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Before the
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure,
U.S. House of Representatives

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Good morning Chairman DeFazio, and members of the Subcommittee on Highways and Transit, it is a distinct pleasure to appear before you to present my comments and concerns about the Federal Transit Administration's (FTA) Notice of Proposed Rulemaking (hereinafter, "NPRM" or proposed rule(s) or regulation(s)) on the New Starts and Small Starts programs.

By way of introduction, let me provide you with a little information about my background in transportation and transit. As a member of the Arlington County Board since 1996, I serve as the County's representative to a number of transportation bodies and planning agencies including the Washington Metropolitan Area Transit Authority (WMATA), the Board of the Virginia Railroad Express (VRE), the regional Metropolitan Planning Organization (MPO), the Metropolitan Washington Transportation Planning Board (TPB), and two state regional transportation agencies:,the Northern Virginia Transportation Commission and the Northern Virginia Transportation Authority.

I have reviewed the FTA' s proposed rule on the New Starts and Small Starts programs and spoken with colleagues involved in transit issues and I have concluded that the effect of the proposed regulations would be a huge step backwards with lasting detrimental consequences for the development of transit in the United States.

A number of the FTA's proposed provisions exceed or contravene what Congress authorized in the 2005 reauthorization statute- the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). In other instances the proposed rules set specific spending limits on program eligibility and set weights for criteria that would be used to evaluate projects. The proposed spending limits and weights make rigid what Congress intended to be flexible in these relatively new programs and are contrary to current, sound administrative practice.

I will focus my comments on the proposed evaluation criteria, particularly the issues of land use, economic development, and cost effectiveness and the apparent bias in the proposed rules toward highway and rubber tire surface transit solutions and against fixed-rail transit projects, including innovative transit investments such as Arlington's Columbia Pike Streetcar and the Crystal City/Potomac Yard Transitway.

As you will see from these examples below, the FTA proposed rules will create significant barriers to new surface transit projects such as Arlington's that should otherwise qualify under the New Starts and Small Starts programs given Congressional intent in the 2005 Reauthorization to emphasize land use and economic development.

Arlington County exemplifies the inter-relationship of transit investments, land use planning and successful economic development. Arlington County is well known for its success in integrating rail transit and land use to promote vibrant economic development and alternative modes of transport. The success of our Metrorail corridors, the Blue and Yellow lines along the Potomac River and Route 1 corridor and especialy the Orange line between Rosslyn and Ballston, is well known and documented. Today, we enjoy the benefits of a very successful transit-oriented community that was born of very daring and difficult transportation, land use and development policy decisions made more than a quarter-century ago.

Based upon 2000 US Census Bureau data twenty-three percent (23%) of work trips by Arlington resident were made on transit. In the Metrorail corridors the transit work trips reach thirty-nine percent (39%). In FY 07 more than 63 million Metrorail trips, thirty percent (30%) of all Metrorail trips in the region, either originated or ended in Arlington County. Ten percent (10%) of all trips on the Metrobus system, over 14 million trips, were made to or from Arlington. Finally, the local Arlington Transit (ART) buses made more than a million passenger trips in FY07.

The history of Arlington's planning and decision making around the Orange line is instructive regarding the FTA's proposed regulations. As originally proposed, the Orange line would have run down the middle of Interstate 66. Instead Arlington County chose to build through the heart of the community, beneath the corridor between Rosslyn and Ballston, which then was a typical suburban automobile-oriented commercial corridor heading toward decay. This significantly increased the cost of the transit system, a cost Arlington agreed to bear. Concurrent with this decision, Arlington engaged in a community based planning effort that resulted in major changes in land use and economic development policies with strategies to maximize the return on the County's investment by centering significant increases in density and future growth along that corridor, while preserving the character of neighboring residential communities.

Arlington's transit system investment with the accompanying local land use and economic development could not have been implemented today under the current policy trends within the FTA and as reflected in the proposed rules. No models then (or now) could have projected the degree of success, the levels of transit ridership, or pedestrian and biking internal trips that Arlington has achieved in our transit corridors. And, the costs of the proposal to tunnel beneath the community would probably have pushed the project budget well beyond cost effectiveness measures.

Yet today, Arlington's transit, land use and economic development strategies have been so successful that half the County's taxes come from taxpayers on 10% of the County's land – the Metro corridors. We are planning and building a second generation of new and more intense redevelopment in our transit corridors. In support of existing and future planned growth with its anticipated increase in ridership, we are now designing and building multi-modal improvements on the surface around our Metrorail stations, and access improvements into those same Metrorail stations. One example is the three new high speed elevators at the Ballston station.

Arlington is currently planning new surface transit initiatives to extend the reach of our Metrorail system and to better serve new growth and redevelopment in these and other transit corridors. Two new projects, the Columbia Pike Streetcar Initiative and the Crystal City Potomac Yard Transitway should be eligible for New Starts, Small Starts or Very Small Starts funding. However, it appears that neither will qualify under the FTA's proposed rules due to the diminished value accorded land use and economic development and the arbitrary per mile program investment caps.

Columbia Pike Streetcar Initiative

Columbia Pike is a community main street that also serves as a major aterial that carries commuters through Arlington directly to major employment centers and to Metrorail stations such as the Pentagon. While it carries significant automobile traffic, this corridor also has the highest bus transit ridership in Northern Virginia and among the highest in the region (more than 14,500 daily Metrobus and ART bus riders (August 2007)). In conjunction with our neighbors in Fairfax County, Arlington has been planning surface transit improvements to the corridor. As a result of an Alternatives Analysis, both jurisdictions have adopted a "preferred alternative" that would deploy a streetcar along the corridor from Bailey's Crossroads in Fairfax County to Pentagon City in Arlington County.

Both jurisdictions have targeted the Columbia Pike corridor for major redevelopment programs. Fairfax and the Urban Land Institute recently conducted a study of Bailey's Crossroads, which will lose a significant number of its current tenants as a result of Base Realignment and Closure Commission decisions. The Bailey's Crossroads study concluded that the proposed streetcar is critical to its redevelopment. Fairfax is proceeding with a small area plan to address the land use and economic development goals of the area. Arlington County has already completed an extensive community planning effort that resulted in the adoption of a Columbia Pike corridor redevelopment plan based upon the proposed streetcar, a new street space plan, and a form-based code.

In the meantime, along the Columbia Pike Corridor, Arlington County has invested in new rapid bus services, known as the Pike Ride and is about to build a number of enhanced bus shelters, with advanced technology and customer amenities. While Arlington and Fairfax are poised and ready to move forward with the environmental clearance and preliminary engineering for the Columbia Pike Streetcar, the proposed FTA rules would likely disqualify the project for federal funding. Under the proposed rules, it appears that none of our prior investments or community planning, or the prospective economic development will count significantly in the evaluation process. Under the proposed rules, it is uncertain whether the recent improvements in the current bus service will be accepted as the Transportation System Management (TSM) alternative, or if it will be enforced as the baseline, requiring another level of hypothetical TSM investment for the comparative analysis. Contrary to Congress' clear direction in the 2005 Reauthorization, the FTA rules diminish the consideration it will give to land use and economic development in the evaluation of New Starts and Small Starts projects. This will significantly affect the FTA's "effectiveness" evaluation of the Columbia Pike project, which as envisioned by the community, has a fundamental role in land use and economic redevelopment strategies.

Crystal City Potomac Yard Transitway

The Crystal City Potomac Yard Transitway is a joint project of Arlington and the City of Alexandria to connect a major new development area with the existing Metrorail system and adjoining communities along the Blue and Yellow lines. Potomac Yard is an abandoned rail yard that has been planned for major new development as a result of comprehensive community plans adopted by both jurisdictions. Both jursidictions have also adopted a proposed transit system along a dedicated transitway or transit lanes that will connect from the Pentagon or Pentagon City area in the north to the Braddock Road Metrorail station in the South. The FTA has recently approved a Documented Categorical Exclusive for an initial operable segment in Arlington connecting recent development in Potomac Yard, including the new headquarters of the Environmental Protection Agency (EPA), to the Crystal City Metrorail station.

Unfortunately, it appears that the proposed rules would prevent this project from being eligible under the Very Small Starts program even though the budget for the initial operable segment would fall within the Very Small StartStarts budget ceiling, the project budget exceeds the $3 Million cost per mile limitation. The proposed cost limits for the Very Small StartStarts program do not work in many urban environments, where the cost of dedicated lanes, street geometric and signal redesign, and station improvements are likely to exceed this per mile cost ceiling.

Frankly, under the proposed cost limits, Arlington is penalized in this instance because we have chosen to make substantial investments in the transitway in addition to the private contributions to the project. A substantial portion of the transitway will be built on right-of-way donated by the private developer of Potomac Yards, but it is unclear whether the FTA would give credit for this private contribution toward a project, penalizing Arlington and other localities for leveraging all available resources. It also appears that no credit would be accorded for investments such as Arlington's in Intelligent Transportation System (ITS) and signal systems, the dedicated roadway and especially the station stops. For example, the station located in front of the new EPA headquarters has been designed as an architectural element of the actual building with an overhanging structure that expands the station platforms in the dedicated transitway. We firmly believe that an urban station in a surface transit system, whether rubber tire or rail, should contribute to the character of the community creating a sense of place and permanence that also encourages private capital investment.

Below are detailed comments with regard to particular sections of the proposed rules as each affects various components of the New Starts and Small Starts program.[1]

New Starts Program

1. *Weight Given to Cost Effectiveness*

When Congress amended §5309 in SAFETEA-LU in 2005, it moved both land use and economic development to the project justification subsection to reflect an intent that these criteria be given greater weight by the FTA in the evaluation process. Instead, FTA has proposed to lock into regulation a 50 percent weight for cost effectiveness in the New Starts project review and evaluation process which enables this criterion to "trump" all of the other criteria. The remaining 50 percent would be allocated as follows: 20 percent on "effectiveness" which includes mobility benefits, land use/economic development and environmental benefits, 20 percent to land use and economic development as a single measure, and 5 percent each for environmental benefits and transit dependent mobility. This defeats the intent of Congress to elevate the importance of land use and economic development. The FTA proposal to incorporate this change into the rule would lock in this allocation of the weights for the foreseeable future removing any flexibility from the evaluation process.

[1] These comments were developed in cooperation with the Community Streetcar Coalition.

2. *Requiring a "Medium" Cost Effectiveness Rating To be Recommended for Funding*

Prior to April 2005, the FTA employed a "multiple measure" approach that enabled a "medium" or "medium-high" rating for land use to offset a "medium-low" rating for cost effectiveness. Even with a "low-medium" rating on cost effectiveness, a project could obtain an overall project rating of "medium" based on receiving a "medium" or higher rating on the land use plans in the region where the project was being built. The FTA proposes to lock into the regulation what had been a policy decision of this Administration in the informal 2005 guidance.

The informal 2005 guidance and the proposed rule are contrary to both the statute and substantially contravene Congress' intent to elevate the role of land use and economic development criteria in the evaluation process. The effect of the FTA practice has been to reduce 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.

3. *Land Use and Economic Development Measures and Weights*

Contrary to amended §5309's elevation of land use and cost effectiveness criteria to the project justification subsection with economic development, which signaled these criteria were to receive greater weight and consideration in the New Starts project evaluation and review process, the FTA's proposed rule diminishes the weight to be given to land use by combining it with economic development and assigning 20 percent of the weight to the combined criteria. Further, FTA attempts to justify its resistance to implementing the "economic development" criteria by declaring that economic development in a project corridor or at a project station is not additive, but redistributive and that the tools to separate land use from economic development are "overly costly and burdensome."

This assertion from the agency that has brought the industry SUMMIT software tests credulity, and perhaps demonstrates that FTA really does not understand the inter-dynamics of land use, markets and economic development. Several groups have presented papers to the FTA that outline approaches to separating land use from economic development, and FTA commissioned a paper prepared by Hickling, Lewis and Broad in the late 1990s that identified the economic development impact of projects. Moreover, FTA has chosen to emphasize "mobility benefits" over land use and economic development by also incorporating these benefits in the "effectiveness" measure. The effect of these changes is to totally dilute the intent of Congress and the importance of land use and economic development in the New Starts project review and evaluation process.

FTA's resistance to elevating the economic development criteria stems from a belief that the principle project benefit is "mobility" or "user benefits", hence the enormous FTA investment in SUMMIT and the corresponding investment at the local level in updated travel demand models to interact with SUMMIT; as well as a belief that "user benefits" also capture economic development impacts as reflected in regional growth forecasts and project development in a project corridor. The FTA argument that the development of an economic development measure would be "overly costly and burdensome" is specious in light of the fact that the SUMMIT software was developed with little or no input from the transit industry and localities have had to incur substantial investment to modify local travel demand models to be able to effectively interact with the SUMMIT software.

Arlington strongly opposes the diminished weight being given to land use as well as the combination of land use and economic development into a single factor when Congress clearly intended that these factors receive separate consideration. And Arlington disagrees with FTA's assertion that regional growth forecasts accurately capture the economic development effects of projects as those forecasts do not address the type and pace of development that occurs in a corridor after a transit investment. The better approach would be FTA's rewarding communities that seek to concentrate economic development in project corridors or at stations through the use of local policies and incentives. The benefits of a project are not solely or primarily measured in mobility improvements, but also by their impact in shaping economic development patterns in a community that results in shifts in trip patterns and impacts congestion through eliminating automobile trips.

4. Revising Definition of Fixed Guideway

There are extensive changes in this definition that merit scrutiny. First, for New Starts projects, FTA is modifying the definition of what is considered to be public transportation facility so that the definition would be met when "at least 50 percent of the length of the project" is in "exclusive use" by the project. Heretofore, FTA had not defined when a bus facility would meet the definition of eligibility for New Starts, but made that determination on a project by project basis.

Moreover, "exclusive use" has never been defined, but it has generally been interpreted by FTA as a facility dedicated to transit use during peak hour operations. Major changes in the proposed rule would allow both New Starts and Small Starts funds to be used where a project is designed that "in any given month" transit vehicles are using a "barrier separated" right of way (ROW) and "by means of tolling or other enhancements", and "95 percent of the transit vehicles will be able to maintain an average speed of not less than 5 miles below the posted speed limit for the time they are on the facility." FTA seeks to use

New Starts to fund a portion of a "high occupancy toll" facility that can replicate "free flow" conditions achieved by physically separate ROW. FTA proposes to fund a portion of the construction of the HOV/HOT lanes on which transit vehicles would run. FTA's proposed calculation would be based on (i) the total project cost of the fixed guideway, multiplied by (ii) a ratio, (a) the numerator of which would be the expected total peak transit vehicle miles traveled on the fixed guideway and (b) the denominator of which would be the expected total peak vehicle miles traveled on the fixed guideway.

This proposed change is not authorized by any of the amendments to 49 U.S.C. 5309, but is purely an FTA policy position. High Occupancy Toll ("HOT") lanes are already eligible under the highway program. Thus, this policy shift is intended to diminish the investment in traditional fixed guideway projects. Further, there is no requirement that the transit service and the level of transit investment be maintained after the project is built.

5. *Other Factor - Focus on areas with greatest congestion reduction and use of pricing strategies and not economic development opportunity*

FTA has added a number of "other factors" that it would consider in evaluating and rating projects. These "other factors" are not included in the statute. Specifically, FTA proposes that all projects will be evaluated and rated based on the severity of the transportation and economic problem or opportunity in the corridor, as well as, if applicable, the identification of the project as a principal element of a congestion reduction, in general, or a pricing strategy, in particular, and any other factor identified by the project sponsor that is not otherwise captured.

With respect to the transportation or economic development problem or opportunity, FTA proposes a three-tiered rating 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. A project could have its rating raised or lowered by these "other factors."

The effect of this FTA proposed rule, to give priority to projects in areas with severe transportation problems seems logical but could curtail the growth of the New Starts program because many projects are built to shape economic redevelopment and growth, and not severe (in comparison to New York, Los Angeles, or Washington, DC) congestion problems. Depending upon what factors FTA uses to judge the "severity" of the problem, this could result in many communities having project ratings lowered. The emphasis on congestion pricing advances the FTA policy to promote congestion reduction or pricing. But how you measure project impact in a congested highway corridor could result in less than hoped for impacts on parallel roads due to "induced demand" as traffic fills available capacity in a corridor.

Small Starts

1. *Project Eligibility – Corridor-based bus project*

FTA is defining an eligible project to be a "corridor-based bus project where at least 50 percent of the project operates in a separate right of way (ROW) during peak period, or the project represents a "substantial investment" in a "defined corridor" that includes a range of investments similar to the list in the Interim Small Starts Guidance. FTA is not requiring that the 50 percent of the dedicated ROW be contiguous so long as it achieves significant travel time savings. In the preamble FTA takes the position that the "defined corridor" should be a "single travel shed that consists of a concentration of trip origins and destinations" and that routes with geographical separation would be considered to serve different corridor travel markets." In defining "substantial investment" FTA was selective in the criteria it chose to incorporate into the regulation. While including "substantial transit stations", "traffic signal priority/preemption", and "low floor buses", FTA did not incorporate ITS technology, off-board fare collection, park-and-ride lots, next bus technology, and other features. FTA has merely brought forward the focus on the frequency of service that was included in the Interim Guidance on Small Starts.

FTA has not fully incorporated the list of eligible investments while placing an emphasis on frequency of service which was not included in the statute. This does not fully implement the SAFETEA-LU provisions but does adversely impact a number of Bus Rapid Transit projects that do not fall squarely within the narrow FTA definition of project eligibility. Thus, some communities like Arlington that may choose to implement a different set of improvements will get penalized in the evaluation process.

2. *Very Small Starts Favors Bus Rapid Transit(BRT) over Streetcars or Comparable Investments*

FTA has specifically defined project eligibility under the proposed Very Small Starts to be projects that cost not more than $50 million and are less than $3 million per mile, in addition to the other eligibility criteria. These limits makes it impossible for a streetcar project or some more substantial BRT projects to qualify as Very Small Starts, even though there are several streetcar projects that would cost less than $75-100 million to construct, but may cost $15-25 million per mile to build. Very Small Starts projects are able to automatically receive a "medium" rating for cost effectiveness, land use and economic development simply based on meeting the eligibility criteria without the project sponsor having to make any demonstration of what benefits will be realized. The absence of any land use or economic development criteria is perhaps a recognition that BRT projects generally do not encourage private sector investment or community redevelopment, and that this program is designed to implement "highway" oriented BRT as opposed to "urban" BRT projects.

The Very Small Starts program is not authorized in the statute. FTA's attempt to reduce the difficulty of submissions and the approval for smaller projects is appreciated, but the statute specifically states that all Small Starts projects must be justified on the basis of cost effectiveness, land use and economic development. Experience to date indicates that only one streetcar project has been approved for project development and not a single streetcar project has received a Project Construction Grant Agreement. Whereas, most of the projects in the queue are BRT projects and FTA has approved into project development process a number of BRT projects. The goal of the Small Starts program was to be neutral as to technology and FTA has clearly skewed the program in favor of a specific type of transit investment.

Finally, the specific dollar amounts of $50 million total project cost and $3 million per mile should not be written into regulation and should be left to guidance documents. These proscriptive spending limits remove all flexibility from program implementation and should be dependent upon market conditions and fluctuations in respective communities.

3. *Weight Given Cost Effectiveness vis-à-vis Land Use and Economic Development*

As with the New Starts program, FTA has given cost effectiveness a 50 percent weight and "effectiveness" a 50 percent weight. However, land use and economic development are included within "effectiveness", which is not even a measure included in the statute, and combined into a single measure with a weight of 60 percent within the "effectiveness" measure or 30 percent of the total. The other 40 percent of "effectiveness" is given to "mobility" which is also not a measure included in the statute.

Arlington strongly opposes this proposal for the same reasons set forth above in the New Starts section. FTA has ignored the statute by adding measures not included in the statute and failing to develop separate measures for land use and economic development which are included in the statute. Finally, no specific weights should be included in the final rule, but should be left to guidance documents to enable flexibility in program application and development.

4. *Project Baseline*

FTA is taking the position that the Transportation System Management alternative is typically a Very Small Starts eligible bus project. Thus, any project advancing through the New Starts program or the Small Starts program would require the project sponsor to develop a Very Small Starts eligible project as the baseline project. Many project sponsors have no intent to build a project that would be funded through the Very Small Starts program and seek to advance a less expensive alternative. Moreover, by requiring a Small Starts project, especially a commuter rail or streetcar project to be measured against a Very Small Starts eligible project, there is an "apples to oranges" comparison because the projects are seeking to serve very different travel needs or markets in a community.

CONCLUSION

The proposed FTA rules attempt to create permanent regulations with criteria weights and spending limits that will prevent all flexibility in the New Starts and Small Starts programs. Transit is not a one dimensional mode. Each transit solution should be molded to a particular community's needs – no one size fits all communities. It is surprising that FTA would seek to dictate such precise and proscriptive requirements.

I am especially concerned that FTA's proposed rules “reverse flex” funds toward highway and rubber tire transit solutions and away from rail transit. The FTA's proposed rules redefine “fixed guideway” to allow a substantial “flexing” of transit funds for highway HOV/HOT projects. This proposed rule is not authorized by SAFETEA-LU. Similarly, the Very Small Starts program is not authorized by Congress, and given its restrictive parameters appears to be an attempt by FTA to force jurisdictions into consideration of less expensive, rubber tire alternatives to investments in rail transit. In combination with the introduction of additional “other factors”, such as congestion reduction and pricing, the FTA's proposed rules as a whole evidence clear biases contrary to express Congressional intent.

Arlington's commitment to transit as an integral part of community and economic development would seem to be the model that Congress intended in its 2005 reauthorization changes, but it is not the model that FTA's proposed regulations would promote.

Mr. Chairman, iIt was an honor to speak before you today and I appreciate the time you are taking to discuss this important issue. I look forward to answering any questions the Committee may have.