ACTION: Notice; announcement of proposals selected to advance to Phase 2 of the Corridors of the Future Program.

SUMMARY: The U.S. Department of Transportation (DOT) announces the selection of the Corridors of the Future (CFP) Phase 1 proposals to be advanced to Phase 2 of the CFP. Through the CFP selection process, the DOT will select up to 5 nationally significant transportation corridors in need of investment for the purpose of reducing congestion, increasing freight system reliability, and enhancing the quality of life for U.S. citizens. The DOT has identified 8 nationally significant corridors comprised of 14 CFP proposals that have the potential to alleviate congestion and provide national and regional long-term benefits to further economic growth and international trade within the corridors and across the Nation. Several of these proposals are multimodal and multi-jurisdictional in nature.

DATES: The proposals selected for Phase 2 of the CFP are invited to submit a Corridor Application. Applications must be received on or before May 25, 2007.

ADDRESSES: Proposals selected for Phase 2 should submit their Corridor Application to Mr. James D. Ray, Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Room 4213, Washington, DC 20590, or electronically to *corridorsofthefuture@dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael W. Harkins, Attorney-Advisor, (202) 366–4928 (*michael.harkins@dot.gov*), or Ms. Alla C. Shaw, Attorney-Advisor, (202) 366–1042 (*alla.shaw@dot.gov*), Federal Highway Administration, Office of the Chief Counsel, 400 Seventh Street, SW., Room 4230, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access: An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background: On September 5, 2006, the DOT published a notice in the **Federal Register** seeking applications from States, or private sector entities, interested in forming coalitions to build and manage corridors in a way that alleviates congestion on our highways, rail, or waterways (71 FR 52364). The notice outlined a two-phase submission and selection process. For Phase 1, interested parties were asked to submit proposals containing general information about the proposed corridor projects. The DOT received 38 proposals during Phase I and evaluated each proposal against the primary objectives of the CFP. The DOT established a team comprised of representatives from DOT's surface transportation administrations with expertise in the areas of finance, environment and planning, infrastructure, and operations to review the proposals. Proposals were selected to move forward to Phase 2 based on each Applicant's responsiveness to the information requested for Phase 1 and the ability of the proposed project to achieve the primary goals of the CFP, including the development of corridors with national and regional significance in the movement of freight and people, congestion reduction, and the use of innovative financing.

Based on the recommendations of the Phase 1 review team, the DOT has identified 8 major corridors comprised of 14 CFP proposals that have the potential to achieve the goals of the CFP.

The 8 corridors and 14 proposals selected for Phase 2 of the CFP are as follows:

1. Interstate 95 (I–95)

A. I–95—Submitted by the Florida, Georgia, South Carolina, North Carolina and Virginia DOTs.

B. I–95—Submitted by the Interstate 95 Corridor Coalition.

C. The Southeast Interstate 95 Corridor—Submitted by CSX Corporation.

2. Interstate 80 (I–80)

A. I–80 Nevada—Submitted by the Regional Transportation Commission, Reno, Nevada on behalf of the I–80 Coalition.

B. I–80 California—Submitted by the California DOT.

3. Interstate 15 (I–15)

A. I–15 Corridor California—Submitted by the California DOT.

B. I–15 Nevada—Submitted by the Nevada DOT.

4. Northern Tier (Interstates 80, 90, and 94)

A. Detroit/Chicago National/International Corridor of Choice (I–94) (National Freight Node and Link)—Submitted by the Michigan DOT.

B. Illiana Expressway and Freight Corridor (National Freight Node)—Submitted by the Indiana and Illinois DOTs, Northwestern Indiana Regional Planning Commission, and Chicago Metropolitan Agency for Planning.

5. Interstate 5 (I–5)

A. I–5 in the Portland, Oregon and Vancouver, Washington metropolitan area—Submitted by the Oregon and Washington State DOTs.

B. I–5 Corridor California—Submitted by the California DOT.

6. Interstate 70 (I–70) Dedicated Truck Lanes Corridor Missouri to Ohio—Submitted by the Indiana DOT in partnership with the Missouri, Illinois, and Ohio DOTs.

7. Interstate 69 (I–69)—Submitted by Arkansas State Highway and Transportation Department on behalf of the I–69 Corridor Coalition.

8. Interstate 10 (I–10)—Submitted by Wilbur Smith Associates.

The proposals selected for Phase 2 of the CFP are invited to submit a Corridor Application as described in the September 5, 2006, notice. Corridor Applications must be received on or before May 25, 2007.

Authority: 49 U.S.C. 101.

Issued on: February 1, 2007.

Maria Cino,

Deputy Secretary.

[FR Doc. E7–1979 Filed 2–6–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2006–23511]

Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final Agency Guidance.

SUMMARY: This final Agency guidance describes the eligibility of ''joint development'' improvements under 49 U.S.C. 5301 *et seq.* (Federal transit law) by interpreting 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 final Agency guidance is the culmination of three notices issued by the Federal Transit Administration (FTA or Agency), the first of which appeared in the **Federal Register** on January 31, 2006. FTA intends to publish the text of this final Agency guidance as a stand-alone FTA Circular

titled The Eligibility of Joint Development Improvements under Federal Transit Law.

DATES: *Effective Date:* The effective date of this final Agency guidance is February 7, 2007.

Availability of the Final Agency Guidance and Comments: Copies of this final Agency guidance and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket number FTA–2006–23511. For access to the DOT docket, please go to *http://dms.dot.gov* at any time or to the Docket Management System facility, U.S. Department of Transportation, Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jayme L. Blakesley, Attorney-Advisor, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–0304, *jayme.blakesley@dot.gov*; or Robert J. Tuccillo, Associate Administrator, Office of Budget & Policy, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4050, *Robert.tuccillo@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This document is organized in the following sections:

I. Background

This final Agency guidance describes the eligibility of ''joint development'' improvements under 49 U.S.C. 5301 *et seq.* (Federal transit law). 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 Federal transit law. This amendment permits the Federal Transit Administration (FTA or Agency) 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 (each, a project sponsor), and to their joint development partners, this final Agency 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 defers 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.

This final Agency guidance is the culmination of three notices issued by FTA, the first two of which appeared in the **Federal Register** on January 31, 2006, at 71 FR 5107, and March 26, 2006, at 71 FR 15513. These notices were superseded by a Notice of Proposed Agency Guidance and Request for Comments on the Eligibility of Joint Development Improvements under Federal Transit Law published by FTA on September 12, 2006, in the **Federal Register** at 71 FR 53745.

In the past, FTA has appended its guidance on the eligibility of joint development to its Circulars 5010.1, 9300.1 and 9030.1, guidance for new Major Capital Investments, Grants Management, and Formula Capital Grants, respectively. FTA has decided to consolidate these appendices into one Circular on the eligibility of joint development improvements. FTA intends to publish the text of this final Agency guidance as a stand-alone FTA Circular titled The Eligibility of Joint Development Improvements under Federal Transit Law.

FTA hereby adopts 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 in 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.

II. Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law

This final Agency guidance describes the eligibility of ''joint development'' improvements under 49 U.S.C. 5301 *et seq.* (Federal transit law). 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 transit funds. This amendment permits the Federal Transit Administration (FTA or Agency) 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 (project sponsor), and to their joint development partners, this final Agency 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 defers 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.

Table of Contents

This final Agency guidance is organized in the following sections:

I. 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.

49 U.S.C. 5302(a)(1)(G).

This definition establishes the following criteria for determining whether a joint development improvement is eligible for funding pursuant to a program established under 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 relate 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. 49 U.S.C. 5302(a)(1)(G)(i).

Joint development improvements shall 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.

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 investment.[1]

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 shall 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 shall not set a monetary threshold for private investment. Rather, 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 shall 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 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

[1] 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).

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'' [2]

Any reasonable forecast of joint development impacts that establish new or enhanced coordination between public transportation and other transportation shall satisfy this criterion. FTA shall 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.[3]

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 other 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''

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 243 [4] (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 Federal transit law is that the improvement ''provides a fair share of revenue for public transportation that will be used for public transportation.'' [5] 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,[6] shall be negotiated between the parties involved in the joint development improvement. The only requirements are: (i) That the recipient's Board of Directors (or similar governing body) determines, following reasonable investigation, that the terms and conditions of the joint development improvement (including, without limitation, the share of revenues for public transportation which shall be provided thereunder) are commercially reasonable and fair to the recipient; and (ii) that such revenue shall be used for public transportation. This enhances the ability of 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 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 I 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.[7]

[2] Subsection (e), ''New or Enhanced Coordination,'' explains the second method for complying with a disjunctive requirement. As explained in section (I)(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.

[3] 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.

[4] National Railroad Passenger Corporation (''Amtrak'').

[5] This criterion should not be confused with the requirement of 49 U.S.C. 5302(a)(1)(G)(i) 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.''

[6] 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.

[7] 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

Continued

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:

a. Real Estate Acquisition, including the acquisition of real property and structures thereon; [8]

a. Demolition of Existing Structures;

b. Site Preparation;

c. Building Foundations, including substructure improvements for buildings constructed over transit facilities;

d. Utilities, including utility relocation and construction;

e. Walkways, including bicycle lanes and pedestrian connections and access links between public transportation services and related development;

f. Open Space, including site amenities and related streetscape improvements such as street furniture and landscaping;

g. Safety and Security Equipment and Facilities, including lighting, surveillance and related intelligent transportation applications;

h. Construction, renovation, and improvement of intercity bus and intercity rail stations and terminals;

i. Facilities that Incorporate Community Services, such as daycare or health care;

j. 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;

k. 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. FFE related to an intercity bus station or terminal are eligible costs;

l. 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

m. 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;

n. 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 or Part of a Public Facility Not Related to Public Transportation

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.

IV. 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:

i. language found at 49 CFR 26.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;

ii. 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

iii. 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:

iv. 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 661;

v. 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:

1. The FHWA/FTA metropolitan and statewide planning regulations at 23 CFR 450;

2. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*;

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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 (I).

[8] 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.

3. Executive Order No. 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' 59 FR 7629, Feb. 16, 1994;

4. 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 1500 *et seq.*;

5. FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' 23 CFR 771;

6. 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 800; and

7. 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.

vi. Cargo Preference—language making it clear that items imported from abroad and used in the joint development improvements were shipped predominantly on U.S.-flag ships and that the project complies with 46 CFR 381, to the extent these regulations apply to the joint development;

vii. Seismic Safety—language certifying that a structure conforms to seismic safety standards, as contained in 49 CFR 41;

viii. 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 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;

ix. Lobbying—49 CFR 20;

x. 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 5; Copeland ''Anti-Kickback'' Act as amended, 18 U.S.C. 874 and 29 CFR 3; and Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.,* and 29 CFR 5 and at 40 U.S.C. 3704; as well as 49 U.S.C. 5333(b) concerning protection of transit employees;

xi. Civil Rights Requirements—49 U.S.C. 5332 and DOT implementing regulations at 49 CFR 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 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);

xii. 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 31. Penalties may apply for noncompliance;

xiii. Language making it clear that the level of Federal participation in the joint development improvement provides no U.S. Government obligation to third parties in the project; and

xiv. 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 24.

c. National Environmental Policy Act (NEPA)

In any instance in which FTA determines that NEPA applies to the joint development improvement, 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 771.

V. 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.[9]

[9] 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 in 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 its 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 development improvements, 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.

VI. 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 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 leaves 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. 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.

VIII. 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.

There are two methods for seeking approval for a joint development project: (i) If the joint development improvement conforms to the specifics of the Certificate of Compliance, then the project sponsor may expedite FTA approval by executing the Certificate of Compliance and submitting it to FTA along with a completed Joint Development Checklist and a Joint Development Agreement; or (ii) if the joint development improvement will deviate from the specifics of the Certificate of Compliance, then the project sponsor must substitute an ''alternative certification,'' which certification shall include an explanation of compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18. In all cases, the project sponsor must submit a completed Joint Development Checklist, a proposed Joint Development Agreement, and either (i) An executed Certificate of Compliance or (ii) an alternative certification. 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. 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. An alternative certification must explain compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18 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.

The Joint Development Checklist and Certificate of Compliance are attached hereto as Appendix A and B respectively.

Appendix A—Joint Development Checklist

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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: ☐ Commercial development ☐ Residential development ☐ Pedestrian or bicycle access to public transportation facility ☐ Construction, renovation, or improvement of intercity bus or intercity rail station or terminal ☐ Renovation or improvement of historic transportation facility ☐ Other		
Description of Project:		

II. MATERIALS SUBMITTED
☐ Joint Development Checklist
☐ Joint Development Agreement
☐ Certification of Compliance **or**
☐ Alternative Certification (with written explanation)

III. APPLICATION OF STATUTORY CRITERIA	
Requirement	**Description**
Economic Link (check (1) or (2)): ☐ **(1)** Enhances economic development **or** ☐ **(2)** Incorporates private investment	
Public Transportation Benefit (check (3) & (4), or (5)): ☐ **(3)** Enhances the effectiveness of a public transportation project **and** ☐ **(4)** Relates physically or functionally **or** ☐ **(5)** Establishes New or Enhanced Coordination Between Public Transportation and other Transportation	
Revenue for Public Transportation (check (6)): ☐ **(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): ☐ **(7)** Occupants to pay a reasonable share of the costs of the facility through rental payments and other means	

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APPENDIX B—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 (1) 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 the entity with which the Project Sponsor has partnered, through a Joint Development Agreement, to construct a joint development improvement pursuant to 49 U.S.C. 5302(a)(1)(G).

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 to any investigation, audit or inquiry by the Federal government following approval by FTA of the project.

III. Response to Comments Received

On September 12, 2006, FTA published in the **Federal Register** a Notice of Proposed Agency Guidance and Request for Comments on the Eligibility of Joint Development Improvements under Federal Transit Law (notice of proposed guidance) (71 FR 53745). In its notice of proposed guidance, FTA interpreted 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). The text of FTA's notice of proposed guidance included sections on (I) Eligibility criteria, including (a) The definition of a ''capital project,'' and the criteria for determining whether a joint development improvement (b) ''enhances economic development or incorporates private investment,'' (c) ''enhances the effectiveness of a public transportation project,'' (d) is ''related physically or functionally,'' (e) ''establishes new or enhanced coordination between public transportation and other transportation,'' (f) ''provides a fair share of revenue for public transportation that will be used for public transportation,'' and (g) contributes a ''reasonable share of the costs of the facility''; (II) eligible activities; (III) ineligible activities; (IV) Federal requirements; (V) eligibility procedures; (VI) real property; (VII) the applicability of third party contracting requirements; (VIII) certificate of compliance; and (IX) satisfactory continuing control.

Fourteen parties submitted comments in response to FTA's September 12, 2006, notice of proposed guidance. FTA hereby responds to these comments by topic and in the following order: (a) Notice of Proposed Guidance Generally; (b) Definition of Capital Project; (c) Eligibility Criteria; (d) Eligible/Ineligible Activities; (e) Eligibility Procedures; (f) Real Property; (g) Third Party Contracting; (h) Certificate of Compliance; (i) Satisfactory Continuing Control; and (j) Miscellaneous.

(a) Notice of Proposed Guidance Generally

The intended purpose of FTA's notice of proposed guidance was 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 therein.

FTA received fourteen general comments. Nine commenters praised FTA's notice of proposed guidance. Two commenters asked FTA to clarify the scope and purpose of its proposed guidance, particularly whether FTA intends its final guidance to supplement or replace its prior guidance. One commenter encouraged FTA to place emphasis on joint development in its New Starts rating process. Another commenter suggested that FTA view local grantees as partners and not as adversaries. One commenter stated that the proposed guidance is inconsistent with regulation inasmuch as it compares fixed facilities with rolling stock.

FTA Response: FTA is pleased by the number of commenters that support and praise its Proposed Guidance. FTA appended its past guidance on the eligibility of joint development to its Circulars 5010.1, 9300.1 and 9030.1, guidance for new Major Capital Investments, Grants Management, and Formula Capital Grants, respectively. FTA intends to publish this Final Guidance as a stand-alone circular titled ''The Eligibility of Joint Development Improvements under Federal Transit Law.'' This Final Guidance shall replace FTA's existing guidance on joint development, currently located at FTA Circulars 5010.1, 9300.1 and 9030.1. FTA is uncertain why the commenter viewed its proposed guidance as adversarial to FTA grantees, particularly since FTA's stated purpose is to afford grantees maximum

flexibility within the law to work with the private sector and others for purposes of joint development. Similarly, FTA is unsure how its guidance is inconsistent, as the commenter did not identify the inconsistent comparisons between fixed facilities and rolling stock. Rather, the commenter stated that ''FTA has nearly eliminated the ability to generate revenue from rolling stock.'' FTA is unclear how it has eliminated the grantee's ability to generate revenue from rolling stock. Moreover, the comment is beyond the scope of this guidance, which speaks to joint development improvements, not rolling stock.

(b) Definition of Capital Project

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). In its notice of proposed guidance, FTA interpreted the definition and operation of these terms. Nine parties submitted comments on this topic. Seven commenters believe that FTA correctly interpreted the definition and operation of the terms ''capital project'' and ''joint development'' relating to 49 U.S.C. 5302(a)(1)(G). One commenter suggested that FTA use the statutory definition of joint development rather than attempting to create a new definition for this guidance. This same commenter asked FTA to define the term ''historic transportation properties.'' Another commenter asked FTA for clear definitions of ''joint development,'' ''joint development activity,'' ''joint development project,'' and ''joint development improvement.'' This same commenter inquired whether joint development is limited to development that includes a functionally required element of the transit facility, or encompasses development on federally assisted land, transferred by lease or sale, within walking distance of a transit stop that may only provide increased ridership for the transit agency.

FTA Response: To the commenter that suggested FTA use the statutory definition of the term ''joint development,'' FTA responds by stating that it interprets the term ''joint development'' to mean any public transportation project, improvement or enhancement eligible for Federal transit funding pursuant to 49 U.S.C. 5302(a)(1)(G), a subsection of the statutory definition of ''capital project.'' FTA's use of the term joint development in this guidance document refers to the type of capital project defined at 49 U.S.C. 5302(a)(1)(G). FTA will not define the term ''historic transportation properties'' in this final Agency guidance. For information on historic properties, FTA refers the commenter to the National Historic Preservation Act located at 16 U.S.C. 470 *et seq.* Finally, joint development improvements are not limited to development that includes a functionally required element of the transit project. Any joint development improvement must, however, satisfy the statutory criteria at 49 U.S.C. 5302(a)(1)(G) to be eligible for funding pursuant to a program established under Federal transit law. This Circular seeks to afford FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, and FTA 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.

(c) Eligibility Criteria

Section 5302(a)(1)(G) of Title 49 establishes the following criteria for determining whether a joint development improvement is eligible for funding pursuant to a program established under 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 relate 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. FTA interpreted these criteria in its notice of proposed guidance, and will respond to comments criterion-by-criterion, in the order outlined above.

(i) Enhances Economic Development or Incorporates Private Investment

In its notice of proposed guidance, FTA described the threshold requirement for Federal funding of a joint development improvement—that such improvement either enhance economic development or incorporate private investment. In accordance with the statute's use of the disjunctive ''or,'' rather than the conjunctive ''and,'' the notice of proposed guidance states that 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). FTA received three comments on this requirement, with one party offering two comments. All three comments favor FTA's description of the threshold requirement for Federal funding of a joint development improvement—that such improvement either enhance economic development or incorporate private investment. Two commenters agreed with FTA's reading of the eligibility requirements as disjunctive. The other commenter applauded FTA for not setting any monetary thresholds or providing limiting definitions of private investments.

(ii)(a) Enhances the Effectiveness of a Public Transportation Project and Relates Physically or Functionally to That Public Transportation Project

FTA received two comments on this criterion generally. Both commenters suggested that FTA specifically note in the Guidelines that if an intercity bus terminal or other facility meets the new or enhanced coordination test it does not have to meet the physically or functionally related test.

FTA received four comments on the criterion that a joint development improvement enhance the effectiveness of a public transportation project. One party agreed with FTA's determination that any reasonable forecast of joint development impacts that enhance the effectiveness of a public transportation project shall satisfy this criterion. Another party disagreed, commenting that FTA's use of the term ''reasonable'' as the standard for evaluating this criterion may lead to an inconsistent evaluation of projects. A third party recommended that FTA make clear in section I of its guidance that a project sponsor's reliance on the past results of similarly situated projects is sufficient to form the basis of a reasonable forecast of joint development impacts that enhance the effectiveness of a public transportation project shall satisfy this criterion. Another commenter asked FTA to provide an additional explanation under section I(c) that would guide FTA staff to eliminate the presumed requirement for one-to-one replacement of park and ride spaces.

FTA received ten comments on the criterion that a joint development improvement relate physically or functionally to a public transportation project. One commenter agreed that the functional relationship can be shown by activity or use, and agreed with how FTA defined these terms, but recommended that FTA specifically note in the guidance that if an intercity bus terminal or other facility meets the new or enhanced coordination test, it does not have to meet the physically or functionally related test. One commenter asked whether an intercity facility located miles away from a local transit center would satisfy this criterion; and recommended that in order for any intercity bus facility to receive Federal assistance, it should satisfy both requirements [physically and functionally related] in addition to being subject to a local grantee. This same commenter recommended that these facilities should not be separated by a major or busy street. Another commenter stated that a joint development improvement can be functionally related even if it is across a major thoroughfare or unrelated property from public transportation as long as it is within walking distance of the public transportation facility. One commenter suggested that there needs to be a strong functional relationship when there is no physical connection to a transit facility; that project sponsors should be required to commit to ensuring the functional connection by providing a clear connection for users; and that funding may be contingent upon a shuttle service connecting the joint development to a transit facility. In its notice of proposed guidance, FTA used 1500 feet around the center of a public transportation project as an example of the distance that most people can be expected to safely and conveniently walk to use the transit service. Four commenters expressed concern that

1500 feet is too short a distance, and worry that it may become the de facto limitation, despite being clearly labeled as an example. One of these commenters agreed that functional relationships should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service.

FTA Response: FTA directs the commenters to section I(a) of this final agency guidance, which indicates that if a joint development improvement satisfies the criterion of enhancing the effectiveness of a public transportation project and relates physically or functionally to that public transportation project, it need not establish new or enhanced coordination between public transportation and other transportation. The disjunctive nature of this criterion is also apparent in the box labeled ''Public Transportation Benefit'' on the Joint Development Checklist.

FTA responds to the commenter that questioned FTA's use of the term ''reasonable'' by reminding the commenter that through this guidance FTA seeks to afford FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, and generally defers to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties. Successful joint development improvements necessitate this flexibility.

FTA cannot state with certainty that a project sponsor's reliance on the past results of similarly situated projects is sufficient to form the basis of a reasonable forecast of joint development impacts that enhance the effectiveness of a public transportation project shall satisfy this criterion. Although past results may not be sufficient in all cases, FTA encourages project sponsors to utilize such results when forecasting joint development impacts that enhance the effectiveness of a public transportation. Any reasonable forecast shall satisfy this criterion.

In response to the comments on the requirement that a joint development improvement be physically or functionally related to a public transportation project, FTA reemphasizes the following points, each of which is addressed in section I(d) of this final agency guidance: A joint development improvement is ''physically related'' to a public transportation project only if it provides a direct physical connection to public transportation services or facilities. 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 transportation-related service or community service to the public. 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). In all cases, an intercity facility located miles away from a public transportation project will not have a direct physical connection to that project because several miles is beyond the distance most people can be expected to safely and conveniently walk to use the public transportation project. FTA notes, however, that the distance most people can be expected to safely and conveniently walk to use the public transportation project may extend across an intervening street, major thoroughfare or unrelated property. FTA also notes that it intends its statement regarding the radius of 1,500 feet around the center of a public transportation project to be an example of a distance that is, in certain cases, within the distance most people can be expected to safely and conveniently walk to use transit service. It is an example, not the rule.

Regarding one-to-one replacement of park and ride spaces, FTA believes the commenter was referring to language in FTA Circular C 5010.1C that describes a joint development transfer where a transit operator transfers land from a park-and-ride lot to a developer; the developer plans to construct residential units and retail space on this land; but because the development will generate more transit trips and more non-fare revenue than the displaced parking spaces provided, the transit operator is not required to replace the parking spaces on a one-to-one basis. Although this example is not contained in this final Agency guidance, the commenter is correct—FTA does not require a grantee to replace parking spaces on a one-to-one basis if those spaces are used for joint development purposes and using them for such purposes will not reduce the number of public transportation trips to and from that station.

(b) Establishes New or Enhanced Coordination Between Public Transportation and Other Transportation

FTA received three comments on the criterion that a joint development improvement establish new or enhanced coordination between public transportation and other transportation. One commenter agreed that a public transportation improvement need only satisfy one of the criteria [(i) Enhance the effectiveness of a public transportation project and relate physically or functionally, or (ii) establish new or enhanced coordination between public transportation and other transportation]. Another commenter suggested that FTA specifically note in its guidance that if an intercity bus terminal or other facility meets the ''new or enhanced coordination'' test it does not have to meet the ''physically or functionally related'' test. One commenter identified an error in the paragraph beginning with Examples of physical connections* * *'' where the phrase ''connection public transportation to *non*-transportation facilities'' should have read ''connecting public transportation to *other* transportation facilities.''

FTA Response: FTA directs the commenter to section I(d) and footnote 2 at section I(e), which explain that 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.

FTA has corrected the error noted by the commenter and changed ''non-transportation facilities'' to ''other transportation facilities.''

(iii) Fair Share of Revenue for Public Transportation That Will Be Used for Public Transportation

In its notice of proposed guidance, FTA described the third criterion for determining whether a joint development improvement is eligible for funding pursuant to a program established under Federal transit law—that the improvement provide a fair share of revenue for public transportation that will be used for public transportation. Thirteen parties commented on this criterion. Four parties agree with FTA's position that what is a fair share of revenue, and what form it should take, shall be negotiated between the parties involved in the joint development improvement. One party stated that this position is ''entirely consistent with good business practices and good stewardship.'' Another party suggested that the fair share return should not rely solely upon an estimate of ridership increases, and recommended that FTA require that the fair share of revenue take the form of a cash income revenue stream to the grantee from its joint development partner or the project. Another commenter recommended that FTA explicitly state that the revenue stream that flows to a transit agency from a joint development project is not ''program income'' for purposes of 49 CFR 18. Six parties objected to the requirement 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. These commenters noted that such decisions are more appropriate when coming from a transit agency official, questioned the effectiveness of an opinion of counsel, suggested that the certification be provided by a financial or real estate professional, and believe that this requirement adds nothing to the analysis. One commenter asked FTA to clarify the term ''other advisor.''

FTA Response: As stated in this guidance document, 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 shall be negotiated between the parties involved in the joint development improvement. FTA will not require that a fair share of revenue rely on ridership estimates, nor will it state that the fair share of revenue is not program income. Income generated through joint development activities is considered program income, as defined at 49 CFR 18.25, and described in Section 19 of FTA's Master Agreement, which states that an appropriate use of project property ''may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities.'' FTA Master Agreement MA(13), 10–01–2006.

Due to comments overwhelmingly opposed to language in the proposed guidance, FTA

has eliminated from this final guidance the requirement 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. Instead, and consistent with the policy principles embodied in this guidance, FTA shall defer to the decision of the project sponsor, negotiating and contracting at arm's length with third parties, to determine what is a fair share of revenue. The only requirements are: (i) That the recipient's Board of Directors (or similar governing body) determines, following reasonable investigation, that the terms and conditions of the joint development improvement (including, without limitation, the share of revenues for public transportation which shall be provided thereunder) are commercially reasonable and fair to the recipient; and (ii) that such revenue shall be used for public transportation.

FTA has eliminated the term ''other advisor'' from this guidance document.

(iv) Pays a Reasonable Share of the Costs of the Facility

While not a criterion to determine eligibility of a joint development improvement, Federal transit law requires 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 received three comments on this requirement, with one party commenting twice. The first commenter recommended that an intercity carrier should directly compensate a local grantee for the intercity provider's incremental costs because the local taxpayers would be unfairly subsidizing a private company at the cost of regular bus service, and that ticket sales generated from intercity bus passengers should not factor into an intercity provider's reimbursement or rent. The second commenter expressed concern that this requirement may be confused with the eligibility criterion that a joint development improvement provide a fair share of revenue for public transportation that will be used for public transportation.

FTA Response: The Agency shall rely on the statutory language, which requires 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.''

Recognizing the concern raised by the second commenter—that an inattentive reader may confuse the phrases ''reasonable share of the costs of the facility'' and ''a fair share of revenue for public transportation''—FTA included the following statement in its notice of proposed guidance: ''This criterion should not be confused with the requirement of 49 U.S.C. § 5302(a)(1)(G)(i) 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.' ''

(d) Eligible/Ineligible Activities

In its notice of proposed guidance, FTA describes activities that are eligible and ineligible uses of Federal transit funds for joint development purposes. FTA received six comments on eligible and ineligible activities. Two commenters asked FTA to clarify footnote 7, which notes that space in an FTA-funded facility may be made available for certain commercial revenue-producing activities and for connections to revenue producing activities despite statutory language making ineligible for FTA financial assistance the construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or part of a public facility not related to public transportation. These commenters were concerned that by eliminating some descriptive portions of earlier drafts FTA may have inadvertently constricted local flexibility by reducing the description of ineligible activities to the construction of commercial revenue producing facilities. Two commenters noted a typographical error in the list of eligible costs—the phrase ''construction, renovation and improvement of bus and intercity rail stations and terminals'' should read ''construction, renovation and improvement of *intercity* bus and intercity rail stations and terminals.'' Five parties submitted comments on the eligibility of furniture, fixtures and equipment (FFE). Two parties commented that FFE related to an intercity bus station or terminal should not be an eligible cost. Two parties expressed the opposite conclusion. These commenters recommended that FTA add a statement that ''the furniture, fixtures and equipment of intercity bus stations and terminals are eligible costs.'' Another party recommended that only items jointly used by the grantee and intercity passengers should be eligible for FTA funding, and that FFE used solely by the intercity operator should not be eligible. Yet another commenter suggested that FTA continue its existing practice of excluding FFE for tenant activities from its capital project cost and funding calculations, regardless of whether the tenant is a daycare center, interstate transportation provider, or purely commercial tenant, and recommended that tenant activities should be required to provide all finishes necessary to take advantage of their tenancy.

FTA Response: Footnote 7 is not intended to constrict local flexibility. Rather, FTA's intention is that this guidance generally, and footnote 7 in particular, afford grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development. For this reason, footnote 7 notes that FTA does not interpret the statutory language at 49 U.S.C. 5302(a)(1)(G)(ii) as excluding the use of FTA funds for joint development purposes related to commercial and residential development. 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 I. Moreover, section II of this final guidance states that, subject to the eligibility criteria of 49 U.S.C. 5302(a)(1)(G), joint development improvements expressly include commercial and residential development.

In response to the many comments on the eligibility of furniture, fixtures and equipment (FFE), FTA refers the commenters to the statutory language at 49 U.S.C. 5302(a)(1)(G)(ii), which excepts an intercity bus station or terminal from the exclusion of commercial revenue-producing facilities and public facilities not related to public transportation. This statutory exception requires FTA to treat intercity bus stations or terminals like public transportation-related FFE, which are eligible costs in all cases.

FTA has corrected the typographical error from section II(i) of the notice of proposed agency guidance to correspond with the statutory language at 49 CFR 5302(a)(1)(G). The language in question now reads as follows: ''construction, renovation and improvement of *intercity* bus and intercity rail stations and terminals.''

(e) 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. In its notice of proposed guidance, FTA outlined two methods for seeking approval for a joint development project and introduced two forms to be used in the approval process—the Joint Development Checklist and Certificate of Compliance. FTA received sixteen comments on its proposed eligibility procedures, with some parties submitting multiple comments. Four commenters asked FTA to clarify its use of the term ''expedited review.'' Two commenters favor the Joint Development Checklist. One of these commenters stated that the proposed checklist will streamline the joint development approval process because it is less proscriptive than the previous iteration and allows grantees maximum flexibility to satisfy the joint development requirements. The other commenter believes that the Joint Development Checklist brings clarity to the approval process. This same commenter, however, stated that risk and uncertainty are created by requiring a partnership to commit the resources necessary to plan and design a project to the level of detail required and recommended breaking the project approval process into three stages. One party commented that the eligibility procedures outlined in FTA's proposed guidance do not provide certainty or eliminate time delays. Another commenter recommended that FTA develop a single point of focus for all that is needed to review and approve any joint development project.

FTA Response: FTA modified its eligibility procedures based, in part, on the comments summarized above. Language clarifying the methods by which FTA shall approve a joint development project can be found at section VIII of this final guidance. In summary, there are two methods for seeking approval for a joint development project: (i) If the joint development improvement conforms to the specifics of the Certificate of Compliance, then the project sponsor may expedite FTA approval by executing the Certificate of Compliance and submitting it to FTA along with a completed Joint Development Checklist and a Joint Development

Agreement; or (ii) if the joint development improvement will deviate from the specifics of the Certificate of Compliance, then the project sponsor must substitute an ''alternative certification,'' which certification shall include an explanation of compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18. In all cases, the project sponsor must submit a completed Joint Development Checklist, a proposed Joint Development Agreement, and either (i) An executed Certificate of Compliance or (ii) an alternative certification.

(f) 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. FTA received eleven comments on its discussion of real property. Three commenters asked FTA to clarify its discussion of 49 CFR 18.31 as it applies to property used for joint development purposes. Two commenters agree with FTA's decision to no longer 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 development improvements, including the disposition of real property connected to a joint development improvement. Five commenters expressed concern that language in FTA's proposed guidance would discourage fee simple transfers of real property acquired with federal assistance within a joint development project, and suggest that FTA add to its guidance language from the FTA Master Agreement with regard to the transfer of real property as an alternative to leasing.

Response: FTA responds to the commenters that expressed concern about 49 CFR 18.31 by explaining that part 18.31 contains property management standards applicable to all real property acquired using Federal transit funds. Real property used for joint development purposes is not exempt from the requirements of 49 CFR 18.31. This guidance document references FTA's master Agreement at section IV, Federal Requirements. Section 19 of FTA's Master Agreement sets forth FTA's requirements on the use of real property, equipment, and supplies.

(g) Third Party Contracting

In its notice of proposed guidance, FTA explains the applicability of third party contracting requirements to joint development improvements made eligible by 49 U.S.C. 5302(a)(1)(G). All three comments support FTA's explanation of these requirements.

(h) Certificate of Compliance

FTA received eight comments on its proposed Certificate of Compliance, with some parties submitting multiple comments. Two parties favor the Certificate of Compliance inasmuch as it expedites FTA's review. Another party discourages the additional requirements added when the agency self-certifies. Four parties asked that FTA modify the Certificate of Compliance to allow for the transfers envisioned in other sections of the guidance. One commenter noted that the definition of ''grantee'' refers to section (2) of the certificate rather than section (1).

FTA Response: FTA encourages the commenters that asked FTA to modify the Certificate of Compliance to note that a project sponsor may substitute an ''alternative certificate,'' which may provide for transfers other than fee simple, if the joint development improvement will deviate from the specifics of the Certificate of Compliance. A project sponsor may expedite FTA approval if the joint development improvement conforms to the Certificate of Compliance.

FTA has corrected paragraph (9)(b) of the Certificate of Compliance. It now states that ''grantee'' shall have the meaning provided in section (*1*) of this certificate.

(i) Satisfactory Continuing Control

In its notice of proposed guidance, FTA noted the applicability of the term ''satisfactory continuing control'' to this guidance and the Certificate of Compliance. FTA received ten comments on this topic. Four commenters favor the applicability of the term ''satisfactory continuing control'' outlined by FTA in its notice of proposed guidance. Six commenters asked FTA to clarify its guidance with respect to the disposition of property, including means by which a grantee may maintain satisfactory continuing control through deed restrictions or other enforceable means.

FTA Response: Please see section (f) above for a discussion on the disposition of real property.

(j) Miscellaneous

One commenter noted that footnote 5 incorrectly cited 49 U.S.C. § 5302(a)(1)(G)(*ii*) and suggested that the correct citation is 49 U.S.C. 5302(a)(1)(G)(*i*). This same commenter suggested that FTA substitute ''section (I)'' for ''section (II)'' in the first paragraph of section II and at the end of footnote 7.

FTA Response: FTA has corrected both errors in this final Agency guidance.

FTA hereby publishes the text of its final guidance on the eligibility of joint development improvements under Federal transit law.

Issued on the 1st day of February, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–1977 Filed 2–6–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an extension of OMB approval of the information collection titled, ''Lending Limits—12 CFR 32.''

DATES: Comments should be submitted by April 9, 2007.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0221, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0221, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information from Mary Gottlieb, Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Lending Limits—12 CFR 32.

Type of Review: Extension, without revision, of a currently approved collection.

OMB Control Number: 1557–0221.

Description: 12 CFR 32.7(b) established a pilot program providing