as well as 49 U.S.C. 5333(b) concerning protection of transit employees;

- Civil Rights Requirements—49 U.S.C. 5332 and DOT implementing regulations at 49 CFR part 21 (effecting Title VI of the Civil Rights Act of 1964), 49 CFR 26 (participation by Disadvantaged Business Enterprises in DOT financial assistance programs) and 49 CFR parts 27 and 37 (respectively, nondiscrimination on the basis of disability in programs or activities receiving Federal financial assistance and transportation services for individuals with disabilities);
- Program Fraud—grantees agree to comply with Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and 49 CFR part 31. Penalties may apply for noncompliance;
- Language making it clear that the level of Federal participation in the joint development provides no U.S. Government obligation to third parties in the project; and
- Uniform Relocation—If the federally-funded site to be improved is occupied by other than the grantee and the occupant is displaced, the transferee(s) or joint developer must comply with 42 U.S.C. 4601 et seq. and the regulations at 49 CFR part 24.

c. National Environmental Policy Act (NEPA)

In any instance in which FTA determines that NEPA applies to the joint development, the level of environmental analysis will depend upon the complexity of the project and its likely impacts. In some instances, minimal review will be necessary, in which case FTA may issue a Categorical Exclusion. Generally, however, joint development activities that portend significant environmental impacts will necessitate the preparation of an Environmental Assessment or an Environmental Impact Statement. FTA is available to provide guidance on the environmental review process. See generally the FTA Environmental Impact and Related Procedures at 23 CFR part 771.

V. Eligibility Procedures

Before becoming eligible for FTA funding, a joint development improvement must be approved by the FTA Regional Administrator, or his designee, responsible for the project sponsor's locality. Only FTA grantees may sponsor a joint development improvement. The project sponsor may submit a joint development proposal at any time. FTA approval shall be contingent upon the project sponsor certifying that the joint development improvement conforms to the criteria set forth above and that the project conforms to the requirements of the common grant rule found at 49 CFR 18.31. In the event that the project does not conform to 49 CFR 18.31, FTA may approve the project if the project sponsor submits an

alternative certification explaining compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18.25(g)(4) and (5) together with supporting documentation, in each case in form and substance satisfactory to FTA in its reasonable discretion.

The FTA Regional Administrator, or his designee, shall approve all proposals that meet the criteria described herein. Like all projects funded by FTA, joint development improvements are subject to the applicable crosscutting requirements.

There are two methods for seeking approval for a joint development project. In all cases, the project sponsor must submit a completed Joint Development Checklist and proposed Joint Development Agreement.

By submitting a completed Joint Development Checklist, the project sponsor shall certify that the proposed joint development improvement conforms to the criteria of 49 U.S.C. 5302(a)(1)(G) as outlined above.

For an expedited review, the joint development proposal shall include a signed Certificate of Compliance. By signing the Certificate of Compliance, the project sponsor shall certify, among other things, that the proposed joint development improvement conforms to the requirements of 49 CFR 18.31.

If a project sponsor seeks a more individualized review of the project, a joint development proposal shall include an explanation of compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18.25(g)(4) and (5) (the "alternative certification") with supporting documentation.

The Joint Development Checklist and Certificate of Compliance are attached hereto.

VI. Real Property

Real property acquired by a grantee or subgrantee pursuant to 49 U.S.C. 5302(a)(1)(G) shall be governed by 49 U.S.C. 5334(h) as amended, and subject to the obligations and conditions set forth in 49 CFR 18.31 as amended, which require the grantee or subgrantee to request disposition instructions from FTA whenever real property is no longer needed for the originally authorized purpose.¹²

VII. Applicability of Third Party Contracting Requirements

FTA's third party contracting requirements, which appear in FTA Circular 4220.1E, have limited applicability to joint development projects. As described on page 12 of Circular 4220.1E, the third-party contracting requirements must apply to the federally funded

¹² FTA shall rely on the parties to joint development transactions, including, notably, transit agencies, to determine the appropriate use and disposition of real property used on joint development improvements, so long as such disposition and use complies with applicable statutes and duly promulgated regulations of FTA. For example, FTA shall no longer apply, and shall not require it grantees to apply, its administratively-derived test of "highest and best transit use" (or any other tests) for determining the value of real property used in FTA-funded joint developments, including the disposition of real property connected to a joint development improvement. In the past, FTA relied on 49 CFR 18.25(g) as its authority for requiring (and determining in its discretion) the "highest and best transit use" of such property. No such requirement is expressly authorized or required by 49 CFR 18.25(g), however.

construction aspects of joint development. With regard to revenue contracts as defined in the Circular, FTA will work with grantees on a case-by-case basis to craft approaches that satisfy the statutory and regulatory requirements while preserving the benefits of this innovative contracting strategy to the maximum possible extent. If a contract between a grantee and a third party involving a joint development project is not a construction contract or a revenue contract as defined by Circular 4220.1E, then such contract is not covered by FTA's third party contracting requirements. Paragraph 7.n. of Circular 4220.1E defines "revenue contracts" as "those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity or to create business opportunities utilizing an FTA funded asset."

Revenue contracts in joint development projects that do not meet this primary purpose test are not covered by the third party contracting requirements. For example, third party contracts to manage, operate, and/or maintain intercity bus or intercity rail terminals that are part of FTA-funded joint development projects or tenancy agreements with third party intercity bus or intercity rail operators are not covered revenue contracts. The primary purpose of such contracts is to carry out the congressional intent to give grantees the flexibility to integrate intercity rail and intercity bus terminals and their related services into FTA-funded joint development projects.

Even in situations not covered by the third party contracting requirements, FTA generally favors full and open competition. However, where the third party contracting requirements are not involved, FTA will leave it to the full discretion of the grantees to determine the appropriate extent and nature of competition, if any, for such contracts. For example, in cases involving management of intercity bus or rail terminals or tenancy agreements in those terminals, FTA recognizes that given the unique nature of the national intercity rail and bus systems, a competitive procurement process for such contracts may not be appropriate.

VII. Certificate of Compliance

To ensure compliance with 49 CFR 18.31 and other Federal requirements related to joint development improvements, and the acquisition, use and disposition of real property for such improvements, FTA shall require project sponsors to sign a Certificate of Compliance or, in lieu of such certificate, an alternative certification explaining compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18.25(g)(4) and (5) with supporting documentation. By signing the Certificate of Compliance, the project sponsor shall certify, among other things, that the proposed joint development improvement conforms to the requirements of 49 CFR 18.31.

IX. Satisfactory Continuing Control

For purposes of this guidance and the Certificate of Compliance, "satisfactory continuing control" shall not mean complete operating or managerial control of a joint development facility. In determining whether "satisfactory continuing control" with respect to a joint development capital project is maintained, the project sponsor and FTA shall consider, as a

primary factor, whether the project sponsor has the right and power to direct that such project shall be used for activities eligible for funding under Federal Transit Law (49 U.S.C. 53).

Proposed Joint Development Checklist

Joint Development Checklist

I. PROJECT DESCRIPTION		
Project Sponsor:	Date Submitted:	FTA Project Number (if known):
Project Title:		
Project Location (Include City and Street Address):		
Name of Project Contact:	Phone:	E-mail Address (if available):
Type of Project: <input type="checkbox"/> Commercial development <input type="checkbox"/> Residential development <input type="checkbox"/> Pedestrian or bicycle access to public transportation facility <input type="checkbox"/> Construction, renovation, or improvement of intercity bus or intercity rail station or terminal <input type="checkbox"/> Renovation or improvement of historic transportation facility <input type="checkbox"/> Other		
Description of Project:		

II. MATERIALS SUBMITTED
<input type="checkbox"/> Joint Development Checklist
<input type="checkbox"/> Joint Development Agreement
<input type="checkbox"/> Certification of Compliance <u>or</u>
<input type="checkbox"/> Alternative Certification (with written explanation)

III. APPLICATION OF STATUTORY CRITERIA	
Requirement	Description
Economic Link (check (1) or (2)): <input type="checkbox"/> (1) Enhances economic development <u>or</u> <input type="checkbox"/> (2) Incorporates private investment	
Public Transportation Benefit (check (3) & (4), or (5)): <input type="checkbox"/> (3) Enhances the effectiveness of a public transportation project <u>and</u> <input type="checkbox"/> (4) Relates physically or functionally <u>or</u> <input type="checkbox"/> (5) Establishes New or Enhanced Coordination Between Public Transportation and other Transportation	
Revenue for Public Transportation (check (6)): <input type="checkbox"/> (6) Provides a Fair Share of Revenue for Public Transportation that will Be Used for Public Transportation	
Reasonable Share of Costs (check (7) if applicable): <input type="checkbox"/> (7) Occupants to pay a reasonable share of the costs of the facility through rental payments and other means	

Proposed Certificate of Compliance

Certificate of Compliance

Effective as of the date hereof, the undersigned hereby certifies and covenants to the Federal Transit Administration ("FTA") as follows:

1. Title. Subject to the obligations and conditions set forth in 49 CFR 18.31, as amended, title to real property acquired under a grant or subgrant for FTA Project Number—, [insert project title here] (the "Project"), shall vest in the undersigned or subgrantee thereof (collectively or individually, as the case may be, the "Grantee").

2. Use. Except as otherwise provided by Federal statutes, real property shall only be used for the originally authorized purposes (which may include Joint Development purposes that generate program income, both during and after the award period and used to support public transportation activities) as long as needed for such purposes, and that the Grantee shall not dispose of or encumber its title or other interests.

3. Disposition. When real property acquired with funds provided by FTA for the Project is no longer needed for the purpose originally authorized by FTA, the Grantee shall request disposition instructions from FTA and shall agree that, unless otherwise authorized by FTA, such disposition shall be made in accordance with applicable law, including without limitation 49 U.S.C. 5334(h) and 49 CFR 18.31.

4. Federal Interest. The Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance ("Project Property") until, and to the extent that, the Federal Government relinquishes its Federal interest in such Project Property.

5. Incidental Use. Any incidental use of Project Property, as determined by FTA, shall not exceed that permitted under applicable Federal laws, regulations, and directives, including the requirements of FTA's Master Agreement.

6. Encumbrance of Project Property. The Grantee covenants to FTA as follows:

a. Written Transactions. The Grantee agrees that it will not execute any transfer of title to the Project Property or enter into an instrument legally binding on the Grantee that would encumber Federal Interest in the Project Property.

b. Oral Transactions. The Grantee agrees that it will not obligate itself in any manner to any third party with respect to Project Property.

7. Notice to Joint Development Partner. The undersigned has delivered to the Joint Development Partner a duly executed copy of this certificate, dated as of the date hereof,

receipt of which has been acknowledged by the Joint Development Partner in writing to the undersigned on or before the date of execution of the Joint Development Agreement.

8. Other Actions. The Grantee (a) agrees that it will not take any action that encumbers the Federal Interest in the Project Property and (b) hereby affirms that each of its representations and warranties set forth in the Master Agreement is true and correct in all material respects as of the date hereof. The Grantee agrees that nothing herein shall supersede, amend, modify or otherwise affect the provisions, terms or conditions set forth in the Master Agreement.

9. Definitions.

- a. "FTA" shall have the meaning provided in the preamble of this certificate.
- b. "Grantee" shall have the meaning provided in section (2) of this certificate.
- c. "Joint Development" shall mean a capital project as defined by 49 U.S.C. 5302(a)(1)(G) that is eligible for funding pursuant to the terms and conditions set forth in [insert new Joint Development circular number].
- d. "Joint Development Partner" shall mean [insert definition].
- e. "Master Agreement" shall mean that certain Master Agreement by and between FTA and the Grantee, as authorized by 49 U.S.C. 53, Title 23, United States Code (Highways), the National Capital Transportation Act of 1969, as amended, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21st Century, as amended, or other Federal laws that FTA administers, as the same may be lawfully revised, superseded or supplemented from time to time.
- f. "Project" shall have the meaning provided in section (1) of this certificate.
- g. "Project Property" shall have the meaning provided in section (4) of this certificate.

10. No Estoppel. The undersigned agrees that acceptance of this Certificate of Compliance by FTA shall not estop the Federal government from initiating or conducting, and shall not be used as a defense for, any investigation, audit or inquiry by the Federal government following approval by FTA of the project.

Issued on the 5th day of September, 2006.
James S. Simpson,
Administrator.