



May 14, 2012

U.S. Department of Transportation
Docket Operations
West Building, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Docket Number FTA-2011-0056

Dear Sir or Madam:

On behalf of the Center for Transit-Oriented Development (CTOD), we write to provide comments on the Federal Transit Administration's (FTA) and the Federal Highway Administration's (FHWA) Notice of Proposed Rulemaking (NPRM) for the Environmental Impact and Related Procedures, Docket No. FTA-2011-0056. Since the NPRM concerns actions mainly affecting FTA and not FHWA, we will direct our comments to FTA. CTOD appreciates the opportunity to submit comments to FTA regarding streamlining of the environmental process.

CTOD is dedicated to providing best practices, research, and tools to support equitable market-based transit-oriented development (TOD). CTOD partners with both the public and private sectors to strategize about ways to encourage the development of high-performing communities around transit stations and to build transit systems that maximize development potential. CTOD is a partnership of Reconnecting America, the Center for Neighborhood Technology (CNT), and Strategic Economics. Reconnecting America is a national nonprofit that helps transform promising ideas into thriving communities, where transportation choices make it easy to get from place to place, where businesses flourish, and where people from all walks of life can afford to live, work, and visit. CNT is a creative think-and-do tank that advances urban sustainability by researching, inventing, and testing strategies that use resources more efficiently and equitably. Strategic Economics is an urban and regional economics and research firm.

CTOD receives federal funding to evaluate best practices in TOD, to research economic development impacts of transit investments, and to help develop standards and guidelines for TOD. However, we did not use federal funds to develop these comments.

CTOD supports FTA's goal to streamline environmental impact requirements for transit projects. An environmental impact statement should have the outcome of producing a better project. Yet, given many years of experience and collaboration with the transit industry, we have found that many transit agencies experience a loss in both time and money from extensive National Environmental Policy Act (NEPA) requirements in implementing small-scale transportation projects, or other projects already determined to have no impact due to the nature of the project. We believe this NPRM is a positive step forward to bringing transportation projects to the community with more efficiency.

In general we are supportive of streamlining the environmental review process. However, we wish to highlight concerns about the effect of the proposal on projects that might affect runoff, noise and/or environmental justice. For example, construction of a bus rapid transit project might require work that interferes with the geometry of an existing road – thus affecting onsite runoff and how such runoff is managed. Managing such circumstances is already addressed in regulations of the Federal Highway Administration (FHWA) under the Code of Federal Regulations, Title 23: Highways, Part 771 – Environmental Impact and Related Procedures subsection d.¹ Under those regulations the normal NEPA review process is initiated when factors are present that might adversely impact runoff, noise or other environmental issues. The FTA regulations should make reference to these or create similar regulations for FTA.

FTA specifically requests comments on some of the proposed categorical exclusions and we would like to offer the following suggestions:

CE#1: Acquisition, installation, operation, evaluation, and improvement of utility poles, underground wiring, cables and info systems, power substations and transfer stations within or adjacent to existing transportation right-of-way.

CTOD supports this addition. This categorical exclusion is already allowed for similar road projects under the FHWA regulations (CFR Part 771, subsections (c) and (d)) as previously cited. Thus, we view this proposal as an extension of current regulation. We do recommend, however, that FTA define “adjacent” in the final regulation. If the FTA decides to propose a geographic limit on utility-related activities, we recommend that FTA also be explicit in defining the geographic limitation. There are many innovative solutions to locating utility-related infrastructure that could potentially be affected if FTA were to propose a geographic limitation. For example, one of the power substations in Portland’s Pearl District is located in an underground parking garage adjacent to the line, keeping it away from the street and creating less impact on urban form. If the FTA were to propose a limit, we recommend that FTA state if surface and underground locations are considered within the geographic limits of the project. It would also be helpful if the FTA provided actual distance from the right-of-way in the definition. Again, we believe that the provisions in CFR Part 771 (d) provide ample protection for ensuring environmentally sound projects and should be relied on.

CE #2: Acquisition, construction, rehab, and improvement or limited expansion of stand-alone recreation, pedestrian or bike facility (multi-use pathway, lane, trail, or pedestrian bridge and transit plaza amenities).

CTOD supports the addition of this categorical exclusion.

CE #9: Assembly or construction of facilities that is consistent with existing land use and zoning requirements, is minimally intrusive, and requires no special permits, permissions, and uses a minimal amount of undisturbed land.

CTOD is generally supportive of this proposed categorical exclusion; however, we recommend clarification of the terms “special permits” and “permissions”. There are several instances throughout the life of a project where a special permit or permission is required before a project can proceed. There is essentially no transit project that moves forward without some form of permit or permission. FTA should state if the regulation is intended for federal, state and/or local special permits/permissions. Special permit and permissions are broad terms and can limit a project from obtaining a categorical exclusion, if not properly defined in the regulation.

¹ Electronic Code of Federal Regulations. Current as of May 9, 2012. Title 23: Highways. Retrieved from <http://bit.ly/JFBdsb>

Additional comments:

- *Definitions sections:* CTOD recommends a definition section be included in the final regulation. In addition, unless already defined by FTA statutes, a definition of bus way should be included in the regulation that references bus rapid transit.
- *Impact on small areas:* CTOD believes that environmental impact streamlining will have a particularly positive impact on smaller areas. There are many rural and mid-sized communities that do not have the resources to pay for environmental impact statements (EIS) for small transit improvements. In some cases, the cost of the EIS may exceed the cost of the project, deterring an agency from pursuing a project. The streamlining process will help to ensure that more small projects can move forward without the financial burden of an EIS.
- *CE #6: Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas... and does not result in a substantial change in the functional use of the property or in substantial displacements, such as scenic easements and historic sites for the purpose of preserving the site.:* CTOD supports this categorical exclusion, but recommends clarification on “substantial displacement such as scenic easement and historic sites...”. The intent of the term “displacing scenic easements” is confusing and we recommend that FTA provide more information on the intention of this phrase.
- *Electronic submission:* CTOD appreciates FTA’s attempt to maximize the use of the Internet for expeditious and efficient customer service. We would agree, however, that FTA should continue to provide support to communities with limited Internet access, primarily in low-income areas. We recommend that FTA continue to make paper documents available.

We appreciate the opportunity to comment on the streamlining of the environmental review process for transit projects. We support this effort and look forward to working together in the future. If you have any questions or comments, please contact Sasha Forbes at (202) 429-6990 x204 or gsforbes@reconnectingamerica.org.

Sincerely,



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