

be mailed or delivered to Mr. Robert J. Kemp, New Hanover County Airport Authority at the following address: Mr. Robert J. Kemp, Airport Director, New Hanover County Airport Authority, 1740 Airport Boulevard, Wilmington, NC 28405.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the New Hanover County Airport Authority under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Terry R. Washington, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2-260, College Park, GA 30337-2747, Telephone No. (404) 305-7143.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at New Hanover International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 27, 1997, the FAA determined that the application to use the revenue from a PFC submitted by New Hanover County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 28, 1997.

The following is a brief overview of the application.

*Level of the proposed PFC:* \$3.00.

*Charge effective date:* February 1, 1994.

*Charge expiration date:* January 31, 1997.

*Total PFC revenue collected:* \$410,546.

*Application number:* 97-02-U-00-ILM.

*Brief description of proposed project(s):*

1. Medium Intensity Taxiway Lighting Rehabilitation
2. Acquire Ramp Sweeper
3. Precision Path Indicator Runway 35
4. Reconstruct/Widen Taxiways A&H, and Construct Exit Taxiways for Runway 6-24
5. Install fencing & Security Road

Class or classes of air carriers which the public agency did not require to collect PFCs: On demand air taxi/commercial operator filing FAA form 18-31 enplaning less than 150 passengers per year at New Hanover International Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the New Hanover County Airport Authority.

Issued in Atlanta, Georgia on March 7, 1997.

Dell T. Jernigan,

*Manager, Atlanta Airports District Office Southern Region.*

[FR Doc. 97-6527 Filed 3-13-97; 8:45 am]

**BILLING CODE 4910-13-M**

## Federal Transit Administration

### Policy on Transit Joint Development

**AGENCY:** Federal Transit Administration (FTA), U.S. Department of Transportation.

**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.

**DATES:** Effective March 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Steinmann, Director, Office of Policy Development, on (202) 366-4060; or Paul Marx, Economist, on (202) 366-1675.

## SUPPLEMENTARY INFORMATION:

### 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 incumbrance 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, § 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, § 18.31 apply. That is, the pro-rata Federal share of the net proceeds of a sale at fair market value are 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.<sup>1</sup> 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 which preserves the defined physical or functional relationship between the development and the transit facility should satisfy this requirement. As long as such control is maintained, the transit agency may retain all revenues

<sup>1</sup> 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.

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</sup> 5309 (a) (1)–(5), 5309 (a)(7), and 5309 (f), and by allowing the proceeds from sale, lease or other incumbrance 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,<sup>3</sup> 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 purpose.

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.<sup>4</sup>

The policy will not affect leases of real property for non-transit purposes or

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

<sup>3</sup> 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.

<sup>4</sup> FTA realizes that properties supported with Nonurbanized Area or Elderly and Persons with Disabilities program funds are unlikely candidates for 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.

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.<sup>5</sup>

• 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

<sup>5</sup> 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.

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.<sup>6</sup> 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.

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.

Authority: 49 U.S.C. 5307, 5309(a)(1)–(5), 5309(a)(7), and 5309(f), as well as 49 CFR Subtitle A.

<sup>6</sup>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.

Issued on March 10, 1997.

Gordon J. Linton,  
Administrator.

Attachment A

Listing of FTA Regions:

Region 1

Volpe National Transportation Systems  
Center, Kendall Square, 55 Broadway,  
Suite 920, Cambridge, MA 02142-1093

Region 2

26 Federal Plaza, Suite 2940, New York, NY  
10278-0194

Region 3

1760 Market Street, Suite 500, Philadelphia,  
PA 19103-4124

Region 4

Atlanta Federal Center, 100 Alabama Street,  
N.W., 17th Floor, Suite T1750, Atlanta, GA  
30303

Region 5

55 East Monroe Street, Rm 1415, Chicago, IL  
60603-5704

Region 6

Parkview Place, 524 East Lamar Street, Suite  
175, Arlington, TX 76011-3900

Region 7

6301 Rockhill Road, Suite 303, Kansas City,  
MO 64131-1117

Region 8

Columbine Place, 216 16th Street, Suite 650,  
Denver, CO 80202-5120

Region 9

201 Mission Street, Suite 2210, San  
Francisco, CA 94105-1831

Region 10

Jackson Federal Building, 915 Second Ave.,  
Suite 3142, Seattle, WA 98174-1002.

[FR Doc. 97-6462 Filed 3-13-97; 8:45 am]

BILLING CODE 4910-57-P

### National Highway Traffic Safety Administration

[Docket No. 97-013; Notice 2]

#### General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance; Correction

AGENCY: National Highway Traffic  
Safety Administration, DOT.

ACTION: Correction to a notice.

SUMMARY: The Docket No. 97-113;  
Notice 1, as it appeared in the Federal  
Register on March 7, 1997, on page  
10618 is incorrect. It should appear as  
Docket 97-013; Notice 1.

Authority: 49 U.S.C. 30118, 30120;  
delegation of authority at 49 CFR 1.50 and  
501.8.

Issued: March 11, 1997.

L. Robert Shelton,

Associate Administrator for Safety  
Performance Standards.

[FR Doc. 97-6525 Filed 3-13-97; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 97-16]

#### Country of Origin Marking of Products From the West Bank and Gaza

AGENCY: U.S. Customs Service,  
Department of the Treasury

ACTION: Notice of policy.

SUMMARY: This document clarifies T.D.  
95-25 by notifying the public that, with  
respect to imported goods which are  
produced in the West Bank and Gaza  
Strip, acceptable country of origin  
markings consist of "West Bank/Gaza,"  
"West Bank/Gaza Strip," "West Bank  
and Gaza," and "West Bank and Gaza  
Strip" as well as "West Bank," "Gaza"  
or "Gaza Strip."

EFFECTIVE DATE: The position set forth in  
this document is effective for  
merchandise entered or withdrawn from  
warehouse for consumption on or after  
March 14, 1997.

FOR FURTHER INFORMATION CONTACT:  
Craig Walker, Special Classification and  
Marking Branch (202) 482-6980.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 304 of the Tariff Act of 1930,  
as amended (19 U.S.C. 1304), provides  
that, unless excepted, every article of  
foreign origin (or its container) imported  
into the U.S. shall be marked in a  
conspicuous place as legibly, indelibly,  
and permanently as the nature of the  
article (or its container) will permit, in  
such a manner as to indicate to the  
ultimate purchaser in the U.S. the  
English name of the country of origin of  
the article. Failure to mark an article in  
accordance with the requirements of 19  
U.S.C. 1304 shall result in the levy of a  
duty of ten percent *ad valorem*. Part  
134, Customs Regulations (19 CFR Part  
134), implements the country of origin  
marking requirements and exceptions of  
19 U.S.C. 1304.

T.D. 95-25

T.D. 95-25, published in the Federal  
Register on April 6, 1995 (60 FR 17607),  
discussed the proper country of origin  
marking for imported goods produced in  
the West Bank and Gaza Strip. Prior to  
the issuance of the T.D., Customs had

taken the position that, in order for the  
country of origin marking of a good  
which was produced in the West Bank  
or Gaza Strip to be considered  
acceptable, the word "Israel" must  
appear in the marking designation.  
However, by letter dated October 24,  
1994, the Department of State advised  
the Department of the Treasury that, in  
view of certain developments,  
principally the Israeli-PLO Declaration  
of Principles on Interim Self-  
Government Arrangements (signed on  
September 13, 1993), the primary  
purpose of 19 U.S.C. 1304 would be best  
served if goods produced in the West  
Bank and Gaza Strip were permitted to  
be marked "West Bank" or "Gaza  
Strip."

Accordingly, as Customs has  
previously relied upon advice received  
from the Department of State in making  
determinations regarding the "country  
of origin" of a good for marking  
purposes, Customs notified the public  
in T.D. 95-25 that, unless excepted from  
marking, goods produced in the West  
Bank or Gaza Strip shall be marked as  
"West Bank," "Gaza," or "Gaza Strip."  
The T.D. further stated that the country  
of origin markings of such goods shall  
not contain the words "Israel," "Made  
in Israel," "Occupied Territories-Israel,"  
or words of similar meaning.

#### Clarification

Subsequent to the issuance of T.D.  
95-25, the Israeli-Palestinian Interim  
Agreement was signed, granting  
additional powers and responsibilities  
to the Palestinian Authority. In  
addition, an amendment to the United  
States-Israel Free Trade Area  
Implementation Act of 1985 (19 U.S.C.  
2112 note), enacted on October 3, 1996,  
authorized the President to proclaim  
duty-free treatment to products of the  
West Bank and Gaza Strip. Such duty-  
free treatment was implemented by  
Presidential Proclamation 6955 dated  
November 13, 1996, effective for  
products of the West Bank and Gaza  
Strip entered or withdrawn from  
warehouse for consumption on or after  
November 21, 1996.

By letter dated January 13, 1997, the  
Department of State advised the  
Department of the Treasury that the  
Palestinian Authority has asked that the  
U.S. accept the country of origin  
marking "West Bank/Gaza" so as to  
reaffirm the territorial unity of the two  
areas. The Department of State further  
advised that it considers the West Bank  
and Gaza Strip to be one area for  
political, economic, legal and other  
purposes. Accordingly, the Department  
of State requested that Customs accept  
the country of origin markings "West