

FTA

FEDERAL TRANSIT ADMINISTRATION

FTA's Final Joint Development Circular

Webinar
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U.S. Department of Transportation
Federal Transit Administration

Presenters

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Agenda

- Introduction and Background
- Overview of Final Circular
- Questions and Answers

FTA Joint Development Circular Introduction and Background

Circular Development

- FTA issued Notice of Availability of Proposed Circular on Joint Development – March 2013
- Specifically solicited comments on “fair share of revenue” criterion
- New Policy Focus: Ensure JD projects generate a fair share of revenue for the transit agency

New Joint Development Framework

- Requirement to conduct and certify baseline market analysis
- Establishment of a fair share of revenue threshold
- Clarification of the FTA review process

Overview of Final Joint Development Circular

Joint Development: Defined



A transit project



Integrally related to commercial, residential or mixed-use development; often co-located



May include public, private or non-profit development associated with transit capital investments



FTA financial assistance = “a federal interest”



Joint Development: FTA's Policy

FTA supports the use of joint development wherever possible to maximize utility of FTA-funded projects

FTA allows the revenue received from an FTA-funded joint development project to be treated as program income

FTA recognizes that joint development provides multiple and varied benefits

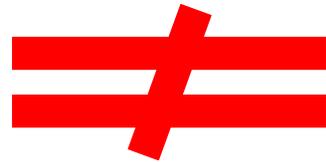
FTA supports the grantee's ability to work with the private sector and others

Circular Overview

- Circular only applies to Joint Development having a Federal interest
- As a transit project, eligible for FTA planning and capital funding
- May include public, private or non-profit development associated with transit capital investments
- There is no specific FTA funding program for Joint Development.

FTA Joint Development Distinctions

Joint Development



Transit-Oriented Development (TOD)

Public Private Partnership (P3)

Bicycle and Pedestrian Projects

FTA Joint Development Considerations

- Eligibility for FTA funds
- Real property concerns when FTA assisted

Eligibility Requirements

JD Project Eligibility

§ 5302(3)(G): “Capital project” includes a joint development improvement that ...

i. Creates an economic benefit;

ii. Enhances public transportation;

iii. Provides a fair share of revenue for public transportation; and

iv. Requires the JD’s tenants to pay a fair share of the costs of the occupied facility.

i. Economic Benefit

(1) Enhance economic development

- Demonstrate that the JD will contribute to privately or publicly funded economic development activity occurring in close proximity to the transit facility.

OR

(2) Incorporate private investment

- Does not need to be monetary; the amount and form of private investment is up to the project sponsor and its partners.

ii. Public Transportation Benefit

(I) Enhances the effectiveness of public transportation and is related physically or functionally to transit

- **Public transit benefit:** forecasted benefits such as increased ridership, travel-time savings, enhanced wayfinding, improved access, reduced transit operating costs
- **Physical relationship:** direct physical connection to transit service or facility, such as being within or adjacent to transit, directly connected, or air rights
- **Functional relationship:** enhances connectivity with or access to transit

ii. Public Transportation Benefit

OR

(2) Establishes new or enhanced coordination between transit and other kinds of transportation

- Demonstrates enhanced coordination between transit and another mode of transportation (e.g., intercity bus/rail, taxi facilities, etc.)
- May include shared ticket counters, terminals, parking facilities, waiting areas, walkways, etc.

iii. Fair Share of Revenue

- **Minimum Threshold Policy:**

The project sponsor must minimally receive an amount of revenue that is equivalent to the amount of the original FTA investment in the FTA-assisted asset contributed to the joint development project.

- **Community Service/Public Facility Policy:**

The “fair share of revenue” can be less than the amount of the original FTA investment contributed to the project, but must be based on the actual revenue generated by the community service or publicly operated facility.

iii. Fair Share of Revenue

Minimum Threshold Policy

$$\text{Fair Share of Revenue} \geq \frac{\text{Original FTA Investment Contributed by Project Sponsor to the Joint Development}}{\text{Amount of Revenue to Project Sponsor from Partner(s) over the Contract Agreement Period}}$$

The Project Sponsor and Joint Development Partner(s) may negotiate a higher revenue share than the minimum threshold.

iv. Tenants Pay Share of Costs

- Applicable only when the project provides space within a federally-assisted transit facility for use by a tenant or for a non-transit purpose.
- Agreement must include provisions for the tenant to cover its fair share of the operating and maintenance costs of the facility.
- Rental payments or “other means.” Gives flexibility to project sponsor.

Eligible Activities

Joint development projects and activities eligible for FTA capital assistance:

- Typical capital activities of FTA projects
- Capital activities associated with a transit project identified through the transportation planning process
- See list on pages III-7 and 8

Ineligible Activities

FTA law *prohibits* the use of federal funds for joint development when ...

- Outfitting of commercial space
 - “Shell” of structure OK. “Outfitting” includes fixtures and equipment for the purpose of generating commercial revenue (signs, shelves, kitchen equipment, furniture, etc.).
 - Exception for intercity bus/rail facilities.
- Part of a public facility not related to public transit
 - All four criteria must be met.
 - Must be physically or functionally related to transit.

Real Property Considerations

1. How was/is the property acquired
2. How is the property being used
3. How is the property being protected for transit

Acquisition of Real Property with FTA Assistance

- Real Property must be acquired, managed and used in accordance with applicable laws, regulations, and guidance
- Uniform Assistance and Real Property Acquisition Policies Act of 1970, as amended

Use of Real Property

Originally Authorized Purpose

49 C.F.R 18.31(b) Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purpose as long as needed for that purpose; and the recipient shall not dispose of or encumber its title or other interests.

FTA's Master Agreement includes joint development as an allowable transit purpose.

Use of Real Property

Joint Development Transfers

- Typically in a JD, program income is derived from the recipient encumbering title to or interest in FTA funded real property.
- Examples include: leases, covenants, mortgages, deed restrictions, easements, and any other contractual arrangements short of a disposition.
- A transfer for the purposes of joint development is not a disposition -- *disposed-of property cannot be used in an FTA-assisted joint development project.*

Satisfactory Continuing Control

The legal assurance that FTA-funded property will remain available for its originally authorized purpose throughout its useful life until disposition

- Available for public transportation purpose
- Unimpeded public transportation access
- Written FTA concurrence required

Parking Considerations

Joint Development does NOT require one-to-one parking replacement, but the project sponsor should consider:

- Has the parking facility reached the end of its useful life?
- Does the change from parking to joint development benefit public transportation?
- Are there any prior grant commitments that require the project sponsor to construct specific parking facilities or achieve a certain level of ridership?

NEPA and Cross-Cutting Requirements

JD and NEPA

NEPA review of joint development projects depends on:

- FTA's control over the project
- The degree that the JD is reasonably foreseeable
- The award of new FTA grant for the project

Consult with your FTA Regional Office on the applicability of NEPA and other environmental requirements.

JD and NEPA

Joint Development Project Description	NEPA Approach
Proposed JD occurs concurrently as part of a larger FTA-assisted project, no independent utility	JD included in NEPA evaluation of larger FTA-assisted project
Proposed JD is known and would be: (1) co-located with FTA-assisted project, or (2) FTA-assisted project is designed to accommodate future non-transit development	Reasonably foreseeable JD included, to extent practicable, in NEPA evaluation of larger FTA-assisted project
Unanticipated JD to be co-located is identified during construction of an FTA-assisted project and, therefore, was not included in NEPA review	NEPA reevaluation needed to determine if supplemental and public review is required
FTA-assisted real property acquisition for non-transit development project phased prior to unknown transit project	Prohibited application, unless property acquired for purpose of corridor preservation; NEPA review required for FTA-assisted real property acquisition
Proposed JD using existing FTA-assisted transit facility developed on real property also acquired with FTA assistance; grant now closed.	No NEPA evaluation required if FTA is not funding actual JD and has no control over project

Other Federal Requirements

- Planning (page V-1)
- Procurement (page V-4)
- Leases and Conveyances (page V-4)
- Civil Rights (page V-6)

The FTA Review Process

FTA Review of Joint Development

- Two-Stage Review Process
 - Preliminary Review
 - Formal Review
- Required Documents
 - Certificate of Compliance
 - Joint Development Project Request Form
 - Joint Development Agreement
- Additional Documentation
 - Appraisal and Review Appraisal

Baseline Market Analysis

Project Sponsors must certify that a Baseline Market Analysis was conducted.....

What is the Baseline Market Analysis?

- Provides the market basis for revenue projections
- Ensures due diligence
- Project sponsor lists studies conducted and purpose on Project Request Form
- Studies used must be made available upon FTA request

Baseline Market Analysis

What may trigger a review of the Baseline Market Analysis by FTA?

- Agreed Upon Revenue is Less than FSR Threshold
 - Except for Community Service Facilities
- Due Diligence Efforts not Documented
 - Baseline Market Analyses
 - Data Sources
 - Documentation

New Project Request Form

- Project Request Form updated to reflect JD Circular structure, requirements
- Project sponsor submits form to FTA Region
- Form Sections:
 - Project Description and Overview
 - Eligibility Requirements
 - Real Property Considerations
 - Baseline Market Analysis
 - Documentation

Webinar Availability

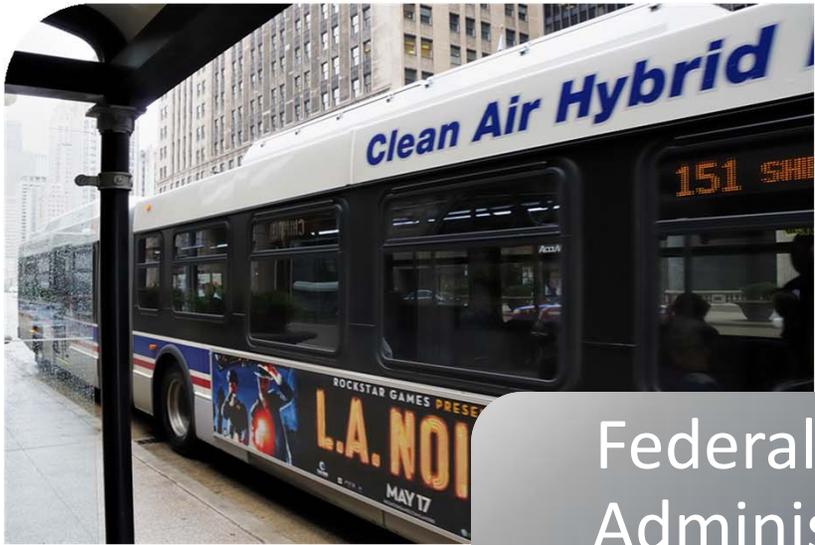
Webinar recorded and will be posted at FTA's Joint Development webpage:

<http://www.fta.dot.gov/grants/16124.html>

QUESTIONS?

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