The Honorable Peter M. Rogoff  
Administrator  
Federal Transit Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  

RE: Joint Development: Proposed Circular, Docket No. FTA-2013-0013  

Dear Administrator Rogoff:  

On behalf of the LOCUS: Responsible Real Estate Developers and Investors (LOCUS), I write to provide comments on the Federal Transit Administration’s proposed circular on joint development, issued March 6, 2013. LOCUS appreciates the opportunity to submit comments to FTA regarding its guidance on joint development activities.  

LOCUS, a project of Smart Growth America, is the leading national coalition of real estate developers and investors that promotes walkable, environmentally friendly, economically vibrant and socially inclusive communities. Smart Growth America is dedicated to researching, advocating for and leading coalitions to bring smart growth practices to more communities nationwide.  

LOCUS commends the FTA’s effort to provide clarity to joint development practices across the country. The experience of LOCUS’ members has shown that transit stations and transit hubs can be the focal point for significant economic development, which is often accomplished through a partnership between the private and public sector. From the LOCUS members’ perspective, joint development is a critical tool to address the market demand for economically thriving, socially inclusive sustainable transit-oriented development (TOD). By maximizing the development potential of the areas around transit stations, TOD brings numerous benefits such as increased business activity, more efficient use of existing infrastructure, and conservation of open space. New residential opportunities affordable to families with a range of incomes, coupled with expanded commercial and business development along a transit corridor, will increase transit ridership, allowing transit agencies to recover more of their costs from fare box revenue, and rely less on taxpayer support. By making it easier for residents to meet their transportation needs through public transit, walking/biking, and shorter car trips, TOD also reduces traffic congestion, oil and gas consumption, greenhouse gas emissions, and household transportation costs. Overall, TOD projects create many positive outcomes for both the private sector and the public sector – a clear “win-win.”
The proposed circular is an improvement over the existing guidance in several ways. First, the organization and flow of the document is logical and understandable, and the definitions of key terms and illustrative examples provided in various sections are helpful in clarifying points of confusion. Equally important is the inclusion of FTA’s statement of policy, namely, that “FTA encourages recipients to undertake joint development, and promotes the recipient’s ability to work with the private sector and others to pursue joint development.” (Proposed Circular, II-1) This clearly articulated policy will encourage transit agencies to elevate joint development amidst their other operational priorities, which will ultimately help to create more transit-supportive communities.

Within the context of our overall support for the proposed circular, we offer suggestions to improve or refine some of its elements. Our suggestions stem from our work with transit agencies on TOD, including a roundtable we hosted in 2011 on the topic for FTA. In general, we believe the circular should lay out a process and requirements for joint development that is a clear and simple as possible, to avoid confusion and delay during the time-sensitive project development process. In addition, we urge FTA to keep requirements as flexible as possible, since joint development goals and project details will differ significantly from one region to another, and even within regions. The questions and suggestions below are intended to assist FTA in achieving those goals.

1. Revenue Requirements

**LOCUS recommends that FTA acknowledge other benefits of joint development for transit agencies besides revenue generation.**

LOCUS understands that revenue generation for transit agencies is an important objective of joint development projects in this era of fiscal austerity. We believe that joint development serves other important objectives, including economic development and increased ridership, which taken together can be viewed as potentially new sources of revenue for the transit agencies. We are concerned that the proposed circular appears to emphasize revenue generation above other objectives. Therefore, LOCUS recommends that FTA explicitly acknowledge in the circular that increased ridership and economic development, among others, are important outcomes of joint development projects.

**LOCUS recommends that FTA not introduce a new requirement but rather continue to rely on local determination of “fair share of revenue.”**

LOCUS appreciates FTA’s retention of the provision in the existing guidance that allows a transit agency’s Board of Directors (or equivalent governing body) to determine whether the terms of the joint development project are commercially reasonable and fair to the agency. The local agency is in the best position to understand the interplay between the agency’s goals, market conditions, community needs, local and regional requirements, and other factors that will help to determine whether the share of revenue to be received by the transit agency is fair.

We are therefore concerned that the circular introduces a new requirement that FTA approve the amount of revenue as “meaningful.” (Proposed Circular, III-6) The
introduction of this new requirement raises the possibility that FTA may reject a proposed project even after the local Board of Directors has determined that the transit agency will receive a fair share of revenue, based on the actual amount of revenue to be received. “Meaningful” is also a subjective term, which could differ depending upon who is doing the review. Moreover, the amount of revenue generated by joint development projects has historically been relatively small compared to transit agencies’ overall budgets, raising the question of whether any realistic amount of revenue from joint development would be considered meaningful.

An additional point of concern stems from comments made by FTA staff on a March 28, 2013 public webinar on the proposed circular. In discussing the fair share of revenue, staff introduced the idea that fare revenue from increased ridership could only be considered part of the “fair share of revenue” if it was a “net positive” to the transit agency, an apparent change from current practice.

We urge FTA not to impose additional restrictions on the evaluation of “fair share of revenue” by requiring transit agencies to demonstrate that revenue is “meaningful” or that fare revenue increases are a net positive for the agency. In order to achieve the dual goals of establishing requirements for joint development that are both clear and flexible, we recommend that FTA continue its practice of relying on a local determination of fair share.

2. Relationship to New Starts Program’s Affordable Housing Criteria

LOCUS recommends that FTA explicitly state that transit agencies can support affordable housing through joint development.

Recently, FTA issued a final rule governing the evaluation criteria for the New Starts program. As part of the that rule, FTA included, for the first time, an evaluation of the number of affordable units in place around proposed transit stations and of the plans and policies in place to support preservation and creation of additional affordable units. LOCUS partners like Transportation for American and Reconnecting America have commended this approach due to the benefits it will provide the new transit line as well as the families occupying the units. We, too, commend this approach. Furthermore, we believe the new rule allows transit agencies to undertake joint development activities as a part of their New Starts project without having to include the joint development costs in the New Starts project’s cost-effectiveness evaluation. FTA explicitly stated that it intended this change to remove a disincentive to transit agencies conducting activities as part of the New Starts process to achieve a more transit-supportive environment around the future stations. Taken together, these two rule changes create the potential for a significant increase in affordable housing around new transit lines.

However, as currently proposed, the circular does not mention affordable housing production as a possible goal of joint development, despite the fact that locating affordable housing near transit is one of the most effective ways of increasing transit ridership. Given FTA’s recognition in the New Starts context of the value of locating

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affordable housing near transit, we recommend that FTA make clear that the circular allows transit agencies to support affordable housing preservation or production through joint development. Such a statement will help to ensure that FTA’s position on the importance of affordable housing is consistent across programs.

3. Additional Points of Clarification

FTA should clarify the impact of Full Funding Grant Agreements on parking requirements in joint development.

Based on many surveys of LOCUS membership, parking requirements are consistently one of the top issues of concern and frustration. For example, it is unclear to both the development community and the transit agency in join development project whether, and how much, parking must be replaced if parking spaces are converted to another use. We understand FTA’s statement that under joint development rules, FTA does not require one-to-one replacement, however the circular remains unclear how requirements from the New Starts program might limit that flexibility.

The discussion of Full Funding Grant Agreements in the section on parking states that transit agencies must achieve “certain ‘user benefits’”, the implication being that elimination of parking spaces could affect the agency’s ability to achieve those benefits. Since “user benefits” is not a defined term in the recently issued New Starts regulation, FTA should clearly articulate what provisions in Full Funding Grant Agreements could require replacement parking, and provide examples of scenarios in which one-to-one replacement would and would not be necessary.

FTA should explicitly state that land sales are possible under joint development rules.

Under current guidance, transit agencies cannot sell land in fee simple for a joint development, although they can sell land with a reservation of rights sufficient to allow the agency to retain satisfactory continuing control and to ensure that the land remains in a transit use. The ability to sell land in joint development projects has been used in several situations, particularly in situations in which the land would not generate enough lease revenue to justify the staff time required to manage the lease, or in cases in which the financing sources require the developer to own the underlying land. Our reading of the guidance suggests that FTA does not intend to change this eligibility, and that the list of possible arrangements (including “sale”) on page IV-3 is intended to apply to joint development projects. However, because the circular does not explicitly state that sales are allowed in joint development (other than fee simple sales), it could be interpreted to allow only leases. We therefore recommend that in order to provide clear and flexible guidance, FTA explicitly state that sales (other than fee simple sales) are permitted under joint development rules.

FTA should clarify the applicability of the circular to joint development projects in which the land was purchased with non-FTA federal funds.
In recent years, transit projects have received federal funding from sources beyond FTA’s programs, including FHWA’s Surface Transportation Program and Congestion Mitigation and Air Quality Program and DOT’s TIGER and TIFIA programs. We hope and expect that these programs will remain important sources of funding for transit going forward. In order to avoid confusion, FTA should clearly state whether and to what extent the circular applies to transit agency owned land that was purchased with federal funding or financial assistance from non-FTA programs.

Again, we appreciate the opportunity to provide comments into FTA’s Proposed Joint Development Circular. We look forward to continuing to work with FTA to expand the use of joint development and other land disposition activities to support the creation of economically vibrant and socially inclusive transit-oriented development. Please feel free to contact Christopher Coes at (202) 207 – 3355 x 136 or ccoes@smartgrowthamerica.org with any questions about these comments.

Sincerely,

Chris Leinberger
President, LOCUS: Real Estate Developers and Investors