

TRANSCRIPT FROM EXTERNAL FTA WEBINAR: FTA JOINT DEVELOPOMENT POLICIES, PROCEDURES, AND UPDATES

FEBRUARY 9, 2017

4:00-5:00 PM ET

>> KIMBERLY GAYLE: Good afternoon, everyone. It's 4:00 p.m. and we are getting ready to get started on our webinar. This is the Federal Transit Administration Joint Development Policies, Procedures, and Recent Updates. Thank you again for joining us today. We appreciate you taking the time to listen in. My name is Kimberly Gayle. I am the Director for the Office of Policy Review and Development. I'm pleased to be here today and participate. Along with me are Daniel Schned, who is the FTA Joint Development Coordinator also with the Office of Budget and Policy; Rabinder Bains, the Chief Economist in the Office of Budget and Policy; and also pleased to have with us Christopher Hall, who is with the FTA Office of Chief Counsel and again, thank you all for joining us today. With that I will hand it over to Daniel and we will continue with the webinar.

>> DANIEL SCHNED: Thank you Kimberly. This is Daniel Schned from the Office of Budget and Policy at the FTA. I just want to go over a few housekeeping matters. First, this webinar is being recorded and the audio and transcript will be hosted on FTA's joint development webpage, which you can access through the web links box on the left of your screen. Also, the updated versions of FTA's Joint Development Circular and Project Request Form are available for you to download located in the file share box on the left of your screen. Throughout the webinar you can submit questions you might have using the Q&A box on the right side of your screen and we will address as many of them as we can as time allows. Please try to ask concise questions and questions generally about FTA's policies and procedures. What I mean by that, is that project eligibility is determined by FTA regional staff so I can't answer questions about specific projects and it would require a lot of follow-up questions about the details of your project. However, we do plan to host more outreach in the future where you can learn from each other and get into the weeds about project eligibility and best practices so be on the lookout for that and hold your project-specific questions for that, or shoot your regional staff an e-mail and they will be happy to help you. Lastly, if you submit a question that we do not address during the webinar, I will personally make sure it gets answered by me or someone at FTA afterwards so don't worry about that.

Enough with the housekeeping and on with the presentation. The agenda for the webinar includes first, an introduction to FTA's joint development policies and background on the Joint Development Circular. Second, an overview of FTA's joint development goals and some lessons learned from several recent joint development project requests. Next a description of the recent updates to the Circular published in the Federal Register in December and finally, some helpful tips for project sponsors, transit agencies as they develop and submit their project request to their Regional Office.

So first, an overview of FTA's joint development policies. As a concept, joint development is real estate development that is coordinated between transit agency and developers or other partners. Basically, it is the transit agency being more active in and benefiting from land of

around or air rights above it stations or facilities. There are four main components. First, joint development includes a transit improvement or benefit to transit. Second, also included is non-transit development, either residential, commercial, or mixed use space that's closely linked to transit. Non-transit development without a transit improvement is basically transit oriented development, or TOD as it's commonly referred to. When a transit agency is involved it is joint development. Third, transit agencies enter into partnerships for joint development, but not necessarily private-sector partners. And finally, joint development includes a fair sharing of costs and benefits among all the partners involved. Joint development is a value capture strategy so the agency usually benefits financially.

Many transit agencies engage in joint development with partners without FTA assistance or involvement. However, FTA gets involved when there is an FTA interest in the project. And this interest can either be in the form of new funding or real property that was previously acquired with FTA funding. And, in terms of funding, FTA does not have a dedicated joint development funding program, but rather joint development is an eligible expense under all FTA capital funding programs, which is written into our statute by Congress. And in determining project eligibility, we review three main categories of issues. First, the four statutory eligibility criteria, which I will walk through in detail in a moment. Second, issues with the use of real property within FTA interest and this will be covered by Chris Hall in just a moment, And third, all of the other cross cutting federal requirements, such as NEPA. All of these policies and procedures are established in the Joint Development Circular 7050.1A.

Now, quickly what is *not* joint development? It's not the same thing as transit oriented development or TOD and it's also different from incidental use. They are not mutually exclusive concepts, but it's important to note the distinctions. First, TOD is not a transit activity; it is only development, which is oriented toward transit although transit should also benefit from TOD. And as I said before, with joint development the transit agency is an active participant in, and beneficiary of, development, but that is not the case with TOD, at least by definition. Also, TOD tends to focus on larger areas, station areas or part of a community. Joint development tends to be centered on a transit facility and relates to one project or one piece of transit agency owned land. That's not always the case. Some are big multi-phase projects that encompass large areas as well. And some of you may not be familiar with the concept of incidental use. FTA's current guidance defines this as a limited use of real property previously acquired with FTA assistance, which on the face of it's own similar to what I said a joint development can be, but there is an important difference. Joint development is defined in statute within the definition of a capital project and this removes question about joint development's eligibility for funding through any of FTA's capital funding programs. However, incidental use, on the other hand, is *not* a capital project. It is use of real property that's limited in scope and does not interfere with transit. A good example of incidental use would be a coffee cart on the train platform in the mornings, which does not include a transit capital project to make it happen. However, incidental use can generate revenue for transit like joint development. So, for example, a coffee cart may pay a fee to the transit agency to operate on its platform. The salient difference is that grantees need to apply and meet all the requirements in the Joint Development Circular. Incidental uses also need to be approved, but there are fewer requirements.

Next, I'm going to talk about the statutory eligibility criteria and they are, one, that the project

must benefit the economy, two, the project must improve the transit system, three, the partners must provide a fair share of revenue for transit, and four, any tenants in a joint development must pay a fair share of the cost of the facility. So, let's take a closer look at each of these criteria.

The economic benefit criterion can be satisfied in one of two ways. Either the project creates economic development in close proximity to transit. And evidence of this can be submitted to FTA as a report that demonstrates that the project will generate an increase in jobs, housing, or commerce. Or, the second way you can satisfy this criterion is that the project incorporates private investment. And this can be monetary or in-kind contributions or some other benefit. FTA does not set a monetary threshold for private investment. The amount and form is up to the project sponsor and partners. So this also supports private sector participation in transit and joint development projects.

The second criterion is that transit must benefit from the joint development. This can also be satisfied in two different ways. The first way to satisfy it is for the project to enhance the effectiveness of transit and be either physically or functionally related to transit. A reasonable forecast of enhanced effectiveness, such as increased ridership or improve transit excess, will suffice as evidence to support a joint development application. And a physical relationship is a direct connection to transit where as a functional relationship provides enhanced use, conductivity with or access to transit without a direct physical connection. This permits a joint development project to be located outside the structural envelope of the transit facility, for example, separated by a street, but a functional relationship does not normally extend beyond the distance most people can be expected to walk or bike to use transit.

The second means of satisfying this criterion is for the project to establish new or enhanced coordination between transit and another mode. To demonstrate this to FTA for approval, again, a forecast of improved coordination will suffice. Examples include a kiss-and-ride parking lot, bus drop-off points, shared ticket counters or waiting areas, bike paths or walkways, as long as they connect transit to another mode.

The third criterion is the fair share revenue. Meaning, again as a value capture strategy, the transit agency must benefit financially and the amount of revenue they receive needs to be *fair*, according to FTA policy. And FTA's policy is that the minimum threshold or fair share revenue is the amount of the original FTA investment. We defined this as FTA's share of the original cost of the assets contributed to the project and year of expenditure dollars, not adjusted for inflation or real estate market. Most of the time, this is land FTA helped acquired with a grant and the minimum threshold policy sets the floor for the amount of revenue the sponsor is to receive. But sponsors may negotiate to receive a higher amount of revenue and are encouraged to, taking into account the sponsor's and the community's goals and objectives, other than revenue, such as equity concerns and gentrification.

Whatever revenue is negotiated, the minimum threshold amount must be received cumulatively over the life of the joint development agreement, and in presenting the fair share revenue to FTA, sponsors must identify the amount, source, in terms of revenue payments that they expect to receive. The exception to this policy is when a joint development project is a community service or a publicly operated facility, or affordable housing. In these cases, the fair share revenue can be less than the minimum threshold, but should be based on the actual revenue generated by the facility or affordable housing.

So the next slide shows an example. In 2005, a FTA capital grant helped construct a light rail system including land and right-of-way acquisition, and FTA's share of the total project cost was 80 percent. One of the stations has one and a half acres of land remaining unused originally purchased for \$2.25 million and used for construction staging, and a developer wants to lease the land from the transit agency to build apartments. How much is the transit agency required to receive in payments according to FTA policy? As you can see from the calculation, the original FTA investment, designated as the fair share of revenue is \$1.8 million, which again is the floor and can be greater, but that is the minimum threshold. This is a simplified example to demonstrate how the fair share of revenue is calculated, but in some cases, determining the FTA investment may be complex requiring review of several assets and FTA grants going back many years.

The fourth and final statutory eligibility criterion is the tenant contribution or fair share of costs. And basically this says that tenants must pay a fair share of the cost to build, furnish, operate and maintain the space they occupy and the facility it is in. This is applicable only when the project provides space for tenants in FTA-funded transit facilities. FTA does not require a minimum threshold amount for this as we do for the revenue criterion discussed before, but it should cover the operating and maintenance costs. Again the amount, source, and terms of the payments need to be identified in the application the project sponsor submits to FTA for approval of the joint development.

Now I'm going to turn it over to Chris Hall to discuss the next part of the agenda, the real property considerations.

>> CHRISTOPHER HALL: Thanks Dan. So the circular includes a chapter on real property focused on some of the real property considerations that are going to come up that are particular to the joint development requirement as opposed to some of the other capital projects FTA funds and it's divided into a couple of themes, how you acquire property using FTA funds once you have a piece of property that was paid for with FTA funds, how are you allowed to use that property and then finally some of the tools in the toolbox I will say how you can use the property and kind of unusual ways in terms of conveying interest to other parties to enable joint development to occur while not violating the terms of the agreement to keep the property preserving the federal interest in the property.

So in the vast, majority of the joint development applications that we see, the grantee has already acquired the property for some other kind of transit purpose. And now the property either has development potential beyond the original transit asset or, for one reason or another, has become excess property, but it has joint development potential. So that is the vast majority of the projects that we see. Conceivably, we could write you a grant to go out and acquire your property from the start if it is expected to be used for joint development, but that is not the usual kind of project that we see.

So once you have the property, once you enter into the grant agreement with FTA, and we reimburse the acquisition of some kind of property for a transit project, of course that comes with a very thick agreement of how you agree to use that property, what you can do with it. Certainly whatever the grant specific purpose was that was written into the agreement, you have to do that. We reimburse you to buy this property and go out and build a bus stop, build a subway station, build whatever -- what is written specifically into the grant for that specific

transaction has to be accomplished. In addition to that, all of our grant agreements for several years now have made joint development an eligible purpose on the property. So you do not need to have joint development called out specifically in the grant agreement. Joint development is always -- I shouldn't say always -- in almost all circumstances going to be an eligible activity on property we helped you acquire.

So here is where we get into the more creative and fun things we can do with property in the joint development arena. Normally as you all know, when you go out, buy a piece of property with FTA money, you have to take title of that property and we are very particular you not start selling off pieces of that property without our approval or you might have a disposition on your hands and we will demand our money back basically, our share of what the property is worth. With joint development we can be a little more flexible with that requirement. And really this is a result of necessity over the years that joint development projects are sometimes very difficult to achieve without having to convey some kind of interest in the property to another party. Commonly this might come up in the financing stage, if the banks that are financing the project obviously want to have some kind of a security interest in the property, that normally would not be permitted, but in a joint development context we can permit that. We have also seen grantees convey the property to joint development entities, special entities that the grantee has created along with a development partner specifically to accomplish the joint development. And the key things we will be looking for in these situations are -- is the government, is the federal interest in the property protected through all of these transactions? In other words, after the title is conveyed away to another party, does FTA have the legal assurance, however you structured it in that arrangement, that we are guaranteed that the property is going to continue to be used for the purposes that were first set out in the grant and it's not going to be used for any inappropriate purposes. And our interest is protected and ultimately we can get our money back when we do want to dispose of the property. I want to draw a distinction between the conveyances that I've been talking about for purposes of accomplishing a joint development and the normal context in which a grantee sells all federal interest property which is a disposition. Disposition, of course is when you know longer have any use for the property, don't want to own it anymore or have anything to do with it anymore, and just want to get it out of the world of FTA grant requirements. That is disposition. You are clearing it of the federal interest. We take our money, you take your money, and the property goes away. In the joint development context, it is different. We are not clearing away the federal interest. We've got to be very, very careful about protecting the federal interest so even though the property may no longer be held by the grantee on a title of the property, it is still subject to the grant agreement and still subject to all the terms and conditions and we are going to be looking for some mechanism through which we are assured that the grantee can enforce the grant terms on whatever party ends up holding the party.

>> DANIEL SCHNED: Thank you. Now before I switch gears, I want to briefly talk about some of the goals and principles of FTA-assisted joint development and some recent projects and successes. FTA joint development policy puts an emphasis on value capture. We see joint development as a way for grantees to leverage resources to generate revenue, which is treated as program income and can be used for transit operating expenses and future capital projects. In addition to revenue through lease payments, joint development maximizes the utility of FTA

funded projects by building TOD, which can increase ridership and farebox revenue, And while the financial benefits are clear, many other benefits accrue to grantees and local communities such as more efficient land use, enhanced economic development and each community and transit agency must prioritize their own goals in developing a joint development in their community.

And lastly a joint development is a tool that transit agencies can use to help shape the environment around their transit stations in ways that are preferred by the local community. What I mean by that, is joint development as a tool where transit agencies have become a partner with the local community to accomplish these transit oriented developments in a way that improves their community relationships around their assets. And as a policy, FTA provides our grantee's maximum flexibility under the law in pursuing joint development in terms of determining local goals and objectives and designing projects around them, contracting with third parties, and negotiating terms and conditions of joint development agreements, forming business structures or authorities to deliver and operate those projects. As long as the project meets federal requirements, we tend to defer to the project sponsors on the specifics.

So the next slide shows an example of a successful project request approved by FTA and the site outlined here in red is in St. Paul, Minnesota between University Avenue and Interstate 94. It was originally a streetcar manufacturing facility and after the streetcar company went bankrupt we helped acquire the site and convert it into a bus barn, or a bus storage and maintenance facility. 10 or 15 years ago the building was aging and was demolished and has since been used as construction staging for the Green Line light rail shown at the top in green with the station there and also the new BRT line in blue there also the station in blue. That opened this summer, this past summer and also been used for other uses such as surface storage for buses over time. The site was underutilized in general though and it became a redevelopment opportunity, and Major League Soccer was in discussion with the City of Minneapolis to build a new soccer stadium, but when those negotiations broke down, the City of St. Paul jumped at the chance to redevelop the site as part of a larger effort to enhance the land use in the area, which as you can see is mainly surface parking and big box retail at the moment.

So the City of St. Paul, this shows a rendering of the final outcome of the TOD, which includes a soccer stadium for Major League Soccer. The City of St. Paul is going to lease the site from Metro Transit to develop a publicly-owned soccer stadium as part of the larger private TOD that will include the surrounding 25 acres and Metro Transit will receive in rent roughly a half million dollars per year for 52 years, so the total income to Metro Transit will be \$29 million and the most recent appraisal showed the fair market value as \$12 million and FTA's original investment in the site was \$11 million. So you can see there is a very good return on investment in terms of FTA's original investment and the revenue generated. No new FTA funding is being sought as part of the proposal and all the costs for construction are to be paid with private or local public funds. Metro Transit will retain ownership and maintain continuing control of the property through specific clauses in the lease. FTA's interest and approval of this joint development was the lynchpin for this project and will help catalyze roughly \$150 million of private investment in the air to create what I think, it is fair to say, is a far more transit-supportive community than what is there today. I think this project really helps illustrate the power of joint development. Especially in the value capture context.

The next project I wanted to present here is a project request in Tacoma, WA, submitted by Pierce Transit. This project is still under review for now. The site is a bus transfer facility which has an FTA interest. We helped acquire some of the property many years ago on part of the development area. Outlined here in red is a park-and-ride which was identified as being heavily underutilized by Pierce Transit and was identified also as a redevelopment opportunity by the local community.

So this site there is a proposal to develop a 100 percent affordable housing project which is for families and households of formerly homeless veterans. And the average median income of those units will be 18 percent of the area median income, which is a deeply affordable housing project and the revenue projection for this project is three times what FTA requires as part of the minimum threshold policy. So this project really helps illustrate how an affordable housing project can also meet the requirements of FTA's minimum threshold fair share revenue policy. And again there is the red showing you the area that is going to be redeveloped. And the next slide shows a rendering of the facility in question.

So as a value capture strategy joint development is working quite well. Of the five joint development projects that were submitted and approved by FTA in 2016, FTA's total original investment was \$24.8 million and FTA grantees have leveraged that investment to generate \$277.8 million in contracted future revenue. So that is a great return on FTA's investment in terms of future contracted revenue. Some of that revenue is generated in the next several years and some upfront. Others are leases that stretch out over 50 or 99 years. And project sponsors also estimate these projects will generate \$335 million in additional local economic development as part of these projects.

Now I want to shift gears and describe the recent updates to the joint development circular, which were really the trigger for this webinar. First, just a couple of notes on the evolution of FTA's joint development policy. In 2014 the first Joint Development Circular was published. The major changes to FTA's guidance are listed here. The fair share revenue minimum threshold policy was established as well as the exception for community service and publicly operated facilities. We also started requiring sponsors to certify that they conducted a baseline market analysis, which Rabinder will describe in a moment. And there were some procedural changes as well. We now employ a two-tiered review process, and we also require a project request form, which is essentially a new spreadsheet that collects more information than the joint development checklist we used before 2014.

Then in 2015, Congress passed and the President signed into law the FAST Act, which made a change to the definition of joint development. We established an internal working group, studied the circular for critical improvements and this December published in the Federal Register an update, which affects the change the FAST Act made to the definition and the fair share minimum threshold policy for affordable housing as part of a joint development project, and I will describe both now.

The statutory definition of joint development in Section 5302 of our statute includes a list of 14 activities that are eligible for FTA funding as part of joint development. They include land acquisition, demolition of existing structures, foundations, utilities, etc. And that list of activities was followed by a prohibition here in the red text, the prohibition was against outfitting of commercial space with the exception of intercity bus and rail facilities. The FAST Act struck this prohibition. So the text in red is struck from our statute and is no longer part of the statute.

So the effective date of this change is really the date that the FAST Act became effective. And to address this, FTA struck the section of the circular that listed ineligible activities, which only listed outfitting of commercial space. And so the effect of this change is that commercial outfitting is an expense that, you can make the argument, is eligible as part of a joint development, but potentially eligible. It is still subject to all of the other statutory eligibility requirements, including the fair share costs requirement, so a commercial space that is going to be outfitted, the tenant needs to pay a fair share of those costs. The term outfitting is no longer in the circular because FTA has determined there's no need or basis for us to publish guidance at this time and if and when requests for funding commercial outfitting are received we will reconsider the need for guidance in the future.

The next change that we made to the circular is the fair share revenue minimum threshold policy, which we discussed earlier and includes an exemption for community service and public facilities because they generate less revenue than market rate development. However, we also acknowledge that affordable housing also generates less revenue than market rate development. Number two, promoting affordable housing near transit is a strategic priority for FTA and DOT and is promoted by our funding and financing programs, including the Capital Investment Grant Program, and, three, we have received requests from stakeholders to provide the same exemption to affordable housing for the fair share revenue minimum threshold policy that we currently provide to community service facilities. So we established a working group to look into this and came to the conclusion that a change was warranted and updated the joint development circular accordingly. And mechanically what you see in the next slide is the changes that were made to the circular in this respect. We added a definition of affordable housing, which is listed on the slide. And the definition is consistent with the language in our Capital Investment Grant program guidance that is embedded in the land-use and economic development rating criteria guidance. The effective date of this change is February 12 -- 45 days after it was published in the Federal Register.

So next I just wanted to walk through a scenario of affordable housing to demonstrate how the fair share of revenue threshold is established for an affordable housing project. Here we have a transit authority that has a park-and-ride that is underutilized and an opportunity to redevelop it has come along, and a developer would like to build apartments. So the transit agency is going to lease the land to the developer, who will demolish the park-and-ride and construct an apartment building, in which 25 percent of the units are affordable, per the definition in the circular, and the other 75 percent of units will be market rate. So the question, more rhetorically than anything, for the group is, is this project subject to the fair share of revenue threshold? And as I said before, affordable housing is exempt from the fair share revenue threshold, but the market rate part of the project is still subject to the fair share revenue so how do you calculate the threshold for a project where you have a mix of affordable housing and market rate housing, and I'll describe that on the next slide.

First, you have to determine the proportion of the project that is affordable housing. In this case it's 25 percent and then you calculate the proportion of the project that is not affordable housing, which in this case is 75 percent. So as you see in the calculation below the fair share of revenue equals the original FTA investment multiplied by 75 percent -- this is the portion of the project that we do not provide an exemption for. And going back to apply this to the example we discussed earlier where you have the original FTA investment in fair share revenue of

\$1.8 million, if the project has 25 percent affordable housing units than you multiply that \$1.8 million by 75 percent and the fair share revenue becomes \$1.35 million, which is significantly less than the fair share revenue for a fully market rate project. So again that is just a floor and we encourage grantees and project sponsors to try to negotiate more revenue than that.

So now I am going to provide a quick overview for project sponsors on how to submit a joint development project request and some of the steps FTA takes to review those projects. This slide shows an overview of the two-tiered review process that I mentioned before. First, we have a preliminary review process, which is meant to facilitate discussion between FTA and sponsors about the project and FTA's requirements. And most projects should begin with a preliminary review, but it's not a requirement. It can help speed up the formal review at the end. And the formal review is conducted when it is certain through discussions in the preliminary stage that the project meets all of FTA's requirements and can move on to the formal review stage and be considered for final action.

The final action, I mentioned at the very beginning of the presentation, is the authority of the Regional Administrators not FTA Headquarters, so the review process is undertaken by the Regional Offices as well, regional staff. And headquarters staff can often be utilized as consultants in that process, but the authority all is with Regional Administrators.

So the only documents that are required as part of a preliminary request submitted by a project sponsor is a project request form and that is available on FTA's website and also its linked there in our file share box on the left of your screen. And the required elements of a formal project request are the project request form updated through discussions in the preliminary stage, the baseline market analysis, which Rabinder will describe in a moment. Certificate of compliance executed by the sponsor or an alternative certificate, and the certificate of compliance is the back page of our circular – that is where you can find that. And a copy of the joint development agreement between the project sponsor and partners prior to final execution. It's important so FTA has a chance to review the agreement and provided comments as necessary.

And the final required element of a formal project request is an appraisal and review appraisal for any FTA-assisted property that's involved in the project. Lastly, in between the preliminary request and formal request is an iterative process to update a preliminary request, where the project sponsors are not held to any of the information they have submitted. It's just an effort, an optional effort for project sponsors to work with regional staff to develop a project request that can be reviewed formally and approved. So as information is submitted it can be updated and regional staff will review those updated documents as they come in.

Okay, now I'm going to hand it over to Rabinder, who is going to describe the baseline market analysis requirement in our circular.

>> RABINDER BAINS: The grantee as a project sponsor is required to certify the baseline market was done that means they should complete attachment one of the project form baseline market labor analysis documentation form. This should list the market analysis and later documents such as an appraisal of the property to be used for a joint development and transcend plans in the local area and analyses of housing and commercial rental markets. So basically it's an assessment of the market conditions and the location where the joint development is going to be taking place. And what we have not specified exactly what these

documents should be, it is up to the judgment of the project sponsor to determine what they need to know about the local development conditions. The market analysis issues to understand the revenue projections made for the documents.

So based on what the conditions are, it would help the project sponsor negotiate and share revenue that is equal to or greater than the threshold recommended based on the property paid for by FTA originally.

The baseline market analysis ensures that diligence was done on the part of the sponsor to understand what the market conditions are and negotiate a fair share revenue.

The baseline market analysis although you do not have to submit this with the document, but we may review it particularly if we are helping sponsors in the preliminary JD review process, we would advise on understanding the market conditions if they need that kind of assistance. And also if we feel that the due diligence or the market analysis [inaudible] any other relevant documents that would be helpful in understanding the market conditions, then we may ask what was done to satisfy this need.

>> DANIEL SCHNED: Thank you. Lastly, I will provide a few best practices for project sponsors. They all fall under one big category, which is communicate early and often with your regional staff and counsel to develop your project request. We have provided this two-tiered review process in the circular in an attempt to encourage this communication so that when a formal review or formal request is submitted and a review is underway by FTA there are no surprises and FTA can review it as quickly as possible because usually at that time of a project when it's been submitted it's at a critical stage of the development timeline and holdups can be costly for the project so the preliminary stage we encourage project sponsors to utilize it, work with your appropriate regional staff to, number one, understand what the project is and determine whether it is or is not joint development. Chris Hall described the distinction between joint development and disposition. I described the difference between joint development and incidental use. Make sure the project does need to apply for joint development approval and again that process is early as possible so you can get a jumpstart.

The next thing is to identify the amount of the original FTA investment and calculate the fair share of revenue. That can be difficult in some projects. The FTA-assisted assets can be many. Several pieces of property and some of the grants can go back many years and can be tricky to track down the original cost of that land acquisition FTA shares. So the earlier the better to identify that and determine what your minimum threshold is so you make sure to negotiate the correct amount of revenue in your leases.

Next is to understand FTA's requirements and how the review of your project is going to fit into that development timeline. Many joint development projects are different sizes and complexity so it is hard for FTA to provide definitive timelines for review, but we do make our best attempt to do reviews in a timely manner, but it's important again to work with your regional staff to understand and try to get as good of a sense as possible of how long the reviews will take given the size, scope and complexity of your project.

The next is to develop templates or model provisions and Chris mentioned everything that's required to protect the federal interest and provide satisfactory continuing control and many provisions have been used before in leases that we have reviewed and approved and the regional staff can help provide some of that language as a template. If your project is a

multi-phased project has multiple leases that are going to be involved, you can work with regional counsel to develop a template for those leases with the provisions that will be in each individual lease and that can help streamline the formal review process as well.

So those are just a few best practices. Here are a couple of things we plan for the near future in terms of outreach to grantees and helping understand our policies and requirements. We are going to be publishing a set of Frequently Asked Questions on our website in the next couple of months, Spring 2017, and we will also be presenting an online guidebook, which is going to be a resource for project sponsors that will provide a wealth of information, detailed description, kind of how to submit a project, what's required, eligibility criteria and examples and scenarios that can help you understand a little better whether your project is joint development or not and how the requirements apply.

So with that I just want to quickly draw your attention to some important information. The FTA resources are all on our website at <www.transit.dot.gov/joint-development>, where you can find a copy of the circular and everything you need to submit a joint development application, as well as some other guidance and resources there. And contact information for myself and Chris Hall, the main points of contact at headquarters if you have questions about the circular or legal questions about policies in general. But, again, your regional staff are the main points of contact for submitting a joint development request and in conducting the review. If you have project-specific questions those are the people to talk to. So, thank you. That is the end of the presentation and we are going to switch now to discuss and go over some of the questions we have received. We've got quite a few here, so I will go through a few of them.

>> Q&A: The first question by Ashley's is: what happens to the St. Paul Minnesota soccer stadium property after the 52 years? Ashley, I will have to get back to you on that and review the project request and remember, but again there is satisfactory continue control provisions in there so the FTA federal interest will remain, but I can't remember if the city of St. Paul -- I think there will be an option to release the property to Major League Soccer, if I remember correctly, but I'll get back to you on that with an exact answer.

Monica asked: in the Pierce Transit example, did Pierce lease the property to the veterans housing agency that's the first question and the answer is yes. And it says they still maintain control the property. Yes, they will be leasing the property to the nonprofit housing agency that is developing the veterans TOD, and the revenue terms, if I remember correctly, are actually one upfront payment, which is unique. It's a lease however, there is a single upfront payment to provide revenue to Pierce. And we do have Janine Robertson on the call. So thanks Janine for joining.

Next Laura asks: if I understand your example correctly for a project that was 100 percent affordable housing, I guess she is referring to the example I gave to determine the fair share of revenue for an affordable housing project. The question is: if I understand you correctly if the project was 100 percent affordable housing then there would not have been a fair share of revenue. And the answer is that we provide leniency on the fair share revenue for affordable housing projects, but there is language in the circular that says that the revenue the transit agency receives must be based on the actual revenue the project generates. So again we

encourage transit agencies to maximize the revenue they can get for a project, but it can be less than the original FTA investment. You are correct in that sense. Affordable housing projects, you don't have to go through that calculation that I described.

The next question from James Madden, it says: does joint development require a competitive procurement process to select a partner, and the answer is yes. Joint development is subject to free and open competition. Actually Chris, could you answer this with the correct language?

>> CHRISTOPHER HALL: We *encourage* free and open competition when selecting a development entity to benefit from these opportunities.

>> DANIEL SCHNED: Okay. Margaret asks: what is the joint development agreement and are there templates? That's a good question and the joint development agreement can be a couple of things. In the event of a fairly straightforward joint development, the agreement is just going to be the lease or sales agreement or whatever conveyance instrument is being used. The agreement is that instrument and it's between the transit agency and the joint development partner. It can get complicated when there is a multiphase project in multiple leases involved in a single joint development program, if you will. And in that case, there might be a master joint development agreement between the transit agency and the master developer, but there might also be individual leases that are submitted, so it is not a straightforward answer or not a simple answer, but I think that gets to what you were asking.

The next question from Joshua is: how do you show that -- is there a requirement to maintain a certain number of stalls in a joint development? This is referring to parking replacement. So a reasonable forecast or a reasonable measurement of the utilization of a parking facility would suffice there to show its underutilized and we do not require a one to one replacement of parking when you are replacing a parking facility and there's not a one-to-one requirement there, but again the subject to the transit benefit criterion. So working with your regional staff there will be some common sense and reasonable negotiation about what is best for transit and if the resulting joint development is going to provide enough parking for transit do not harm transit in any way. I think that answers your question Joshua.

Yolanda asks: is gross revenue the sum of the revenue for the useful life of the project? Gross revenue, the sum of the revenue for the useful life of the project ... I think, if you could submit a little more detail to that question that would be helpful. I'm not sure I totally understand and if we don't get to it, I promise I will send you an e-mail and get to the bottom of your question.

Moving on, John asks: several years down the road if the joint development goes away and the grantee takes the property facilities back, do the fair share revenue requirements go away? Like I said, it depends on what you mean by "goes away." Do you mean that the agreement has run its course and the joint development agreement is over or it's been canceled or terminated in some way? In either case, if the agreement -- well FTA's requirements remain so the fair share revenue -- if the joint development has been executed, that revenue needs to be collected.

>> CHRISTOPHER HALL: If you are facing that situation and address it with your Regional Office, we can figure out what to do there.

>> DANIEL SCHNED: I will follow-up with you to make sure we understand what you are asking. Adam asks: the market analysis portion was difficult to hear. There's been no issue with the main speaker speaking now. [Laughing]

>> RABINDER BAINS: Apologies for that.

>> DANIEL SCHNED: There will be a transcript so you will be able to get a copy of everything that was said. And I think the response -- if you have questions about the baseline market analysis if it was not answered by the slides, first check the circular because there's a good description of the requirements there and then check in with your regional staff on that requirement as well.

Next question: can joint development funds be used for relocation costs of a joint development facility to attract business or public service tax? So -- I don't think so. I think they are saying you want to attract a business to be a tenant in your facility can you pay to relocate them and I don't think that's an eligible expense.

There is a list of eligible expenses in joint development projects in the circular that we copied and pasted out of the statute. And relocation, again, afterwards we can check on the specifics if you are thinking about a specific project we can talk specifics, but in general that is not eligible. Where can we find legal language regarding satisfactory continue control is the next question from Michael. While the circular first of all has some language in there and references other legal resources.

>> CHRISTOPHER HALL: I think what they are asking for is like model clauses to include in agreements or something like that which we don't presume to supply. And that is an area where you kind of have some flexibility and room for creativity between you and whoever is on the other side of the table. Commonly grantees will use some kind of a reverter clause or they may be able to achieve it contractually and the other attorneys we have in your regions will review that and they will either be satisfied by that or raise red flags. We do not require certainly any particular model of agreement to achieve satisfactory continue and control.

>> DANIEL SCHNED: So the next question: I will not recite it, but it is from John and he is basically asking how determine the proportion of a project that is exempt from fair share revenue if it's a mixed use project and it's more than affordable housing. It's a good question because they can get very complicated. We just provided a very simple example but it can get complicated when you have housing that is a mix of affordable and market rate units in addition to commercial space, which could also be a mix of community service facilities and other market rate commercial or office space. And so those instances will rely on square footage as you indicate in your question as the method of determining the proportion of the

project that we provide some leniency and flexibility on fair share revenue. That will be a discussion that a project sponsor will have with the regional staff to determine what the fair share revenue threshold is for any given project and, so I think that answers your question, John.

And then you also ask: how is the associated parking allocated? So parking is not exempt in any way from the fair share revenue threshold. If there are parking costs associated with a joint development that is subject to the fair share revenue threshold. I wonder if what you are saying is, is parking deducted from the housing calculation and it is not. You have to determine the total cost of the non-transit joint development project, it's a good question John, you do have to determine the proportion of the total project cost, that is associated with either community service facility, publicly operated facility or public housing and that's the proportion that is provided flexibility on.

We've got one more question from Douglas. And it says: is it possible, I think we have a good person in the room to answer this question. Is it possible to add joint development funds for example, can we convert stations not yet under construction to joint development and also add joint development funding to the projects?

>> CHRISTOPHER: Let's go back to what Dan said at the top which is that joint development is not a funding program. Joint development is a kind of capital project. So if you are receiving 5309 funds, 5307 funds, funds that are eligible for capital projects, they could be applied towards something that looks like a joint development.

>> DANIEL SCHNED: So Douglas said you have joint development *funds* and there are no joint development *funds*, it's not a program, but it can be included.

>> CHRISTOPHER HALL: That's what I was going to say, absolutely, as you are designing your project on applying for discretionary funds, joint development elements can certainly be part of that larger project.

>> DANIEL SCHNED: All right, so I think that answers all the questions. We are out of time so we are going to wrap up. Like I said the webinar has been recorded and the recording, slides, and a transcript of the proceedings will be available on FTA's website. And we will also send it to all of the participants today that were registered and attended. If you have any additional questions come up you are more than welcome to reach out to the headquarters points of contact, myself or Chris Hall. Questions on the circular. And, again utilize your regional staff -- they are your best friends in the joint development process. Thank you, everyone for joining. Have a great rest of your day