

FTA

FEDERAL TRANSIT ADMINISTRATION

An FTA Update on Joint Development

FTA Real Estate Workshop

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Sharon Pugh

Office of Policy Review
and Development



U.S. Department of Transportation
Federal Transit Administration

Joint Development Efforts at FTA

- Proposed Circular
 - To be published for public comment
 - Single guidance document for grantees
 - Incorporates MAP-21 provisions
- FTA Defines Joint Development (JD)
- Clarifies FTA Policy
- Provides Framework for Analyzing JD Projects

Joint Development: Defined



A transit project



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



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



FTA financial assistance = “a federal interest”



Joint Development: FTA's Policy

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

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

FTA recognizes that joint development provides multiple and varied benefits

FTA will defer to grantee on business decisions

FTA Funding for Joint Development

- Since joint development is a transit project, generally all FTA planning and capital program funds are available for use!
- Planning Activities:
 - FTA/FHWA Metropolitan and Statewide Transportation Planning
 - Other Federal community development funding programs
- Capital Activities:
 - Urbanized Area Formula: Section 5307
 - Fixed Guideway Capital Investments: Section 5309
 - Elderly and Disabled Formula: Section 5310
 - Rural Area Formula: Section 5311
 - Bus and Bus Facilities Formula: Section 5339

Areas of Interest

When FTA is presented with a joint development project, there are typically two categories of issues that we must consider:

1. **Eligibility issues** associated with the use of FTA grant funds or program income for a capital project; and
2. Issues associated with the acquisition, use, and disposition of **real property** that was or will be purchased with FTA funds.

Eligibility Requirements

JD Project Eligibility

§ 5302(3)(G): “Capital project” means a project for a JD improvement that ...

i. Provides economic benefit;

ii. Enhances public transportation;

iii. Provides revenue for public transportation; and

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

i. Economic Benefit

- Enhance economic development
 - Demonstrate that the JD will enhance economic activity in the area
- Incorporate private investment (e.g., commercial or residential dev.)
 - Can be cash, property, or some other short- or long-term benefit

ii. Public Transportation Benefit

- Enhances effectiveness of transit and is related physically or functionally to transit
 - Physical relationship: improvement adjacent to or co-located with transit; bike or ped. paths; air rights
 - Functional relationship: usually not farther than 0.5 mile (ped.) or 3 miles (bike); remote baggage handling; community services (day care, healthcare)
- Establishes new or enhanced coordination between transit and other kinds of transportation
 - Presumption of enhanced coordination if distance is shortened between transit and other kinds of transp.

iii. Fair Share of Revenue

- Two requirements:
 1. Recipient's board of directors must conclude that the share of revenue is commercially reasonable and fair; and
 2. Revenue must be used for public transportation.

iv. Tenants Pay Share of Costs

- Tenant making an agreement to occupy space in the JD facility must pay a fair share of the costs of the facility.
- Rental payments or “other means.” Gives flexibility to recipient. FTA deference.

Activities Eligible for FTA Funds

✓ Standard capital project activities:

- *Property acquisition,*
- *Demolition*
- *Site preparation*
- *Utilities*
- *Building Foundations*
- *Walkways*
- *Pedestrian/bike access*
- *Renovation and improvement of historic transportation facilities*

✓ Open space, site amenities, streetscape elements

✓ Parking that links to transit use

✓ Construction of new or improvement to intermodal transfer facility or transit mall

✓ Facility that incorporates community services such as daycare or health care

✓ Construction of commercial space

- *FTA funds cannot outfit the space*

✓ Safety and security equipment/facilities

✓ Project development activities

✓ Professional services

Ineligible Activities

- “Capital project” means a project for a JD improvement that *does not* include ...
 - Outfitting of commercial space
 - “Shell” of structure OK. “Outfitting” includes fixtures and equipment for the purpose of generating commercial revenue (signs, shelves, kitchen equipment, furniture, etc.)
 - Exception for intercity bus/rail facilities
 - Part of a public facility not related to public transit
 - All four criteria must be met.
 - Must provide public transportation benefit.

REAL PROPERTY

Joint Development and Real Estate

- Joint development projects often involve real property – in which there is a federal interest – that is transferred or leased by the transit operator to a third party.
- Real Property requirements:
 - Primarily governed by the Uniform Act, 49 U.S.C. 4335(h) and the Common Grant Rule .
 - Strict regulations on acquisition, use and disposal

Real Property Considerations

1. How was/is the property acquired
2. How is the property being used
3. Disposition requirements

Real Estate Requirements

- Acquisition:
 - Appraisal and appraisal review
 - Businesses and residents relocation
- Use:
 - Consistent with original grant
 - Satisfactory continuing control
- Disposition (or not):
 - Fee simple sale of real property cannot be used for joint development
 - Transfer via lease or other contractual agreement

Acquiring Real Property with Federal Assistance

- Real Property must be acquired, managed and used in accordance with applicable laws, regulations, and guidance.
 - Appraisal and appraisal review
 - Uniform Standards of Professional Appraisal Practices- (USPAP)
 - 49 CFR Part 24.103 and 104
 - Displacements of businesses and residents
 - Administrative review of appraisals for compliance
 - TPM-20 – Real Estate Specialists

Use of Real Property

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

Originally Authorized Purpose

- FTA's Master Agreement includes joint development purposes that generate program income
- FTA's interpretation of 49 C.F.R. 18.25(g), Program Income, brings revenues derived from JD within the definition of program income.

Joint Development Transfers

- Typically, in a JD, program income is derived from the recipient encumbering title to or interest in FTA funded real property
- Examples include: leases, covenants, mortgages, deed restrictions, easements, and any other contractual arrangements short of a disposition
- JD transfers do not include sales. Income derived from the sale of real property is not program income.

Disposition of Real Property

What it is ...

- The settlement of the Federal interest in property that is no longer needed for the originally authorized purpose

What it is not ...

- Does not include leases, covenants, easements, or any other transaction conveying less than a fee simple interest

Permissible disposition methods

1. Sell property and use towards another capital project. 49 U.S.C. 5334(h)(4)(B). If not, return federal share to FTA. 49 C.F.R. 18.31(c)
2. Retain title and compensate FTA
3. Transfer title
4. Other options:

FTA C 5010.ID

The Federal Interest and Joint Development

Encumbrance of Title

- Allows joint development financing at market rates using real property as collateral
- General occurs with property leases

Subordination of Federal Interest

- Driven by business arrangements for joint development transfer
- FTA would continue to retain a federal interest

Incidental Use of Property

- Is permitted as long as it doesn't interfere with intended transit use

Satisfactory Continuing Control

- Property must remain available for its intended transit purpose and be able to be accessed by the transit agency/grantee at any time

Asset Need

- Grantee can hold onto property for original transit purpose or for future transit purpose

Parking Use Considerations

- Useful Life of Improvement
- Public Transportation Benefit
- Prior Grant Commitments
- NEPA

Cross-Cutting Federal Requirements

Cross-Cutting Federal Requirements

- Planning and Environmental
- Procurement
- Leases and conveyances
- Civil rights
- Labor Protection
- Other

➤ Planning and Environmental Review

Scenario 1:

JD as Part of Larger Project

- Larger project must be included in the long range transportation plan and the TIP/STIP
- Larger project requires NEPA review
 - If only land acquisition for subsequently longer term joint development, then only reasonably foreseeable JD impacts are included in NEPA review

Scenario 2:

JD as a Stand-alone Project

- JD must be included in the long range transportation plan and the TIP/STIP
- JD requires NEPA review

➤ Planning and Environmental Review

Scenario 3:

Joint Development on FTA-Funded Land, But No FTA Funds in Actual Joint Development Project

- No FTA planning and environmental requirements
- FTA review required for JD project plan.

➤ Procurement

- Full and Open Competition
 - Selecting a developer
 - Selecting tenants (e.g., over-the-road bus carrier)
- Non-Restrictive Specifications
 - No exclusionary or discriminatory specifications
 - No geographic restrictions

➤ Leases or Conveyances

- No FTA assistance for new JD improvements
 - Civil Rights
 - ADA
 - Master Agreement: conflicts of interest
- FTA assistance for new JD improvements (construction)
 - Generally, all cross-cutting federal requirements are applicable

Comparisons

Joint Development

Transit-Oriented Development (“TOD”)

Joint Development vs. TOD

Joint Development

- Tends to be project-specific, often occurring within a city block and tied to a specific real estate development
- Usually developed through a partnership of public (transit agency) and private interests
- A transit project, eligible for FTA capital funding

Transit-Oriented Development

- Generally encompasses multiple city blocks, more or less a neighborhood in size and character
- Usually led and organized by a public agency
- Not a transit project, but may be eligible for FTA planning funding

Joint Development vs. TOD

(FTA Funding)

CHARACTERISTICS/BENEFITS	JOINT DEVELOPMENT	TOD
Transit project	X	
Physically related to transit (co-located)	X	
Functionally related to transit	X	
No physical, but functional relationship to transit (e.g., fare kiosk off site)	X	
Station area planning	X	X
Community development projects		X
Streetscape improvements or pedestrian/bicycle paths linked to transit	X	X
Health care facility at transit station	X	
Recreation center near transit		X

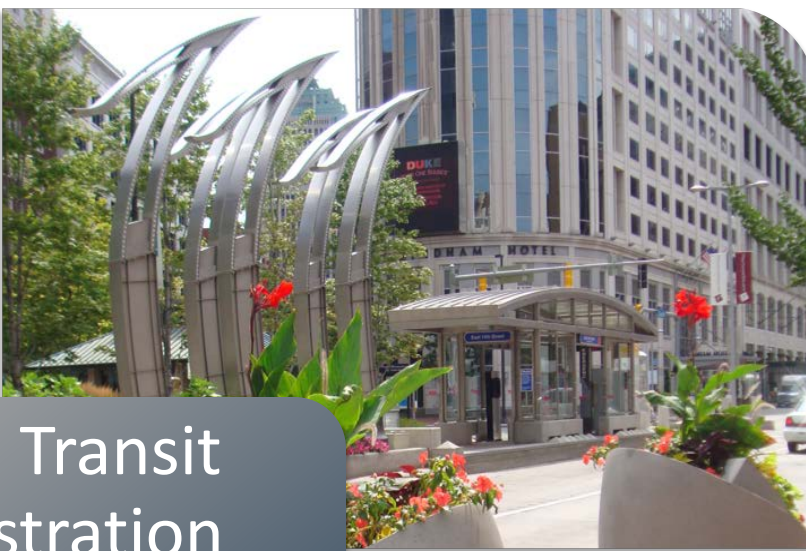
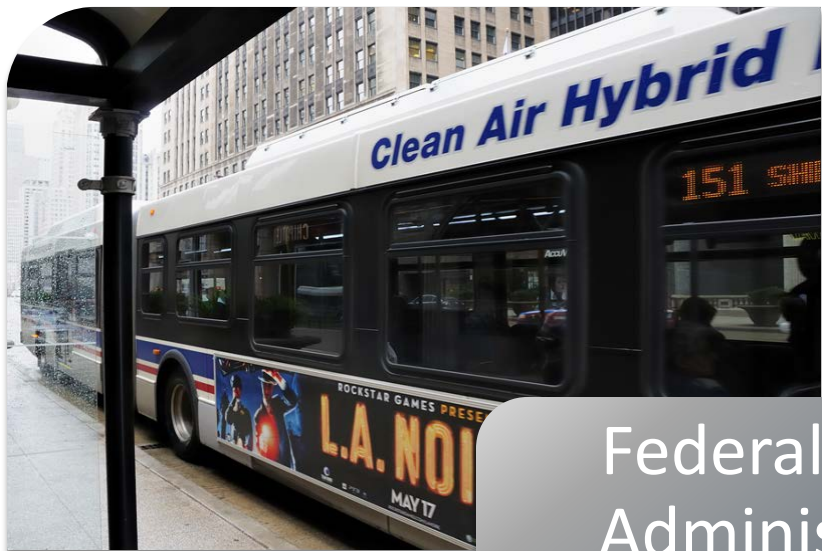
Joint Development vs. TOD

(FTA Funding)

CHARACTERISTICS/BENEFITS	JOINT DEVELOPMENT	TOD
Housing in transit air rights	X	
Housing connected to transit by walkways		X
Location efficiency	X	X
Increases transit ridership	X	X
Transit revenue	X	
Leveraged transit infrastructure	X	X
Constructed using FTA funds	X	
Planned using FTA funds	X	X
Occurs on transit owned property	X	
Occurs on non-transit owned property	X	X

FTA Contacts

- Sharon Pugh, Senior Policy Analyst
Office of Policy Review and Development
sharon.pugh@dot.gov
202-366-0713
- Jayme Blakesley, Attorney-Advisor
Office of the Chief Counsel
jayme.blakesley@dot.gov
202-366-0304



Federal Transit
Administration
www.fta.dot.gov

