



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

**[Docket FTA-2013-0013]**

#### **Joint Development: Proposed Circular**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of Availability of Proposed Circular and Request for Comments

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its web site proposed guidance, in the form of a circular, on joint development. 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 to determine which joint development activities are eligible for FTA funding; (3) describes the legal requirements applicable to the acquisition, use, and disposition of FTA-funded real property; and (4) outlines the most common crosscutting requirements. This circular incorporates provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141(2012), 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. By this notice, FTA invites public comment on this proposed circular.

**DATES:** Comments must be submitted by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments to DOT Docket ID Number FTA-2013-0013 by any of the following methods:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: 202-493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA-2013-0013) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the *Federal Register* on April 11, 2000 (65 FR 19477). Docket: For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave SE, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For legal questions, Jayme L. Blakesley, Office of Chief Counsel, 1200 New Jersey Avenue, SE, room E56-316, phone: (202) 366-0304, or e-mail, [jayme.blakesley@dot.gov](mailto:jayme.blakesley@dot.gov); For program questions, Sharon Pugh, Office of Budget and Policy, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E52-322, Washington, D.C., 20590, phone: (202) 366-0713, or e-mail, [sharon.pugh@dot.gov](mailto:sharon.pugh@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

It is FTA's policy to maximize the utility of FTA-funded projects and to encourage transit agencies to generate program income through joint development. The benefits of joint development include revenue generation for the transit system through "value capture" mechanisms, such as income derived from rental or lease payments, and 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.

This proposed circular is intended to guide interested parties through the FTA program and policy requirements that must be considered when pursuing a joint development project.

This following is a summary of the proposed circular. The proposed circular itself is not included in this notice; an electronic version may be found on FTA's Web site at [www.fta.dot.gov](http://www.fta.dot.gov) or on the Docket at [www.regulations.gov](http://www.regulations.gov) (Docket No. FTA-

2013-0013). Paper copies of the proposed circular may be obtained by contacting FTA's Administrative Services Help Desk at (202) 366-4865. FTA seeks comment on the proposed circular.

## **II. Chapter Summary**

### **A. Chapter I – Introduction and Background**

Chapter I is an introductory chapter. It defines terms used throughout the proposed circular, provides a brief background of FTA's authorizing legislation, the effect of the circular, and instructions for how to contact FTA.

### **B. Chapter II – Circular Overview**

Chapter II introduces the substance of the proposed circular. It describes joint development as a concept and lists several elements of a joint development capital project, including the funding sources, project eligibility criteria, crosscutting requirements, and restrictions on the use of real property acquired with federal assistance. The real property section includes discussion on the requirements for real property acquisition, satisfactory continuing control, incidental use, and disposition.

### **C. Chapter III – FTA Assistance for Planning and Capital Projects**

Chapter III describes the eligibility requirements for an FTA-funded joint development capital project or planning activity.

FTA planning grants are available to assist states, metropolitan planning organizations, local governments, and others to plan transportation projects, including joint developments.

FTA program funds may be used to support capital projects. The Moving Ahead for Progress in the Twenty First Century Act (MAP-21), Pub. L. 112-141, provides the most recent authorization for FTA's programs. MAP-21 explicitly includes joint development within the definition of capital project. The proposed circular describes the MAP-21 provisions on joint development and explains each element of the statutory eligibility criteria. Chapter III is based on previously published guidance on the eligibility of joint development activities for FTA funding. 72 FR 5788 (Feb. 7, 2007).

#### D. Chapter IV – Real Property Considerations

Chapter IV reviews the requirements applicable to the acquisition, use, and disposition of real property acquired with FTA funds. Chapter IV gives special attention to circumstances that are most likely to be part of a joint development project. For example, Chapter IV discusses subordination of the federal government's unrecorded interest in real property, the incidental use of real property for non-transit purposes, and the maintenance of satisfactory continuing control of real property in the context of a joint development project.

#### E. Chapter V – Crosscutting Federal Requirements

Chapter V reviews federal requirements that are not unique to public transportation projects, but which have application to all federally assisted projects, including joint development projects funded by FTA.

### **III. Request for Comments and Examples**

In addition to general comments about the proposed circular, FTA invites comments on the following topics specifically:

Currently, the proposed circular does not expressly define the term “fair share of revenue” and does not set a monetary threshold for the same. Instead, FTA proposes to reserve the right to decline funding for a joint development project if the project does not generate a meaningful amount of revenue. FTA seeks comment on how it should assess whether a project generates a “fair share of revenue,” including any measures or criteria FTA should use.

The proposed circular does not yet include a chapter on the process FTA will follow to review and approve or concur in a joint development project. Before drafting this chapter, FTA seeks comment from its stakeholders. After considering comments, FTA intends to include a chapter on FTA’s review process in the final version of the proposed circular.

FTA requests the submission of examples that illustrate the many issues that arise in joint development projects.

Issued in Washington, D.C., this \_\_27th\_\_\_\_\_ day of February, 2013.

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Peter Rogoff  
Administrator

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