



Planning for a Transit Facility

If Using Federal Funds for Any Phase of Work

*Presented to the Region IV
State DOT Meeting*

By

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March 2008*

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- Presentation offers a potential grantee seeking Federal funds *for any phase* of work a “*point of departure*”
- Help Grantee research & understand the *myriad Federal requirements* for developing a facility
- Not meant to over-simplify a complicated *real estate, environmental review, public involvement & oversight process*

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- If **transit facility** is within an urbanized area, make sure the project is in Metropolitan Planning Organization's (MPO)
 - Long Range Transportation Plan (LRTP)
 - Metropolitan & **State Transportation Improvement Programs** (MTIP & STIP)

- MTIP & STIP are ***fiscally constrained*** & inclusion of a project in the MTIP may be a matter of negotiation & *funding priority*

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➤ If using **FTA funds** for:

- *Preliminary Engineering, site selection, land acquisition, site improvements or construction* please include phase of work & funding amount (approx) in the MTIP & STIP **for the correct FY**
- FTA looks to *STIP documentation* as part of app. process
- *STIP program pages & approval dates* are required & must be **entered in TEAM** (not MTIP documentation)

➤ RE **Air Quality**:

- MPO's LRTP will need to be in compliance with the Statewide Implementation Plan (SIP) & relevant **motor vehicle emissions budgets (approved by EPA)**
- If within air quality **non-attainment or maintenance area** please note Clean Air Act provisions (FTA Circular C 9300.1 a 10-01-98)

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Project Feasibility

- Identify **need for & the feasibility** of a Transit Facility to support funding request
- Consider/complete **detailed scope of work &/or study** to determine potential sites & feasibility of sites
- If you **procure consultant services** pls. make sure you:
 - **advertise & take competitive proposals**
 - **fair & open procurement**
 - **document the “how/why”** of selection

Environmental Reviews

- If an **EA or EIS** will be undertaken by a consultant, can the **consultant:**
 - **Document number & types of NEPA projects completed**
 - **Persons who worked on NEPA projects, &**
 - **Satisfactory award & Records of Decision (ROD) from FTA**
- Additional services may be likely & should be anticipated in budget

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- Greensboro NC
- IM Transit & AMTRAK Facility
- Greensboro Transit Authority (GTA)
- Fixed Route service
- HEAT service
- Transit linkage clear

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➤ Site Issues & Zoning

- Determine proposed uses & develop site plan & building/facility layout
- Identify local ***comprehensive plan, land use & zoning***
 - Will site need to be re-zoned? Is zoning compatible with use?
 - Can you get letter from zoning authority specifying permitted uses
- Determine if ***parking, access & circulation*** are adequate
 - Per land development setbacks
 - Any buffers needed?
- Evaluate ***access, floodplain, drainage, sewer & retention, topography & grading issues***

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- Please document **public involvement** in the process of site selection.
- Make sure level of public involvement is consistent w/ **Participation Plan** of MPO
 - Public involvement meetings during course of study
 - Grantees may want to advertise & hold mtgs. at MPO
- For example, is the **public generally**:
 - **supportive** of the use & proposed location
 - *or* is there a lot of opposition?
- Can you **document** comments (cards)?

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- ***Construction Management Handbook***
- Please see the web link below for the ***construction management handbook***:
- http://www.fta.dot.gov/documents/Construct_Proj_Mangmnt_CD.pdf

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➤ Environmental Documentation

- FTA planning dollars from 5303 & 5307 programs may be used to:
 - fund the provision of NEPA documentation
 - NOTE: if done, please reference in the Unified Planning Work Program (UPWP)
- To apply for capital dollars under 5307 or 5309 programs:
 - NEPA documentation needs to have been **submitted to FTA**
 - **Prior to making a grant application in TEAM** for a capital expenditure
 - **NOTE: 5309 is a capital program, not used for planning**
 - Small 5309 earmarks generally cannot be used for studies
 - ...unless incidental to facility (engineering...)
- The purposes of developing the environmental document include:
 - **1) protect the natural & social environment;**
 - **2) to lead a lay reader through NEPA process so...one can reasonably understand the logic of this evolutionary process...to the recommended alternative/solution; &**
 - **3) to protect the federal & local agency using public funds.**

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- **Contemplating the NEPA document...**
- Primary reason for NEPA is to arrive at **“good decisions by the parties”**
- Taking “shortcuts”, **dismissing possible alternatives** without examination & making “simplistic or wrongful assumptions” might result in “flaws”
 - A “flawed document” can result in expensive re-dos & legal delays
 - In anticipating/completing the document please determine:
 - **type, scope & scale of the facility**
 - level of **potential adverse risk &**
 - **detailed scope of work** for needed level of environ. review
- Please consider **the class of action**, emphasizing the:
 - level of **potential adverse impact**
 - **degree of certainty** with respect to potential adverse impact
 - **assessment of local accord/discord** w/action (potential risk)

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- A brief synopsis of 3 types of environmental reviews or “classes of action” are as follows:
 - **Categorical Exclusion (23 C.F.R. 771.117)**: Categorical Exclusions (CE’s) are granted for actions that **do not** individually or cumulatively involve significant social, economic or environmental impacts
 - Projects listed in 23 C.F.R. 771.117
 - Gives **list of types of projects** are categorically excluded
 - May involve little or no construction & **minimal or no effects**
 - **FTA may request a documented categorical exclusion...** more detail...in addition to info. entered in TEAM
 - Once FTA determines that a CE applies, it may act on the **application for financial assistance**

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- **Environmental Assessment (23 C.F.R. 771.119):** FTA may require an Environmental Assessment (EA) when *significance of the environmental impact is not clearly established.*
- An EA should have a doc. public involvement process
- An EA can result in either a:
 - **Finding of No Significant Impact (23 C.F.R. 771.121)** (FONSI) requiring no further environmental evaluation, or
 - identification of **potentially significant impacts** requiring applicant to conduct Environmental Impact Statement (EIS).

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- **Environmental Impact Statement (23 C.F.R. 771.123 et. seq.):** Depending on nature of project, FTA may require applicants to develop an Environmental Impact Statement (EIS) based on outcome of an EA
- The EIS process requires:
 - **substantial technical analysis**
 - **public review**
 - **evaluation of project alternatives**
 - ID of potential social, economic & environmental impacts of project &
 - ways to **avoid/mitigate impacts**
- **Successful completion of EIS results in FTA signing a Record of Decision (ROD)**
- Once FTA has signed a ROD, the applicant can proceed with project
- FTA may act on **application for Federal assistance**

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- Please note that **neither the physical magnitude nor the cost of the project** alone are indicators of what class of action should be
- It is the **degree of adverse impact & environmental risk** that points to class of action
- The size &/or the cost of the project **do not** by themselves determine the class of action
- Consider the **alternatives & their relative environmental impacts**

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- For example, transfer & storage facilities & bus & maintenance facilities are ***Categorical Exclusions*** with:
 - written documentation provided by grantee for actions that do not individually or cumulatively involve significant social, economic or environmental impacts; (23 C.F.R. 771.117) including:
 - **new bus storage & maintenance facilities,**
 - **rehab or reconstruction of bus storage & maintenance facilities,**
 - **bus transfer facilities & rail storage facilities, &**
 - **“Hardship” (to the seller) I& acquisition, among others**
 - **NOTE: Transit terminal may not be a CE due to impacts!**

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- The presence of “**unknown impacts**” from development & construction for example, may result in requirement that grantee produce a **documented CE report**
- **Written documentation** beyond that provided by the checklist
- Generally the case when property assembly is proposed and when a **phase one or two environmental site assessment** (as differentiated from a NEPA Environmental Assessment) may be needed to determine **likelihood of contamination**
 - Phase One: Good practice, needs to be done to determine likelihood of contamination
 - Phase Two: If likelihood of contamination exists, do borings and wells
 - Phase Three: Remediation and clean-up
- As a general rule, FTA **does not provide funds to remove contamination**
- Contamination may need to be removed with local or state funds
- **Exception: “Brownfield” clean-up per EPA**

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- Review the **appropriate environmental requirements** in various circulars on FTA web site
- See FTA Circular C 9300.1 A 10-01-98, Capital Projects
- Also, consider NEPA web site at EPA and FAQ:
<http://www.epa.gov/oecaerth/nepa/index.html>
- CEQ web site & possible NEPA changes:
<http://ceq.eh.doe.gov/ntf/>
- Consider CEQ NEPA Task Force Matrix:
<http://ceq.eh.doe.gov/ntf/report/20031017matrix.pdf>

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- **Special Studies:**
- Presence of one or more conditions may require **special studies & documentation** of impacts re:
 - archaeological, cultural, ecological, historical, parks & water
 - these issues may indicate a need for an EIS
- **NOTE: See National Historic Preservation Act, Section 106 & Federal Transit Act, Section 4 (f)** for additional information re **National Register properties**
 - In some cases properties **50 years old or older**
 - **projects which impact parkland** may need special studies

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- NEPA document is a **Federal document**:
 - *While local sponsor (grantee) may recommend an alternative as the locally preferred alternative (LPA), the **Federal agency is the ultimate decision maker** of the alternative's appropriateness for funding*
 - *Federal agency may require **a range of alternatives to be considered***
 - ***Alternatives analysis** part of EA and EIS process*

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- **Intermodal Transportation Facility: Level Boarding**
- **Level-boarding compatibility issues** must be examined where AMTRAK & commuter rail trains may use same platform/facility
- AMTRAK & other trains may have different platform & doorway heights & “low floor” measures of doorways
 - 17.5, 22 or 48 inches on older trains may provide challenges
 - Grantees may contact Civil Rights Officer in Region IV re level boarding
- The **Disability Law Coordinating Council** has written guidance on level boarding & platform issues on the FTA web site:
- http://www.fta.dot.gov/civilrights/ada/civil_rights_3890.html

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- If an *intermodal facility is proposed along an existing rail freight line* or a *proposed high speed rail corridor* (Atlanta to Richmond) than:
 - Reviews by Federal Railway Administration (FRA) required
 - Ensure freight & passenger routes (& potential conflicts) reviewed
- The *FRA contact is Dick Cogswell at 202.493.6388.*
- Older systems may find *fleet replacement & level boarding* issues. If existing heavy rail line is extended level boarding is critical
- “Gap” Issue should be considered re ADA and curvature of track:
 - Example: transit facilities built within curve may result in a “gap” in excess of that which can be bridged between platform & doorway of train
 - Prospective stations have been moved due to “gap” issue.
 - Care should be taken to consider station location in light of platform/doorway “gaps” & level boarding & freight queues

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➤ ***Inter-modal (IM) Facilities***

➤ Under SAFETEA LU:

- Intercity rail (non-AMTRAK), commuter rail & intercity bus **components** of an IM facility are sometimes ***eligible for FTA funding*** when:
 - IM facility has a ***public transit component***
 - Commuter rail has a ***public transit component***
 - Rehab of **historic terminals** with IC rail or IC bus (or commuter rail) has a ***public transit component***
 - ***Bus transit interface on site is key***
 - ***AMTRAK facilities are generally excluded from FTA funding...***

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- ***PM 2.5 Particulate Matter—Non-Attainment (NA) Areas***
- ***Possible Conformity Determination***
- If proposed transit facility is located within a NA area for particulate matter (PM-2.5), the applicant:
 - may need to address a ***project conformity determination for PM-2.5 from diesel exhaust***. According to 40 C.F.R. 93.123(b)(1)(iv), FTA & EPA may become involved via “interagency coordination” with applicant
 - Projects of air quality concern with “significant increase” in diesel buses at transfer facilities may result in a “CO hot-spot”
 - **However**, if transit project receives **CE determination** by FTA conformity determination **may not be required...**

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➤ Region IV PM 2.5 NA Areas:

- *Atlanta, Birmingham, Chattanooga, Cincinnati-Hamilton, Greensboro, Winston-Salem, High Point, Hickory, Huntington-Ashland, Knoxville, Louisville, Macon or Rome*
- Facilities in these areas which will require an EA or EIS may require PM 2.5 conformity determination if they will attract a significant # of diesel vehicles

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➤ *Real Estate*

➤ Consider the following real estate property acquisition & relocation guidance from FTA web sites & links:

- 49 C.F.R Part 24, see below for **Uniform Relocation Act & Real Estate requirements for Fed. Government** aka “Uniform Act”
- http://www.fta.dot.gov/planning/planning_environment_5937.html
- Please review section 1.3.3.4 - Real Estate Contracts of the FTA, Best Practices Procurement Manual (BPPM) that deals with acquisition of Real Property
- http://www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6102.html

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- See FTA web site & type in **Circular name/number** in “Search” box:
 - a. **FTA Circular 5010.1C, Grant Management Guidelines, Chapter II-2 Real Property.** This Circular defines the requirements of the Federal Transit Laws that are codified at 49 U.S.C. Chapter 53.
 - b. **49 CFR §18.31 Real Property, & 49 CFR Part 24, Subpart B Real Property Acquisition.**
 - c. **FTA Master Agreement (MA (12) Section 19.**
 - Acquisition of real property, either by purchase or lease, is not subject to the requirements of FTA Circular 4220.1E. Real property is defined in 49 CFR Section 18.3 as “land, including land & improvements, structures & appurtenances, excluding movable machinery & equipment”
 - Acquisition of easements & ROW are considered real estate acquisitions & requirements discussed herein pertain to these types of acquisitions
 - Real property acquisition, use & disposal is covered by FTA Circular 5010.1C, Chapter II-2; 49 CFR Part 18.31; 49 CFR Part 24 Subpart B; & by the FTA Master Agreement, Section 19.1

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- **Circular 5010.1C, Chapter II-2.** Circular establishes procedures to be followed in following areas:
 - The conduct of a **Hazardous Waste Site Assessments before** acquiring real property
 - The conduct of an **independent appraisal** by a certified appraiser
 - The requirement for a **review appraisal** of the initial appraisal
 - FTA **review & concurrence requirements** related to grantee's offer to buy property
 - **Incidental use of acquired real property** as a means to supplement transit revenues
 - **Disposition of excess real property** by sale/transfer to other programs
 - Requirement to prepare excess property utilization plan for real property no longer used for its original purpose.

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- Appraisals & review appraisals (“hard copy”) completed by appraiser required **prior to preparing an application** for funds in TEAM (properties with a value of \$ 250,000 * or greater) for facility:
 - Have “**hard-copy**” appraisals & a **summary cover letter** from the applicant/grantee) sent to FTA Region IV
 - FTA headquarters (HQ) review & will provide a review memo for **sufficiency of documentation** to Region IV
 - Region IV will notify applicant/grantee of results
 - Value determination is not FTA’s responsibility
 - Approval does not constitute FTA’s agreeing with value, only sufficiency
 - FTA region will **not be able to process a grant request** in TEAM for acquisition unless ‘hard-copy” appraisals reviewed (HQ)
 - Appraisals should be dated **within six months of proposed purchase**
 - Values **do change**...update appraisals if over 6 mos. old

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- Other real estate issues to address in *Project Detail narrative in TEAM*, as follows:
- Who will own the facility?
 - Will there be non-transit retail or other tenants in facility?
 - If yes, will they pay rent & what will be disposition of rents?
 - Will parking be provided & if so will it be adequate for bus & automobile circulation?
 - Will non-transit related parking also be provided & if so, who is paying? NOTE: FTA may not fund non-transit parking
 - **NOTE: the facility must be ADA accessible with curbs, ramps & other ADA improvements**

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- *“Earmark Funds” & Purchase of Real Estate*
- Because of **NEPA**, appraisal and “Uniform Act”, **requirements**, the purchase of property with earmark funds by a grantee that has **not completed** the numerous Federal actions is **discouraged**
 - Grantees who try to purchase property with earmarks without completing **NEPA**, appraisal and **Uniform Act** documents will find challenges completing in sequence
 - Grantees may be **risking a lapsing earmark**
- ...or the **possible future use of Federal funds!**
- **5309 capital earmarks cannot be used for planning...**

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- ***Early Acquisition of Real Estate is “At-Risk”***
- Grantees should understand that ***“early acquisition” of property is “at risk”*** to the grantee
- Failure to complete **NEPA, appraisal & Uniform Act** requirements will jeopardize use of Fed. funds on project
- Good “rule of thumb”: ***If project is in TIP then probably Fed. funds will be sought***
- **Respect** NEPA, appraisal & Uniform Act requirements
- Letter of No Prejudice (LONP) process...in FRN

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- ***Uniform Relocation Assistance & Real Property Acquisition Act aka “Uniform Act”***
- ***See Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970***, as amended, may be viewed at: <http://www.fhwa.dot.gov/realestate/act.htm>
- Implementing regulations (government-wide) are found in 49 CFR Part 24
<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-6.htm>

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- ***Use of Land as In-Kind Match for Fed. Funds***
- See Circulars/Rules as follows:
- **Common Grant Rule at 49 CFR 18.24 "Matching or Cost Sharing"** (2) FTA's administration of authority is in FTA C5010.1C, "Grant Management Guidelines," Chapter II, "Management of Real Property, Equipment & Supplies"
- Also see 42 U.S.C. 61, Section 4627
<http://www4.law.cornell.edu/uscode/42/4627.html>
- ***Value is value at time of donation...***

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- **Davis-Bacon Wage Rates & Buy America**
- Grantees should be aware of Labor Dept. wage determination & certification process
 - ...aka **Davis-Bacon Act for CST projects**
- Project facility budgets & schedules need to **anticipate Davis-Bacon wage rates & labor reviews**
- **Applications in TEAM are routinely sent to DOL for 5307, 5309, 5311 and 5316 programs (30 to 45 days)**
- Grantees should also be made aware of **Buy America provisions** when purchasing materials & equipment
- Buy America is a requirement under 5307 & 5309...

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- **CE Information “Checklist” to be submitted for CE requests to FTA is available from FTA Region IV**
- **NOTE: Circulars are in process of being updated & will change from time to time.**

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- For additional Information contact FTA Region IV, at 404.865.5600
 - Keith Melton, at 404.865.5614 or keith.melton@dot.gov
 - **THANKS...**