April 1, 2011

Neil Eisner, Assistant General Counsel for Regulation and Enforcement
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**Subject: FTA Regulatory Changes to Promote Affordable Housing and Community Development Near Transit Stations; Response to Docket Number: DOT-OST-2011-0025**

To Mr. Neil Eisner:

Thank you for the opportunity to comment on the review of existing Department of Transportation (DOT) regulations, as required under Executive Order 13563. These comments are co-authored by Enterprise Community Partners (Enterprise) and the National Housing Conference (NHC). More information on our organizations can be found in Appendix B. Enterprise and NHC share a commitment to promoting equity and opportunity for households of all incomes. We believe that this can be achieved through coordinated development decisions that promote affordable housing, economic development, and strong connections to public transportation. Our comments focus on potential changes to Federal Transit Administration (FTA) regulations that would facilitate such development.

**PROMOTING THE INTERAGENCY PARTNERSHIP FOR SUSTAINABLE COMMUNITIES' LIVABILITY PRINCIPLES**

We strongly support activities that embody the Livability Principles as developed by the Department of Housing and Urban Development, DOT, and the Environmental Protection Agency (collectively, the Interagency Partnership for Sustainable Communities):

- Provide more transportation choices
- Promote equitable, affordable housing
- Enhance economic competitiveness
- Support existing communities
- Coordinate and leverage federal policies and investments
- Value communities and neighborhoods

As you conduct your review of DOT regulations, we urge you to continue to work with your interagency partners to identify regulatory barriers to livability and sustainable community development.

We focused our review of DOT regulations on the FTA's policies that have an impact on residential and commercial development around transit sites. Public transit investments can have both positive community impacts and negative unintended consequences. Studies confirm that low- and moderate-income families are more likely to ride public transit than other families.[1] Increased transportation access can connect households to employment and services and reduce transportation costs. However, in many cases the development or enhancement of public transit stations will raise property values within walking distance of the stations, leading to increases in rents and home prices. This can subsequently result in increased cost burden and potential displacement of low- and moderate-income families.[2] Creating incentives for preserving and expanding affordable housing near planned public transit stations would help to increase ridership for public transit, improving both the economic and societal return on investment of new transit lines (for a full discussion of the importance of affordable housing near transit, see Appendix A). Therefore, it is important to take proactive steps to develop these incentives and reduce any regulatory barriers that may exist. Such actions are clearly aligned with the Livability Principles.

We have identified two areas where FTA can make regulatory and programmatic changes to promote coordinated housing and transportation investments. First, FTA can make changes to its rating criteria for the New Starts program. Second, FTA can amend and clarify its policies related to joint development and the disposition of excess local transit authority property.

**1.) FTA SHOULD MODIFY THE NEW STARTS REGULATIONS AND NOTICE OF FUNDING AVAILABILITY TO CREATE INCENTIVES FOR PRESERVING AND EXPANDING THE AVAILABILITY OF AFFORDABLE HOUSING NEAR PLANNED TRANSIT STOPS**

We urge the Administration to consider regulatory changes to the New Starts program to more effectively achieve the Livability Principles. As reflected in the Advanced Notice of Proposed Rulemaking issued in June 2010, FTA is considering refining its approach to evaluating projects for federal financial assistance under the New Starts program to give greater weight to livability factors such as economic development and environmental benefits. We applaud this decision

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[1] Nearly 66 percent of transit users had household incomes below $50,000 (in 2004 dollars). Neff, John, and Larry Pham. 2007, May. *A Profile of Public Transportation Passenger Demographics and Travel Characteristics Reported in On-Board Surveys*. Washington, DC: American Public Transportation Association.

[2] Immergluck, Dan. 2009. "Large Redevelopment Initiatives, Housing Values and Gentrification: The Case of the Atlanta Beltline." *Urban Studies* 46: 1723-1745; McMillen, Daniel P., and John McDonald. 2004. "Reaction of House Prices to a New Rapid Transit Line: Chicago's Midway Line, 1983-1999." *Real Estate Economics* 32(3): 463-486; Pollack, Stephanie, Barry Bluestone and Chase Billingham. 2010, October. "Maintaining Diversity in America's Transit-Rich Neighborhoods: Tools for Equitable Neighborhood Change." Dukakis Center for Urban and Regional Policy.

and urge FTA and the Administration to consider specific changes to the award criteria for New Starts to better support the Livability Principles.

Specifically, in order to promote more equitable, affordable housing – the second of the Livability Principles – we recommend that FTA incorporate new rating factors into the competition for New Starts funding to create incentives for applicants to preserve and expand affordable housing near planned transit stations. We believe these new rating factors can be incorporated into either the economic development or land use assessment factors. In many cases, the award of New Starts funding drives up local land prices, making it more difficult for low- and moderate-income families to afford to live near transit. By revising the New Starts criteria to create incentives for applicants to develop proactive housing strategies to preserve and expand affordable housing near transit before the award is made, FTA could help ensure that families of all incomes can afford to live in the sustainable communities being developed around new transit stations.

Incentives to preserve and expand the availability of affordable housing near planned transit stations would also advance other objectives of the New Starts Program including improving mobility and access for the "transit-dependent population," increasing ridership, creating jobs and reducing sprawl and pollution.

The addition of these new ranking criteria would carry no cost to the federal government and, by encouraging the development and implementation of proactive affordable housing strategies before land prices rise, would actually lower the long-term costs to states and localities of providing affordable housing near transit. Indeed, several no-cost solutions are available to local governments to build affordability into new development, including tax-increment financing with affordable housing set-asides, density bonuses, and various approaches to inclusionary housing. The key is to ensure that the appropriate local policies are adopted before land prices rise.

We understand that the existing New Starts application process is already time-consuming for applicants and that adding these proposed rating factors will require that applicants gather more information and coordinate with local and regional housing and planning agencies in order to complete their application. Recognizing the added time-cost, we recommend making funding available to applicants that advance through preliminary New Starts rounds to facilitate coordination between transit plans and affordable housing strategies in the metropolitan area.

## Proposed Rating Factors

Below is a brief summary of the rating factors we recommend be added to the New Starts program to achieve the Interagency Partnership's affordability goals. We recommend the addition of two rating factors rather than one in order to capture the different approaches that are needed for meeting the housing needs of moderate-income families (up to 60 percent of income for renters and up to 100 percent of the median income for homeowners ) and very-low income families (less than 50 percent of the median income). Together with the populations that can be served by the market without government intervention, these two rating factors will help ensure that housing will be affordable to families of all incomes within walking distance of planned transit stations.

1.) Proposed Factor: Affordability of New Residential Development near Transit Stations

The purpose of this rating factor is to ensure that communities adopt a policy of ensuring that a share of new development within one-half mile of new station stops is affordable to moderate-income families. Applicants receive credit for adopting policies designed to ensure that a specified share of new residential development around proposed transit stations is affordable to moderate-income families and will remain affordable for as long as the transit stations are in operation. Exceptions should be made for areas with existing high concentrations of poverty and low housing costs.[3]

There are many possible strategies that local governments can adopt to ensure that a share of new development near planned transit stations is affordable to moderate-income families. These include: developing affordable housing on publicly owned land; dedicating a share of proceeds from tax increment or tax assessment districts for affordable housing near the proposed stations; providing density bonuses to developers that agree to meet specified affordability targets; and using federal, state or local housing subsidies for development near proposed transit stations. Other options can and should be allowed so long as they are reasonably likely to lead to the desired outcome.

2.) Proposed Factor: Preservation and Development of Deeply Affordable Subsidized Housing and Siting of Proposed Stations Near Existing Subsidized Housing Developments.

The first rating factor provides incentives for communities to adopt policies designed to ensure that a share of new development is affordable to moderate-income families. Many families in need of affordable housing, however, have much lower incomes. To address this need, the

[3] For a proposed station area with very low housing costs and very high poverty levels, additional investments in long-term affordable housing may not be warranted. Where rents, housing sale prices and poverty rates within a one-half mile of a proposed station all fall in the bottom quartile of existing station areas in the metropolitan area, the applicant should have the option of being excused from planning for additional affordable housing near that station and be awarded a portion of the points available. Visit http://www.nhc.org/media/files/NHC_New_Starts_Comments.pdf for a full discussion of this exception.

second rating factor evaluates the commitment of applicants to preserving and expanding deeply affordable housing for the lowest-income families near proposed station stops. As these families can be equally well served by both existing and newly created deeply affordable housing, this factor also gives jurisdictions credit for existing deeply affordable housing located within one-half mile of proposed stations.

In many cases, the most efficient housing solution for very low-income families will be layering existing federal rental subsidies (such as project-based housing vouchers) onto units made affordable to moderate income families through the policies adopted in response to the first rating factor.

More detail on the proposed rating factors, their justification, and how they could be implemented may be found in comments submitted jointly in response to FTA's Advanced Notice of Proposed Rulemaking by Enterprise Community Partners, Habitat for Humanity, and the National Housing Conference:
http://www.nhc.org/media/files/NHC_New_Starts_Comments.pdf (the rating factors are covered in particular detail in Appendix B).

**2.) FTA SHOULD ISSUE UPDATED GUIDANCE ON ITS JOINT DEVELOPMENT POLICIES AND PROVIDE MORE FLEXIBILITY TO TRANSIT AUTHORITIES TO DISPOSE OF EXCESS PROPERTY FOR THE PURPOSE OF MIXED-INCOME AND AFFORDABLE HOUSING**

FTA can maximize scarce resources for both transit and affordable housing investments by ensuring that FTA-funded property can be sold, leased or donated for the purpose of mixed-income and affordable housing development projects. As previously stated, such projects can increase and stabilize ridership and decrease the cost of living for low income families. Current FTA policies on joint development give local transit agencies the ability to undertake joint development projects that include an affordable housing component, and research has highlighted successful projects in this area.[4] However, we have found that practitioners in the field would benefit from further explanation of some of the more complex elements of the regulations, including the continuing control policy and issues around parking replacement on FTA-funded properties.

According to FTA Guidance 72 FR 5788, residential development meets the following standards as an eligible joint development activity:

- The activity must enhance economic development OR incorporate private investment;

[4] Kneich, Robin and Melinda Pollack. 2010. *Making Affordable Housing at Transit a Reality: Best Practices in Transit Agency Joint Development*. FRESC: Good Jobs – Strong Communities and Enterprise Community Partners.

- The activity must enhance the effectiveness of a public transportation project and be "physically or functionally" related to the public transportation project; OR (b) establish new or enhanced coordination between public transportation and other transportation; AND
- The activity must provide a fair share of revenue for public transportation (as determined by the grantee)

In order for a project to qualify as a joint development transportation project,[5] FTA requires transit agencies to retain continuing control of the property. While this control does not have to be outright, the project sponsor must have the legally enforceable right and power to direct that the project is used for activities eligible for funding under Federal transit law.[6]

In our experience, local transit agencies and practitioners could benefit from further clarification on what constitutes continuing control in cases where the agency subordinates land to a developer. FTA should consider releasing updated guidance that provides examples of contractual agreements or covenants that address site control issues (such as accessibility to the transit system) when ownership is transferred to developers.

Similarly, local transit agencies could benefit from expanded guidance and technical assistance related to parking replacement on joint development projects. Parking is commonly cited as a significant local challenge to implementing joint development projects. Therefore, FTA should consider providing updated guidance and best practices from the field on effective strategies for managing existing and future parking demand while advancing successful joint development projects.

In addition to joint development, transit agencies can also support affordable housing development near transit stations through the disposition of excess property. While there may be cases where property disposition is the best strategy for developing transit-adjacent properties, there are regulatory restrictions that make this type of development difficult. According to 49 C.F.R. § 18.31 and 49 C.F.R. § 19.32, transit agencies are required to sell excess FTA-funded property for the highest possible return and must pay FTA the proportionate share of its interest in the property. This requirement puts affordable housing preservation and development at a disadvantage. Transit agencies are prohibited from donating property (or selling it at a discounted rate) to affordable housing interests. Given the previously described increase in property values associated with transit investments, this prohibition is a significant barrier.

[5] If the project is considered a transportation project for joint development, it is eligible for FTA funding and revenue received by the transit agency is considered program income. If the property is sold through general property disposition, the agency has to reimburse FTA for the federal interest.

[6] FTA Policy on Transit Joint Development (FR Vol. 62, No. 50; 3/14/1997) and modified by FTA Guidance 72 FR 5788, Feb. 7, 2007.

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Furthermore, absent a discount, project financial viability is often reliant on identifying and purchasing properties early in the transit development process before values begin escalating. By the time the property is deemed as "excess," station area planning/development is likely to be underway and this opportunity will have passed.

While it is important that transit agencies receive a fair return on investment, we believe that the ability to exercise more flexibility in property disposition is in their long-term interests. Agencies should have the ability to sell (or donate) property at below fair market value in exchange for the ridership stability and enhanced long-term revenue streams that come from low- and moderate income residents living within close proximity of public transit. Therefore, we recommend that FTA undertake a public rulemaking process to amend its rules on property disposition, provided that such property is to be used for a public purpose such as mixed-income or affordable housing. FTA should also consider expanding this rulemaking to its policies on joint development, so that practitioners can have the opportunity to provide comment on the full range of options for transit-oriented development.

Once again, the undersigned organizations appreciate the opportunity to comment on the DOT Regulatory Review. We would be happy to answer any questions or clarify any points made in this letter. Please contact us with any questions or for further discussion. Contact information for each organization is included in the Appendix.

Sincerely,

Enterprise Community Partners
National Housing Conference

## Appendix A

### Why is it important to preserve and expand affordable housing near public transit?

There are several reasons why it is important to preserve and expand affordable housing near planned public transit stops:

First and foremost, it is necessary to ensure that low- and moderate-income families have **equitable and affordable access** to the new public transit stations. In many cases, the development or enhancement of public transit stations will increase property values within walking distance of the stations. This can lead to increases in rents and home prices and, subsequently, the increased cost burden and potential displacement of low- and moderate income families.[7] By revising its criteria to create incentives for preserving and expanding affordable housing near planned public transit stations, FTA would help offset the property price increases and displacement that new transit lines cause and ensure that families of all incomes are able to afford to live within walking distance of new stations.[8]

As energy prices rise and the population ages, demand for transit-oriented development is likely to increase in many markets,[9] exacerbating the problem and further diminishing equitable access to public transit for low- and moderate-income families. These expected trends underscore the importance of FTA action to provide incentives for the preservation and creation of affordable housing for low- and moderate-income families near public transit stops.

Second, studies confirm that low- and moderate-income families are more likely to ride public transit than other families.[10] By creating incentives for preserving and expanding affordable housing near planned public transit stations, FTA programs would help to **improve ridership**

[7] Immergluck, Dan. 2009. "Large Redevelopment Initiatives, Housing Values and Gentrification: The Case of the Atlanta Beltline." *Urban Studies* 46: 1723-1745; McMillen, Daniel P., and John McDonald. 2004. "Reaction of House Prices to a New Rapid Transit Line: Chicago's Midway Line, 1983-1999." *Real Estate Economics* 32(3): 463-486; Pollack, Stephanie, Barry Bluestone and Chase Billingham. 2010, October. "Maintaining Diversity in America's Transit-Rich Neighborhoods: Tools for Equitable Neighborhood Change." Dukakis Center for Urban and Regional Policy.

[8] It is true that low- and moderate-income families may be able to access the new station by bus or car, even if they are priced out of homes built in the immediate surroundings. But while these types of access should not be discounted, it is readily apparent that it would be inequitable to simply accept the fact that low- and moderate-income families will be excluded from the new transit-oriented and livable communities that we are seeking to create – especially when there are easy ways to prevent this outcome by restructuring the New Starts NOFA to create incentives for affordable housing development near transit.

[9] Reconnecting America's Center for Transit-Oriented Development. 2004, September. *Hidden in Plain Sight: Capturing the Demand for Housing Near Transit*. Washington, DC: Author.

[10] Nearly 66 percent of transit users had household incomes below $50,000 (in 2004 dollars). Neff, John, and Larry Pham. 2007, May. *A Profile of Public Transportation Passenger Demographics and Travel Characteristics Reported in On-Board Surveys.* Washington, DC: American Public Transportation Association.

**for public transit**, improving both the economic and societal return on investment of new transit lines.

Third, incentives for the preservation and expansion of affordable housing near public transit are needed to **minimize the extent and cost of sprawl and reduce traffic congestion, air pollution, and emissions of greenhouse gases.** Without an adequate supply of affordable housing near transit and other close-in locations, low- and moderate-income families are likely to leapfrog existing development in many cases and move to the fringes of metropolitan areas where they can better afford their housing costs. This will exacerbate sprawl and lead to increases in vehicle-miles traveled, air pollution, greenhouse gas emissions, and traffic congestion. The incentives we describe would lead to more affordable and compact development patterns that help mitigate these problems.

Finally, creating incentives for preserving and expanding affordable housing near transit would help **advance core economic development objectives**, including**:**

- **An equitable distribution of economic development benefits**. Economic development is not simply a measure of total economic impact, but rather a social objective that seeks to improve the stability and quality of life for residents of targeted areas. Large economic impacts that displace existing residents are known variously as gentrification or displacement, rather than economic development because they deprive existing residents of the benefits of the new development. By helping existing (and other) low- and moderate-income families to afford to continue to live near planned station stops, affordable housing incentives would help ensure that such families share equitably in the economic development benefits that new transit lines bring.

- **Job creation**. The preservation and new development of affordable housing would create jobs. A study by the National Association of Home Builders finds that a typical new 100-unit Low Income Housing Tax Credit property creates 122 local jobs during the construction phase, and new residents support an additional 30 jobs on an ongoing basis after construction is complete.[11] NAHB also estimates that every $100,000 spent on residential remodeling supports 1.11 new employment opportunities primarily in the construction field,[12] suggesting that preserving and rehabilitating affordable multifamily properties can also have a significant impact on the local economy.

- **Improved job access**. These incentives would also help to improve job access for low- and moderate-income families by ensuring these families have good access to transit.

[11] National Association of Home Builders. 2010, March. *The Local Economic Impact of Typical Housing Tax Credit Developments*. Washington, DC: Author.

[12] Liu, Helen Fei, and Paul Emrath. 2008, October 7. "The Direct Impact of Home Building and Remodeling on the U.S. Economy." HousingEconomics.com. Washington, DC: National Association of Home Builders.

**APPENDIX B**

**Information on Comment Authors**

**Enterprise Community Partners (Enterprise)**. Enterprise is a national nonprofit organization. Enterprise creates opportunity for low- and moderate-income people through fit, affordable housing in diverse, thriving communities. Enterprise provides financing and expertise to community-based organizations for affordable housing development and other community revitalization activities throughout the U.S. In over 25 years, Enterprise has invested over $10.6 billion to create more than 270,000 affordable homes and strengthen hundreds of communities across the country.
Point of Contact: Michael A. Spotts, Policy Analyst (mspotts@enterprisecommunity.org or 202-649-3902)

**National Housing Conference (NHC)**. Since 1931, NHC has been dedicated to ensuring safe, decent and affordable housing for all Americans. NHC has earned its strong reputation as the *United Voice for Housing* by actively engaging and convening its membership in nonpartisan advocacy for effective housing policy solutions at the local, state and national levels. Our comments are grounded in the work of our research affiliate, the Center for Housing Policy, which has an ongoing research program focused on the intersection of housing and transportation policy.
Point of Contact: Clare Duncan, Policy Associate (cduncan@nhc.org or 202-466-2121, ext. 228)