Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

Arthur T. Leahy
Chief Executive Officer
213.922.6888 Tel
213.922.7447 Fax
metro.net

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FEDERAL TRANSIT ADMINISTRATION
ADVANCE NOTICE OF PROPOSED RULEMAKING
DOCKET NO. FTA-2010-0009/MAJOR CAPITAL INVESTMENT PROJECTS

Dear Administrator Rogoff:

The following constitutes the comments of the Los Angeles County Metropolitan Transportation Authority (LACMTA) on the Federal Transit Administration's (FTA) Advance Notice of Proposed Rulemaking (ANPRM) for Major Capital Investment Projects, published in the Thursday, June 3, 2010 Federal Register at 31383 *et seq.*

LACMTA is the third largest public transit agency in the United States and is responsible for transportation programming, planning, coordination, design, construction, and operation of bus, subway, light rail, and Bus Rapid Transit (BRT) services. LACMTA also partners with Caltrans on carpool lanes and with Metrolink on an extensive commuter rail system. LACMTA has a $3 billion annual budget, operates 200 bus routes, 73 miles of rail lines, and working with Caltrans, has constructed over 500 miles of carpool lanes in Los Angeles County. With a workforce of 9,000 employees, LACMTA serves a 1,400 square mile area in one of the Nation's largest and most populous counties of 10 million people. LACMTA is a leading innovator in improving and expanding mobility and, in particular, has significant experience in the design, construction and funding of New Starts projects.

LACMTA appreciates FTA's open request for and consideration of these comments on the ANPRM. The following will provide some overall observations first and then address the specific discussion items delineated in the FTA's Federal Register Notice at 31383-31387, and on a section-by-section basis, the text of the FTA's eventual regulation, Part 611 – Major Capital Investment Projects.

INTRODUCTION

From our experience with several FTA major New Starts Projects, LACMTA has serious concerns with the delays, schedule uncertainty, and onerous nature of the New Starts project development process. The New Starts rulemaking process, starting with the current ANPRM, in our view, should be the appropriate place for FTA to take a step back from the intricacies of the evaluation and rating system. This process is an ideal opportunity for addressing major policy issues such as the need to streamline and simplify the process, the need for clear bilateral timeframes for project development, and the need to reduce some elements of FTA's time-consuming and oftentimes burdensome due-diligence reviews. We are encouraged that FTA is seeking to address these issues - first through the questions and suggestions raised in this ANPRM - and later when considering the industry responses in the final rulemaking process.

Not unlike the earlier (August 3, 2007) Major Capital Investment Projects NPRM, the current NPRM still shows an inherent bias toward freeway-oriented transit projects, to the disadvantage of urban rail projects. Emphasis on freeway improvements will serve to encourage urban sprawl and maintain a pattern of urban growth that conflicts with the planning and land use goals of Los Angeles County. Large urban areas, such as Los Angeles, which are subject to high levels of growth are going to have much more difficulty than small cities in demonstrating that proposed New Starts transit projects, on a corridor-by corridor basis, will measurably reduce freeway congestion.

The following examples help illustrate the above point:

(1) FTA's proposal to include congestion relief as one of the measures of mobility improvements. Congestion relief measures (congestion pricing and parking pricing) should be tied to the funding of highways that caused congestion, not transit. Highway projects should address the root cause of the problems causing congestion -- not just the symptoms.

(2) FTA's earlier proposal to decrease the weight given to land use and economic development factors in evaluating projects. This is inconsistent with SAFETEA-LU and is disadvantageous to rail projects that depend more on economic benefits to urban areas than do freeway-oriented projects.

Current FTA approaches for evaluating proposed projects have resulted in making project development more difficult and financially risky for applicants. For example, requiring reliable cost estimates before allowing entry into Preliminary Engineering (PE) is counterproductive, potentially punitive, and leads to inflated estimates. No transit agency can accurately define capital costs without New Starts PE generated data. An approach allowing for a range of costs, subject to revision at the completion of PE, would be much more equitable and would most probably result in lower cost estimates, while allowing for design adjustments that generally are made during the PE and later design stages.

In summary, several of the proposed approaches are disadvantageous to Los Angeles' City and County General Plans, which focus on a "City Centers" concept uniting centers directly via fixed guideway systems, and utilize freeways that follow separate routes around these centers and connect to regional centers via streets and highways. FTA's proposed rules over the past two years have favored suburban-oriented projects over more sustainable urban projects. FTA should adopt a more balanced approach for evaluating and funding New Starts that does not place worthy urban transit projects at a disadvantage. Such an approach would also support the Administration's stated livability and sustainability objectives.

Despite the above concerns, LACMTA appreciates the overall quality of the FTA document – it has obviously been carefully and thoughtfully developed, and it provides an articulate and open framework for addressing a number of complex and difficult issues.

FTA ANPRM DISCUSSION ITEMS

1. *Cost Effectiveness*

LACMTA believes FTA should define the core elements of a New Start project; that is, those scope elements essential to the *functioning* of a fixed guideway project (i.e., adequate number and size of stations for estimated ridership; adequate vehicle fleet; maintenance facilities; ROW and track, etc.). If a project sponsor wishes to supplement that scope with additional project elements (extra large stations; additional facilities; artwork, etc.) that are not functionally necessary for transit operations, and to pay for those "extras" with non-Section 5309 funds, then the cost of the extras should be excluded from the Full Funding Grant Agreement (FFGA) project cost and from FTA's cost effectiveness calculations.

2. *Simplified Evaluation Framework for Small Starts Projects*

FTA has asked whether a simplified evaluation framework should be utilized for Small Starts projects as an alternative evaluation methodology that has been used to date.

The current evaluation methodology is too complex and requires a disproportionate amount of data collection and analysis given the amount of federal funding to be provided for Small Starts projects. In establishing the Small Starts Program, Congress intended to create a simpler, more streamlined program for smaller transit capital fixed guideway investments. However, the current evaluation approach and project development process does not substantially differentiate between the New Starts and the Small Starts programs.

A pass-fail system of evaluation would be more appropriate and efficient means of allocating these Small Starts funds. LACMTA also supports the elimination of any complex modeling requirements for these smaller scale projects.

3. *Congestion Relief Considerations*

As part of the evaluation process for New Starts projects, FTA first suggests consideration of the degree to which a project is supported by an effective congestion relief strategy, including variable pricing. Second, FTA proposes to include highway user transportation benefits, such as travel time savings from reduced demand on the highway system, as part of the evaluation measures. Third, FTA suggests including congestion relief in the evaluation of mobility improvements.

The New Starts program is not and should not be the answer to help alleviate highway congestion. Congestion relief measures should be tied to the funding of highways - which experience congestion - not to transit. The problem of congested roads is not caused by transit, and the onus of curing congestion or showing a reduction of demand on the highway system should not be borne by New Start transit projects. Road congestion is caused by automobile use, and could be caused by increased demand or other design and capacity deficiencies in the highway system.

Traffic congestion is more effectively addressed by means such as rational parking pricing and road congestion pricing. Large cities such as Los Angeles continue to have high levels of population growth and automobile use continues to grow rapidly, creating additional congestion. Many meritorious New Start transit projects would have difficulty demonstrating that they would reduce highway congestion on a corridor or system-wide basis. This is particularly true if the New Starts project is in a different travel corridor than the highway that is subject to congestion. In addition, in the absence of clear criteria to measure mobility improvements and workable, uniformly applied models, the introduction of these new concepts into the evaluation process will over-complicate an already intricate system.

Besides these basic policy concerns, there is a clear legislative issue as to whether FTA has any statutory basis for including highway and congestion pricing considerations in the cost effectiveness evaluation. However, if FTA wants to address the congestion and mobility issue, a possible mobility measure would be to examine the delay in the corridor (by comparing free flow travel time to congestion time) and multiplying the amount of delay by a factor that accounts for the projected ridership on the New Starts project. This approach would examine true "mobility improvements" or delay time saved by the transit project, without requiring a showing that the project would solve or relieve congestion.

4. *Incentives to Increase Role of Public/Private Partnerships*

LACMTA supports the idea of excluding private investments from the cost effectiveness calculation. It is not clear, however, whether this exclusion would actually act as a significant incentive to increasing public/private partnerships. If FTA wants to create a meaningful incentive, it should provide that the presence of private capital and/or public private partnerships will actually have a positive impact on the public sponsor's project evaluation and rating.

LACMTA also supports the notion of FTA giving credit to project sponsors who provide financial contributions through benefit assessment districts. LACMTA has used this approach which has generated private sector contributions to its funding of the Metro Red Line project.

5. *Project Justification -- Weights in Rule or in Separate Document*

LACMTA has concerns with the percentage weights currently allocated to land use and economic development under the Project Justification criteria, and to the treatment of the local share under the Local Financial Commitment criteria. Given this concern, LACMTA supports the inclusion of weights in a separate document, not in the regulation itself. However, a project should not be subjected to constant variation in evaluation weights once it enters preliminary engineering.

6. *Quantification of User Benefits*

FTA seeks comment on a methodology to quantify the user benefits that would accrue from the interaction of the new start project and road pricing included in an effective congestion management strategy. FTA also seeks comment on a methodology to quantify the benefits attributable to the economic development/land use changes that occur from a New Start project.

a. *Road Pricing.* It is *not* clear that transit funding should be tied to road pricing or other congestion management strategies. As noted previously, road congestion is caused by automobile use, not transit use, and thus any congestion management strategies should be tied to road, highway, and freeway funding. Outside of larger cities such as New York City, it cannot be argued that transit plays a dominant role in the total transportation system of any city in the United States. As such, it is our view that utilizing highway management strategies such as pricing and tolling schemes in attempting to evaluate user benefits of a proposed transit project is entirely inappropriate and should be removed from the equation.

b. *Economic Development.* LACMTA endorses the concept of comparing the vehicle miles traveled induced by development at an outlying location with the vehicle miles traveled induced by development located at a central transit served location, for purposes of analyzing economic development/land use impacts. Historic data could be used and FTA would have to review the reasonableness of the outlying distance selected for comparison.

Measures of Reliability

If FTA intends to rate the reliability of cost estimates and ridership forecasts, then FTA should provide to project sponsors complete detail on cost estimating means and an actual FTA high-reliability ridership model for their use and assistance in this process.

LACMTA also believes it is important to FTA to provide as much specificity as possible regarding the measures of reliability it will use and how they will be applied to individual project sponsors. It would also be helpful for FTA to *quantify* how these measures will operate to "adjust" project justification and local financial commitment ratings (i.e., how much can these measures of reliability operate to change a specific rating).

Project Justification Criteria

LACMTA is opposed to a decrease in the weight given to land use and economic development. As noted earlier, this is disadvantageous to projects in urbanized areas in general and to rail projects in particular. LACMTA is also not in favor of the suggested practice of specifying weights for each measure in the rule. Such weights are more appropriately provided in policy guidance and should be subject to periodic review.

LACMTA also disagrees with the practice of assigning a 50% weight to the measure of cost effectiveness (as well as the previous minimum of "medium" ratings for project advancement) in the project justification rating. Such a high weight does not reflect a multiple measure evaluation approach.

Local Financial Commitment

LACMTA has two primary concerns about FTA's past practice for considering "Local Financial Commitment". First, it discounts the "overmatch" factor, by essentially limiting its use in the evaluation and rating process to that of a tiebreaker. Second, it fails to consider or give any credit for the overall amount of local investment in new transit capital projects.

In addition to a fundamental inconsistency with the legislative intent of Section 5309, failing to recognize local investment levels would result in clearly inequitable ratings. For example, if transit agency A provides only the statutory 20% match, and gets a "medium" rating for both its capital and operating plans, it will get a "medium" rating for Local Financial Commitment. If transit agency B makes a significantly greater Local Financial Commitment and provides a 70% local share, and also gets "medium" ratings for its two plans, it will also receive a "medium" for its Local Financial Commitment. This result is simply flawed public policy-- transit agency B gets no recognition for its significant overmatch, and is treated no differently, at the end of the day, from an agency that provides only the minimum local match. This shortsighted approach will negate any possible incentive for local agencies to provide overmatch for New Starts projects.

LACMTA also strongly believes that the overall local financial contribution to transit capital investments should be considered. As a matter of equity and common sense, the policy of the Federal Government should be to recognize and reward substantial local financial contributions of this type. These contributions decrease the demand on federal funds, allow the Federal Government to assist a greater number of capital projects throughout the United States, and facilitate a greater amount of transit infrastructure development nationwide, with the resulting air quality and mobility benefits.

Over the past 20-25 years, Los Angeles has spent over $8.6 billion constructing nine (9) new fixed guideway projects. Over 60% of that funding has come from state and local sources. However, under the current New Starts and proposed rules, this enormous financial investment is simply not considered, in any regard, in the evaluation and rating process. To fail to recognize this magnitude of local financial contributions in the New Starts evaluation and rating process is not only poor public policy, but it is also inconsistent with the very purpose of the required evaluation of this statutory factor-- Local Financial Commitment.

In sum, FTA's evaluation of New Starts and Small Starts projects should be based on the level of federal funds being requested, to reward those metropolitan areas that have developed local funding sources (and private sector contributions) in order to overmatch the scarce Section 5309 monies.

<u>Project Development Process</u>

LACMTA has several concerns regarding the FTA's current Project Development process. As an overall matter, there has been widespread frustration and concern in the transit industry, particularly among New Starts grantees, about the complexity and length of the existing project development process. LACMTA estimates that the New Starts process adds one to two years to the project schedule.

FTA needs to take advantage of this opportunity to simplify and streamline the process and also share some of the risks currently borne almost exclusively by the individual project sponsors, especially if project development agreements are to be signed in the earlier stages of project development. Such an accelerated process will need to include some flexibility for adjusting project scope, schedule, and budget as the project development process advances. This approach would result in better overall project results and in most cases lower total costs.

One way to help streamline the process and share some of the risks would be for FTA to define – as part of the project approval process – clear decision points with a commitment to a firm schedule which grantees can rely on. Reducing the length of the project development and approval process is crucial as delays jeopardize local financing, increase total project costs, and undermine local support.

We also have concerns about earlier proposals to use Project Development Agreements (PDA) as a pre-condition to entering into PE. Such a bureaucratic requirement would inevitably delay the start of PE and add more time to the process, with little or no benefit to the grantee, or to the project development process itself.

In developing the eventual NPRM and the Final Rule, we are concerned with any approach that would require all project capital costs be determined *before* entering into PE, not afterwards (during final design or FFGA negotiation) as it is at present. No transit agency can accurately define capital costs without PE level data. It is common for PE work to yield about fifteen times the number of drawings as conceptual engineering and that level of engineering translates into more precise cost estimates. Setting firm project capital costs and the New Starts share at the PE stage is impractical, inconsistent with a sound project development process, and negates the benefits derived from a robust PE process.

The practical effect of such an approach (firm project costs before PE) would be to force agencies to add large contingencies to their project budgets and inflate total project capital costs. FTA should also adjust its evaluation, justification and monitoring requirements for projects which are extensions to existing systems vs. projects developing their initial investment in a major guideway operation.

Small Starts Project Justification Criteria

Small Starts projects will have difficulty meeting the cost effectiveness criteria. FTA should consider using travel time savings as only one possible measure of cost effectiveness and adding the project's ability to supply most mobility needs in the project area without resorting to automobile use.

Small Starts Project Development Process

It is not reasonable to require Small Starts projects to go through an extensive development and approval process similar to that applicable to New Starts. Small Starts projects should have a simplified process that can be quickly completed and implemented. As noted in these comments, LACMTA believes that FTA should simplify the evaluation and rating process into more of a pass-fail system and streamline the project development process.

Additional Comments on Specific Questions in the ANPRM

In the area of Environmental Benefits and Sustainability, credit should be given to areas that have implemented major projects in support of such "green" initiatives. For example, LACMTA's acquisition of its 2000 bus CNG fleet plus its solar energy investments need to be recognized when comparing proposed New Starts projects across regions.

These efforts are also supportive of the Administration's livability and sustainability objectives, which are part of the multi-agency initiative USDOT Secretary LaHood has established with the Department of Housing and Urban Development (HUD) and the Environmental Protection Agency.

We appreciate the opportunity to provide comments and suggestions as FTA develops the new Notice of Proposed Rulemaking documents for Major Capital Projects.

Sincerely,

for Arthur T. Leahy
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority