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Docket Management System
U.S. Department of Transportation, Docket Operations
M-30, West Building Ground Floor
Room W12-140
1200 New Jersey Avenue SE
Washington, DC 20590

RE: Federal Transit Administration Docket Number FTA-2006-25737

Dear Docket Clerk:

On behalf of Smart Growth America (SGA), I write to provide comment on the Federal Transit Administration's (FTA) Notice of Proposed Rulemaking (NPRM) concerning the New Starts and Small Starts major capital investment projects, published August 3, 2007, at 72 FR 43328.

About Smart Growth America:
Smart Growth America is a coalition of national, state and local organizations working to improve the ways we plan and build the towns, cities and metro areas we call home. The coalition includes many of the best-known national organizations advocating on behalf of historic preservation, the environment, farmland and open space preservation, neighborhood revitalization and more. Our state- and regional-level members are community-based organizations working to save treasured landscapes while making our towns and cities ever more livable.

Smart Growth America (SGA) is a leading authority on how public transit systems and development practices can be coordinated to foster thriving communities, greater transportation choices, better transportation system performance, and increased transit ridership. Across the nation, we have worked with business leaders, public officials, transportation practitioners, citizen groups, and other stakeholders to help them envision and plan for excellent transit-oriented development (TOD) projects.

General Comments:
SGA appreciates the opportunity to comment on the Proposed Rule on Major Capital Investment Projects, specifically the New Starts and Small Starts programs that fund fixed-guideway transit. Overall, we are very concerned that the Proposed Rule will have a negative impact on the ability of communities to build transit systems to provide residents with greater transportation choice, use transit as a development strategy, and promote more travel options that reduce greenhouse gas emissions. The Proposed Rule does not represent the intent of the United States Congress as adopted in the 2005 Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) codified at 49 U.S.C. §5309. The Proposed Rule fails to fully

incorporate all of the Congressionally mandated project justification criteria into either New Starts or Small Starts and includes other criteria not included in the statutory language of 49 U.S.C. §5309. Our specific concerns relate to the requirement that projects receive at least a medium "cost effectiveness" rating in order to be recommended for funding and the weight given to this single criteria in evaluating a project; the combination of economic development and land use into a single measure of effectiveness and low weight of this criteria in the overall project rating; the inclusion of specific weights to be applied to criteria and measures applied in project evaluation and rating; and the emphasis on projects that are within a Congestions Reduction and Pricing program and inclusion of High Occupancy Toll (HOT) lanes as eligible for funding. Our detailed comments on each of these issues are included below.

The NPRM gives too much weight to the Cost-Effectiveness Criterion.
The Final Rule would require that a project receive at least a medium "cost effectiveness" rating in order to be recommended for funding. This would make FTA's Cost Effectiveness Index, contrary to congressional intent, the primary factor in deciding the fate of funding for New Starts projects with a 50% weight in the project rating.

This requirement was a policy initiative introduced without public comment or input in April 2005. This practice runs counter to the "multiple measure" project evaluation approach outlined in 49 U.S.C. §5309, effectively identifying the current definition of "cost effectiveness" as the prime determinant in project funding decisions.

The Cost Effectiveness Index is a complex federal model that essentially rates a project based on its full costs weighed against timesavings benefits. This index has been a key reason why several good transit projects have not moved forward or decisions have been made that reduce the long-term effectiveness of new projects to generate ridership, promote smarter development around transit, or serve low-income communities. Many communities planning transit projects or extensions are being shut out of the process or forced to change locally preferred options that would bring significant economic and community development activities. The NPRM proposes to give the cost-effectiveness criterion greater weight than all of the other statutorily mandated criteria combined.

The NPRM combines economic development and land use into a single measure and does not adequately weigh that combined measure in the project rating.
Land Use and Economic Development are combined as a single measure of effectiveness, with a new set of indicators to be addressed. This has the effect of diminishing their weighting in the ratings, counter to the intent of SAFETEA-LU and 49 U.S.C. §5309.

Congress elevated land use and added economic development to the list of 6 project justification criteria in SAFETEA-LU. The NPRM ignores this and has combined them into one measure with a combined weight of 20% in the overall ratings process. This is contrary to existing law and goes directly against local efforts to use transit investment to support smart growth and transit-oriented development, address climate change through transit, and coordinate land use planning, community revitalization and transportation choice.

The justification for combining these two measures, that the tools to separate land use and economic development are "overtly costly and burdensome," is inaccurate. Several

studies have been done to outline approaches to separate land use from economic development, including research by the Reconnecting America's Center for Transit Oriented Development. FTA should have a separate economic development measure to reward communities that seek to concentrate economic development in project corridors or at stations through the use of local policies and incentives. The law does not require a quantitative or predictive approach to measuring land use and economic development, but rather elevates their weight in the justification and review of proposed transit projects seeking funding. Therefore, FTA does not need to rely solely on a quantitative measure but can instead rate a project's economic development benefits based on a combination of qualitative and quantitative information. A number of proxies could be used to do this, ranging from housing, employment and population projections to developer agreements, local financial contributions to the corridor and targeted public finance tools such as Business Improvement Districts and tax increment financing.

The NPRM includes specific weights applied to criteria and measures applied in project evaluation and rating, which should instead be address in Policy Guidance.

In the past, such weights have been provided in Guidance rather than in the Final Rule in order to provide flexibility as technical methods and measures are improved or modified. Under the proposed approach, it is possible that technical methods to calculate measures could be changed, however, the weights established in the rule would need to be applied until a new rulemaking was completed.

The Final Rule also includes specific eligibility requirements and justification criteria for projects referred to as "Very Small Starts." This aspect of the program, while commendable for its efforts to streamline project advancement, was not specifically directed in 49 U.S.C. §5309. Perhaps it is more appropriate that eligibility and weights be provided in Guidance rather than the Final Rule.

The NPRM emphasizes projects that are within a Congestion Reduction and Pricing Program, and extends funding eligibility to High Occupancy Toll (HOT) lanes; contrary to 49 U.S.C. §5309 which states that New Start funds may only be used for facilities that are exclusively for transit and HOVs.

Final Rule redefines "fixed guideway" definition to include HOT lanes projects, and indicates that project ratings could be modified for these types of projects and projects that are part of congestion reduction and pricing strategies. None of these provisions are directed in 49 U.S.C. §5309.

FTA proposes a three tiered rating system with the highest rating given to projects with severe transportation or economic problems; the next highest rating to projects with less severe transportation or economic problems; and the lower rating for projects which are opportunities to improve transportation or economic development. The effect of this proposed rule would curtail the growth of the New Starts program because many projects are built to shape economic redevelopment and growth, and not severe congestion problems.

"HOT" lanes are already eligible for funding in the FHWA program. In this new rule barrier-separated high-occupancy toll (HOT) lanes would be eligible for funding if 95% of the transit vehicles on the lanes maintain an average speed of not less than 5 mph below the posted speed limit. The share eligible for New Starts/Small Starts funding would be based on the project cost, peak transit VMT, and total peak VMT on the

guideway. This is contrary to 49 U.S.C. §5309 which states that New Start funds may only be used for facilities that are exclusively for transit and HOVs. Further, there is no requirement that the transit service and the level of transit investment be maintained after the project is built.

A number of communities are beginning to look seriously at congestion pricing and high occupancy toll lanes as new tools in fighting traffic congestion. Road pricing has the potential to be an important strategy in better capturing the true costs of congestion, but using transit funds to supplement existing highway funding is questionable. Over 300 transit new starts were authorized in SAFETEA-LU, yet only about a dozen will be funded in the 6-year bill. Quite simply, demand far outstrips supply. The heightened demand for this funding is one reason cited by FTA over the years as to the rigor and complexity of its evaluation process. Adding a new category of eligible projects will only make it harder to fund new transit in this country and provide Americans with more sustainable transportation choices.

The FTA proposed rule will create significant barriers to new surface transportation projects that should otherwise qualify under the New Starts and Small Starts programs given Congressional intent in the 2005 SAFETEA-LU bill to emphasize land use and economic development. Informal guidance has already resulted in reducing the New Starts project “pipeline” by more than half in the past three years. Including this policy change in a final regulation will have a similar lasting impact on investment in new transit projects for the foreseeable future.

Respectfully Submitted,

Don Chen
Executive Director and CEO
Smart Growth America