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of Transportation
**Federal Transit
Administration**

CIRCULAR

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**Subject: FEDERAL TRANSIT ADMINISTRATION GUIDANCE ON JOINT
DEVELOPMENT**

1. **PURPOSE.** This circular provides guidance to recipients of Federal Transit Administration (FTA) financial assistance on how to use FTA funds or FTA-funded real property for joint development. This circular: (1) defines the term “joint development”; (2) explains how a joint development project can qualify for FTA assistance; (3) describes the legal requirements applicable to the acquisition, use, and disposition of real property acquired with FTA assistance; (4) outlines the most common crosscutting requirements applicable to FTA-assisted projects, including FTA-assisted joint developments; and (5) describes FTA’s process for reviewing a joint development project proposal.

This circular incorporates provisions of the Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114–94 (2015), advances the goals of 49 U.S.C. § 5315 by informing FTA recipients of opportunities for private sector participation in public transportation projects, and includes the most current guidance for the federal public transportation program.

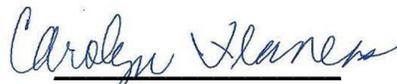
The requirements outlined in this circular are intended to assist recipients in managing FTA-assisted projects and in complying with federal rules. Recipients must comply with all statutory and regulatory requirements, including those not specifically mentioned in this circular.

Because there is no separate FTA grant program specifically for joint development, this circular does not present grant program requirements that are unique to joint development. Rather, it presents project eligibility requirements for a joint development to qualify as an eligible capital project. This circular also presents requirements generally applicable to FTA’s grant programs from the specific perspective of undertaking a joint development project. FTA funds used for joint development are subject to the requirements of the grant program through which they were received.

2. **AUTHORITY.** Federal transit law, chapter 53 of title 49, United States Code.
3. **CANCELLATION.** This circular consolidates all of the existing FTA guidance¹ on joint development, and supersedes any FTA guidance on joint development contained in other sources, including, but not limited to, the following:

¹ FTA is in the process of updating many of its program-specific circulars. This circular will supersede guidance in those circulars pertaining to joint development.

- a. [Notice on Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law](#) (72 FR 5788, Feb. 7, 2007);
 - b. [Policy on Transit Joint Development](#) (62 FR 12266, Mar. 14, 1997);
 - c. [FTA Circular 5010.1D](#), Grant Management Requirements;
 - d. [FTA Circular 4220.1F](#), Third-Party Contracting Guidance;
 - e. [FTA Circular 9030.1E](#), Urbanized Area Formula Program: Program Guidance and Application Instructions;
 - f. [FTA Circular 8100.1C](#), Program Guidance for Metropolitan Planning and State Planning and Research Grant Programs;
 - g. [FTA Circular 9300.1B](#), Capital Investment Program Guidance and Application Instructions; and
 - h. [FTA Circular 9040.1F](#), Non-Urbanized Area Formula Program Guidance and Grant Application Instructions.
4. WAIVER. FTA reserves the right to waive any provisions of this circular to the extent permitted by federal law or regulation.
 5. FEDERAL REGISTER NOTICE. When the final circular is published, FTA will add a citation to the *Federal Register* notice that announces its availability.
 6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular to reflect changes in policy, revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on its website at www.transit.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on “sign up for e-mail updates” for more information.
 7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA’s Administrative Services Help Desk, at 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.



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FTA GUIDANCE ON JOINT DEVELOPMENT

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I. INTRODUCTION AND BACKGROUND

1. **THE FEDERAL TRANSIT ADMINISTRATION (FTA)**. FTA is one of ten modal administrations within the U.S. Department of Transportation (DOT). Headed by an Administrator who is appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices that assist transit agencies in all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and federally recognized Indian tribes.

Public transportation means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation generally includes transportation services provided by buses, heavy rail, light rail, commuter rail, fixed guideway, bus rapid transit, passenger ferryboats, trolleys, inclined railways, people movers, vans, streetcars, jitneys, and aerial tramways. Public transportation can be either fixed-route or demand-response service, but excludes intercity passenger rail provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing services, courtesy shuttle services provided by individual businesses, and intra-terminal or intra-facility shuttle services.

The federal government, through FTA, provides financial assistance to develop new transit systems and help improve, maintain, and operate existing systems. FTA administers thousands of grants to hundreds of State and local transit providers, primarily through its regional and metropolitan offices. These recipients are responsible for managing their programs in accordance with federal requirements, and FTA is responsible for ensuring that recipients follow federal statutory and administrative requirements.

Because there is no separate FTA grant program specifically for joint development, this circular does not present grant program requirements that are unique to joint development. Rather, it presents project eligibility requirements for a joint development to qualify as an eligible capital project. This circular also presents requirements generally applicable to FTA's grant programs from the specific perspective of undertaking a joint development project. FTA funds used for joint development are subject to the requirements of the grant program through which they were received

2. **AUTHORIZING LEGISLATION**. Most federal transit laws are codified at 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a federal program or agency. FTA's most recent authorizing legislation is the Fixing America's Surface Transportation (FAST) Act, Public Law 114-94, signed into law December 4, 2015, and effective on October 1, 2015.
3. **HOW TO CONTACT FTA**. FTA's regional and metropolitan offices are responsible for the provision of financial assistance to FTA recipients, and oversight of grant implementation and project management for most FTA programs. Certain specific programs are the responsibility of FTA headquarters. Inquiries should be directed to either

the regional or metropolitan office responsible for the geographic area in which you are located.

Visit FTA's website, <http://www.transit.dot.gov>,² or contact FTA Headquarters at the following address and numbers:

Federal Transit Administration
Office of Communications and Congressional Affairs
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. **GRANTS.GOV.** FTA posts all competitive grant opportunities on Grants.gov. Grants.gov is the one website for information on all discretionary federal grant opportunities. Led by the U.S. Department of Health and Human Services (DHHS) and in partnership with federal grant-makers, including 26 agencies, 11 commissions, and several States, Grants.gov is one of 24 federal cross-agency e-government initiatives. It is designed to improve access to government services via the Internet. More information about Grants.gov is available at <http://www.grants.gov>.
5. **DEFINITIONS.** All definitions in 49 U.S.C. 5302 apply to this circular as well as the following definitions:
 - a. **Affordable Housing:** Legally binding affordability restricted housing units available to renters with incomes below 60 percent of the area median income or owners with incomes below the area median.
 - b. **Community Service Facility:** A facility that provides day care, career counseling, literacy training, education (including tutorial services), recreation, outpatient health care, or a similar service to local residents either free of charge or for an affordable fee³.
 - c. **Disposition:** The settlement of the federal interest in property that is no longer needed for the originally authorized purpose. *See generally* 49 C.F.R. 18.31; FTA Circular 5010.1D Chapter IV.
 - d. **Federal Interest:** Applied to real property, equipment, or supplies, the dollar amount that is the product of (a) the federal share of total project costs, and (b) current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs. 2 C.F.R. § 200.41. The federal interest is applied at the project level, and FTA has a federal interest in all project property regardless of whether such property was acquired using FTA assistance, was provided as local match, donated by a third party, or acquired in some

² Please refer to FTA's website for links to [guidance and regulations](#) referred to in this circular.

³ Internal Revenue Bulletin: 2003-29, July 21, 2003

other way. FTA may relinquish its interest in project property through the disposition process outlined at 49 C.F.R. part 18, by the authority of 49 U.S.C. 5334(h), or, in the case of facilities, equipment, or supplies, when the project property has exhausted its useful life.

- e. FTA Assistance: Also “grant” or “award.” The financial contribution in the form of a grant to a recipient made or managed by FTA. A recipient may use FTA assistance for capital, operating, or planning expenses, according to the conditions of the grant.
- f. Incidental Use: The limited authorized non-transit use of project property. Such use must be compatible with the approved purposes of the project and not interfere with intended public transportation uses of project property. An incidental use does not affect a property’s transit capacity or use. FTA may concur in incidental use after the award of the grant.
- g. Joint Development: A public transportation project that integrally relates to, and often co-locates with commercial, residential, mixed-use, or other non-transit development. Joint development may include partnerships for public or private development associated with any mode of transit system that is being improved through new construction, renovation, or extension. Joint development may also include intermodal facilities, intercity bus and rail facilities, transit malls, or historic transportation facilities.
- h. Original Federal Investment: The FTA share of the original cost of project property that will be incorporated into an FTA-assisted joint development project.
- i. Originally Authorized Purpose: The activities for which an FTA grant was originally awarded as evidenced in the grant agreement. The FTA Master Agreement incorporates “joint development purposes that generate program income to support transit purposes” into the originally authorized purpose even when not specified in the original grant award.
- j. Program Income: Gross income earned by the non-federal entity that is directly generated by a supported activity or earned as a result of the federal award during the period of performance. Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with federal award funds. Interest earned on advances of federal funds is not program income. Except as otherwise provided in federal statutes, regulations, or the terms and conditions of the federal award, program income does not include rebates, credits, discounts, taxes, special assessments, levies, and fines raised by a grantee and subgrantee, and interest earned on any of them.
- k. Project Property: Any real property, equipment, supplies or improvements included in the costs of an FTA-assisted project, regardless of whether such property was acquired using FTA assistance, was provided as local match, donated by a third party, or acquired in some other way.

- l. Project Sponsor: An FTA grant recipient that proposes a joint development project that either (a) will be financed with an FTA grant, or (b) will make use of project property that is subject to the federal interest. In this circular, “project sponsor” and “recipient” are used interchangeably.
- m. Public Transportation: Regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; does not include intercity passenger rail transportation provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing service, courtesy shuttle service for patrons of one or more specific establishments, or intra-terminal or intra-facility shuttle services. 49 U.S.C. § 5302(14).
- n. Recipient: *See* Project Sponsor.
- o. Satisfactory Continuing Control: The legal assurance that project property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition. The FTA Master Agreement incorporates “joint development purposes that generate program income to support transit purposes” into a grant’s originally authorized purpose even when not specified in the grant award.
- p. Sub-recipient: An entity that receives an FTA grant indirectly through an FTA recipient.
- q. Shared Use: Instances in which a project partner, separate from the recipient, occupies part of a facility and pays for its pro rata share of the construction, maintenance, and operations costs. Shared uses must be declared at the time of grant award. Shared use and incidental use are distinguishable.
- r. Value Capture: The term “value capture” means recovering the increased value of property located near public transportation resulting from the investments in public transportation. While value capture on the large scale often occurs through a special assessment district, tax-increment financing, or similar mechanisms, joint development is a meaningful value capture mechanism readily available to a project sponsor to be applied on the small scale of one or more parcels of real property it owns. Joint development is the value capture mechanism used most often for public transportation purposes. FTA encourages all forms of value capture that can contribute to the operation, maintenance, or expansion of public transportation service.

II. CIRCULAR OVERVIEW

1. INTRODUCTION AND CONTEXT. The purpose of this circular is to provide guidance to recipients on how FTA assistance or real property acquired with FTA assistance may be used for joint development. “Joint development,” irrespective of FTA assistance, commonly refers to the coordinated development of public transportation facilities with non-transit development, including commercial and residential development. Coordinated development may involve private and public entities, and is supportive of the private sector participation provisions of 49 U.S.C. § 5315 and § 20013 of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141. The transit and non-transit developments are integrally related to one another and are often co-located on the same real estate. Joint development may be associated with, or take place on property associated with, any mode of public transportation.

This circular provides instructions on how to use FTA assistance or develop FTA-assisted real property in a manner that improves coordination between the public and private sector, and between public transportation and other forms of transportation for joint development. Strategic, coordinated joint development can enhance the value of both the transit and non-transit, public and private, activities taking place on real property, resulting in an efficient use of real estate, reduced distances between transportation and destinations, and focused economic development for communities.

As a matter of policy, FTA encourages project sponsors to undertake joint development, and promotes the project sponsor’s ability to work with the private sector and others to pursue joint development. Project sponsors can pursue joint development through new grants or with property previously acquired with FTA assistance. The project sponsor maintains satisfactory continuing control over such property used in a joint development project by ensuring that the property continues to serve its originally authorized purpose. Proceeds derived from an FTA-assisted joint development project are considered program income, which the project sponsor may apply to eligible FTA capital or operating expenses.

- a. Distinction between Joint Development and Transit-Oriented Development (TOD). Although related in purpose—creating vibrant, compact, mixed-use, economically successful communities near public transportation—joint development and transit-oriented development (TOD) differ in several material respects and for purposes of applying FTA’s rules. In joint development, the recipient is an active partner, contributing either property or funds for use in the joint development project. TOD has a broader, neighborhood scope and can encompass either several parcels of property or as much as an entire community; the recipient is a stakeholder but may not be a partner in TOD. FTA assistance may not be used in construction of TOD projects, although it may be used to plan TOD in conjunction with transit projects. Thus, while joint development can be considered a form of TOD, it is much smaller in scope and uses project property or grant funds owned by the recipient. When the joint development incorporates either real property or other project property for which FTA assistance has been provided, or a direct investment of FTA grant funds, federal requirements apply to

the joint development project. The involvement of federal assistance notwithstanding, FTA's policy is to encourage TOD. Both joint development and TOD leverage FTA-assisted projects to develop local economies and to encourage private investment near public transportation.

- b. Distinction between Joint Development and Pedestrian/Bicycle Projects. Joint development must be distinguished from other transit projects, particularly pedestrian and bicycle projects that enhance or are related to public transportation facilities.⁴ Such projects are statutorily eligible for transit capital funding and can therefore be funded as independent projects or as part of a larger transit project, including as part of a joint development project. Whether pedestrian and bicycle improvements are considered part of a joint development or independent projects will depend, among other considerations, on how the projects are identified in the statewide and metropolitan transportation plans and Transportation Improvement Programs.
 - c. Distinction between Joint Development and Public-Private Partnerships. Another key distinction to note is the difference between a joint development project and a public-private partnership (P3). A joint development project often combines the development of transit and non-transit projects, and, in most circumstances, includes the participation of a private entity. P3s are essentially a form of procurement. Unlike conventional methods of contracting for new construction, in which discrete functions are divided and procured through separate solicitations, P3s entail a single private entity, typically a consortium of private companies, assuming responsibility and financial liability for performing all or a significant number of functions in connection with a project. In transferring responsibility and risk for multiple project elements to the private partner, the project sponsor relaxes its control of the procurement, and the private partner receives the opportunity to earn a financial return commensurate with the risks it has assumed.⁵ Thus, while a joint development project may include coordination between and the sharing of responsibilities by public and private entities, it is not a P3. A project sponsor, however, may use a P3 to procure services from a private partner in a joint development project.
2. APPLICABLE PROGRAMS. Because there is no separate FTA grant program specifically for joint development, this circular does not present grant program requirements that are unique to joint development. However, FTA can support joint development through its various planning and capital assistance programs. This circular should be used in conjunction with FTA's other circulars that provide guidance specific to each program. The FTA programs available for funding joint development are identified in Chapter 3 of this circular.
 3. FTA JOINT DEVELOPMENT POLICY. FTA's policy is to maximize the utility of FTA-assisted projects and to encourage the generation of program income through joint

⁴ See Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements Under Federal Transit Law (76 FR 52046, Aug. 11, 2011).

⁵ "Report to Congress on the Costs, Benefits, and Efficiencies of Public-Private Partnerships for Fixed Guideway Capital Projects", FTA, December 2007.

development. One of the primary benefits of joint development is revenue generation for the transit system, such as income derived from rental or lease payments, as well as private sector contributions to public infrastructure. Other benefits include shared costs, efficient land use, reduced distance between transportation and other activities, economic development, increased transit ridership, and improved transit connectivity.

The revenue a project sponsor receives from an FTA-assisted joint development project is treated as program income and may be used towards eligible capital or operating expenses of providing transit service. It is FTA's policy to give project sponsors maximum flexibility within the law to work with the private sector and others to pursue joint development. Therefore, as long as the project sponsor complies with federal requirements, FTA will usually defer to the decisions of the project sponsor about the particulars of a joint development project.

4. FRAMEWORK FOR ANALYZING A PROPOSED JOINT DEVELOPMENT. FTA funds may be used to pay for many aspects of a joint development, including costs associated with eligible planning and capital activities. There are two categories of issues that FTA typically considers when presented with a proposed joint development: (1) eligibility issues associated with either the use of FTA grant funds or the use of program income towards joint development as an FTA-assisted capital project; and (2) issues associated with the acquisition, use, and disposition of FTA-assisted real and other project property.

a. Eligibility of Joint Development as an FTA-Assisted Capital Project.

- (1) Source of Funds. Project sponsors may fund joint development with new FTA grants or with program income generated by an existing FTA-assisted project. When the source of funds is a new grant, project sponsors shall apply for funding under an authorized FTA program. As with any capital project, FTA grant funds may be used for real property acquisition, design and construction of the project, or for any designated capital activity related to the project. To be eligible for funding, both a stand-alone joint development and a joint development within a larger project must satisfy the eligibility requirements in the definition of capital project at 49 U.S.C. 5302(3)(G). Revenues derived from a joint development are program income as that term is defined at 49 C.F.R. 18.25(g) (throughout this Circular, 49 C.F.R. parts 18 and 19 are referred to as the "Common Grant Rule"). Program income may be used for capital and operating expenses of providing transit service.
- (2) Eligibility Criteria. This circular incorporates the statutory interpretation FTA made in its 2007 guidance on the eligibility of joint development projects under federal transit law (72 FR 5788, Feb. 7, 2007). Per the eligibility criteria set forth at 49 U.S.C. 5302(3)(G), a new joint development project must do the following to be eligible for FTA funding or use of FTA-assisted project property:
 - (a) Create an economic benefit by enhancing economic development or incorporating private investment;

- (b) Provide a public transportation benefit by either: (a) enhancing the effectiveness of a public transportation project and relating physically or functionally to the public transportation project, or (b) establishing new or enhanced coordination between public transportation and other transportation;
 - (c) Provide a fair share of the produced revenue for public transportation; and
 - (d) Provide that a person occupying space in a facility constructed with FTA funds must pay a fair share of the costs of the facility through rental payments or other means.
- b. Use of Real Property Previously Acquired with FTA Assistance for Joint Development.
- (1) Real Property. Project sponsors may use FTA-assisted real property to pursue joint development. In pursuing the joint development project, the project sponsor must adhere to all requirements designated in the FTA grant from which the financial assistance was provided.
 - (2) Acquisition. Real property must be acquired, managed, and used in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), 42 U.S.C. chapter 61; implementing regulations at 49 C.F.R. part 24; FTA’s Master Agreement; FTA Circular 5010.1D, Grant Management Requirements; and all other applicable laws, regulations, and guidance. FTA Circular 5010.1D provides guidance on the use of FTA assistance for the acquisition of real property.
 - (3) Use. The Common Grant Rule at 49 C.F.R. 18.31(b) requires that real property acquired with FTA assistance be used by the recipient for the originally authorized grant purpose as long as needed for that purpose. The Common Grant Rule also prohibits a recipient from disposing of or encumbering its title or other interests in FTA-assisted real property without FTA’s approval. Discussed below are several requirements for the use of real property for a new capital project, and for the incidental use of real property previously acquired with FTA assistance.
 - (4) Incidental Use. Incidental use is the limited authorized non-transit use of project property. Such use must be compatible with the approved purposes of the project and may not interfere with the public transportation uses of project property. An incidental use may not affect a property’s transit capacity or use. Unlike a shared use, FTA can concur in a project sponsor’s proposed incidental use after the award of a grant. With FTA’s concurrence, a project sponsor may undertake joint development on property that was acquired using FTA funds.
 - (5) Satisfactory Continuing Control. Project sponsors must maintain “satisfactory continuing control” over project property. Joint development must not interfere with a project sponsor’s continuing control over the use of project property or the project sponsor’s ability to continue to carry out the originally authorized purpose for which the property was acquired.

5. CROSSCUTTING REQUIREMENTS. Upon receipt of FTA funds, a project sponsor agrees to follow a set of standard terms, conditions, and requirements. These “crosscutting requirements” apply to all FTA-funded projects. Sponsors of a joint development should pay particular attention to those requirements outlined in Chapter 5 of this circular.

III. FTA ASSISTANCE FOR PLANNING AND CAPITAL PROJECTS

FTA can support joint development through its various planning and capital assistance programs. The programs available for funding joint development, and the criteria a project must satisfy to be eligible for FTA assistance as joint development, are described in this chapter.

1. **FTA PLANNING ASSISTANCE FOR JOINT DEVELOPMENT.** FTA planning assistance is available under 49 U.S.C. 5305 for planning activities that support joint development.⁶ Such assistance is also available for transit station area planning that may facilitate transit-oriented development. In general, these planning grants are available to assist States, authorities of the States, metropolitan planning organizations (MPOs), local governmental authorities, and transit agencies with preparing transportation plans and programs, planning, engineering, designing, and evaluating a public transportation project, and conducting technical studies related to public transportation in addition to other statutorily eligible activities. Also, Federal Highway Administration (FHWA) planning program funds may be available, through the MPO or State, to support planning for joint development. As with all FTA grants, transportation planning funds used for joint development must be programmed in the Unified Planning Work Program, the State Planning and Research Program, or the Transportation Improvement Program in accordance with federal transportation planning requirements.

Joint development planning activities may also be eligible for assistance from other federal agencies such as the U.S. Department of Housing and Urban Development, the U.S. Environmental Protection Agency, the U.S. Department of Commerce, the U.S. Department of Health and Human Services, or the U.S. Department of Agriculture. Please refer to the appropriate agency's website for more information.

2. **FTA CAPITAL ASSISTANCE FOR JOINT DEVELOPMENT.** Under federal transit law, joint development is a kind of transit capital project.⁷ As such, project sponsors may fund joint development using any FTA funding source that is available to assist a capital project.
 - a. **Chapter 53 Programs.** When the source of funds is a new grant, the funds will be awarded under a particular FTA program. Each FTA grant program has its own requirements and criteria for eligibility. So, depending on the activities involved, a joint development may not be eligible for funding under every program. The FTA grant programs that can be applied to capital projects are:
 - (1) Section 5307: Urbanized area formula grants

⁶ See FTA Circular 8100.1C, Program Guidance for Metropolitan Planning and State Planning and Research program Grants, September 1, 2008.

⁷ 49 U.S.C. 5302(3)(G) (definition of "capital project").

- (2) Section 5309: Fixed guideway capital investment grants (New/Small Starts and Core Capacity Program)
 - (3) Section 5310: Formula grants for the enhanced mobility of seniors and individuals with disabilities
 - (4) Section 5311: Formula grants for rural areas
 - (5) Section 5337: State of good repair grants
 - (6) Section 5339: Bus and bus facilities formula grants
- b. FHWA Flexible Funds. In addition to these FTA grant programs, certain funding programs administered by FHWA, including the Surface Transportation Program and the Congestion Mitigation and Air Quality Improvement Program, may be used for public transportation purposes.⁸ These “flexible” funds are transferred from FHWA, administered as FTA funds, and take on the requirements and eligibility of the FTA program to which they are transferred.
- c. Program Income. Project sponsors are encouraged to earn program income to defray program costs. Program income may be applied to the capital or operating costs of providing transit service.
3. ELIGIBILITY CRITERIA. As an FTA-assisted capital project, a joint development project must satisfy all four eligibility criteria set forth in the statutory definition of capital project at 49 U.S.C. 5302(3)(G). This definition also specifies common joint development activities that are eligible for FTA assistance. Project sponsors of an FTA-assisted joint development must ensure their project satisfies all four eligibility criteria in order to be eligible for capital funding.

⁸ 49 U.S.C. 5334(i).

TABLE 1: THE FOUR JOINT DEVELOPMENT CRITERIA

(i) The economic benefit criterion is satisfied by...	<ul style="list-style-type: none"> • Enhancing economic development <li style="text-align: center;">-OR- • Incorporating private investment
(ii) The public transportation benefit criterion is satisfied by...	<ul style="list-style-type: none"> • Enhancing the effectiveness of a public transportation project and relating physically or functionally to that public transportation project <li style="text-align: center;">-OR- • Establishing new or enhanced coordination between public transportation and other modes of transportation
(iii) The revenue criterion is satisfied by...	<ul style="list-style-type: none"> • Providing a fair share of revenue for public transportation that will be used for public transportation purposes
(iv) The tenant contributions criterion is satisfied by...	<ul style="list-style-type: none"> • Requiring that a person occupying space in a joint development facility shall pay a fair share of the costs of the facility through rental payments or other means

- a. **Criterion One: Economic Benefit.** An FTA assisted joint development project must either (a) enhance economic development or (b) incorporate private investment. The statute uses the word “or” when describing this criterion (as opposed to “and”), so a joint development project will satisfy this criterion if it produces either effect.
- (1) **Enhances Economic Development.** The project sponsor may satisfy this criterion by demonstrating that the joint development will add economic value to privately or publicly-funded economic development activity occurring in close proximity to a public transportation facility.
 - (2) **Incorporates Private Investment.** Private investment need not be monetary. It can take the form of real property, commercial or residential development, or some other benefit to be generated initially or over the life of the joint development. The amount and form of private investment will be negotiated between the project sponsor and its joint development partners. While FTA will not set a monetary

threshold for private investment, it can decline funding or approval for a joint development project if the level of private investment is not meaningful to promote an economic benefit.

- b. Criterion Two: Public Transportation Benefit. As with the first criterion, the statute provides two ways to satisfy this criterion. The joint development project can either (a) enhance the effectiveness of a public transportation project to which it is related physically or functionally, or it can (b) establish new or enhanced coordination between public transportation and other modes of transportation.

- (1) Enhances the Effectiveness of a Public Transportation Project and Is Related Physically or Functionally to That Public Transportation Project. Any reasonable forecast of how the joint development will enhance the effectiveness of a public transportation project will satisfy this criterion. These impacts may include, but are not limited to, any of the following:

- Increased ridership
- Shortened travel times
- Improved/enhanced wayfinding
- Deferred or reduced transit operating or capital costs
- Improved access or connectivity to public transportation

The alternative requirement for a physical “or” functional relationship allows a joint development to be built separate from, but in functional relationship to, a public transportation project. A joint development satisfies this element if it has a physical or functional nexus to a public transportation project.

- (a) Physically Related. A joint development is physically related to a public transportation project if there is a direct physical connection to public transportation services or facilities. Some examples of physical relationships are:

- Projects built within or adjacent to public transportation facilities
- Avenues of access that connect directly to public transportation, e.g., bicycle paths, pedestrian paths, or parking facilities
- Connections between public transportation and airports, train stations, and other transportation facilities
- Projects using air rights over public transportation facilities

- (b) Functionally Related. A joint development is functionally related to a public transportation project if by activity and use, with or without a direct physical

connection, it enhances the use of, connectivity with, or access to public transportation. A joint development can also be functionally related to a public transportation project if it provides a transportation-related service (such as remote baggage handling or shared ticketing) or public access to community service⁹ facility (such as daycare or health care).

FTA's considerations include, among other things, whether there is a reduction in travel time between the joint development project and the public transportation facility, reasonable access between the joint development and the public transportation facility, and increased trip generation rates resulting from the relationship between the joint development and the public transportation facility.

A functional, rather than physical, relationship permits an FTA assisted joint development to be located outside the structural envelope of a public transportation facility and even to be separated by an intervening street, major thoroughfare, or unrelated property. However, a functional relationship will not ordinarily extend beyond the distance most people can be expected to safely and conveniently walk or bicycle to use the transit service.¹⁰

- (2) Establishes New or Enhanced Coordination between Public Transportation and Other Transportation. FTA will accept reasonably supported judgments of new or enhanced coordination from the project sponsor.
- (a) "Public transportation" is defined as "regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income," and it does not include school bus, charter, sightseeing, intra-terminal or intra-facility shuttle service, courtesy shuttle service for patrons of one or more specific establishments, intercity bus transportation, or intercity passenger rail transportation provided by Amtrak. FTA interprets the term "other transportation" 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.
- (b) Connections that can establish new or enhanced coordination between public transportation and other transportation may include proximate or shared ticket

⁹ See the definition of "community services" at Chapter I.5.a. for types of services considered.

¹⁰ In 2011, FTA published a statement of policy in the *Federal Register* on the subject of the functional relationship between pedestrian and bicycle improvements and public transportation. Within one-half mile of a public transportation stop or station, pedestrian improvements *ipso facto* have a functional relationship to public transportation. Within three miles of a public transportation stop or station, bicycle improvements *ipso facto* have a functional relationship to public transportation. Pedestrian and bicycle improvements beyond these distances may also have a functional relationship to public transportation, but the relationship is not *ipso facto* and must be demonstrated. See Final Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements under Federal Transit Law (76 FR 52046, Aug. 19, 2011), for detailed information.

counters, termini, park-and-ride lots, taxicab bays, passenger drop-off points, waiting areas, shared or coordinated signage, schedules, ticketing, and bicycle paths and sidewalks that connect public transportation to other transportation facilities. Projects that shorten the distance between public transportation termini and other transportation shall be presumed to enhance coordination. Pedestrian and bicycle improvements that are physically located outside the structural envelope of a public transportation facility may nonetheless be functionally related to the public transportation.¹¹

- c. Criterion Three: Fair Share of Revenue.¹² A “fair share of revenue” is the division of revenue generated from a joint development project that the project sponsor and its partners negotiate and agree that the project sponsor will receive. The fair share of revenue may be amortized over the life of the project. FTA has determined that the minimum threshold for the amount of revenue that a project sponsor receives cumulatively from a joint development must be equivalent to the amount of the original federal investment contributed to the joint development project (see Chapter 6 of this circular for more information). FTA grant funds or other FTA-assisted project property acquired for the purpose of joint development are included in this threshold. The project sponsor must report to FTA the source and expected amount of such fair share of revenue. FTA reserves the right to decline funding for or approval of a joint development project if the project does not generate a minimum threshold of revenue for the project sponsor.
- (1) To qualify as a fair share of revenue, FTA requires the following:
- (a) The project sponsor’s General Manager or Chief Executive Officer must certify, following reasonable investigation, that the terms and conditions of the joint development are commercially reasonable and fair to the project sponsor, and that the share of revenues generated for public transportation satisfy FTA’s threshold requirement;
 - (b) FTA must review and approve the amount and source of revenue; and
 - (c) Such revenue must be used for public transportation services. 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.
- (2) Community Service or Publicly Operated Projects, or Affordable Housing: When a joint development project is a community service or publicly operated facility, or includes affordable housing, FTA recognizes that the revenue generated by the joint development project may be less than what would be generated from commercial, residential, or mixed-use development projects. As such, the resulting “fair share of revenue” can be less than the amount of the original FTA investment contributed to

¹¹ See note 10, *supra*.

¹² Note that this criterion is distinct from Criterion Four, discussed below.

the project, but must be based upon the actual revenue generated by the community service or publicly-operated facility, or affordable housing.

- d. Criterion Four: Fair Share of Costs. A joint development must provide that a person making an agreement to occupy space in a facility constructed with FTA assistance must pay a fair share of the costs of the facility to the project sponsor. “Person” here includes natural persons as well as businesses. FTA will not attempt to define what amounts to a fair share of the costs of the facility and will not impose a particular valuation methodology. FTA will accept commercial valuation methodologies used by the project sponsor to determine a fair share of the costs of the facility. However, FTA reserves the right to decline project funding or approval if the rental payment, or other means, is less than the actual cost to the project sponsor to operate and maintain the space in its facility.

The fair share may be paid in the form of rental payments, but may also take other forms, e.g., operating and maintenance agreements. Project sponsors and their partners/tenants have flexibility to form agreements other than for rent, so long as the value of such an agreement is at least equal to the costs of operating and maintaining the leased space.

4. ELIGIBLE ACTIVITIES. Capital costs associated with joint development activities are eligible for FTA assistance. Some of these activities are specifically included in the various definitions of capital project at 49 U.S.C. 5302(3). Those activities not specifically designated under 49 U.S.C. 5302(3)(G), joint development, must be associated with a project that has been identified through the transportation planning process. Common eligible capital costs of joint development projects may include, but are not limited to:
- a. Property acquisition, and the relocation of residents and businesses;
 - b. Demolition of existing structures;
 - c. Site preparation;
 - d. Utilities, including utility relocation and construction;
 - e. Building foundations, including substructure improvements for buildings constructed over transit facilities;
 - f. Walkways, including bicycle lanes and pedestrian connections and access links between public transportation services and related development;
 - g. Pedestrian and bicycle access to a public transportation facility;
 - h. Construction, renovation, and improvement of intercity bus and intercity rail stations and terminals;
 - i. Renovation and improvement of historic transportation facilities;

- j. Open space, including site amenities and related streetscape improvements such as street furniture and landscaping;
- k. Safety and security equipment and facilities (including lighting, surveillance, and related intelligent transportation system applications);
- l. Facilities that incorporate community services¹³ such as daycare and health care;
- m. A capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall;
- n. Construction of space for commercial uses;
- o. 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, parking facilities, park-and-ride services, improvements to 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;
- p. Transportation-related furniture, fixtures, and equipment (FFE) are eligible costs in all cases;
- q. Parking improvements with a public transportation justification and use, or with an intercity bus or intercity rail justification and use, in connection with joint development;
- r. 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; and
- s. Professional services, including reasonable and necessary costs incurred to hire professionals to prepare or perform the activities described above, or to assist the project sponsor in reviewing the same.

¹³ See the definition of community services at Chapter I.5.a. for types of services considered.

IV. REAL PROPERTY CONSIDERATIONS

1. INTRODUCTION. FTA-assisted joint development often involves using real property that was previously acquired with FTA funds for another transit project, or the transfer of such property to a third party by the project sponsor for the purpose of joint development. Any real property used in an FTA-assisted project, regardless of whether it is purchased by a transit agency or another party, must be acquired, managed, used, and disposed of in accordance with applicable laws and regulations. This chapter clarifies the relationship between federal transit law and regulations, and FTA's policies regarding the acquisition and use of real property for joint development.
2. ACQUISITION OF REAL PROPERTY WITH FTA ASSISTANCE. Property acquisition is an eligible activity under the definition of capital project. Real property must be acquired, managed, and used in accordance with the Uniform Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), 42 U.S.C. chapter 61, as implemented at 49 C.F.R. part 24; the Common Grant Rule of 49 C.F.R. part 18; FTA's Master Agreement; FTA Circular 5010.1D, Grant Management Requirements; and all other applicable laws, regulations, and guidance.

The purposes of the Uniform Act are to ensure: (1) the fair treatment of owners of real property that is acquired for federal and federally assisted projects; (2) that people displaced by a federally supported project are treated fairly and consistently; and (3) that acquiring agencies implement the regulations in a manner that is efficient and cost-effective. The requirements of the Uniform Act apply to all real property to be used in a federally assisted project, regardless of whether the property acquisition was itself federally assisted.

Project sponsors pursuing FTA-assisted joint development shall identify parcels of land that may require the displacement of protected persons or entities and develop solutions to ensure that they are in compliance with the Uniform Act. FTA Circular 5010.1D requires recipients to develop a Real Estate Acquisition Management Plan (RAMP). RAMPs are used to assess the possible issues associated with and feasibility of the acquisition of real estate needed for a capital project. Depending on the complexity of the joint development project,¹⁴ a project sponsor's RAMP shall include, among other things, a relocation plan.¹⁵

3. USE OF REAL PROPERTY. A project sponsor is restricted in how it can use or dispose of property that is subject to the federal interest. FTA encourages the pursuit of joint development that can raise revenue for transit systems and enhance transit ridership. Any portion of the property may be used for joint development. In approving a use of real property, FTA will rely on the project sponsor to determine the appropriate use of real property for joint development, provided that the project sponsor maintains satisfactory

¹⁴ Relocation planning is required if the property acquisition will displace individuals, families, businesses, or non-profit organizations.

¹⁵ See 49 C.F.R. part 24 for direction on relocation planning.

continuing control of the real property to ensure that the real property remains available for its originally authorized grant purpose. Project sponsors must obtain FTA's concurrence for joint development use, including as an incidental use, of FTA-assisted real property.

- a. The Federal Interest. The use of FTA assisted real property is governed by the Common Grant Rule at 49 C.F.R. 18.31(b), which provides: "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 or subrecipient shall not dispose of or encumber its title or other interests." FTA retains an interest in how real property it has funded is used. This federal interest is equal to the federal share of the fair market value of the real property and remains until FTA relinquishes its interest in the property. Accordingly, project sponsors shall not dispose of, modify the use of, or change the condition of the title to real property or any site or facilities in which FTA has an interest without express written consent from FTA. FTA's Master Agreement states FTA's policy on uses of grant property or actions affecting the title of grant property that may impair the federal interest.
- b. Originally Authorized Purposes.¹⁶ Since October 1, 1996, the FTA Master Agreement has allowed the originally authorized purpose of a grant agreement to include "joint development purposes that generate program income to support transit purposes." FTA's interpretation of the Common Grant Rule at 49 C.F.R. 18.25(g)(2) brings revenues derived from a joint development, from leases or other conveyances, within the definition of program income, thereby permitting use of such revenues for eligible capital and operating expenses where the project sponsor maintains satisfactory continuing control of the property, ensures that the federal interest in the property is reasonably protected, and otherwise meets the eligibility criteria set forth in 49 U.S.C. 5302(3)(G).
- c. Conveyances for the Purpose of Joint Development. A project sponsor's ability to secure willing partners to participate in joint development has historically been impeded by an outright prohibition on the encumbrance of title to FTA-assisted real property. The rationale for this prohibition was that FTA viewed any lien against, or other conveyance of, FTA-assisted property as a disposition. Thus, project sponsors and their project partners were unable to secure financing at market rates because the real property could not be used as collateral for a loan.

FTA recognizes that many of the arrangements a project sponsor may enter into pursuant to a joint development may require conveyance of an interest in real property that is subject to the federal interest. Because federal transit law includes joint development as an eligible grant purpose, FTA may authorize a project sponsor to convey any interest in real property acquired with FTA assistance,

¹⁶ For real property acquired prior to the FTA Master Agreement inclusion of joint development as an authorized purpose, the term "originally authorized purpose" should be construed to apply to any public transportation project as defined at 49 U.S.C. 5302(3).

provided that the project sponsor can maintain satisfactory continuing control over the property to ensure that the federal interest in the property will be reasonably protected and the property will continue to be used for authorized grant purposes.

Any such conveyance requires the express written consent of FTA. Absent express written consent from FTA, a project sponsor may not encumber, convey, or otherwise affect title to real property that is subject to the federal interest by executing any written, oral, or other arrangement that would either adversely affect the federal interest in the property or impair the project sponsor's satisfactory continuing control of the use of the project property.

With FTA's express written consent, a project sponsor may enter into the following illustrative arrangements:

- Sale¹⁷
- Exchange
- Lease
- Lien
- Pledge
- Mortgage
- Easement
- Covenant
- Third-party contract
- Sub-agreement
- Grant anticipation note
- Innovative finance arrangement

- (1) Distinguished from Disposition. When FTA-assisted real property is no longer needed for its originally authorized grant purposes, recipients must request disposition instructions from FTA. The disposition process accounts for any remaining federal interest in the property and, once completed, extinguishes the federal interest. The proceeds of a disposition are not considered program income. Because disposition occurs when grant property is no longer needed for its originally authorized purposes (including any potential joint development), disposed of property will thereafter be unavailable for an FTA-assisted joint development project.

In contrast, when FTA permits a conveyance of an interest in FTA-assisted property for the purpose of joint development, it is to enable the property to be used more effectively for an authorized grant purpose. Such a conveyance is not a disposition and does not extinguish the federal

¹⁷ "Sale" in this circular generally refers to a joint development conveyance after which the federal interest persists. A sale that extinguishes the federal interest is a disposition. See "Disposition" in C5010.1D or "Disposition of Real Property", section 4 of this chapter.

interest in how the property is used. Proceeds therefrom are considered program income.

- (2) Protecting the Federal Interest through Mandatory Provisions.¹⁸ Any conveyance of an interest in federally assisted real property for the purpose of joint development must protect the federal interest and preserve the project sponsor's satisfactory continuing control over the property. Any such conveyance must include provisions that:

- Extend the requirements of the grant or cooperative agreement as necessary between the project sponsor and FTA;
- Ensure that the project sponsor maintains satisfactory continuing control of the property (see discussion of satisfactory continuing control, below);
- Ensure that the federal interest in the property will be reasonably protected; and
- Ensure that the federal interest is adequately protected following in any further transfer of the real property in a manner consistent with this and other applicable guidance, laws, or regulations.

If federally assisted real property is to be conveyed away, a project sponsor may wish to include provisions in the conveyance instruments that account for the federal government's proportional share of the value of the property, i.e., the federal interest, in the event the property is someday disposed of.

These requirements should not be a deterrent to the pursuit of joint development. It is FTA's policy to give project sponsors maximum flexibility within the law to enter into arrangements with the private sector and others that are suitable to the joint development and the parties involved.

- d. Satisfactory Continuing Control. FTA does not allow for the unrestricted transfer, conveyance, or encumbrance of property acquired with FTA assistance. FTA-assisted property must remain available and accessible for its intended public transportation purpose at all times. In all circumstances, the project sponsor must obtain FTA concurrence that it has secured "satisfactory continuing control" of FTA-assisted real property.

- (1) Mechanisms for Preserving Original Public Transportation Purpose. Ultimately, FTA will decide whether a proposed conveyance or

¹⁸ FTA takes no position on a project sponsor's decision to affect its interest in real property that is not subject to the federal interest.

encumbrance will preserve the property's public transportation purpose. In making this determination, FTA will look to the contractual agreement, deed, or other instrument between the project sponsor and the private developer or other third party to determine whether it incorporates provisions that both allow the project sponsor to adequately maintain satisfactory continuing control and ensure that the private developer or third party will actually proceed with the development as approved of or concurred in by FTA. Such agreement, deed, or other instrument must contain a clause assuring that access to the real property for its originally authorized purpose will be maintained.

Any number of legally enforceable mechanisms may be acceptable. Satisfactory continuing control may be evidenced by a real property transaction, including a conveyance with a restrictive covenant, or clauses in a contract that are totally separate from the land transaction. For example, a conveyance might include a condition that returns the real property to the project sponsor if the conveyee prevents the property from being used for its originally authorized grant purpose. As another example, a project sponsor may receive control in the non-transit portion of the development as payment for the land. This assurance may take the form of an easement, but the particular assurance will depend on the specific joint development conveyance method (easement, fee simple, lease, etc.) being considered.

- (2) Duration. For structures, the requirement that a project sponsor maintain satisfactory continuing control remains for the useful life of the structure. For the underlying real property, the satisfactory continuing control requirement remains in perpetuity or until the project sponsor or transferee disposes of the real property.
- e. Incidental Use. FTA Circular 5010.1D, Grant Management Requirements, defines incidental use as “the authorized use of real property acquired with FTA assistance for purposes of transit service but which also has limited non-transit use due to transit operating circumstances.” Incidental uses must be compatible with the approved purposes of the project and may not interfere with either the intended public transportation uses of the property or the project sponsor's ability to maintain satisfactory continuing control. A joint development project satisfying these requirements can be completed on property subject to the federal interest as an incidental use of the property. Such a joint development is analyzed not as a new capital project, but as an incidental use—that is, based on its compatibility with the FTA-assisted transit project. Because an incidental use does not receive additional federal assistance, it is not a new federal action and need not satisfy additional federal eligibility requirements. FTA Circular 5010.1D provides guidelines for the incidental use of real property.
- (1) As stated above, FTA's policy is to permit maximum flexibility in determining the best and most cost-effective use of FTA-assisted property. To this end, FTA encourages incidental use of real property that can raise

additional revenues for the transit system and enhance system ridership. Income received from authorized incidental use is program income and may be retained by the project sponsor (without returning the federal share) if the income is used for eligible capital and operating expenses of providing transit service. Program income cannot be used as part of the local share of the grant from which it was derived. However, it may be used as part of the local share of another FTA grant.

- (2) Many joint development projects also include incidental uses of FTA-assisted real property. The incidental uses are not a capital project, but instead may complement, support, or enhance the existing project. For example, allowing nearby theaters and restaurants to use transit parking spaces during the transit system's off-hours is an incidental use. So is temporary use of transit property as a staging area for nearby construction unrelated to the joint development project. Other examples include, but are not limited to the following:

- Parking facilities used by public transportation patrons during the day and theater and restaurant patrons at night;
- Leasing of space in a station for a newspaper stand or coffee shop when the additional uses do not interfere with the original purpose authorized in the grant; and
- The lease of air rights over transit facilities or utilities associated with transit facilities (such as spare capacity in general utilities and fiber optics communications utilities).

- (3) FTA concurrence is required before an incidental use may occur.

4. DISPOSITION OF REAL PROPERTY. As required by 49 C.F.R. 18.31(b), real property acquired with FTA assistance must be used for the originally authorized grant purpose. When such real property is no longer needed for the originally authorized purpose, a recipient must request disposition instructions and requirements from FTA, including for the sale of real property to a public agency for a non-transit use. Once disposed of, all federal interest in the real property is extinguished. FTA requirements for real property disposition are set forth in FTA Circular 5010.1D, chapter IV, section 2.
5. PARKING. FTA-assisted real property that was originally used as a surface parking lot for automobiles can later be converted to a joint development project. These types of projects frequently occur on park-and-ride lots. When surface parking is converted to a joint development use, FTA does not require the project sponsor to replace existing automobile parking spaces at a one-to-one ratio. However, in doing so, the project sponsor must consider the following factors:
- a. Useful Life. FTA must approve of any change in use (or disposition) of an asset before the end of its useful life. Thus, if a project sponsor wishes to replace an FTA-assisted parking lot with a joint development project, it must first consider

whether the parking improvement has reached the end of its useful life. If useful life remains, then the project sponsor must account for the remaining federal interest in the improvement prior to any change or disposition. See FTA Circular 5010.1D, chapter IV, section 2j.

- b. Public Transportation Benefit. As with any FTA-assisted joint development project, the change in use from parking to joint development must benefit public transportation. The benefit may accrue by enhancing the effectiveness of public transportation or by establishing new or enhanced coordination between public transportation and other transportation.
- c. Prior Grant Commitments. Projects funded pursuant to a Full Funding Grant Agreement (FFGA), or similar contract, may require the project sponsor to construct specific parking facilities or to achieve a certain level of ridership. Elimination of parking may cause the project sponsor to breach such a contract term. FTA must concur whenever a project sponsor seeks to change the use (or dispose) of real property purchased with funds from such an agreement.

V. CROSSCUTTING FEDERAL REQUIREMENTS

1. MASTER AGREEMENT. FTA's Master Agreement contains the terms and conditions governing the administration of a project supported with assistance from FTA through a grant agreement, cooperative agreement, Transportation Infrastructure Finance and Innovation Act (TIFIA) loan, loan guarantee, or line of credit. The requirements of the Master Agreement will vary depending on the type of project, the program under which it is funded, and the project sponsor's status as a State or local government, private nonprofit entity, or private for-profit entity. This chapter highlights some of the most common requirements encountered by joint developments, regardless of the project sponsor or the FTA program under which the project is financially assisted.
2. PLANNING REQUIREMENTS. When FTA funds will be used for the joint development, transportation planning requirements apply.¹⁹ As for any FTA-assisted capital project, a joint development, or a larger project that includes joint development, must be included in the applicable metropolitan transportation plan and the Transportation Improvement Program (TIP). In rural areas, the long-range statewide transportation plan and Statewide Transportation Improvement Program (STIP) must include the proposed effort.

Planning requirements will vary depending on the nature of the project and FTA's involvement.

3. ENVIRONMENTAL REQUIREMENTS. How project development is considered and treated in the environmental review process varies depending on the nature of the project and the level of FTA's involvement, regardless if the development is eligible as a federally assisted joint development project as described in this circular. The considerations for the nature of the environmental review responsibilities under the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (Section 106), and other federal environmental laws or requirements include the level of federal control over the proposed development and the degree that the development is reasonably-foreseeable.

Typically, FTA's control over a proposed project is related to the financial assistance provided for project development and/or construction, and the degree of influence it has on the siting and design of such a facility. Federal "control" and responsibilities for environmental reviews may extend to all elements of the project, regardless of whether such elements utilize any FTA assistance, are provided as local match, donated by a third party, or provided in some other way, including the non-transit element of joint development projects. For example, if the construction financing and operation of a FTA-assisted transit project is dependent upon anticipated joint development revenue from leasing station air rights for commercial or residential development, then the FTA

¹⁹ Federal transportation planning regulations are jointly administered by FTA and FHWA. See Statewide and Metropolitan Transportation Planning, Final Rule (72 FR 7224, Feb. 14, 2007).

environmental review for the transit project would consider the environmental effects and mitigation, if needed, of the non-transit development using the transit station air rights.

The term “reasonably foreseeable” in the NEPA context means an action or effect that is sufficiently likely to occur, and not simply a speculation of any action or effect that could be conceived or imagined. Whether a development is reasonably-foreseeable would depend on stated plans by the project sponsor, based on a market analysis. The degree to which a FTA environmental review considers reasonably foreseeable development depends on the level of information and details that are known at the time the environmental process is being conducted.

Any FTA-assisted real property may be used for joint development, in accordance with the FTA Master Agreement. However, if joint development was not specified as an original purpose in the grant, the project sponsor will usually be required to obtain FTA’s concurrence for environmental review purposes prior to pursuing the joint development. If no new grant award is being made for the actual joint development, the FTA environmental requirements would not apply.

- a. Common Joint Development Scenarios. The table below describes how to package the environmental analysis²⁰ of a FTA-assisted joint development project.

TABLE 2: APPROACH TO ENVIRONMENTAL ANALYSIS

Joint Development Project Description	Approach to NEPA
Proposed joint development (regardless of FTA assistance) would occur concurrently as part of a greater project FTA-assisted project, without independent utility from the transit project.	The joint development would be evaluated as part of the larger, FTA-assisted project in a single NEPA evaluation.
Proposed joint development is known and would be (1) co-located with the FTA-assisted project or (2) the FTA-assisted project is being designed to accommodate the future non-transit development that would occur at some time in the future after the FTA-assisted project is operational.	To the extent that information about the proposed joint development is known and is reasonably foreseeable, it should be covered in the NEPA evaluation of the larger FTA-assisted project.

²⁰ Environmental analysis is defined to include compliance with Federal environmental regulations.

Joint Development Project Description	Approach to NEPA
<p>Joint development was unanticipated at the time of the environmental review of the FTA-assisted project. However, the joint development would be co-located with the FTA-assisted transit project and is identified during construction of the FTA-assisted project.</p>	<p>The FTA Regional Office would need to conduct a reevaluation of its NEPA finding to determine if supplemental and public environmental review of the change in the FTA-assisted project and setting is necessary.</p>
<p>Acquisition of real property with FTA-assistance for joint development with the development of a FTA-assisted transit project occurring in the future.</p>	<p>Early acquisition of real property for the purposes of joint development that would be associated with a future FTA-assisted capital project would not be permitted (because it would be considered impermissible segmentation under NEPA) unless the property meets the definition of right-of-way for the purpose of corridor preservation.. A NEPA review would be required for real property acquisition using FTA funds.</p> <p>Acquisition of real property for the purposes of a joint development project with independent utility from a FTA capital project would be covered in its own NEPA evaluation.</p>
<p>Proposed joint development on real property acquired and developed with FTA assistance for a different transit purpose. The original FTA grant for the acquisition and development of the property has closed and the construction funded by the original grant is completed.</p>	<p>If FTA is not funding the actual joint development and is not otherwise involved in project decisions, then a FTA NEPA evaluation would not be necessary.</p>

In many cases, development on or adjacent to an existing federally assisted transit facility may qualify as a categorical exclusion under FTA's NEPA regulations at 23 CFR § 771.118(c)(10). Otherwise, the types of actions described in Table 2 would be handled in a NEPA review involving either a categorical exclusion under § 771.118(d), an environmental assessment, or an environmental impact statement.

- b. Additional Environmental Requirements. In addition to NEPA, there are other federal environmental laws, regulations, or executive orders that project sponsors must comply with. These include:

- Section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f) and the Advisory Council on Historic Preservation’s implementing regulations at 36 CFR part 800, involving historic and archaeological preservation;
 - Section 4(f) of the Department of Transportation Act, 49 U.S.C. 303 and the FTA/Federal Highway Administration’s implementing regulations at 23 CFR part 774, involving the protection of publically owned parklands, wildlife refuges, and historic resources;
 - Endangered Species Act of 1973, 16 U.S.C. 1361 for protection of threatened or endangered wildlife;
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and FTA Circular 4703.1 on Environmental Justice Policy Guidance for Federal Transit Administration Recipients;
 - Executive Order 11988, Floodplain Management; and,
 - Clean Water Act, 33 U.S.C. 1344 on permits for dredged or fill material in waters of the U.S.
4. PROCUREMENT. Procurements that are assisted with FTA funds, including those for FTA-assisted joint development, must adhere to certain standards. Among these is the general requirement for full and open competition. FTA recipients generally may not use exclusionary or discriminatory specifications, or geographic restrictions in their procurements. For a full description of procurement requirements that must be observed, and for guidance, refer to the Master Agreement and FTA Circular 4220.1, Third-Party Contracting Guidance.

If the procurement will make use of union labor, any project labor agreement must comply with Executive Order No. 13502, “Use of Project Labor Agreements for Federal Construction Projects.”

5. LEASES AND CONVEYANCES. A joint development sponsor may wish to lease or convey an interest (including a lien or other encumbrance on title) in real property that was acquired with FTA assistance. The federal interest that must be represented in such a lease or conveyance will depend on whether FTA is also financially assisting the construction of improvements on the real property.
- a. No FTA Assistance for New Improvements. If the joint development involves a ground lease or transfer of FTA-assisted real property, and there is no FTA financial 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:
- (1) Language found at 49 C.F.R. 26.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;
 - (2) Language found at 49 C.F.R. 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

- (3) Language contained in FTA's Master Agreement, updated annually in October, particularly relating to conflicts of interest, debarment and suspension.
- b. FTA-Assisted Construction of Joint Development. If the construction of the joint development is also assisted by FTA, then the following requirements will apply and must be incorporated into the lease or conveyance instrument:
- (1) Buy America. Language making it clear that the steel, iron, and manufactured goods used in the federally assisted project are produced in the United States, as described in 49 U.S.C. 5323(j) and 49 C.F.R. part 661;
 - (2) Planning and Environmental Analysis. Language making it clear that the project sponsor must comply with, and the federally assisted project is subject to the requirements of:
 - (a) The FHWA/FTA metropolitan and statewide planning regulations at 23 C.F.R. part 450;
 - (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*
 - (c) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, Feb. 16, 1994);
 - (d) Council on Environmental Quality regulations on compliance with NEPA, 40 C.F.R. part 1500 *et seq.*
 - (e) FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771;
 - (f) Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation;
 - (g) Advisory Council on Historic Preservation regulations on compliance with Section 106, "Protection of Historic and Cultural Properties," 36 C.F.R. part 800; and
 - (h) Restrictions on the use of certain publicly owned parklands and historic resources, unless the FTA makes the specific findings required by 49 U.S.C. 303.
 - (3) Cargo Preference. Language making it clear that items imported from abroad and used in the federally assisted improvements were shipped predominantly on U.S.-flag ships and that the project complies with 46 C.F.R. part 381, to the extent these regulations apply to the joint development;

- (4) Seismic Safety. Language certifying that a structure conforms to seismic safety standards, as contained in 49 C.F.R. part 41;
 - (5) Energy Assessments. Language making it clear that the transferee(s) or joint developer agrees to perform a mandatory, energy assessment as prescribed by 23 C.F.R. part 771 and 42 U.S.C. 8373(b)(1) for any buildings constructed, reconstructed or modified with FTA assistance. The assessment shall be incorporated into the Environmental Impact Statement or Environmental Assessment, if the project has one; otherwise the assessment shall be provided with the application for FTA assistance;
 - (6) Lobbying. Provisions at 49 C.F.R. part 20;
 - (7) Labor Protection. Language making it clear that the transferee or joint development partner will adhere to labor protection requirements applying to federal projects, such as:
 - (a) Davis-Bacon, 49 U.S.C. 5333(a), 40 U.S.C. 3141 *et seq.*, and 29 C.F.R. part 5;
 - (b) Copeland “Anti-Kickback” Act as amended, 18 U.S.C. 874 and 29 C.F.R. part 3;
 - (c) Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.* and 29 C.F.R. part 5; and
 - (d) Provisions concerning the protection of transit employees, 49 U.S.C. 5333(b);
 - (8) Civil Rights Requirements. Title 49 U.S.C. 5332 and DOT implementing regulations at 49 C.F.R. part 21 (effecting Title VI of the Civil Rights Act of 1964), 49 C.F.R. part 26 (participation by Disadvantaged Business Enterprises in DOT financial assistance programs) and 49 C.F.R. parts 27 and 37 (respectively, nondiscrimination on the basis of disability in programs or activities receiving federal financial assistance and transportation services for individuals with disabilities); and
 - (9) Uniform Relocation. If the federally assisted site to be improved is occupied by other than the project sponsor and the occupant is displaced, the transferee(s) or joint development partner must comply with 42 U.S.C. 4601 *et seq.* and the regulations at 49 C.F.R. part 24.
6. CIVIL RIGHTS. Project sponsors and their third-party participants must comply with the federal transit law’s prohibition against discrimination on the basis of race, color, creed, national origin, sex, or age. Project sponsors and third-party participants are subject to Equal Employment Opportunity requirements, myriad federal civil rights requirements (Civil Rights Act, Americans with Disabilities Act, environmental justice requirements, Age Discrimination in Employment Act, etc.), and DOT regulations implementing federal civil rights laws.

Certain civil rights requirements follow real property acquired with FTA assistance until it is disposed, even if FTA funds are not involved in the construction of joint development improvements. See the previous section of this chapter, “Leases and Conveyances.”

In addition to the Master Agreement, project sponsors should refer to the most current versions of FTA Circular 4702, Title VI Requirements and Guidelines; FTA Circular 4703, Environmental Justice Policy Guidance; and FTA Circular 4704, Equal Employment Opportunity Program Guidelines.

VI. JOINT DEVELOPMENT PROJECT REVIEW PROCESS FOR FTA-ASSISTED PROJECTS

This chapter describes FTA's process for reviewing an FTA-assisted joint development project proposal. FTA supports joint development projects either by awarding assistance for joint development or by concurring in improvements on real property previously acquired with FTA assistance. When FTA assistance is used, the project sponsor must follow the grant application process for the respective Chapter 53 grant program, as well as the procedures included in this Chapter. When FTA concurs in a joint development project improvement to FTA-assisted real property, the project sponsor must continue to adhere to the conditions stipulated by the grant that awarded the funds for the real property.

FTA's Master Agreement contains the standard terms and conditions governing the administration of a project supported with federal assistance through a grant agreement or supported by FTA through a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan, loan guarantee, or line of credit with the project sponsor. Not every provision of the Master Agreement will apply to every project for which FTA provides federal assistance. The type of project, the federal laws and regulations authorizing federal assistance for the project (or amended use of federally assisted real property), and the legal status of the project sponsor as a State or local government, or private entity will determine which federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. The project sponsor shall comply with all applicable federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Any violations of a federal law, regulation, or directive applicable to the project sponsor or its project may result in sanctions to, or other actions taken against, the violating party.

Project sponsors are encouraged to discuss their plans for undertaking a joint development project in advance with the respective FTA Regional Office. Early discussions with FTA will identify the applicable federal laws, regulations and directives, the appropriate course of action to take, and any potential impediments to completing the joint development project review. Such discussions will also aid the project sponsor's joint development partners in understanding federal requirements. FTA Regional Office staff will consult with FTA Headquarters staff, as required, in reviewing joint development project proposals.

1. **SUBMITTING A JOINT DEVELOPMENT PROJECT PROPOSAL TO FTA.** Only eligible FTA recipients may submit (sponsor) a joint development project proposal to FTA. Proposals can be submitted at any time to the FTA Regional Office within the respective geographical area. A project sponsor may choose to submit a joint development project proposal for either a preliminary or a formal FTA review. A preliminary review is strongly recommended. As described in the following section, the formal joint development project proposal must include the following: (1) a Joint Development Project Request form, (2) a Certification of Compliance, and (3) the proposed Joint Development Agreement, along with any appropriate supplemental documentation.
 - a. **Preliminary FTA Review.** The project sponsor is strongly encouraged to submit its proposed joint development project for a preliminary FTA review, prior to determining

the terms and conditions to be agreed upon by all parties participating in the joint development project. A preliminary review assists the project sponsor in framing how FTA requirements may be satisfied relative to specific elements of the proposed joint development project, and in identifying explicit terms and conditions to which the joint development partners must agree. A preliminary review is recommended for project sponsors having limited experience with joint development projects to ensure they do not commit themselves to proposal terms that may be unacceptable to FTA. A Joint Development Project Request form, identified as preliminary, is the only document required to be submitted for a preliminary review. A project sponsor may, however, also submit supporting documentation, proposed Joint Development Agreements, and alternative certifications for preliminary review, as necessary. A Certificate of Compliance for preliminary review is only necessary if the project proposes to deviate from the standard FTA requirements. FTA comments provided to the project sponsor during a preliminary review are subject to modification pending submission of the formal joint development review package.

- b. Formal FTA Review. The project sponsor should request a formal FTA review of the proposed joint development project when it is certain that all FTA requirements, terms, and conditions will be satisfactorily met. When requesting a formal FTA review of the proposed project, the project sponsor must submit a completed Joint Development Project Request form (see Section 2. of this chapter, below), an executed Certificate of Compliance (see Section 3. of this chapter, below), and a proposed Joint Development Agreement, along with any supplemental documentation.
2. JOINT DEVELOPMENT PROJECT REQUEST FORM. The Joint Development Project Request form (located at the FTA website) identifies pertinent information about the proposed joint development project, including how the eligibility criteria are to be satisfied. The Request form replaces the previously used Joint Development “Checklist”. The Request form must be used by the project sponsor to prepare for a joint development project and to facilitate discussion with FTA concerning the joint development proposal. The Request form does not include every possible joint development consideration but, rather, reflects those considerations that project sponsors and their partners may find most useful to consider during the project development process.
3. CERTIFICATE OF COMPLIANCE. By submitting a written Certificate of Compliance (Appendix A of this circular), the project sponsor shall certify, that the proposed joint development project conforms to the criteria of 49 U.S.C. 5302(3)(G), and that determinations relative to the value of the federally assisted project property used for the joint development, along with the baseline market analysis, have been made with due diligence (see Section 5.a., iii, 2. of this chapter, below), and that the joint development project also conforms to the requirements of 49 C.F.R. part 18, as discussed in this circular.
4. JOINT DEVELOPMENT AGREEMENT. In addition to the project sponsor, joint development projects requiring FTA approval may impose certain federal requirements on the project partners. Therefore, the project sponsor must submit a proposed Joint Development Agreement for each project partner for FTA review. Once executed, the project sponsor shall submit a signed copy of all Joint Development Agreements to FTA.

5. FTA REVIEW OF THE JOINT DEVELOPMENT PROJECT PROPOSAL. FTA's review of the formal joint development project proposal will include, but not be limited to, the following: (1) determining satisfaction of all four eligibility criteria; (2) examination of issues associated with the use of FTA assistance or program income for the project; and (3) examination of issues associated with the acquisition and use of real property that was or will be acquired with FTA assistance. During its review, FTA may require additional material or data to clarify or expand upon any item.
 - a. Eligibility Requirements. FTA will examine each of the four eligibility criteria independently of one another, although the means of satisfying one criterion may also be involved in satisfying another criterion. All four of the eligibility criteria must be satisfied. There may be more than one way to satisfy some criteria, as discussed in full in Chapter 3.
 - (1) Economic benefit criterion. This criterion is satisfied by enhancing economic development or incorporating private investment.
 - (a) Enhancing economic development. Demonstration that the joint development project will contribute to privately or publicly funded economic development activity occurring in close proximity to the transit facility.
 - (b) Incorporating private investment. Demonstration that the joint development project includes private investment, generally by identification of a joint development partner and its role in the project. Private investment does not need to be monetary; contribution of capital assets to the project, either initially or over the life of the project, will suffice. The amount and form of private investment is up to the project sponsor and its partners.
 - (2) Transit benefit criterion. There are two ways to satisfy this criterion: (1) by enhancing the effectiveness of public transportation as well as being physically or functionally related to public transportation, or (2) by establishing new or enhanced coordination between public transportation and other transportation.
 - (a) Enhancing public transportation effectiveness. Reasonable demonstration of forecasted benefits of the project onto the related transit facility or the transit system as a whole. These include increased ridership, travel time savings, enhanced wayfinding (signage, directions, etc.), deferral of transit operating or capital costs, improved transit access, and increased mobility.
 - (b) Physical relationship to public transportation. Demonstration of a direct physical connection to transit service or facilities. This includes projects built within or adjacent to a transit facility, means of access that connect directly to the transit facility (e.g., bicycle or pedestrian paths, parking spaces), or projects using air rights over a transit facility.
 - (c) Functional relationship to public transportation. Demonstration that the project, by activity and use, with or without a direct physical connection to a transit facility, enhances connectivity with or access to transit. This factor may also be satisfied by demonstrating that a transportation-related service (e.g.,

remote baggage handling or shared ticketing) or a community service (e.g., daycare or health care) facility is provided. Considerations include reduced travel time or improved access between the project and the transit facility, or increased trip generation rates as a result of the relationship. A functional relationship allows the project to be located outside the structural envelope or footprint of the transit facility, or to be separated by an intervening street, major thoroughfare, or unrelated property. A functional relationship generally will not extend beyond the distance the average person can be expected to safely and conveniently walk or bike to use the transit service.

- (d) Establishing new or enhanced intermodal coordination with transit. Demonstrated by any reasonable forecast that the project establishes or improves coordination between transit and another mode of transportation. This may include proximate or shared ticket counters, terminals, parking facilities, taxicab bays, passenger drop-off points, waiting areas, shared or coordinated signage, schedules, ticketing, or bike paths or walkways connecting transit to another mode. Projects that shorten the distance a user must traverse between transit and another mode are considered to enhance coordination.
- (3) Revenue criterion. This criterion is satisfied by demonstrating that the project sponsor receives a fair share of the revenue generated by the joint development project over the term of the contractual agreement.
- (a) Fair Share of Revenue. A “fair share of revenue” is the division of revenue generated from a joint development project that the project sponsor and its partners negotiate and agree that the project sponsor will receive over the term of the contract period. FTA has determined that the minimum threshold for the amount of revenue that a project sponsor receives cumulatively from commercial, residential, or mixed-use development projects must be at least equivalent to the amount of the original federal investment²¹ in the project property contributed to the joint development project. In most instances, the project sponsor contributes its right to use FTA-assisted real property for the joint development. However, FTA grant funds or other project property may also be contributed.

Fair Share of Revenue	\geq	Original FTA Investment Contributed to the Joint Development	$=$	Amount of Revenue to Project Sponsor from Partner(s) over the contract period
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²¹ As federal assistance is provided to an entire project as a percentage of total project costs, the “original FTA investment” in project property contributed to a joint development project equals the original cost of the project property multiplied by the federal share in the project.

In certain circumstances, there may be economic factors that affect the amount of disbursements of revenue generated by the joint development project on a monthly or annual basis. Therefore, FTA’s minimum threshold requirement to the project sponsor can be satisfied as long as the equivalent to the original federal investment is ultimately received by the project sponsor over the term of the contract period.

For example, if the “Original FTA Investment in Contributed Project Property” equals \$1 million, and the term of the contract agreement is 25 years, the minimum fair share of revenue expected to the project sponsor is a cumulative \$1 million over the life of the contract. The average annual amount of the fair share of revenue is \$40,000.

$$\frac{\$1 \text{ million}}{25 \text{ years (Term of the Contract Agreement)}} = \$40,000$$

(Original FTA Investment Contributed to the JD)

Community Service or Publicly-Operated Projects, or Affordable Housing.

When a joint development project is a community service or publicly-operated facility, or includes affordable housing, FTA recognizes that the revenue generated by the joint development project may be less than what would be generated from commercial, residential, or mixed-use development projects. As such, the resulting “fair share of revenue” can be less than the amount of the original FTA investment contributed to the project, but must be based upon the actual revenue generated by the community service or publicly-operated facility, or affordable housing.

- (b) Analysis. Project sponsors are expected to exercise due diligence in determining the market value of the FTA-assisted project property contributed to the joint development project. Although FTA does not prescribe any specific methods, a baseline market analysis is required to demonstrate a good faith effort to provide a “fair share of revenue” to the project sponsor. The required baseline market analyses may include the following:

- Real estate (or designated asset) appraisals and analyses
- Joint development project costs and responsibility
- Development trends and plans
- General market conditions
- Project Site conditions analysis
- Benchmark estimates
- Risk analysis
- Industry analysis
- Fair market value determinations

Elements of the baseline market analysis may be undertaken by either the project sponsor or its joint development partners; however, the project sponsor is expected to use professional expertise and exercise professional judgment in

its acceptance of the results of any analyses. The various studies relied upon in conducting the baseline market analysis should be identified in the Joint Development Project Request form submitted to FTA. In addition, the project sponsor must provide certification in writing that it has complied with this requirement using the Certificate of Compliance in Appendix A of this circular.

- (c) FTA Investment and Fair Share of Revenue. Based upon the results of the baseline market analysis, the project sponsor must report the current market value of the FTA-assisted project property that will be contributed to the joint development, as well as the original cost of the project property and the federal share invested in the FTA-assisted project. The project sponsor must determine with its joint development partners the expected revenue to be generated by the joint development project, and their timing over the contract period. The project sponsor is expected to negotiate with its joint development partners to determine the fair share of revenue amount (as described in 1. above) and the timing of the portion of the revenue that it will receive, taking into consideration the type of project to be undertaken and priorities that the project sponsor and/or local government want to advance through the joint development project. The agreed upon amount is to be reported to FTA using the Joint Development Project Request form.
- (4) Tenant contribution criterion. This criterion is applicable only when the project provides space within a federally-assisted transit facility for use by a tenant or for a non-transit purpose. Satisfaction is demonstrated through an agreement whereby the tenant covers his fair share of the operating and maintenance costs of the space being used. The project sponsor must identify the type/purpose of all costs to be provided. Tenant refers to people as well as business entities. FTA does not define “fair share” of the costs nor does it impose any valuation methodology. The project sponsor must demonstrate use of a commercial valuation method to determine what constitutes a fair share of the costs. Although this criterion is generally satisfied using rental payments, agreements other than for rental payments may be used, e.g., agreements for the outright payment of operating and maintenance costs.
- b. Use of Grant Funds or Program Income. FTA does not have a dedicated program or funding source for joint development projects. Rather, joint development projects may seek grants under various FTA assistance programs or use real property acquired using such assistance (refer to Chapter 3 of this circular). As each funding program has its own eligibility and other requirements, FTA will review the activities involved in the project to determine whether the specific program’s requirements are met. Program income is another funding source that may be applied to joint development projects. FTA will review any such application of program income to ensure that it conforms to the terms and conditions of the grant funding the project from which the program income was generated.
- c. Federally Assisted Real Property. The joint development project often uses real property owned by the project sponsor that was acquired with FTA financial assistance, i.e., is subject to federal interest. A joint development project sponsor may either transfer or

lease this real property to a third-party joint development partner. Acquisition and use of federally assisted real property is governed by the Uniform Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and the Common Grant Rule at 49 C.F.R. part 18. Acquisition of real property for joint development purposes follows the standard guidelines for acquiring real property with FTA assistance and the specific requirements of the FTA funding program through which federal funds are awarded (refer to FTA Circular 5010.1D, Grant Management Requirements, Chapter IV, Section 2). FTA allows maximum flexibility, within the law, for how the project sponsor uses federally assisted real property for joint development purposes. Accordingly, FTA will carefully examine the terms and conditions for the joint development use of the real property. Real property that has been disposed of may not be used for a federally assisted joint development project. Typical real property considerations examined by FTA are as follows:

- (1) Satisfactory continuing control. The project sponsor must ensure that the real property remains available for the transit purpose originally authorized by FTA and that it will satisfactorily maintain transit access and operation of the real property for the duration of the joint development project. The project sponsor must specifically describe any interests in the property to be conveyed, including any encumbrance, easement, long-term lease, or similar interests, the means of conveyance, and elements of property identification or recordation. The project sponsor must also specify the terms and conditions stipulated for preserving satisfactory continuing control to ensure the use of the property for its transit purpose. The conveyance of real property interests requires FTA's written consent.
- (2) Parking. FTA-assisted parking facilities are often removed or modified for use for joint development purposes, e.g., conversion of surface parking to a shared parking structure. Generally, FTA does not require the replacement of parking spaces that will be eliminated or displaced by the project on a one-to-one basis.²² FTA will examine the useful life of any existing parking improvements that are proposed for change for the joint development project. If any useful life remains, the project sponsor must account for the remaining federal interest in the parking improvement through replacement parking or some other method. (Refer to Disposition Alternatives of C5010.1D, p. IV-11.) Any change in existing parking facilities for use as joint development must produce an overall benefit for transit; the project sponsor must demonstrate how this benefit is provided. All prior grant commitments related to the parking facility must be examined to ensure that no terms of the attendant funding agreement are violated. Occasionally, a change in a parking facility for joint development may trigger a need for additional National Environmental Policy Act (NEPA) review. Required NEPA review is dependent upon the use of FTA assistance in the conversion, the timing of the change, and whether the attendant grant remains open. The FTA Regional Office will advise the project sponsor if any additional NEPA review is required.

²² For parking facilities related to a Capital Investment Grant project, or funded pursuant to a Full Funding Grant Agreement or Small Starts Grant Agreement, or similar contract, the project sponsor should consult with the FTA Office of Planning and Environment regarding potential impacts on travel forecast related to that project. FTA must concur that the change will not violate or adversely affect the terms of the funding agreement.

- (3) Protection of the Federal Interest. When FTA assists in the acquisition of real property, FTA has an interest in how the property is used (the “federal interest”). If title to grant funded real property will be altered or encumbered in any way in order to undertake the project, the project sponsor must ensure that the federal interest in the property will be reasonably protected until such time as FTA relinquishes its interest in that property. Any such alteration of title requires express written consent from FTA.
6. JOINT DEVELOPMENT PROJECT APPROVAL. FTA will approve a joint development project proposal submitted for formal review only. The approval shall be contingent upon the project sponsor satisfying the eligibility criteria set forth in law at 49 U.S.C. 5302(3)(G), as well as certifying that the joint development project conforms to these criteria, and that the project conforms to the requirements of the common grant rule found at 49 C.F.R. part 18. FTA will identify any elements of the package that it finds to be unacceptable, and work with the project sponsor to seek resolution. The FTA Regional Administrator has been delegated the authority to approve joint development projects, and will notify the project sponsor of the joint development approval in writing, including any terms and conditions warranting caution.

APPENDIX A**CERTIFICATE OF COMPLIANCE**

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

1. *Eligibility.* The Project Sponsor attests that the Joint Development project to be undertaken fully satisfies the eligibility requirements set forth in 49 U.S.C. 5302(3)(G), and the Project Sponsor has provided sufficient documentation of the same that may be subject to FTA oversight review.
2. *Due Diligence.* The Project Sponsor attests that due diligence has been exercised in determining the value of any FTA-assisted assets contributed to this Joint Development project. The Project Sponsor also attests that due diligence has been exercised in conducting a baseline market analysis to determine that a fair share of revenue will be received from the Joint Development project.
3. *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 is used to support public transportation activities) as long as needed for such purposes, and the Project Sponsor shall not dispose of, encumber, or convey its title or other interests without express written consent of FTA.
4. *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 Project Sponsor 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 FTA's Master Agreement, 49 U.S.C. 5334(h), and 49 CFR part 18.
5. *Federal Interest.* The Federal Government retains a federal interest in any real property, equipment, and supplies of a federally financed project (Project Property) until, and to the extent that, the Federal Government relinquishes its Federal Interest in such Project Property.
6. *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.
7. *Encumbrance of Project Property.* The Project Sponsor covenants to FTA that it will not execute any conveyance of any interest in title to the Project Property or enter into an instrument legally binding on the Project Sponsor, or obligate itself in any other manner with respect to Project Property, that would impair the federal Interest in the Project Property or alter the condition of title to the Project Property as it was received by the Project Sponsor, without explicit written consent of FTA.
8. *Notice to Joint Development Partner.* The undersigned has delivered to the Joint Development Partners a duly executed copy of this certificate, dated as of the date hereof, receipt of which has been acknowledged by the Joint Development partners in writing to the undersigned on or before the date of execution of the Joint Development Agreement.
9. *Other Actions.* The Project Sponsor (a) agrees that it will not take any action that impairs 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 Project Sponsor agrees that nothing herein shall supersede, amend, modify or otherwise affect the provisions, terms or conditions set forth in the Master Agreement.

10. *Definitions.*

- a. FTA shall have the meaning provided in the preamble of this certificate.
- b. Project sponsor shall have the meaning provided in Section 3 of this certificate.
- c. Joint Development shall mean a capital project as defined by 49 U.S.C. 5302(3)(G) that is eligible for funding pursuant to the guidance set forth in FTA circular 7050.1.
- d. Joint Development Partner(s) shall mean the entity(ies) with which the Project Sponsor has partnered, through a Joint Development Agreement, to construct a joint development project pursuant to 49 U.S.C. 5302(3)(G).
- e. Master Agreement shall mean that certain Master Agreement by and between FTA and the Project Sponsor, as the same may be lawfully revised, superseded or supplemented from time to time.
- f. Project shall have the meaning provided in Section 3 of this certificate.
- g. Project Property shall have the meaning provided in Section 6 of this certificate.

11. *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.

(Signature)

Date

Name and Title of Certifying Official