THE FEDERAL TRANSIT ADMINISTRATION'S PROPOSED RULE ON THE NEW STARTS AND SMALL STARTS PROGRAMS

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HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

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TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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September 21, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on "The Federal Transit Administration's Proposed Rule on the New Starts and Small Starts Programs"

PURPOSE OF HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Wednesday, September 26, 2007 at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony on the Federal Transit Administration's ("FTA") proposed rule on the New Starts and Small Starts programs. The Subcommittee will hear from the Administrator of FTA, a Member of the Arlington County, Virginia Board, the Executive Director of Hampton Roads Transit, the General Manager of the Kansas City Area Transportation Authority, and the President and CEO of Reconnecting America, a nonprofit organization currently conducting research for FTA.

BACKGROUND

The New Starts and Small Starts programs, codified at 49 U.S.C. §5309, are the Federal government's primary programs for supporting transit capital investments for the construction of new transit systems and extensions to existing systems, including subways, commuter rail, light rail, streetcars and bus rapid transit ("BRT"). These transit systems improve the mobility of millions of Americans, help to reduce congestion and improve air quality in the areas they serve, and foster the development of more economically viable, safe, and livable communities.

Congress created the New Starts program in the Urban Mass Transportation Act of 1964 ("UMTA") to fund major investments in the transit infrastructure of urbanized areas. Since then, the New Starts program has helped to make possible dozens of rail transit fixed guideway systems across the country. Transit project sponsors seeking more than $75,000,000 in Federal New Starts funds must apply to FTA under the New Starts program criteria at 49 U.S.C. §5309(d).

The Small Starts program was created in 2005 by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"). Transit project sponsors seeking less than $75,000,000 in Federal funds for a project with a total estimated net capital cost of less than $250,000,000 may apply to FTA under the Small Starts program criteria at 49 U.S.C. §5309(e). The Small Starts program is designed to include fewer criteria and grant requirements, allowing for a more simplified FTA review.

Until the passage of SAFETEA-LU, transit projects seeking less than $25,000,000 in Federal New Starts or Small Starts funds were exempt from FTA evaluation altogether. In SAFETEA-LU, Congress continued this exemption only until FTA issues regulations establishing an evaluation and rating process for the Small Starts program. Until such a rule is finalized, however, these very small scale projects can still receive and obligate Federal funds without a formal FTA evaluation process.

<u>FTA's Implementation of the Statutory Requirements of the New Starts and Small Starts Programs</u>

New Starts and Small Starts projects may be approved for Federal funding only if they meet three basic requirements. SAFETEA-LU directs that each New Starts and Small Starts project justification factor be rated on a five-point scale including high, medium-high, medium, medium-low, and low designations. For a New Starts project, the selection criteria are as follows:

1. The project must be based on the results of an alternatives analysis and preliminary engineering.
2. The project must be justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use policies and future patterns (collectively know as project justification criteria).
3. The project must be supported by an acceptable degree of local financial commitment.

For a Small Starts project, the selection criteria are as follows:

1. The project must be based on the results of planning and alternatives analysis.
2. The project must be justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development (collectively know as project justification criteria).
3. The project must be supported by an acceptable degree of local financial commitment.

Of these basic requirements, the project justification criteria receive by far the most attention in the statute, and Congress directs FTA to conduct a "comprehensive review" of these criteria for each project. To date, however, FTA has not fully incorporated all of the Congressionally mandated project justification criteria into either the New Starts or Small Starts programs. FTA continues to place more emphasis on one single criterion – cost effectiveness – and does not distinguish the economic development benefits of transit projects from local land use factors.

Cost effectiveness is currently measured as the incremental cost per hour of transportation system user benefits in the forecast year and is weighted at 50 percent of the total project rating. Land use is measured by FTA in three ways: existing land use in the study corridor, transit supportive plans and policies, and performance and impacts of policies. Land use is also currently weighted at 50 percent of the total project rating. FTA currently has no method of independently analyzing or measuring the economic development criterion, nor does FTA currently give weight in the project evaluation to environmental benefits.

FTA's Notice of Proposed Rulemaking on the New Starts and Small Starts Programs

FTA is currently in the process of undertaking a rulemaking on the New Starts and Small Starts programs as required by SAFETEA-LU. FTA issued its formal Notice of Proposed Rulemaking ("NPRM") on August 3, 2007 (72 Fed. Reg. 43328). In the NPRM, FTA articulates various proposals for implementing changes to the New Starts and Small Starts programs. This hearing will explore this NPRM in depth, and Members will hear from witnesses who are working on transit projects and initiatives that would be affected by the rule. The deadline for comments on the NPRM is November 1, 2007.

The NPRM has raised both Congressional and transit industry concerns. The Administration considers the New Starts/Small Starts rule to be a significant rulemaking and, if finalized, the transit industry will be governed by this rule for a number of years to come. The topics within the NPRM that have elicited the most concern thus far are:

1. FTA's failure to consider the economic development benefits of transit projects in a meaningful way, or as a separate and distinct criterion;
2. FTA's proposal to establish in regulation this Administration's policy to give the cost effectiveness criterion greater weight than all of the other statutorily mandated criteria combined;
3. FTA's proposal to utilize congestion pricing and innovative contracting strategies as "other" criteria that could either increase or decrease a transit project's final rating; and
4. FTA's proposal to create an evaluation framework for "Very Small Starts" projects that is arguably not mode-neutral.

Following is a more detailed discussion of FTA's treatment of the four issues highlighted above in its New Starts/Small Starts NPRM.

FTA's Treatment of the Economic Development Criterion in the NPRM

Transit lines and stations increase communities' property values, efficiently link workers and businesses, and stimulate job creation. For example, a University of North Texas study found that between 1997 and 2001, commercial properties located near Dallas Area Rapid Transit stations increased in value 24.7 percent, while commercial properties not served by rail increased in value by only 11.5 percent. Residential properties near the stations rose in value 32.1 percent, compared to a 19.5 percent increase for residences not served by a rail station.

Congress included the economic development criterion in the law with the intent that economic development impacts of transit projects be considered in the New Starts and Small Starts evaluation processes. In response to the SAFETEA-LU requirement that the agency issue a report on economic development evaluation methodology, FTA issued a January 2006 letter to Congress which stated: "Predicting economic development impacts of transit improvements is a particular challenge. No predictive tools are available in standard practice and development of new tools is infeasible in the short run."

Several economists, research institutions, and other organizations have refuted this claim with studies and economic models that quantify the economic development effects of transit investments. Nevertheless, FTA has not established a separate economic development criterion for the evaluation of New Starts and Small Starts projects, nor has it proposed a method for capturing the economic development benefits of transit in the project ratings. FTA does, however, solicit in the NPRM comments on a methodology to quantify these benefits, acknowledging that changes in economic development and land use may provide benefits that are not otherwise included in current evaluations.

One tangible benefit of economic development around transit stations is the resulting "trip not taken" in a private automobile. For example, when a new transit station spurs economic development around the station area in the form of new residences and businesses, those riders who walk from their residence or place of work to the transit station instead of driving provide a benefit to that area in the form of relieving roadway congestion and reducing oil consumption and pollution. FTA, however, argues that there are no models that can predict the number of transit riders who walk or use non-motorized transportation to access transit and does not allow transit project sponsors to count these riders in their project estimates or the benefits they bring to the community. As a result, certain transit riders who live or work near proposed transit lines and stations are not included in the calculations of a project's economic development or land use benefits, or in determining a project's cost effectiveness by FTA.

FTA's Treatment of the Cost-Effectiveness Criterion in the NPRM

SAFETEA-LU directs that each New Start and Small Start project be rated against the project justification criteria enumerated in the statute, though the law does not specify the relative weight that each project justification criterion should be given. However, since the issuance of an April 2005 "Dear Colleague" letter announcing the new policy, the Administration recommends for federal funding only those projects which receive a "medium" or better rating for the singular cost effectiveness criterion, regardless of the overall project rating. In essence, this administrative treatment of cost-effectiveness made this one criterion more important than any of the other statutorily required measures.

In SAFETEA-LU, the New Starts evaluation process was amended by elevating the consideration of non-cost related transit investment benefits, such as land use and economic development effects, to a more prominent section in the law. However, in the NPRM, FTA proposes to lock into regulation a numerical weight of 50 percent for the cost effectiveness criterion, and at the same time, proposes to combine the two separate statutory criteria of land use and economic development into one criterion and assign it a combined weight of 20 percent. The NPRM further proposes to count mobility benefits as 20 percent, environmental benefits as 5 percent, and benefits to transit dependent riders as 5 percent of the total project rating. Thus, instead of giving greater consideration to the economic development and land use benefits of transit, as was intended by elevating these two separate criteria in SAFETEA-LU, FTA is giving the two combined criteria much less weight in the evaluation process than land use currently receives.

For a Small Starts project, the NPRM would similarly weight cost effectiveness at 50 percent of the total project rating, mobility at 20 percent and a combined economic development and land use criteria would comprise 30 percent of the total project rating.

<u>FTA's Inclusion of Innovative Contracting and Congestion Mitigation Factors into the New Starts and Small Starts Programs via the NPRM</u>

Another proposal advanced by FTA in the NPRM is its intention to include both innovative contracting and congestion pricing factors into the New Starts and Small Starts programs. Specifically, FTA is proposing to either increase or decrease a project's rating based on two new factors:

1. If the project has provided the opportunity for the operation and maintenance of the project to be contracted out; or
2. If the project is a principal element of a congestion management strategy, in general, and a pricing strategy, in particular.

Congress did not include these factors in either the primary project justification criteria or in the broader statutory language of 49 U.S.C. §5309. However, the statutory authority for FTA to consider additional factors that are not explicitly included in the list of New Starts or Small Starts evaluation criteria is the language that allows the consideration of "other factors that the Secretary determines to be appropriate to carry out the subsection." As such, the Administration is proposing to include these two factors to support the Department of Transportation ("DOT") congestion initiative.

A third congestion mitigation factor that is proposed in the NPRM is an expanded eligibility in the use of Federal New Starts funds to allow these funds to pay for the construction of high occupancy toll ("HOT") lanes, on which transit vehicles and high occupancy vehicles ("HOVs") would run without charge and on which single-occupancy vehicles could pay a toll to use, so long as free-flow conditions were maintained. Concerns have been raised that this expanded eligibility may exceed the statutory definition of transit fixed guideway projects under 49 U.S.C. §5302(a), which explicitly authorizes construction of HOV lanes (but not HOT lanes) with Federal transit funds.

<u>FTA's Creation of the Very Small Starts Program in the NPRM</u>

FTA proposes in the NPRM to create a new set of project eligibility standards and apply them to a subset of Small Starts projects. FTA would name this the Very Small Starts program and would pre-qualify certain Small Starts projects for automatic approval of the project justification criteria if they meet the following proposed criteria:

1. Have a total capital cost less than $50 million;

2. Cost less than $3 million per mile, exclusive of rolling stock.; and
3. Are located in corridors with at least 3,000 average weekday existing riders.

These new project eligibility standards are not established in statute, and concern about this approach to very small transit projects has been raised by the transit industry, particularly by those communities pursuing streetcar projects. Nearly all streetcar projects have average costs greater than $3 million per mile. As such, this eligibility criterion would effectively bar streetcar projects from entering the Very Small Starts program. BRT projects, however, could more easily meet the per-mile standard, thus increasing the likelihood that they would be eligible for these Federal funds. The Small Starts program was created in SAFETEA-LU to be a simpler, faster FTA evaluation process for lower cost transit projects, including light rail, commuter rail, streetcars and BRT. Care was taken by Congress to ensure that the program would be mode-neutral. By including the $3 million cost-per-mile eligibility standard in the NPRM, however, FTA proposes to establish a program that could not likely be accessed by all transit modes.

Senate Amendment Limiting the NPRM

On September 12, 2007, during Senate consideration of H.R. 3074, the FY 2008 Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, an amendment by Senators Dodd and Shelby of the Committee on Banking, Housing and Urban Affairs was adopted that prohibits FTA from using funds appropriated under the Act to promulgate regulations to carry out section 5309 of title 49, United States Code. (The House had concluded its consideration of H.R. 3074 on July 24, 2007, before FTA published the NPRM.) If this funding limitation is retained, the New Starts/Small Starts rulemaking process would be effectively halted for the 2008 fiscal year.

Previous Subcommittee Action

The Subcommittee on Highways and Transit last held a hearing on the New Starts and Small Starts programs on May 10, 2007. The focus of the hearing was on FTA's implementation of these programs, and included witnesses from FTA, the U.S. Government Accountability Office (GAO), several transit agencies, and an economist.

Witness List

PANEL I

The Honorable James S. Simpson
Administrator
Federal Transit Administration
Washington, D.C.

PANEL II

Mr. Christopher Zimmerman
Member
Arlington County Board
Arlington, VA

Mr. Michael Townes
Executive Director
Hampton Roads Transit
Hampton, VA

Mr. Mark Huffer
General Manager
Kansas City Area Transportation Authority
Kansas City, MO

Ms. Shelley Poticha
President
Reconnecting America
Oakland, CA

HEARING ON THE FEDERAL TRANSIT ADMINISTRATION'S PROPOSED RULE ON THE NEW STARTS AND SMALL STARTS PROGRAMS

Wednesday, September 26, 2007

HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable Peter A. DeFazio [Chairman of the Subcommittee] presiding.

Mr. DEFAZIO. The Subcommittee will come to order. I want to thank Members and the witnesses for being here.

On May 10th we held a hearing on New Starts and Small Starts, and at that time the FTA had not yet issued its proposed rule for these programs. We had, I thought at the time, a pretty frank exchange of views and the Committee made clear and underlined what we thought was the legislative intent previously. Unfortunately, since that time we now have the NPRM on New and Small Starts, and I don't think that, as currently written, it reflects the concerns that were raised in that hearing. I don't believe it implements the statutory intent, and it has caused tremendous concern among transit stakeholders around the Country in terms of the long-term implications, should it be implemented as currently written. I am hopeful that we will see some major changes.

We understand we are in the comment period. The FTA has scheduled some listening sessions, and hopefully not only the FTA will be listening, but those others in the Administration who have been involved in writing this rule will be listening and will be attentive to concerns expressed and perhaps conveyed to them by the FTA.

I will get into the details of my particular concerns after we have heard from the Administrator. I appreciate his being here today. But I really do feel that this is potentially a failed attempt at rulemaking that, as I said earlier, somehow there are new provisions that were not authorized by Congress that seem to reflect the agenda of other parts of the Department of Transportation and the Bush Administration, and yet those parts which should reflect the clear statutory instructions from Congress are still wanting.

So I look forward to discussing this rule with the Administrator and other witnesses.

I do have a markup on a very, very critical issue to my district—it is also a national issue—in another Committee, so at some point

I will have to leave, but we will try and move things along as quickly as we can.

With that I turn to the Ranking Member, Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman. You have pretty well adequately stated the situation under the Federal Transit Administration's New Starts Program. Local transit agencies partner with the FTA to develop and construct subway, light rail, commuter rail, streetcar, ferry, and bus rapid transit projects to try to solve specific local transportation problems in their communities. New Starts projects can be brand new starter lines or extensions to existing transit systems. The size, cost, and complexity of these projects varies widely.

SAFETEA-LU authorized a new Small Starts program within New Starts for projects that are less than $250 million in total cost and less than $75 million in New Starts funding. The program is designed for simpler, smaller projects and the evaluation and rating process is also supposed to be simpler, and we hope will allow for faster development and construction.

The FTA project evaluation and rating process is established in law by this Committee. SAFETEA-LU made a number of changes to the New Starts program and today's hearing will focus on the Notice of Proposed Rulemaking or, as you have stated, NPRM, that the FTA has developed to implement those changes. Once this proposed rule is finalized—and it always amazes me how long it takes to finalize a rule such as this—it will govern New Starts and Small Starts policy for years to come. It will be at least two years after the next authorization bill is passed before changes in that law are implemented in a new final rule, so the final rule that results from the current NPRM before us will be in place at least through 2011, and perhaps longer.

I have been impressed and do appreciate the responsiveness and courtesy which the FTA has shown my staff and my constituents in Knoxville in working through a transit center land purchase issue there, but I do wish there was more flexibility in the rules that the agency is implementing in this case. It seems like there is very little room for responding to unique circumstances.

This same concern could also be raised regarding the proposed rule on New Starts and Small Starts we are examining today. The FTA runs the risk of locking in certain policies too timely in the rule and not being able to react to new information, including better forecasting tools, ways to capture and reflect economic development around transit stations and along the corridor, and other benefits.

The agency needs to carefully consider all the comments it receives in the upcoming comment period and build in enough flexibility in the New Starts and Small Starts evaluation process to help move forward good transit projects. It would be a shame and certainly would not reflect the intent of SAFETEA-LU if this new rule has the effect of discouraging communities from considering transit solutions at all.

I thank you, Mr. Chairman, for holding this hearing and I yield back the balance of my time.

Mr. DEFAZIO. I thank the gentleman.

I have been notified that Ms. Matsui would like to make a brief opening statement. I would recognize her at this time.

Ms. MATSUI. Thank you, Mr. Chairman. Thank you for calling this important hearing. For many of us, our transit systems are the backbone of our districts. In many cases, our transit systems are also the blueprint for future growth and economic opportunity in the communities we represent. In my district, and especially within the City of Sacramento, we consider most of our future growth and economic development on our transportation infrastructure, and specifically our light rail system. Therefore, it is important that our New Starts and Small Starts programs are responsive to the needs and demands of our growing communities.

My main concern is why isn't the FTA following the guidelines and criteria that Congress laid out in SAFETEA-LU. Specifically, I am concerned that the FTA is too narrowly focused on cost-effectiveness of projects, looking only at the time savings and not the full range of the project benefits. While this is important and a criteria that should be followed, other criteria such as land use decisions and economic development opportunities must play a greater role in the FTA decision-making process.

If our light rail systems are truly going to meet the needs of our communities, they must be built with the anticipation of future regional growth and economic development. Transit should be used as a tool to encourage our communities to grow smartly and, in some cases, safely. Sacramento is the most at-risk city in the Country for catastrophic flooding. In addition, the Sacramento region is one of the fastest growing regions in the Country. We have to make our land use decisions wisely.

In short, the principles of transit-oriented development must be a strong consideration in the New Starts approval process. Over the last decade, public transportation's growth rate outpaced population growth and the growth rate of vehicle miles traveling our Nation's highways. It is my hope that, as we move forward with full implementation of SAFETEA-LU programs, that the full intent of the legislation that was drafted here in the Committee be followed.

By this I mean that land use and economic development criteria included among the six evaluation criteria be weighed on equal footing with other factors, such as cost-effectiveness. Transit-oriented land use and development are demonstrated factors that truly do make projects more cost-effective in the long run. We need to capture the dramatic increase of transit ridership across the Country and marry it with the steady population growth many of our communities and regions are experiencing. We need a Federal partner that responds better to these trends.

Combining SAFETEA-LU's revised criteria in the New Starts FTA decision-making process is an important step in ensuring that the projects Congress authorizes and ultimately funds may see evolving demand of our regions. Ultimately, fully integrating transit-oriented development into the New Start decision-making process will be the most cost-effective measure we can take to ensure that the investment made by the American taxpayers leverage additional private sector investments and create more sustainable, livable communities.

I am looking forward to working on these issues during this Congress. Thank you, Mr. Chairman, for calling this hearing. I yield back.

Mr. DEFAZIO. I thank the gentlelady.

Any other Members have opening statements?

[No response.]

Mr. DEFAZIO. If not, then we will proceed to the honorable witness, Mr. Simpson.

TESTIMONY OF THE HONORABLE JAMES S. SIMPSON, FEDERAL TRANSIT ADMINISTRATION, ADMINISTRATOR, WASHINGTON, DC.

Mr. SIMPSON. Good morning, Chairman DeFazio, Ranking Member Duncan, and Members of this Subcommittee. Thank you for the opportunity to testify today on the recent NPRM on FTA's New Starts and Small Starts programs. This proposed rule is intended to continue and strengthen our successful management of this important program. Our goal for New Starts remains to deliver the best projects on time, within budget, and that realize the benefits projected. At the same time, we want to streamline this process so that decisions are made more quickly and projects are delivered sooner.

As I testified in May, we believe FTA's management of the New Starts program fosters highly successful Federal local partnerships that benefit millions of Americans across the Country on a daily basis. We believe that this NPRM will continue this record of success. As you know, FTA issued the NPRM on New Starts and Small Starts on August 3rd, 2007. This was the culmination of a significant effort to obtain input from key stakeholders, which we are continuing.

In January 2006, we published a series of questions on New Starts and an Advance Notice to Proposed Rulemaking on Small Starts. FTA then provided an opportunity for public involvement by holding three listening sessions. We received over 70 written comments on the New Starts questions and over 90 written comments on the Small Starts ANPRM. The NPRM summarizes and responds to these comments. Continuing our outreach, we are conducting five outreach meetings. At these sessions, FTA staff will provide further explanation of our NPRM and related proposed evaluation measures, and invite public comment to the docket, which closes this November 1st.

Once the docket closes, we plan on closely examining the comments we have received. Given the stakeholder interest on this topic, we expect that it will take some time to carefully consider and prepare a final rule. We expect that the rule will be issued some time in 2008.

To implement the Small Starts program, the NPRM adds eligibility for non-fixed guideway projects, as in SAFETEA-LU, and defines the kinds of investments needed to qualify. Small Start project justification includes only cost-effectiveness and two measures of project effectiveness, that is, land use and economic development benefits and mobility. Project justification may be made based on simplified travel demand forecasts based on year of opening, rather than a complex 20-year forecast. Local financial commitment is assessed based on a plan that demonstrates the capacity to build and operate the project during the first year of operation.

The NPRM proposes that certain simple, low-risk projects, which by their very nature have sufficient benefits to rate well without further analyses, can qualify as Very Small Starts and be subject to a highly simplified project evaluation and rating process. A project will be required to contain certain features and have a total project cost of less than $50 million.

The NPRM includes consideration of all the statutory New Starts project justification criteria. The NPRM reorganizes the justification criteria into cost-effectiveness and several measures of effectiveness, namely, land use and economic development benefits, mobility improvements, and environmental benefits, and clarifies that operating efficiencies are covered by cost-effectiveness.

The NPRM expands the evaluation of economic development in a new combined measure of land use and economic development benefits. We continue to believe that it is extremely difficult to distinguish economic development benefits from land use benefits. However, the NPRM provides an opportunity for input on how we might do so and how we might implement improved measures of project merit that would include the land use and economic development benefits more directly.

The NPRM includes evaluation of the congestion reduction potential of the proposed investment in the assessment of mobility benefits. Further, it proposes to consider the relationship of the project to road pricing strategies as another factor.

Finally, the NPRM asks for inputs on methods by which FTA could include the currently unmeasured highway system user benefits in calculating the cost-effectiveness of the proposed project.

The NPRM proposes to make permanent our current policy of recommending for funding only those projects that rate at least medium on cost-effectiveness. First, this is the only measure that compares a project's benefits to its costs. Second, the measure of effectiveness we use, user benefits, is an objective and quantifiable metric. Third, other benefits such as improved accessibility and mobility, the propensity for increase in property values, and the likelihood that highway users will switch to transit, reducing demand for highway travel, are directly related to user benefits. Finally, a project with a high rating on cost-effectiveness almost always has high ratings on other factors such as mobility improvements and environmental benefits.

Chairman DeFazio, Ranking Member Duncan and Members of this Subcommittee, FTA is committed to the New Starts and Small Starts programs. We believe that the NPRM we have issued provides a good basis on which to make continued improvements to the management of this important program. We remain committed to streamlining project delivery, while providing strong project management oversight to bring good projects in on time and within budget. We look forward to working with Congress on these and other issues facing our Nation's public transportation systems.

I want to thank you for the opportunity to be here today, and I am happy to respond to your questions.

Mr. DEFAZIO. Thank you, Mr. Administrator.

Ranking Member Mica had another commitment, came in late, and has an opening statement.

Mr. Mica.

Mr. MICA. Thank you. Thank you for yielding, too, and also for holding this hearing, Mr. DeFazio and Mr. Duncan. I think this is very important. Since we haven't really addressed New Starts with the Administration, I wanted to weigh in a little bit on a couple of my concerns and also from a policy standpoint.

One of the things that I think is essential, we are all trying to find ways to deal with congestion and get people out of traffic and into mass transit and other environmentally positive modes of transport. One of the frustrations I have—and I am pleased to see you here this morning, Mr. Simpson—is just the sheer amount of time it takes to get into the queue, so to speak, with the New Starts program. And I think part of the problem I have identified is sometimes Congress, and I would ask this question: Have we set too many requirements?

I don't have a question, but one of the things I would like you to do to respond to me and also to the Committee would be to provide us with any of your specific recommendations on how could speed this process up. I think we are going to hear from Norfolk and I will ask the question about their light rail, and I think from the entry to P&E it is eight years, I was told.

I have been involved, as you know, with a commuter rail on an existing rail right-of-way. We first proposed this in 1989. Of course, communities and partners have to make a decision, and they did that, but I know we have been involved in this for at least three years, answering some questions that are sort of as plain as the nose on somebody's face. We have turned the consulting requirements or the requirements to do New Starts into a cottage industry that is very costly and time consuming.

So I want to know how we can speed up the process. Speeding it up can also save us time and money.

The other thing, too, is I can't tell you, having been involved in these not just in my district with commuter rail, but around the Country, the players change. The local players change and the politics, and some of the politics, of course, evolve around these questions and they get pretty testy. So the longer that takes, the more players we deal with and the political challenges become even greater.

So I compliment you on what you are doing. You have to play by the rules that we in Congress set, but anything you can recommend or anything you can come up with that can condense that period of time to get these New Starts moving.

Then, looking at exceptions for projects like commuter rail on existing rail lines, this isn't exactly rocket science. For example, through my communities, I have Amtrak already with a franchise. They already make these commuter stops. They could probably increase their traffic without all of these studies and requirements, but folks are a little bit reluctant to give Amtrak any more responsibility based on their performance and some of the constraints that they have to operate under.

So those are just my comments this morning. I look forward to working with you. I know Mr. DeFazio and Mr. Duncan are also interest in seeing how we can help communities, States, and localities that move these new projects forward.

Thank you, and I yield back.

Mr. DEFAZIO. Thank you. I thank the Ranking Member for those comments.

We will now proceed to questions for the Administrator.

At issue in the earlier hearing, in May, and I believe still today, is that I feel you have not delivered on the statutory direction, I believe, from Congress regarding economic development and land use. They have been lumped into one criteria, and I have a couple problems with it. One is that it is lumped into a criteria which scores 20 percent, which, given the statutory direction, I believe does not adequately address the direction from Congress to act in these areas and to emphasize projects that would provide benefits in those areas.

Secondly, as I understand the way—I mean, we did have testimony later, after you appeared in May, from several experts who had models and said there is no big deal or problem in predicting or forecasting economic benefits and quantifying them; that the work has been done, but somehow the FTA can't find that work and implement it. It seems that what you are attempting to do is look at the impacts of a limited facility on the regional economy, as opposed to just looking at what the local transit agencies would look at, which is the economic development based on the corridor and the station area economic development.

I think that is part of the problem why FTA can't qualify; they are saying, well, we want to look at the impact of this line serving this segment, this neighborhood, and what the impact would be on the regional economy kind of gets lost. And we are going to have testimony a little later representing a county in Virginia about how they don't have any trouble quantifying exactly what is going to happen when they do the streetcar line in terms of the more intense development that is going to occur and the economic benefits that are going to flow from that.

So do you think this this part of the problem, Mr. Administrator, why you can't get to economic development, that you are off chasing the regional benefit, when I believe the models that have been developed, and would be more practical since these are relatively small projects, to measure the benefits on the corridor and the stations?

Mr. SIMPSON. Let me answer that two ways. First, let me tell you what FTA is doing since the last hearing in terms of economic development. Then I can give you my thoughts generally on the measurement of economic development.

First, we have had a two-phased project, one started over a year ago, and I mentioned it at my last hearing, where we did a study, and the effort included an initial study to develop a methodology to forecast changes in economic development activity that result from transit capital investment projects. The FTA developed and tested two potential approaches. One was a regional economic model to forecast changes in jobs and income, and, two, to develop a method to forecast station area development that would result from transit investments, which I think is what you are referring to, Mr. Chairman.

When we looked at those, we found that the first one, the regional economic modeling approach, was rejected due to the high cost and complexity of implementing these models, as well as concern about the erratic results observed in FTA's test cases. I said it in my last hearing, that cost-effectiveness gives everybody a lot of grief. These models that we looked at would be just as challenging.

Mr. DEFAZIO. Right. So why don't we just discard the regional approach and focus on the second which you mentioned?

Mr. SIMPSON. I'm going to get to that.

Mr. DEFAZIO. All right.

Mr. SIMPSON. The station area forecasting method was also somewhat unsatisfactory in that the impact of the transit investment on development patterns was not significant in FTA's test cases.

Now, we didn't stop there. There is more. We have a phase two study that seeks to make additional progress in developing a method to evaluate the economic development impacts of capital transit investments. The first thing we are doing, which I mentioned to you previously, is we are convening a panel of top experts on economic development impacts which are well known to the industry and are leaders in the field. They are going to review FTA's results to date and try to come up with a program for us. They are going to also assist us in consulting and developing a program that can show us which methods, if we can achieve them, are likely to succeed. The panel is also going to develop a methodology and research program based on panel recommendations, and so forth and so on.

But the bottom line is that, to date, we have not been able to find anything that we can use on a cross-cutting basis to measure economic development. And just as a sidebar, I have been reading Alan Greenspan's book on the age of turbulence and he talks about economic forecasting, and he basically says how complex the world really is, and when you try to measure something, it is just not that easy. And I think that, if you will allow me to steal a page from his book, it is pretty much the same case here.

But what we have found consistently throughout the transit program at FTA is that when we measure cost-effectiveness, which I know gives a lot of folks a lot of grief, there is a direct correlation between the cost-effectiveness measure and economic development and mobility and all the other factors. They are inextricably linked and we just can't uncouple them. That is why, when we now have decided to put land use and economic development together, we are trying to do a couple things: we are trying to show transparency and, as you said at your last hearing, we have this mysterious black box that we go back to the shop and try to churn out these cost-justifiable projects. We are trying to be transparent and to let everybody know clearly what we are thinking and how we are thinking, and we are making our best attempt at that.

With respect to economic development and land use, we believe that you can't have economic development unless you have land use, good land use patterns and policies. So it is a no-start if you don't have that in place. So if we rate a project with really effective land use and then give another measure of economic development, you could be double-counting, number one. Number two, even if you do have really good land use, it is not enough to make the case that you are going to have that economic development; there are other externalities that are so great, including—we have had a run-up in real estate over the last 17 years. I don't care where you travel around the city, every place that I have traveled has seen economic development and the redevelopment of cities and warehousing districts that have become a great mixed use development, and people seem to be moving back to the city. But there are other externalities like interest rates, like jobs, and all those other things that are really hard to try to put into a formula and put into our so-called black box and churn out a metric that is cross-cutting throughout the whole Country and that is meaningful.

The second thing with economic forecasting is we have got our transportation model, as I spoke about, and some of this economic forecasting is almost a second level of economic forecasting. So I think that, in a certain way, it explains what our predicament is here.

Mr. DEFAZIO. Right. Well, if we can come back to earth for a minute.

Mr. SIMPSON. Okay.

Mr. DEFAZIO. I think you can look at projects that have been completed and, yes, you do have land use, which is a theoretical underpinning, but land use potential is only realized in certain instances; there is a lot of potential that isn't realized. So I wouldn't say just having that and then counting the actual economic benefits and/or more intense development that resulted from the construction of the transit project are the same thing at all.

I mean, land use provides the potential, but the potential often is not realized until there is a project. And if you just look at the nodes that have developed just right over here in Virginia and around the D.C. area, the intense development has taken place and you can measure within a certain distance of each of the transit stations the values that have occurred. You can do so, similarly, in Portland, Oregon, where they have put a streetcar. You can see where, along that line, they have the same zoning on one side of the river and the other, but the more intense development has been realized along the streetcar line because that became a magnet for the development.

So I have got to disagree, and I think that we just gave direction that doesn't require consulting with Alan Greenspan or these other exotic metrics, but just the reality of will economic development follow this project and will there be value created. I think that is a fairly simple thing, I believe, to quantify. Having studied economics, I know it is not a science, so let's discard the scientific stuff and go to observational reality and direction from Congress, which is we want economic development and we don't want it to be part of a criteria which is only 20 percent and which is totally trumped by the black box of cost-effectiveness.

And then going to cost-effectiveness, part of that goes to another concern, which is trips not taken. Again, we don't seem to be putting any value on avoiding automobile use and/or commuting. I just had the Chairman out to ride a tram in Portland, and you were on that same tram. It has now been operational. They say they have had a million riders in less than a year on the tram, and what they are finding is at the base of that tram, which is also served by a streetcar line, a lot of people who work at Oregon Health Sciences University are relocating there.

So they are either abandoning their cars or only using their cars infrequently. But there wouldn't be any credit for that, it is a trip not taken. They are living on a transit line, they are living on a tram. You are not involving the tram. But the point is we are missing a lot of the benefits here.

And then we also wanted to have environmental criteria, which go to trips not taken, congestion, lack of pollution, all those things, and now you have brought in this new criteria. So this is going to be a two-part question. One, why can't we measure trips not taken and why isn't that a benefit, because I think it is an avoided cost?

Secondly, how is it that we would penalize a transit agency which, in most jurisdictions, has no control, none whatsoever, over policy relating to roads, bridges, and highways, if their local jurisdiction, which they don't control, doesn't impose tolling and congestion pricing over here, then you are going to penalize the transit project which is proposed over here to mitigate congestion with trips not taken? I mean, you are putting the transit agency in a bit of a difficult position here.

Mr. SIMPSON. Mr. Chairman, we are in agreement with you that we should measure the trip not taken. We asked the question in the NPRM, and just to try to stay on earth, the problem that we have experienced with the trip not taken, it is sort of like the second order of magnitude or it is the forecast on the forecast. In other words, we are trying to forecast a certain development and a certain economic development, so that is a forecast, so we have got this one forecast.

Now, off that forecast, we are going to try to forecast again behavior patterns, travel patterns, where people won't need to use their automobiles. So it is the second order of magnitude in a forecast, so the——

Mr. DEFAZIO. Maybe we ought to just count the number of people that use the transit.

Mr. SIMPSON. Well, we should.

Mr. DEFAZIO. Right.

Mr. SIMPSON. We do. I think we do. But this trip not taken is a very difficult——

Mr. DEFAZIO. And distribute a survey to them and say before you moved here, how did you get to work.

Mr. SIMPSON. Right. You know, I understand the trip not taken, having lived in an urban environment, so I understand it.

Mr. DEFAZIO. Right.

Mr. SIMPSON. But let me just say again that we are asking that question. We do believe that it should be counted. And I know that there are one or two models out there that are counting the trip not taken, or proposing to count the trip not taken. Once again, when we put it into a national program, we have to make sure that we have a product that is not usable in one county and not used in the rest of the Country.

Mr. DEFAZIO. Okay, but then how about my second part of the question? Transit agencies often do not control other modes of transportation and/or the policies that relate to them. So why should a transit agency be penalized in applying if their local jurisdiction has not adopted congestion pricing?

Mr. SIMPSON. The proposal is not to penalize anybody.

Mr. DEFAZIO. Well, I understood the first proposal was just to give them extra points. As I understand the NPRM, you could get demerit points for not having that, in addition to getting extra points.

Mr. SIMPSON. Not to my knowledge, but could you hold on one second?

Mr. DEFAZIO. Yes.

Mr. SIMPSON. It is only a matter of boosting, Mr. Chairman. It would only help, it wouldn't hinder. And it also——

Mr. DEFAZIO. So you are going to filter, but you are going to filter—I mean, it seems like pretty broad language. The first proposal was we are going to take something that wasn't statutorily authorized by Congress——

Mr. SIMPSON. Right.

Mr. DEFAZIO.—that is an obsession of this Administration, particularly a few ideologues from right-wing think tanks who have positions of power, that relate to theories of market and congestion pricing, and we are going to use it anywhere and everywhere we can. So now we have added it on to transit. We had this discussion last time, so I am not going to totally revisit that in terms of whether or not you are discouraging transit at this point with this. So you are just saying this so-called filter is essentially the same thing you proposed before, which is if an agency, which you don't control, in your vicinity adopts congestion pricing, you will get extra points on your transit project even though you had nothing to do with it.

Mr. SIMPSON. That is correct. But most planning is not——

[Laughter.]

Mr. SIMPSON. Well, wait a minute, now, Mr. Chairman. Most planning is not done in a vacuum. Typically, you have got the whole MPO and the whole planning process. So we are saying if an area were to adopt a congestion pricing strategy that would help transit, because now you are getting more vehicles off the road and you have more people riding transit, we would look at things like, in the mobility factor, fewer vehicle miles traveled——

Mr. DEFAZIO. But when we are talking about New Starts and Small Starts, we are not talking about—many projects are not deep into suburban areas.

Mr. SIMPSON. Right.

Mr. DEFAZIO. So when you include that—I mean, for the inner city folks, I guess we would have to be talking about cordon pricing and saying if you want to use your car today, it is going to cost you $15 or $20. We are going to be like London. Of course, they have slightly different land use patterns in Europe. Again, the transit agency doesn't control that, and it is beyond me why that should be a factor.

I can see, in some limited instances, when you are dealing with light rail versus, say, streetcar or true Small Starts, something that is an extensive system which serves suburban areas, that you might get some extra points with the idea that you are going to somehow drive people onto that and they are going to utilize it more. I believe if you do it right and you make it convenient, they will use it, and I don't believe that we need to penalize people to make them do it, and the Chairman of the full Committee shares my concern about this.

Mr. SIMPSON. Mr. Chairman, I don't want to take up the Committee's valuable time to discuss this, but from everything that I know and speaking to the folks at FTA, we know of no area where anybody would be penalized as a result of not implementing a congestion strategy——

Mr. DEFAZIO. Right. But again, the point is that transit agencies don't control these other policies. Transit agencies we want to be run efficiently, we want them to bring in projects on budget or under budget, we want them to run efficiently, and we want them to serve the general public. None of that, again, externalities that might or might not drive customers toward them, that are beyond their control, I don't believe, in most instances, should be scored.

Mr. SIMPSON. This is an NPRM and the point is well taken. But if I could just continue for the record for one second.

Mr. DEFAZIO. Sure. I am well over my time.

Mr. SIMPSON. With respect to congestion, as you know, and we have said it before and it is mentioned throughout the statute, the Department believes, first of all, that it is one DOT, and we are not looking at highway versus transit. As in the MPO planning process, we are trying to look at transportation solutions for a corridor, and it could be a mixture of transit and highway projects. You know, since SAFETEA-LU was written, which was probably five or six years ago, we have got a national crisis that is on the front page every day on congestion, and the Department is trying to take a proactive stance to try to solve the problem that perhaps wasn't thought about when SAFETEA-LU was written.

Mr. DEFAZIO. Well, I beg to differ. I think it was a major consideration when SAFETEA-LU was written. This Committee attempted to have about another $70 billion or $80 billion to invest over the term of the bill, which the White House fought tooth and nail, and in the end we got a bill that wasn't adequate in terms of investment, and now they are trying to make up for that by saying, well, we will just use market forces, and I have just got to disagree with this cockamamie theory.

Thank you. I am going to turn now to the Ranking Member.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

Mr. Administrator, you know, the problem that I see is this. I have great respect for Mr. Greenspan and I agree with most of what he says on things, and I understand your quote that he said the world is a lot more complicated than people realize. On the other hand, a lot of people feel that the government, and particularly the Federal Government, makes things a lot more complicated than they really need to be.

So, in SAFETEA-LU we had these laws trying to come up with some sort of environmental streamlining to speed up some of these projects because people on both sides of the aisle agreed that all of these projects were taking far too long. Where there is really a desire to move fast, we can do so. We showed that on the bridge out in Minneapolis. I mean, we passed a $250 million bill within just a few days of that happening.

We always hear, and it gets sort of old to me to say that we are in a global marketplace now or we have to compete globally, and yet we see all these other countries that are so dynamic economically moving really fast on major projects, major highway projects, major aviation projects. I chaired the Aviation Subcommittee for six years and I will never forget the main runway in Atlanta. It took 14 years from conception to completion. It only took 99 days of actual construction, and it was primarily due to all the environmental rules and regulations and red tape. Certainly, we don't want to do to the environment what they are doing in some of these places like China and other places, but we have to do better. We have got to have a better balance in there because we have got to speed up these projects. A few months ago we had testimony in here about a highway project they have been working on in California since, I think, 1990, 17 years, and it was only 12 miles.

So what I am getting at through all this is what do you think your proposed rule will do to contribute to faster decision-making and project development, particularly in regard to the New Starts, the bigger programs?

Mr. SIMPSON. Your question really gets to the question or statement, rather, that Congressman Mica made earlier, so maybe I can address it in that context. I mean, the environmental is one piece of it, but with a lot of these projects—I know it varies on the complexity. We talk about the length to bring a project from the planning cycle to the revenue date or the date that a project opens—there are a whole bunch of reasons for them and they don't all wind up at the doorstep of the Federal Government.

We find that most of the projects—and I think you asked that question last time, Congressman, local commitment, rather than cost-effectiveness, is the reason why many projects fail and don't proceed through fruition, and that holds true for the delay in projects. We find that in many times, as Congressman Mica was so eloquent in explaining it, there are changes in political parties, there are changes in transportation officials, and what was once a priority may not be a priority or other things happen, and you thought you had local commitment and now you no longer have commitment. So that is one reason why.

The other thing is transportation planning. Sometimes, when we plan these projects—and we have a project very close to Washington, D.C. that is like that—that the scope gets changed and people think about, midstream, well, maybe we are not going to have an aerial alignment, maybe we should do a tunnel, and that is perfectly within the local jurisdiction. That also slows up projects.

Our NEPA process, we are trying to do the best that we can with respect to NEPA and with respect to the processes that go on in FTA. We have commissioned Deloitte and we have implemented many of the changes, and I won't take the Committee's time to tell you them now, but I would be more than happy to send them to you for the record. Then we have also improved the product at FTA over the years. You know, there was a time, maybe 10 or 12 years ago, where not our forecasting, but the grant recipients' forecasts on ridership were woefully inadequate and low, and their costs were a lot lower than what the actual costs would be. Now, you know what the rationale is for that: we need to get projects funded, so let's keep the ridership numbers as optimistic as we can and the costs as low as possible.

So FTA, with the help of Congress, clamped down on that and we are moving forward with a Contractor Performance Assessment Report. We started our own risk analysis to try—we do a lot, but basically what I am saying is we are trying to keep projects on time and on budget because we would rather be here talking about this than why the project blew the estimate by 50 percent. And we are trying to streamline the process as much as we can without jeopardizing the integrity of the program. It is a multifaceted approach and the project time line did go from 3.7 years to 4.9 years, where it is at now,—I guess it has been over the last 10 years—but then again we are handling like $22 billion worth of projects within 99.5 percent of construction costs, which is unheard of. We don't have that anywhere, and I think it is a testament to the risk program. So we are working what we can, it is just that there are so many partners involved—between the local governments, the Federal Government, the funding partners—that it is not as easy as that when you build these major capital infrastructure projects.

And with respect to the rest of the world, I only know that we have rules and regulations that protect everybody, and I know other countries sometimes don't have the same environmental guidelines or they don't need to get consensus from the community. We have all that public involvement.

Mr. DUNCAN. Well, I have certainly seen and read about what you are saying, you know, one mayor will start a project and be real enthusiastic about it, and the next mayor is not quite so enthusiastic or whatever. But I also have heard through so many Subcommittee hearings on several different Subcommittees in this Committee, I have heard local officials, I have heard academic experts, I have heard private business, you know, the contractors and so forth, say that all these projects that we deal with in this Committee—highways, water projects, aviation projects, the whole kit and caboodle—that, on average, these things take about three times as long and tossed about three times as much as they should. If we really had the desire to speed some of these things up, if we all joined together and made that our main——

What do you think is the most time-consuming process for New Starts projects sponsors in fulfilling the evaluation requirements?

Mr. SIMPSON. Well, it depends on the project. I mean, a lot of it is we have got some projects where they haven't done all the environmental protocols correctly or their forecasting is not—you know, we have seen projects before and we will have projects come in where the forecasting doesn't look right, where you will see forecasting on the date when the project is scheduled to be completed and 10 years later you have seen—this is just an example—or 100 percent increase in ridership, things that are out of the norm. So we see less of that today, but those are the kinds of things that we have to put the paperwork back to the grant receiver and say, you know, this really doesn't look right, you need to look at your travel models and you need to look at this and you need to look at that.

So it is hard to just say any one thing, it is a whole host of things, and it is a cumbersome process.

Mr. DUNCAN. Well, we have other Members here. I don't want to take up too much time, but let me just ask one last question. At our May hearing that the Chairman mentioned, the GAO testified that there is less than half the number of New Starts projects in the pipeline in fiscal year 2008 than there was in 2001. Is that from State and Federal funding? What is the situation?

Mr. SIMPSON. No. I think it was we had a lower bar. In other words, sort of like if you just decided—I like to use the SAT as an example for the New Starts program, with the SAT score being cost-effectiveness. It is almost like if we throw away the SAT, let everybody come in to preliminary engineering, let's bring everybody in, which was happening for a long while because of political pressures and other and lower standards. So we found out, with our limited assets of full-time equivalents, that we had our staff at FTA working on a multitude of projects, probably half of which aren't going to make it past PE.

So I think you brought this up last time, so I do have some extra data. From 1999 to 2005, which is what you are talking about, we found that 56 percent of the projects are out of the process because of a lack of local commitment. So there is a lack of local commitment, which seems to trump everything else, where projects fall out, number one. Number two, we have certain standards now, and if you would like to, I can articulate them. Certain things have to happen before we allow a project into preliminary engineering, because once we allow the project in preliminary engineering, that is when the resources of the Federal Government or local government, they start spending money and putting a lot of resources into a project. We want to make sure that projects now that come into preliminary engineering have a really good shot of being funded. The short answer is we didn't do that in the past.

Mr. DUNCAN. All right. Thank you very much.

Mr. DEFAZIO. Okay, we will turn to Members in the order in which they arrived for questions. Ms. Hirono would be first on the Democratic side.

Ms. HIRONO. I know that we are, today, addressing the proposed rule, however, on July 20th, 2007, the FTA issued the New Starts and Small Starts evaluation and rating process, which I think are the guidelines that FTA intends to use, and pretty much this rating process issuance incorporates many of the factors in the proposed rule. So what is the intention of the rule if you already have guidelines that incorporate these rules and you intend to use those guidelines, I assume, regardless of whether the proposed rules go into effect or not?

Mr. SIMPSON. Congress asked us to be more transparent in what we do and to look at economic development and other factors, and at the last hearing we heard from some Members that we weren't really paying enough attention to environmental benefits and the like, so, as the program changes, we are trying to change along with the requirements that Congress has enacted. So we are putting this proposed rule out to get comment.

Ms. HIRONO. My understanding is that this July 20th issuance already incorporates the weight to be given to the cost benefit aspects of New Starts and Small Starts, so it seems as though you are already going in that direction under these guidelines that have already been issued, so I need clarification from you.

Mr. SIMPSON. Yes. Particularly the Small Starts was a new program and we didn't have the rule out. We put out what we thought would be—I guess what we thought might work in the short run, until we had a final rule. So there was a certain logic that went along with that, and I think you will see that that logic follows what the proposed rule is now, particularly for the Small Starts program. Once again, this is for comment, so we are expecting a lot of comment from all the stakeholders before we initiate a final rule.

Ms. HIRONO. In other words, then, just so I am very clear on this, then, the final rule will trump or will supersede whatever is in your July 20th, 2007?

Mr. SIMPSON. Yes. Right now we have guidance. We have guidance right now.

Ms. HIRONO. Okay.

Mr. SIMPSON. We needed a place to start, a placeholder, and we are moving towards the final rule, and hopefully that final rule will come out sometime in 2008.

Ms. HIRONO. I have one more question. Has any New Starts project ever received a high financial rating, as opposed to the medium rating?

Mr. SIMPSON. Yes. Yes. Quite a few.

Ms. HIRONO. Could you provide the Committee with a list of those New Starts that achieved a high financial rating?

Mr. SIMPSON. Yes. We will do that, absolutely.

Ms. HIRONO. Thank you.

Thank you, Mr. Chairman.

Mr. DEFAZIO. That was of interest to me also. We would like to see a list of those that have achieved a high rating.

Mr. SIMPSON. Matter of fact, yours received a high, your BRT project in your town received a high rating.

Mr. DEFAZIO. New Starts and Small Starts.

Mr. SIMPSON. New Starts as well.

Mr. DEFAZIO. Okay. Thank you.

Ms. Hirono, are you——

Ms. HIRONO. I yield back my time. Thank you, Mr. Chairman.

Mr. DEFAZIO. Okay.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Simpson, the gentleman from Tennessee put a question to you that concerns me, and that is the apparent lack of increase in the starts that are in the pipeline, and I know you responded to that, but am I correct in concluding that maybe one of the reasons for this is that it is so difficult that the local authorities just can't get their hands around it?

Mr. SIMPSON. No, I wouldn't call it that. It is difficult, but we give a tremendous amount of technical assistance in outreach to anybody that is interested in a New Starts. It is just that there are certain milestones that you need to achieve in order to get into the preliminary engineering stages where basically the Federal Government starts to follow the projects through to construction. As I said, years ago the entry was very simple. If you had a project, pretty much you could get it into the preliminary engineering, and we found that there was a high failure rate.

So we figured that sort of prior planning prevents poor performance. Let's try to do as much planning and let's try to do as much work so that if you do get into preliminary engineering, because there's a lot at stake once it's in PE, there's an expectation that you are going to have a project, so let's not disappoint communities and the like, so let's work with folks. And once they're in PE, many times when projects get into this preliminary engineering stage, we work with projects that may not be viable and we help—because we have been building projects all over the Country and this may be a community's first project, so there are many projects that come to us.

Once they meet the PE milestone, we work with them just like partners, investment bankers, and we tell them, you know, maybe your project is too long, or you need fewer stations or you need more stations, or have you thought about transit-oriented development and the like, have you thought about alternative forms of financing. So we really work very hard with the—we take ownership of the project, basically. We work very hard with the grant recipients, and it is very timely. So whatever shortfalls the local community or the transit agency may lack, we really try to help them and we give them proper guidance. It is really in that way. I say that seriously. We take ownership of the project.

Mr. COBLE. Mr. Simpson, there have been concerns voiced about the proposed rules expanded eligibility to allow New Starts funds to be used to build high occupancy toll lanes, popularly referred to as HOT lanes, in addition to the high occupancy vehicle, HOV, lanes, which are currently allowed. What is the FTA's statutory authority to amend this regulatory definition, and will this change make the treatment of HOT lanes consistent under highway and transit law?

Mr. SIMPSON. We are really trying to help transit projects as much as we can, and what we found over time, you don't see bus lanes being constructed any longer, and it is our belief that one of the reasons is that cost of a bus lane—I know from my personal experience in the northeast, particularly in my old community in Staten Island, we have exclusive bus lanes that travel probably about 15 miles from one of the suburbs to the center of Manhattan or to the tunnels that connect the highway to Manhattan, and those bus lanes typically run at about 30 to 40 percent of capacity. So on existing bus lanes that transit authorities, in this case, the City of New York, they have a bus lane where they are running buses, great express bus service, and they have only got 30 to 40 percent of capacity.

So it was our thinking, to try to be creative and look for alternative financing methods and to help transit, that the use of an HOT to make a bus lane or another lane, an HOT lane, as long as you maintain that flow of traffic so that the buses are not bogged down, that the HOT lane or the pricing lane, if you will, is incidental to the main purpose of the bus project, but it is also subsidizing the bus project.

So if you can envision a bus lane that is maybe 30 to 40 percent of capacity, now you put cars on the lane up to the point where you have real-time pricing, up to the point so that you don't bog down that lane and it meets the requirement of at least 5 miles of the speed limit, all those cars that are on the lane that are getting that what we call free flow, there is a lot of revenue to be picked up off of those people that feel that time is money. That actually goes to subsidize transit projects. So the person who is sitting in the bus, looking out the window of the bus as it travels down the exclusive HOT lane, the cars that are on that lane are subsidizing the fare box to promote more transit.

It is very similar to what New York City Transit does when they build a tunnel and they put telephone wires and cable and a whole host of things in that tunnel. Now, that is an incidental purpose; they didn't build that subway tunnel—they built the subway tunnel to drive the train through it, but they are picking up huge revenues to help offset the fare box by allowing these incidental purposes or uses to the tunnel.

So that's what the thinking was there. It is a new innovative way of thinking to help alleviate traffic congestion, because now, whatever cars that you take off those other free lanes, you are helping everybody there. So you are using unused capacity, and we believe that since that is not the main purpose of the HOT lane, it is incidental, it is an ancillary purpose, that we are perfectly within the statutory authority to do that.

Mr. DUNCAN. Well, I think, Mr. Chairman, any time we can take action to improve congestion, which inevitably negatively impacts productivity, results in additional consumption of gasoline, I am endorsing that. Thank you, Mr. Chairman.

Mr. DEFAZIO. Mr. Simpson, if you could, since you gave a long explanation, but at the very end I thought you sort of brushed over the question. Again, he started the question with what do you believe is your explicit statutory authority. Could you just get back to that? It sort of was incidental at the end. I think what you said was because it's incidental, or something, that somehow you found it was statutory.

Mr. SIMPSON. I think it is best if I give you another example.

Mr. DEFAZIO. No, I don't want examples. Just what statute are you referring back to? I mean, what is the expressed statutory authority to use these funds for HOT lanes? Because you could argue the other side of the argument, which is the Federal funds that go to construct the HOT lanes are subsidizing the non-transit use of that lane, at least initially, because later, perhaps, you will realize the potential of those additional revenues and maybe you will pay back the additional investment was made. So what is the statutory authority?

Mr. SIMPSON. Well, first, our intent is that whatever Federal dollars from the FTA program are utilized, it is for the transit portion of the project only. That is what our intent is. Secondly, can I get back to you for the record fully with where in our statute, because I don't have that?

Mr. DEFAZIO. Yes, we would like that. Thank you.

Mr. SIMPSON. Okay, thank you.

Mr. DEFAZIO. Mr. Mitchell. He left also? Okay, then we go to Mr. Bishop from New York.

Mr. BISHOP. Thank you, Mr. Chairman.

I want to just follow up on the question that you were just asking. In the Notice of Proposed Rulemaking, you also create a new category called Very Small Starts. So my first question is what is the explicit statutory authority under which you are creating that category.

Mr. SIMPSON. Well, I don't know that we have an explicit statutory authority, but, once again, we have a lot of really good thinkers at FTA that do a lot of transportation modeling, and we have got economists. We know that when you build a transit project, the complexity of forecasting and all those other things increases exponentially the larger the project is. So when you start to get to like your project on the Long Island Railroad, the East Side Access project, as these projects start to get complex, the forecasting, all those things and all those requirements that you need to measure in order to determine whether you are going to rate the project a pass or a fail, get a lot harder.

We just happen to know, from working with all of these transportation models, that if you have at least 3,000 riders a day,—and there are two or three other requirements—that the project is no more than a $3 million a mile, and a couple of other things, that it automatically would meet our requirements because we have just seen that over the pipeline. So it is sort of like a preapproval, if you will.

Mr. BISHOP. Let me just stay on that for a second. The $3 million per mile, in response to a question from Mr. Coble, you just indicated that one of the goals was to help transit projects as much as you could. By creating or imposing this $3 million per mile limit on Very Small Starts, does that not eliminate certain types of transit projects like streetcars?

Mr. SIMPSON. No, not at all, no. See, what we are saying is—I left out the most important thing. The project has to be less than $50 million. So if you happen to have a project that is less than $50 million, it costs less than $3 million a mile to implement, and it has got 3,000 riders a day, it is basically a preapproval. We know that that will meet the requirements because it is really small in nature, the complexity is not there, and we just happen to know, in studying these projects and funding projects before we had the Small Starts program, even, or these exempt projects, that these projects meet the criteria.

You know, it is a proposal. If the desire of Congress is not for us to label that or have that, we will note that in the comment here today. But it is certainly not to exclude any project, because there is the regular, you have got the Small Starts program and you have got the New Starts program as well. So there is no limitation on anything, it is just that, hey, by the way, community, if you happen to have a project that meets that litmus test, it looks good.

Mr. BISHOP. And, again, not to be difficult, but in response, I believe, to a question from Ms. Hirono, you indicated that one of the goals here was transparency, improved transparency. Are you not at odds with that goal by virtue of layering all these both new designations and new requirements onto the NPRM?

Mr. SIMPSON. I kind of think we are just trying to be customer-focused. It is like if you go into a bank and buy a mortgage, you want a fixed rate, an adjustable rate, or a one-year ARM. It is just another option for people that may have a small project that they need to fund quickly. So I don't really know how to respond to that other than, when we get the comment, if the transit industry or the stakeholders don't like it, this is a Notice of Proposed Rulemaking.

Mr. BISHOP. Thank you very much.

Thank you, Mr. Chairman.

Mr. DEFAZIO. If I could, just following up on that. I would agree with the gentleman from New York. I believe that the $3 million per mile yardstick would exclude any streetcar project—and that is the consensus in the transit community across America—from the Very Small Starts program. We are not aware of any that have been built for less than that. In fact, it would exclude many BRT projects that have enhanced guideways and those sorts of things.

So, pretty much, I think we are just going down to—maybe this would help the HOT lane issue or something. I don't know what the objective is here, but you are excluding streetcars, as far as I am aware. If you have any evidence of any streetcar project that came in and has applied for Very Small Starts under $3 million a mile——

Mr. SIMPSON. The only streetcar project that we have right now is a project that is out on the West Coast at about $140 million or $150 million.

Mr. DEFAZIO. Right. And people aren't applying because they just know they can't meet the criteria.

Mr. SIMPSON. I don't know that that is the case, Mr. Chairman, but we will note that.

Mr. DEFAZIO. Well, anecdotally, I mean, you say you want to be customer focused—I guess let me just ask this and then we will go on the next. If you are going to be customer-focused, you are going to be real attentive, then, to the majority opinion expressed on the NPRM, which I believe will be echoing a number of the concerns you have heard here today.

Mr. SIMPSON. Mr. Chairman, but to answer the earlier question, if they don't meet the criteria, they can still apply under the Small Starts program.

Mr. DEFAZIO. I know. But you are basically excluding them from the Very Small Starts program.

Mr. SIMPSON. Well, no, we are saying—no, we are not.

Mr. DEFAZIO. Because you are establishing——

Mr. SIMPSON. No, I don't believe that we are. I really hadn't given it that much thought, but I asked Mr. Steinmann and he said no.

Mr. DEFAZIO. Well, you set the $3 million bar, which isn't part of Small Starts.

Mr. SIMPSON. But all that we know now is that if you meet these requirements, the project works. Once you get beyond any of those limitations, then we really have to study the project. That is all we are saying.

Mr. DEFAZIO. Yes, but you are excluding a mode is I think the point. Anyway, we won't belabor it.

We will turn now to Ms. Fallin.

Ms. FALLIN. Thank you, Mr. Chairman.

Mr. DEFAZIO. You will probably be the last set of questions before the votes. Go ahead.

Ms. FALLIN. All right.

I have one question, Mr .Simpson. How does the new rule requiring the FTA to incorporate congestion relief benefit into the New Starts process? We talked a lot about congestion on our highways. How will that new rule help with that?

Mr. SIMPSON. Well, one of the things that we are doing is right now, if we had a congestion program with a pricing component—or let me just back up a step. We don't measure now the impacts and the benefits. When we build a transit project, there will be a certain amount of cars that come off the highway as a result of that, and the people that remain on the highway receive a benefit because there are fewer cars. We don't measure that in our cost-effectiveness, so we think that it is a benefit that is really out there for people.

So the first question is to ask that and to try to—we are going to work with the Federal Highway Department to try and come with a model so we can measure that benefit, because it will help all projects, particularly projects—well, any transit project. It will help any transit project. So that is the first thing that we are asking the question and proposing to do.

The second thing we are saying is that if you have got a congestion program in place in your town and it happens to coincide with a transportation project, that we will give you a benefit as a result of that. If you have a pricing strategy, we will give you one up tick in your rating because you are, in effect, getting more cars off the road and there is a benefit to transit that we don't capture that now. When we do our forecasting to figure out the ridership that supports the finances of a transit project, we have got no method of—because this is somewhat of a new kind of thing, these HOT lanes and all that. We have no way to measure the extra riders that would ride on transit as a result of that.

So we are saying we think we have some things right now with VMT reductions, vehicle miles traveled, and the like, and we are also trying to respond to the fact that we know we have a nationwide crisis on highway congestion, and we are trying to do whatever we can to alleviate that and to assist transit while we do so. I think that sums it up.

Mr. DEFAZIO. Okay, thank you.

Mr. Baird, go ahead. We are going to have two votes, so Mr. Baird will ask his questions, then we will recess and come back for a few other questions.

Mr. BAIRD. First question is very quick. Under the fixed guidelines proposal, would ferries still qualify?

Mr. SIMPSON. I believe they do. Yes.

Mr. BAIRD. That's good. Secondly, in my district, we are working on the Columbia River Crossing project, and there is a debate right now, should we go light rail, should we go buses. The advocates of light rail point out that we can connect to the very successful light rail system that Portland and vicinity have put in place; others look at buses as having relative advantages.

To what extent do you prejudice the decision through your proposed rulemaking and to what extent would you take into account, if there were to be a light rail proposed, because it links up to existing light rail, how would that decision-making process be affected by your proposal?

Mr. SIMPSON. Well, it is a simple question with a difficult answer, and I will try to be as quick as I can with it. We measure each project on its own merit and we look at the alternatives. Basically, a bus rapid transit or a bus project would be less expensive than a fixed guideway project like light rail.

So, before we look at the cost-effectiveness, we say, okay, where do we need to be out in terms of our transportation alternatives? What is the best thing we can do short of the fixed guideway? And we do a model on that. Then we figure what is the delta, the difference in cost between that bus project, if you will, and the fixed guideway project. We take the cost of that plus the operating costs and we look at the differences in travel time savings, how much more time do we save with the fixed guideway project, which creates a problem for some folks, but it is a metric that we use and we have used it consistently.

Then there are other attributes that are associated to a fixed guideway project like the reliability of rail; you don't have to worry about traffic jams. People like to sit in a rail car; they know where the tracks are. There are a bunch of things we call a modal constant. So we give another benefit to the fixed guideway in terms of time, because we want to keep it consistent, so the whole thing is done in time.

So we look at that project and we look at all of our metrics and we say, okay, now, based upon what the alternative was and this new project, does the project meet our cost-effectiveness criteria along with the other statutory requirements, weighting cost-effectiveness as a key indicator, 50 percent of them.

Mr. BAIRD. So stay with the practical application. It is helpful.

Mr. SIMPSON. Yes.

Mr. BAIRD. So in our community we have got a citizens' commission plus the two departments of transportation trying to make decisions. What are the relative differences? They are trying to decide right now which do we go with.

Mr. SIMPSON. Right.

Mr. BAIRD. How do they factor in your decision-making process and outcome in terms of deciding what they think is the right thing to do?

Mr. SIMPSON. They have a transportation plan, a long-term plan, a medium plan. Typically, it is financially constrained; how much money do they have to do the project. And when they look at a corridor, they look at the transportation problem and how best to solve it, and they decide, the local community, not FTA, decides on locally preferred alternative. The folks that really do their planning in advance have an idea whether or not those guidelines, if they wanted a light rail, whether it would meet the Federal requirement or not. So there is a lot of that. That is why we want to get with the MPOs in the transit agencies early in the process so we can help them, so they don't bring us an alternative that might not be——

Mr. BAIRD. What would be the funding difference? What kind of magnitude of funding difference might—let's suppose our community comes to you and says if we go light rail, it will cost X, if we go bus rapid transit, it will cost Y. How much do you kick in on the choice?

Mr. SIMPSON. Do you mean how much is the Federal share?

Mr. BAIRD. Yes.

Mr. SIMPSON. We look at the project, we look at the size of the community, the benefits that are derived. On average, we look at a 50/50 contribution. If it is a mega project, if it is a project that is in the billions of dollars, around a third, because we do have a limited amount of funding.

Mr. BAIRD. But my point would be if it's 50/50, would you fund 50/50 for bus and also, then, 50/50 for light rail, if they choose that?

Mr. SIMPSON. It depends. We would look at really what project winds up coming through the pipeline. We try to have those discussions as early as possible so the transit agency knows what the financial commitment is of the Federal Government.

Mr. BAIRD. Might you be in a position to say we will match 50 percent if you do bus rapid transit, but only 20 percent if you do light rail? Or if they choose light rail——

Mr. SIMPSON. No, we don't do that because we believe it is a local decision. We really don't directly—maybe indirectly if they don't meet cost-effective, but we don't directly tell which city what mode, whether it be a fixed guideway or——

Mr. BAIRD. So they don't necessarily have to factor that in.

Mr. DEFAZIO. There are three minutes remaining to the vote, Brian. You have a little bit of time left, so you can finish up when we come back.

Mr. BAIRD. We will get to this later.

Mr. SIMPSON. Okay.

Mr. DEFAZIO. Thank you.

We will recess probably for 10 to 15 minutes.

Mr. SIMPSON. Thank you.

[Recess.]

Mr. DEFAZIO. The Subcommittee will come back to order.

We appreciate the Administrator's and the other witnesses' tolerance of our hectic schedule.

I guess, sort of following up on a subset of Mr. Baird's questions. First, as I would understand, when you are talking about approximately 50/50, you are talking about very large projects, where a smaller share was requested, is that correct?

Mr. SIMPSON. Usually, the grant recipient comes to us with a plan. We take a look at a whole bunch of things: how we funded other projects, how much money is left in our statutory authority, things like that; what is the ability of the grant recipient to pay their share. So there are a whole host of things, and it is usually—that is never really an issue, Mr. Chairman, with a grant recipient, in terms of funding projects. But we don't dictate in any way what the Federal share is.

Mr. DEFAZIO. But this all then gets back somewhat to cost-effectiveness. I mean, the issue is if in a local jurisdiction there are contributions that constitute betterments that are no burden on the Federal taxpayer, contributed by the local business community, developers, whatever, local improvement district was formed that paid for them, however they were paid for, do those get cranked into the cost-effectiveness? And if so, why, because I don't think that they should be.

Mr. SIMPSON. Mr. Chairman, you are not alone in that regard. We actually asked the question in the NPRM. Right now there are two things. You can have several definitions of betterments, but betterments are components of the project that are not essential, so that if you do away with the betterments, you still get all the benefits of the project. An example might be—although my wife wouldn't like this example—art work in the stations. Art is a betterment.

So right now the betterments are captured, so what we do sometimes, we tell the grant recipient, if they don't meet cost-effectiveness, are there any betterments that you can take out? You know, how many betterments can you take out and still keep the project?

So we are trying to get to the point where, hey, what are the essential components of a project. Then we ask the question, in terms of betterments, do we need to count those or should we count those, because, particularly with the private sector, as you hit on, private sector sees the value in transportation projects and currently, if there was any private sector contribution, we count that.

So the question that we ask is if we have a particular project—and there are a lot of projects where developers, landowners, private interests see tremendous value that accrue to them as a result of this federal-State investment—should we or could we exclude those contributions to cost-effectiveness. And the rationale for that would be if it is not costing the taxpayer any money, there is a betterment as a result of that, there is something that is accruing, like a donation from the private sector, so we believe that that has merit to look at, so we have asked the question.

And that might also help some of these other projects that, as you mentioned, streetcars, where there is certainly a value to developers and people particularly close to the investment. They see a value, and many streetcar projects are being funded privately, so we asked the question if we have a project that were to come forward before the FTA, if there is a private contribution, should we exclude the private contribution from the project and from cost-effectiveness.

Mr. DEFAZIO. So that is outstanding as one of the questions in the rule?

Mr. SIMPSON. Yes.

Mr. DEFAZIO. And you are taking comments on that?

Mr. SIMPSON. And would like to get comment on that.

Mr. DEFAZIO. Because it seems to me part of the rationale for the cost-effectiveness criteria is, one, to have a screen, but, two, theoretically, to look at what is the cost-benefit for Federal taxpayers. You are also looking essentially at financial soundness, risk, debt, those sorts of things, and if the betterments are not constituting a financial overhang that has the potential to bring this system down, I don't see why they would have to be calculated in at all; and/or if you built the system and the betterments were essentially an add-on and someone added on the betterment after the system was approved or built, we wouldn't count it. I mean, at that point you can't count it, right?

Mr. SIMPSON. I can't express my view on it because we have the rule, but I hear what you are saying.

Mr. DEFAZIO. I understand.

Mr. SIMPSON. You know, that might also—you know, when we talk about economic development with respect to certain projects, that we are not measuring economic development, particularly, you know, we put the cards out on the table, this streetcar projects, addressing that question might be able to give you the—what is the true economic value of a streetcar project? Well, maybe it is that value that the private sector decides that they feel that it is worth that is given as a contribution to a project and excluded from cost-effectiveness.

Mr. DEFAZIO. Again, further on economic development, you mentioned in your testimony that you have engaged a consultant?

Mr. SIMPSON. Yes.

Mr. DEFAZIO. Are the results of that consulting going to be accommodated in the rule or is this consulting result going to come in after the rule is already finished? What is the timing on that?

Mr. SIMPSON. I can't give you an answer on that right now, I don't know.

Mr. DEFAZIO. Okay. But it seems that if you have gone to the trouble and expense of engaging a consultant, that hopefully that contract will be structured in such a way that it will inform the rule, since it is a statutory criteria.

Mr. SIMPSON. Absolutely. And it is a priority and we have got a meeting here in Washington, D.C. on October 17th with nine of the Nation's top transportation experts to discuss economic development as part of the phase two.

Mr. DEFAZIO. Okay. Could we get a list of those and what firms or organizations they represent?

Mr. SIMPSON. Yes, you can.

Mr. DEFAZIO. Okay, great. Thank you, Mr. Administrator. Appreciate that.

Now, I have a question, and it seems to me it is a no-brainer, but apparently there is some theory or controversy out there, and that is the issue of does transit provide significant—in fact, there was a press conference going on upstairs just before this with APTA talking about the benefits of mass transit in terms of congestion mitigation and the amount of fuel it saves. I mean, you can quantify it to a great extent. So is it the position of the department that these projects, absent this ancillary action by another body to impose congestion pricing or something, but just the construction of a transit project itself, is it intended to mitigate congestion?

Mr. SIMPSON. A transit project serves a whole host of purposes. As you know, it promotes good economic development, environmental benefits, and also to alleviate congestion, as outlined in SAFETEA-LU.

So I don't know if I understand the question, but I am agreeing with you that it achieves all of those things.

Mr. DEFAZIO. All right. Okay. Well, no, there are some people out there saying transit sort of exists, but it is really not addressing congestion; they sort of take it for granted and don't—I mean, if you had a strike tomorrow and shut down the New York subway, I think what a benefit it had been.

Mr. SIMPSON. That is exactly what thought came to mind when you mentioned that. If somebody is not sure that transit fights congestion, then they need to take a look at the articles in New York or anyplace else that had a transit strike, or even just a service failure or disruption of service as a result of a power outage.

Mr. DEFAZIO. Right. Okay. I see that I have been joined by the Ranking Member.

Oh, do you have some questions? Okay, I recognize the gentleman, Mr. Dent.

Mr. DENT. Thank you, Mr. Chairman.

Mr. Simpson, I realize I came in after you presented your testimony, but I just wanted to relay some comments to you and just ask for your response. In my community there is a lot of talk about passenger rail from the New York metropolitan area into the Lehigh Valley of Pennsylvania—Allentown, Bethlehem, and Easton. The lines currently run to around Clinton, New Jersey, and getting them from Clinton to the western edge of New Jersey and Phillipsburg is, of course, a challenge. There is talk about running passenger rail from Lansdale, just north of Philadelphia, up to a community called Quakertown, a lot of talk about it.

And I would like you to comment, too, if the community were to express interest in a New Starts program or Small Starts, what should I tell them about the local matching requirements? What would be their obligation for that type of a passenger rail project?

Mr. SIMPSON. First of all, I am very familiar with that alignment. I have spent, I don't know, hundreds of days in Allentown and the whole 78 corridor, and was just in Clinton, New Jersey two weeks ago.

Mr. DENT. And there is a study going on right now on the 78 corridor.

Mr. SIMPSON. There is a study. I think in that particular case, I think there would be some sort of a bi-State agreement between New Jersey and Pennsylvania.

Mr. DENT. That is correct. First phase was completed as it relates to non-rail options and we are developing the rail phase now.

Mr. SIMPSON. Not dissimilar to what we do elsewhere, I think that we would need to get all the stakeholders in a room and determine who would be the grant recipient for the project; what would be the entity, do you need to create a new entity; and what is the— you know, you have got two States, so what is the share of the dollars that would flow through. You may have to develop a port authority or some sort. But if you would like, we would be more than happy to contact your office after we leave here and fill you in, because the FTA would be very helpful in assisting your community with that proposed commuter rail line, I believe it is.

Mr. DENT. Yes, commuter rail. And I guess that is the question, too. Oftentimes I tell the community that there will be a local match requirement.

Mr. SIMPSON. Right.

Mr. DENT. And what are you stating as official policy for the FTA now in terms of local match for these types of New Starts?

Mr. SIMPSON. Official policy is that you need to come up with at least 20 percent, and we would encourage an overmatch, anything above that; and then it depends on the community's ability to contribute their share, along with what we have done historically in the past, we like to have a level playing, and within the transit community there is sort of an understanding of how much money you should ask for given the certain size and complexity of a project.

Mr. DENT. Is that local funding requirement consistent for both New Starts and Small Starts?

Mr. SIMPSON. It is the first thing we look at, and that is where we get into a lot of problems, where we believe there is a commitment on a local level and then, as time passes, for one reason or another, the local commitment fades, and that is why the project becomes a no-start.

Mr. DENT. Well, I would be very happy to further discuss this issue with you.

Mr. SIMPSON. Absolutely. We will contact you as soon as soon as we leave here.

Mr. DENT. Thanks for your testimony.

Okay. And just one final question that I have. The FTA, as you know, has been working with FHWA to develop a mobility measure that explicitly includes congestion relief benefits to highway users and pedestrian ridership of transit systems. What is the status of that effort?

Mr. SIMPSON. We have allocated some research dollars. I believe it is $100,000. We are working with FHWA as we speak because, as this Committee asks us to do all the time, to measure all of the benefits that accrue to a given transportation project, and what we don't measure right now is if we were to build a new transit project in a corridor—let's take your project. Let's say we build your project.

What we haven't been able to do is—and let's say I-78 from Allentown going to Newark, everybody wanted to go to Newark on I-78, and we are at peak period in the travel, you know, it is congest. The I-78 can get congested, as you know. So let's say the transit project is good enough where we are able to take off a portion of those vehicles that now ride transit. Well, we pick up the benefit of the folks riding transit, but we don't pick up the travel time savings that accrue to the people that stay in the automobiles.

So what we are saying is—I mean, this would be the best case scenario—if it took an hour to get from Allentown to Clinton in traffic, maybe it would take 40 minutes for all those other drivers if we took 5 percent of the drivers off the road. We want to be able to measure that and measure that within cost-effectiveness, because it truly is a benefit of travel time savings.

Mr. DENT. Thank you. I will yield back to the Chairman.

Mr. DEFAZIO. Ms. Hirono, do you have further questions?

[No response.]

Mr. DEFAZIO. Mr. Boozman?

Mr. BOOZMAN. Very quickly. We appreciate your being here. You said that you needed at least 20 percent. In reality, what is that percent really, though? Now, because of the——

Mr. SIMPSON. An average? I would say it is averaging about 50 percent.

Mr. BOOZMAN. So it is about 50. And that is just because of the competition, the people that are saying that they will come up with 50 percent?

Mr. SIMPSON. Well, you know, it is a whole host of things. I mean, if we have got a couple of projects in New York that were mega projects, literally in the billions, so you could easily wipe out 20, 30 percent of the statutory authority if you were to fund it at the maximum. So we really work closely with the transit agencies, and that has really not been a problem with us. We bend where we have to. You know, I am surprised that there are that many questions on that topic, but that is something that never crosses my desk, it is really never an issue. I guess there is an understanding out there with the transit properties where we are at on that.

Mr. BOOZMAN. So there is enough competition out there that people will come up with the dollars up to the 50 percent?

Mr. SIMPSON. Yes.

Mr. BOOZMAN. It makes it tough if somebody without as much resource only has a 20 percent. That really——

Mr. SIMPSON. We understand that and we work with the grant recipients.

Mr. BOOZMAN. Okay. Thank you very much. Thank you for being here.

Mr. SIMPSON. Thank you.

Mr. DEFAZIO. One last question. SAFETEA-LU authorized a study that is being, as I understand it, done jointly under the auspices or sponsorship of FTA and HUD, Reconnecting America, which is to—we have been talking about sort of the economic benefits that result from transit projects, but we haven't really gotten into this aspect of it, which is the linkage between affordable housing and transit, and I am wondering when that study's results are going to be available. Again, it is sort of like my last question. Are those results going to be available before you finalize your NPRM?

Mr. SIMPSON. Mr. Chairman, to my knowledge, that study has been published and it has been out for at least six months.

Mr. DEFAZIO. Okay.

Mr. SIMPSON. And if you would like to talk about the results of the study, I can, but the study has been—and I apologize if your office has not gotten a copy of it.

Mr. DEFAZIO. So, again, those results will inform the rule to some extent. To the extent they find there is a linkage between affordable housing or the potential for affordable housing would seem to me, again, to be a benefit that would need to be looked at in evaluating transit projects.

Mr. SIMPSON. You know, we do that within the mobility factor, but I will tell you what the takeaway for me was with that study. We have said it here, that as a result of building transportation multi-use development around transit nodes, the price value goes up. It is more expensive to rent an apartment or to buy an apartment or a home which is within walking distance of a transit property. And the people who need to be able to walk and to get to work the most are the people sometimes who can't afford it, and it is a concern that we have at FTA and it is a concern that HUD has, and we have talked about it.

Mr. DEFAZIO. Sure. Well, that is a general urban redevelopment rule of thumb, but some communities, for instance, not to be totally parochial, but Portland has a requirement on the developers that they provide a certain number of affordable units in doing their developments. So, I mean, the question is since we talked about you get scored for planning and those sorts of things, would you get some benefit or scoring for having a policy to provide affordable housing in these corridors?

Mr. SIMPSON. Absolutely. We capture it under transit dependent mobility, and it is——

Mr. DEFAZIO. So that will be expressed in the final rule, then, that this would be——

Mr. SIMPSON. Well, the proposal that we have right now on the street clearly articulates that.

Mr. DEFAZIO. Because it certainly would—some entities haven't done that, and it would certainly potentially encourage entities who are interested in qualifying a project to undertake to see that, as the development took place, that they were providing for some place for affordable housing.

Mr. SIMPSON. Well, FTA and the DOT believes in that and HUD believes in that and the Administration believes in that, so we will make sure that it is part of it.

Mr. DEFAZIO. Okay, thank you. I have no further questions.

Mr. Duncan?

[No response.]

Mr. DEFAZIO. All right, with that, we thank you once again for providing your time and your expertise, Mr. Administrator, and we look forward to a totally transmogrified final rule.

Mr. SIMPSON. It has been a pleasure and honor to be here, and as I said in the past, I look forward to our next hearing.

Mr. DEFAZIO. I would call the next panel: Mr. Christopher Zimmerman, Arlington County Board Member; Mr. Michael Townes, Hampton Roads Transit; Mr. Mark E. Huffer, Kansas City Transportation Authority; and Ms. Shelley Poticha, Reconnecting America, although she does have an Oregon connection.

TESTIMONY OF CHRISTOPHER ZIMMERMAN, ARLINGTON COUNTY BOARD, BOARD MEMBER, ARLINGTON, VA; MICHAEL TOWNES, HAMPTON ROADS TRANSIT, EXECUTIVE DIRECTOR, HAMPTON, VA; MARK E. HUFFER, KANSAS CITY AREA TRANSIT AUTHORITY, GENERAL MANAGER, KANSAS CITY, MO; AND SHELLEY POTICHA, RECONNECTING AMERICA, PRESIDENT AND CEO, OAKLAND, CA

Mr. ZIMMERMAN. I have always thought it should be a prerequisite for service in higher office that one serve in local government first.

Thank you, Mr. Chairman and Members of the Subcommittee. I am pleased to be here this morning. I am Chris Zimmerman, a member of the County Board of Arlington, Virginia, right here across the river, in which capacity I serve on the various regional transportation bodies around here, like the Washington Metropolitan Area Transit Authority and the Northern Virginia Transportation Authority.

I have submitted, of course, a full statement for the record, but I just wanted to make a few comments and then answer your questions.

The community that I have the opportunity to represent is today a very thriving urbanizing community that enjoys extremely low employment, extremely low office vacancy rates, and is widely cited as a model of what is now called smart growth nationally and even internationally. Five years ago, when the Environmental Protection Agency gave their first smart growth award for overall excellence, it was to Arlington for the Roslyn-Ballston corridor.

That stands in contrast to where it was a generation ago, when it was a fairly typical declining inner ring suburb, with declining population, with schools that were emptying out, with retail that was really dying. When you wanted to go to a restaurant, you went outside. When you wanted to go shopping, you went outside.

It has really turned around in the last generation largely because of the foresight of people who served before me, but also because they were able to leverage a big public investment with a significant Federal contribution in the Metro system, and then use that effectively to create the Roslyn-Ballston corridor and the Jefferson Davis corridor, which are about 10 percent of the land area of my very small county, smallest county in America, effectively at 26 square miles. Ten percent of that land is generating half the tax revenue that we collect.

The 26 square miles in Arlington, out of a Northern Virginia region of over 1,000 square miles, accounts for about 60 percent of the transit ridership. Sixty percent of all trips in Northern Virginia begin or end in Arlington. We have some of the highest transit usage, with over 23 percent of rush hour trips being made—of workday trips, I should say, being made on transit; and in our Metro corridors it is more like 40 percent.

Now, the reason I cite all this is that I believe that if the rules that are in place now, or that are proposed now, were in place at the time, that that transit investment could not have been made. I don't believe Arlington would have qualified for the funding that made this possible under the regulations as they are now being pursued by the FTA. As it happens, today we are looking at the next generation of transit development, and we are looking both to redevelop in the Crystal City area, where we have the biggest impact of BRAC from the last round anywhere in the Country, with 18,000 jobs scheduled to leave Crystal City; and we are looking at what has to be done to make it again a vibrant economic center, and we are looking at transit investments obviously as part of that.

Not far from there and connected to it, hopefully, is the Columbia Pike corridor, where we are looking to transform what has been an automobile-oriented strip into a more walkable main street, and we have a streetcar project, very much modeled on the Portland streetcar, which we think has the same kind of potential for economic growth and transforming an area, really, that you have seen in Portland.

However, we don't think that the current rules will make it possible for us to get any help from the FTA and the Federal Government the way they are proposed now, and we are looking at what we have to do and what we can accomplish on our own because we really don't see any way that we would qualify. The specific rules that are being promulgated would make it very difficult for our projects to qualify, which seems fairly strange because they look like exactly the kind of projects that you intended in passing the last law.

The Columbia Pike streetcar project, for instance, which is about a five to six mile stretch, is a project under $250 million, probably $120 million, $140 million, something like that. If we could get 50 percent money, then $60 million, $70 million, something like that, would seem to be within the parameters. But the way the rules are being promoted, we would not likely qualify.

The ridership that we have been able to encourage already is held against us rather than working for us. The additional funds that we will put in and the higher costs that are involved in an urban area work against us, even when we are spending our own money. So, in short, this is fairly frustrating and seems to us to be counter to the intentions of Congress in passing the last act.

Finally, let me just say that I think our commitment to transit as an integral part of community and economic development would be the model that was intended and that you would want to promote in the interest not only of our region, but the Nation, but it doesn't seem to be the model that the proposed regulations would promote.

Again, Mr. Chairman, thank you very much for inviting me here. I look forward to your questions.

Mr. DEFAZIO. Thank you, Mr. Zimmerman.

Mr. Townes.

Mr. TOWNES. Thank you, Mr. Chairman. It is an honor to be here with you today. I appreciate the opportunity to testify on the Notice of Proposed Rulemaking. I want to note that while I am the incoming chair of the American Public Transportation Association, the testimony that I present today represents my views, and not those of APTA, regarding the proposed rulemaking.

I also want to note that on October the 1st, the City of Norfolk, Virginia, the entire Hampton Roads region and HRT will celebrate the signing of a full funding grant agreement for $232.2 million for a 7.4 mile starter light rail line in the City of Norfolk. I want to thank Congresswoman Drake, who was here earlier, for her strong consistent support of this project, as well as Administrator Simpson for making this project a reality.

I don't have enough time to touch on all the points that I think are important with the proposed rulemaking, but I will touch on three in the time that I have, and that includes provisions not included in SAFETEA-LU that are in the proposed rulemaking, the land use and economic development measures weights, and the weight given to cost effectiveness, things you have talked about earlier today.

The Notice of Proposed Rulemaking contains provisions that were not addressed by Congress when it adopted the Safe Accountable Flexible Efficient Transportation Equity Act, a legacy for users, but represents substantial changes to the New Starts program. The proposed rulemaking would change the definition of fixed guideway and allow New Starts and Small Starts funds to be used for high occupancy toll lanes. This proposed change is not found anywhere in 49 U.S.C. 5309. This change is intended to alter the purpose and focus of the New Starts program. The only conclusion that can be drawn from this proposed change is that the FTA intends to diminish the historical investment and traditionally fixed guideway projects.

I would also note that there is no requirement that the transit service which served to establish the amount of the section 5309 investment be maintained after the project is built. Now, why would the FTA support funding a project where there is no ongoing commitment to maintaining transit service in the corridor?

The proposed rulemaking also seeks to redefine these projects that are eligible under the Small Starts program and develop a program that is not neutral as to project eligibility or the level of project review.

I have identified those changes in my written testimony; I won't belabor that point.

With regard to land use and economic development measures and weights, Congress amended section 5309 in SAFETEA-LU by emphasizing the importance of land use and economic development when it moved these criteria from the consideration subsection to the project justification subsection. To the outside observer, it seems clear that the intent of Congress was to put greater weight and emphasis in the New Starts project evaluation and review process on land use and economic development. Instead, the proposed rulemaking diminishes the weight to be given to land use by combining it with economic development as a single factor and assigning only 20 percent to that weight.

Moreover, 5309 establishes separate criteria for land use and economic development, which would appear to clearly indicate an intent by Congress to develop separate measures for each. Instead, the proposed rulemaking not only reduces the weight and emphasis given to land use and economic development, but merges them into a single criteria rather than developing separate measures.

Furthermore, FTA states that the cost to develop a measure for economic development that is distinctive from land use is overly costly and burdensome. Now, I don't recall that the cost or burden on transit authorities was an issue when FTA developed the Summit software and implemented the TSUB measure for cost-effectiveness in 2002. While I don't know what it costs FTA to develop the software and implement TSUB, many communities, including mine, were required to spend several hundred thousand dollars to revise travel demand models to be able to interact with Summit and capture the user benefits in ridership.

Finally, FTA should be 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 measured solely in terms of mobility improvements, but also on the impact of shaping economic development patterns.

Finally, weights given to cost-effectiveness. Prior to the March and April Dear Colleague letters, 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 medium-low rating on cost effectiveness, a project could not obtain an overall project rating of medium, based on receiving a medium or high rating on the land use plans in the region where the project was being built.

The March and April 2005 Dear Colleague letters changed FTA's policy, but were not implemented as a permanent change to regulation. In the Notice of Proposed Rulemaking, FTA has not only chosen to require 50 percent weight for cost effectiveness, which effectively trumps all the other project evaluation or review criteria, but also attempts to make it permanent law through inclusion in the notice.

I hope the Committee would agree that the proposed allocation of weight and excessive emphasis on cost effectiveness is contrary to your intent when you adopted SAFETEA-LU, and I hope that you would agree that the incorporation of specific weighting of criteria should not be included in the final rule, but continue to be left to guidance documents to enable FTA to shift the allocation of weights as might be appropriate in the future.

Thank you for the opportunity.

Mr. DEFAZIO. Thank you, Mr. Townes.

Mr. Huffer.

Mr. HUFFER. Good morning, Mr. Chairman and Members of the Committee. My name is Mark Huffer. I am the General Manager of the Kansas City Area Transportation Authority, also known as KCATA, and we are the regional transit authority serving the Kansas City, Kansas-Kansas City, Missouri metropolitan area.

While we are pleased to make comments on the NPRM today regarding the New Starts program, I am going to limit my comments to the Small Starts and Very Small Starts categories only, as they are most closely related to two recent major capital investment projects in the Kansas City area, one of which is already implemented and the other one is planned.

In 2005, KCATA opened the region's first bus rapid transit project known as MAX. MAX was built at a cost of approximately $3 million a mile and would have met all the criteria of a New Starts program had they been in place at that time. Since New Starts program was not in existence in 2002 through 2005, when we constructed this project, Federal funding was instead attained through a series of discretionary grants spread out over four Federal fiscal years.

The uncertainty of Federal funding and the timing of the revenue stream presented significant challenges in making construction awards and phasing implementation of this project. Without a long-term Federal commitment, the scope and size of the project was changed numerous times.

MAX has been an unqualified success. Ridership in the corridor is up over 40 percent. Thirty percent of our customers are new to public transit, and customer satisfaction is exceptionally high. Because of the success of this program, FTA has been very supportive of KCA's effort to expand into other corridors in the community and, in fact, MAX has already received Federal funding commitments of $24 million under the New Starts guideline to expand into the Troost corridor in 2009.

In general, we applaud the congressional decision to establish a separate Small Starts category for New Starts funding in SAFETEA-LU. This program will allow projects like ours to move quickly, allowing the community to benefit from these projects at a quicker pace.

I want to comment on Small Starts right now, and that is that the NPRM defines a Small Starts project as one with a total project cost under $250 million, with 5309 funding not to exceed $75 million. While we fully support the concept of Small Starts, we are concerned that the proposed changes do not go far enough in streaming the New Starts process for projects under Small Starts category. The process of getting to an FTA funding decision on a Small Starts project still appears to be arduous and time-consuming, requiring nearly the full range of FTA New Starts criteria and processes.

We believe it was Congress's intent to enable recipients to expedite implementation of significant capital investments; yet, the New Starts evaluation criteria require a full alternatives analysis, as well as a NEPA environmental study, regardless of the nature of the project. These two elements are among the most burdensome and deliberative steps in receiving Federal funds. There is little advantage to seeking Small Starts funding as long as these requirements are not changed.

Additionally, we believe that FTA should reconsider and clarify the provision that prohibits a corridor project from being divided into several Small Starts projects. We concur that a corridor should not receive several Small Starts funding for projects concurrently, and that projects should not be artificially segmented just to qualify as a Small Start. However, given the long lead times and high capital costs for implementation of major capital investment projects, phased implementation is a realistic approach, and the benefits of such approaches should be recognized.

For example, if a metropolitan area makes a decision to build a 20 mile corridor, it might choose to implement the system in three separate phases over several years. If the phasing is appropriate and NEPA requirements met, FTA should consider each phase for Small Starts funding eligibility, even though the total 20 mile line might otherwise qualify for New Starts.

In regards to Very Small Starts, this has been a program that we believe will be beneficial to Kansas City. As a result of the less stringent requirements for the Very Small Starts program, we will be able to implement the Troost BRT-MAX corridor project within four years of corridor planning. We are generally supportive of FTA's Very Small Starts requirements, but we believe that FTA should consider eliminating the local financial commitment criteria regarding local overmatch of Federal funds. We recognize that FTA will not rate any project below medium for failure to overmatch, but question whether it should be an evaluation criteria for projects of this size at all.

Similar comments in New Starts regarding Small Starts. We believe FTA should reconsider and clarify how the requirement requiring all projects in the corridor to be considered together for evaluation purposes will be implemented. If multiple-phase projects qualify and are appropriately defined with independent utility, KCATA believes each phase should be independently evaluated as a Very Small project.

We do have a concern that the $3 million per mile threshold, even exclusive of vehicle acquisition, will result in a modal bias toward bus projects. Further, we encourage FTA to consider raising that threshold or at least indexing it to allow for inflationary growth, because it is very possible that within several years, even BRT projects will not be able to be built at $3 million a mile.

Finally, we react very favorably to the concept of the project construction grant agreement for Very Small projects. We find this to be a beneficial requirement that will provide the same assurance as a full funding agreement for much larger projects.

We thank the Congress for your interest in this. We support the direction taken by Congress and FTA to streamline the New Starts process and encourage FTA to consider all possibilities to continue to make the process from beginning to end more expedited.

Mr. DEFAZIO. Thank you, Mr. Huffer.

Ms. Poticha, we have about seven and a half minutes to go, so rather than hurry through your testimony, I think we will reserve your testimony until after the short recess, and then we will proceed to questions. At that point, I have to go to the markup in resources and Ms. Hirono will take the chair, unless Chairman Oberstar wants to take the chair. He can always have the chair whenever he wants.

So, with that, we will stand in recess until probably about 15 minutes ago. Thank you.

[Recess.]

Ms. HIRONO. [Presiding] We are back. Good afternoon. Okay, we are on Ms. Poticha. Please proceed.

Ms. POTICHA. Good afternoon, Members of the Committee. Thank you very much for the opportunity to appear before you today. I am Shelley Poticha, President of Reconnecting America, a national nonprofit dedicated to using transit investments to spur a new wave of development that improves housing affordability and choice, revitalizes downtowns and urban and suburban neighborhoods, and creates lasting value for our communities.

We host the Center for Transit-Oriented Development, and thanks to language included by this Committee in SAFETEA-LU, we receive Federal funding to provide standards, guidance, and research on transit-oriented development for the 40 regions that either have or are planning new transit lines.

As I go from region to region, it is clear that there is a thirst for new and increased investments in transit. First of all, transit ridership is at a 40-year high, with three-quarters of the growth coming from heavy, light, and commuter rail. We are finding that mayors value transit to help spur urban regeneration and reduce traffic congestion; businesses value transit because employees can get to work on time; and transit is viewed as a key amenity in attracting the highly desirable creative class to local economies Developers see an untapped market for housing near transit and are designing new products and new neighborhoods to meet this demand. And communities recognize that when all the pieces come together, transit can help improve the quality of life and lower cost of living.

A common thread in every one of these places is the recognition that transit is a powerful tool that is made more powerful when combined with proactive land use an economic development strategies.

Despite these encouraging trends, we hear frequent complaints about the Federal partnership. Funding for transit is not keeping up with demand or rising construction costs. The length of time, the complexity, and the added cost of trying to navigate the Federal New Starts process is increasing and placing an undue burden on transit projects, while high rate projects receive much less scrutiny. There is a growing concern, whether real or perceived, that including a full range of amenities, streetscape improvements, and pedestrian safety enhancements in a proposed transit project will jeopardize Federal funding.

Yet, these are the very features that help maximize walking trips to transit and create high value urbanism. Local concern over meeting the cost-effectiveness index has led some communities to short-change the number of transit stations, rail cars, or corridor enhancements that would help meet or even exceed 20 year ridership projections.

In addition, our research shows that actual ridership on many recently built transit lines is higher than predicted by FTA's Transit System User Benefit or TSUB model. Some lines, such as Minnesota's Hiawatha Light Rail and the Metro Red Line in Houston are outperforming their ridership estimates 15 years ahead of projections. This raises significant concerns about the substantial weight placed on these model results.

The good news is that over-performing lines give transit agencies and communities the momentum and political capital to expand their transit systems to benefit more of a region, but the bad news is that these over-performing lines are resulting in a shortage of transit vehicles, parking spaces, inadequate tracking or maintenance facilities, or the inaccurate evaluation may have contributed to a downgrading to lower capacity technologies. Ridership numbers are the primary input into the FTA's model to compute cost-effectiveness.

Last fall, in response to requests by FTA for specific guidance on how economic development could be evaluated and defined apart from the land use criteria, our Center for Transit-Oriented Development commissioned research on the topic; convened meetings with academics, practitioners, and economists; and we found that there are different definitions of economic development that are being used.

Without congressional direction on how to interpret economic development, FTA appears to be trying to define economic development as the impact of a proposed transit investment on the regional economy; whereas, local governments and practitioners are trying to maximize and coordinate the transit investment to leverage and focus economic development and growth in a proposed corridor.

We believe that there are a number of commonly used indicators and metrics for evaluating economic development that could be incorporated into the transit evaluation process, and they do not require the creation of a new black box model.

The Federal New Starts and Small Starts programs sets the rules for engagement in how communities coordinate proposed transit investments with larger regional decisions about population growth and economic development. I urge you to remain steadfast in your intent to implement this congressional directive. We need a strong partner for communities that are trying to create new transit investments that provide residents with greater transportation choices, use transit as a development strategy, and promote more travel options that reduce greenhouse gas emissions.

We cannot afford a Federal transit policy that may result in less transit being built or that makes it more costly and uncertain to obtain Federal funding. We would welcome the opportunity to work with FTA on these processes and rules to help create a fair economic development and land use set of evaluation processes.

Thank you very much for the opportunity to appear before you today.

Ms. HIRONO. Thank you very much to all of the panelists, and we will begin questioning.

I would just like to start by asking Mr. Zimmerman, you heard me question Mr. Simpson regarding the directive that they issued in July of this year. Do you have a concern that FTA will use their July 20th directive, which does give weight to the cost benefit factor, that they would use that in their analysis of New Starts and of Small Starts pending the adoption of the new rules, which could take a while?

Mr. ZIMMERMAN. Yes, that is precisely the concern. Of course, the way it is drawn up, the cost factors seem to work against us; the benefit factors work against us with things multiplied by cost—you know, costs including things potentially that desire expense, in any case, or enhancements we may make that may make the investment more valuable in the long-run; and, on the other hand, the benefit side not counting for some of the real reasons for making the investment in the first place, which the statute seem to include as two distinct criteria. So, you know, with the indication that that is the way they are going to evaluate any proposal, it leads me to question whether there is any point in submitting such a proposal.

Ms. HIRONO. So pending the adoption of the new rules—and we hope that they will be changed to reflect the will of Congress and the underlying legislation—what can we do so that—I am a new Member of Congress, so I need to ask these questions. What can we do to direct the FTA to not impose these kinds of percentage requirements that are not in the statute?

Mr. ZIMMERMAN. Well, it would be my hope that Congress could give pretty clear direction that it meant what it said, perhaps by some of the things that I think Ms. Poticha was suggesting, you know, perhaps providing a more clear definition, you know, going beyond what you have already done. I mean, I imagine it must be very frustrating, frankly. The government I work in, the management doesn't get to not do what we put in law. But that certainly looks to me like what is happening here. But if you can't get them to do what you already told them, perhaps you have to give them more specific instruction. Other than that, I am not really sure.

Ms. HIRONO. Thank you.

Mr. Huffer, you indicated that you basically support the direction of these new rules as it relates to your State and what you are doing there, is that correct?

Mr. HUFFER. Generally for and in particularly for Very Small Starts program.

Ms. HIRONO. Very Small Starts. You heard some of the other testimony that the proposal for the Very Small Starts could actually push a lot of jurisdictions into going in that direction so that they don't have to undergo the full range of analysis and assessment. Is that of concern to you?

Mr. HUFFER. Our primary concern with Very Small Starts relates to the cost per mile. We think that that probably prohibits streetcars and forces communities into bus rapid transit. We have two bus rapid transit projects, one developed that was under $3 million per mile, including vehicles, and one that is being developed that will be under $3 million excluding vehicles. But we fully believe that we would never be able to do even a BRT in future years with that $3 million threshold in there.

Ms. HIRONO. So aside from wanting to increase that $3 million per mile, you don't share the concerns expressed by I think it was Mr. Townes, that the new Very Small Starts would actually move a lot of projects into those modes of transportation that would be covered under——

Mr. HUFFER. Our primary concern, again, is that it would prohibit communities from proceeding with a streetcar project. But what we do like is that, as Administrator Simpson said, those projects are small enough that they pretty much automatically qualify for Federal funding, and you can really expedite that process at that point. But we do have issues with some of those items as it relates to Very Small Starts.

Ms. HIRONO. Thank you.

Do the Members have any questions? Mr. Boozman?

Mr. BOOZMAN. Thank you, Madam Chair.

Mr. Townes, congratulations on moving your Norfolk light rail project through the New Starts process and executing your full funding grant agreement next Monday, October 1st. Having just been through this process under the current New Starts rules, do you believe that any of the changes in the new proposed rule will make the process easier or faster than for the project sponsors? You are a guy that has just gone through this. Are any of the proposed changes, do you feel like that will help or speed up the process?

Mr. TOWNES. No, sir, I don't believe that the process, as outlined in the Notice of Proposed Rulemaking, will go any faster or be any less complicated, and I don't think it is fair or reflects the intent of this Committee or Congress in terms of bringing new measures into the process so that the true benefits, not just the cost-effectiveness benefits, of these projects are recognized.

Mr. BOOZMAN. Okay. Very good.

Mr. Huffer, do you believe that a bus rapid transit project such as the Metro Area Express or the Troost corridor BRT generates transit-supportive land use and positive economic development effects? And can you give us some examples?

Mr. HUFFER. Sure. We will say, first o fall, yes, we do believe that it does produce positive economic development effects and does help with transit corridor development, but not to the extent to rail. We would never believe that to be the case.

But I think a good example is on our main street MAX, our first project that was open, the businesses in that corridor formed a community improvement district by which they tax themselves and hired additional security, additional people to clean litter control, just because they saw that as an advantage; they saw that MAX was working in the corridor, and to them it was helping to bring new businesses in, and they wanted to present additional face. So they actually tax themselves to form a CID.

Mr. BOOZMAN. Ms. Poticha, did I get that right?

Ms. POTICHA. Poticha.

Mr. BOOZMAN. Good.

Ms. POTICHA. Yes. Thanks.

Mr. BOOZMAN. I am Boozman, Bozeman, whatever.

[Laughter.]

Ms. POTICHA. I can relate.

Mr. BOOZMAN. Reconnecting America, has it looked at better ways to estimate and incorporate the New Starts evaluation process pedestrian use of transit? You touched on that earlier, I think, about pedestrian being important, to get there so you can get on the—can you kind of elaborate on that a little bit?

Ms. POTICHA. Well, we have a database of every fixed transit station in the United States and we are able to pull data on how people get around in the neighborhoods that touch the transit stations, and what we have done is that people who live in areas within a half mile of a transit stop walk, bike, and take transit four times as much as their peers in the region.

I think one of the challenges in the way that transit projects are evaluated now is that the measurement of those pedestrians is often lost in the computer modeling, and, in fact, although I am not a modeling expert, I have heard from many of the academics and practitioners that the current models that generate ridership are not sensitive to pedestrians and don't fully measure those.

That is part of the reason why we have been doing research on the tracking of projected ridership that is being generated through this FTA computer model and actual ridership, and what we are finding is that in many, many cases the ridership exceeds or is far accelerated beyond what is estimated by the computer model. I think much of this may be coming from this wave of transit-oriented development that has happened in the last 10 years around many, many transit stations in the United States, creating this whole market for neighborhoods where people can walk to transit, walk to services. And, yet, I think in many ways that is not being captured very well by the current system.

Mr. BOOZMAN. Well, thank you all very much. I appreciate it. This is so important. You know, we talk about economic development; we talk about the benefit of reducing emissions, all of the things that we are concerned about, but also it really is important for single moms and single dads who don't have the resources to commute. If you can't do that, you can't have a job, and then also for our seniors. You know, many of them are able to continue to live in their homes because they can get out and shop and do the things that they need to do with just a little bit of help of transportation.

So, again, thank you all very much.

Ms. HIRONO. I have a few more questions.

Some of you may be aware, possibly not, that Honolulu is one of the New Starts cities, and I know that, in working with the mayor there on obtaining Federal funding, that it is certainly not just a question of cost-effectiveness, but there is a lot of discussion around how can we revitalize those areas that the transit stops will be in and economic development. Those are very real issues just because FTA may not have quite the models that they feel are reliable.

I have a question for Ms. Poticha. FTA has argued that it is too difficult and costly to separate land use from economic development factors and is, thus, proposing a single combined measure of effectiveness. What are your thoughts about this approach?

Ms. POTICHA. Well, I have been an urban planner for about 25 years, and a vast majority of my career has been around working with communities who are trying to build communities around transit. It is very important for communities to plan the kinds of land uses that happen around transit to change their zoning codes so that mixed use walkable neighborhoods can actually be built. In many places, as these transit lines come in, the rules don't allow those kinds of neighborhoods to be built and so there is an effort that needs to be done to prepare the land use policies to even allow these neighborhoods to be possible.

But that is not sufficient, in my opinion, to generate the kinds of neighborhoods that truly capture the value that transit provides, and what we are seeing is the most successful places are places that have put in place financial tools that help support and incentivize development to come to these areas; that create the sites where development can actually happen. In many of these places you are running your transit line through an existing community. You might have a zoning that allows transit-oriented uses, but that is often prevented because the land maybe hasn't been assembled in any real way.

So there are a whole set of tools that can be used to work with the private sector to ensure that economic development happens and that this kind of glomeration and clustering of uses and activity truly takes place. So I would say that they are related, but they are different, and both are necessary in order to truly maximize the public's investment in this transportation infrastructure.

Ms. HIRONO. So would you agree that FTA is perhaps jumping the gun in trying to codify certain percentages that does not give the kind of weight that some of us would like to give to those other factors?

Ms. POTICHA. Well, I have heard a lot about the challenges of creating a predictive computer model that would generate an estimate of economic development benefits from a particular transit investment, and I had always thought that the most appropriate way to evaluate transit projects was a combination of predictive models and some qualitative measures, because communities are very complex places. And as we are now learning when we look at these ridership models, they are not necessarily accurate.

So I would—one of the things that we found through all of our research and commissioning papers from various academics and practitioners who work with economic development on a regular basis is that probably the best way to look at economic development is a combination of qualitative and quantitative metrics.

Ms. HIRONO. That sounds like a yes answer to me. Yes. Thank you.

Ms. POTICHA. Well, I would also say that we looked at some of the full funding grant agreements that have been made since 2000, and one of the things that is a worry to me is that there are 14 projects on this list—which I can submit to you—that received either a low or a medium-low cost-effectiveness rating through the FTA's evaluation process. And yet, when land use, which was one of the factors, was included into the evaluation, they rose up high enough in order to get funding.

So, clearly, there is a recognition of the benefits of these other factors, and I would say that we should continue to do that and improve upon it.

Ms. HIRONO. Thank you. And I would like you to submit the 14 projects.

Ms. POTICHA. I would be happy to.

Ms. HIRONO. If there are no further questions, thank you. This hearing is adjourned. I would like to thank once again all of the panelists for giving us the benefit of your views.

[Whereupon, at 1:12 p.m., the Subcommittee was adjourned.]

Harry E. Mitchell

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Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Highways and Transit
9/26/2007

--Thank you, Mr. Chairman.

--Arizona is now the fastest growing state in the nation. Since 1970, our population has more than tripled.

--The Phoenix metropolitan area is now the 13th largest in the nation, just behind San Francisco and Boston.

--As we have grown, so has our need for public transportation.

--We are eagerly anticipating the launch of a new light rail system late next year.

--In building this system, we are investing heavily in our community. But make no mistake; we expect a solid return on this investment.

--Nationally, public transportation has been shown to contribute 6 dollars in economic development for every dollar invested.

--We have already seen significant economic investment and growth in the Phoenix metropolitan area as a result of our light rail system.

--The City of Phoenix, the Downtown Development Office estimates that our light rail project has already encouraged over 3.5 billion dollars in development, including 8.25 million square feet of commercial space and over 6 thousand residential units.

--Arizona State University has also planned the construction of a downtown Phoenix campus for 15,000 students around the light rail system. All academic buildings will be within a half of a mile of a light rail stop. Students will be able to take the train from the main campus in Tempe, in my district, to the Phoenix campus.

--Funding this new transportation infrastructure has been a challenge to say the least. In that regard, New Starts has been invaluable.

--The Federal Transit Administration (FTA) is currently in the process formulating rules to implement the New Starts and Small Starts requirements contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"), and today we will have an opportunity to examine that rulemaking process in depth.

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--Before we begin, I just want to say that, given the economic development we have already seen with our light rail system in Arizona, more than a year before the system is even up and running, I am more convinced than ever that economic development should be a significant factor in considering future New Starts and Small Starts funding requests.

--I look forward to hearing from today's witnesses.

--I yield back the balance of my time.

**KANSAS CITY AREA TRANSPORTATION AUTHORITY
TESTIMONY TO THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
SEPTEMBER 26, 2007**

Testimony given by:

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Introduction

The Kansas City Area Transportation Authority (KCATA) is pleased to have the opportunity to comment on the Federal Transit Administration's (FTA) Notice of Proposed Rulemaking (NPRM) regarding Major Capital Investment Projects as published in the August 3, 2007, Federal Register. KCATA believes that this is potentially very significant and will have profound impacts on the development of highly beneficial, transit capital improvements in cities throughout the country.

About KCATA

KCATA is the regional transit authority serving the Kansas City, Missouri, and Kansas City, Kansas, metropolitan areas. Annually, KCATA serves nearly 15 million customers on 68 routes operating 365 days per year. Funding for operations is provided through a combination of local, state, and federal funds, along with passenger revenue.

KCATA is the "designated recipient" of federal funds for the metropolitan region and works closely with the regional Metropolitan Planning Organization (MPO), as well as other transit operators in Johnson County, Kansas, and Wyandotte County, Kansas.

KCATA is particularly interested in the proposed regulations as a result of two recent major capital investment projects in the Kansas City area, projects that are both implemented and planned. In 2005, KCATA opened the region's first Bus Rapid Transit (BRT) project – Metro Area Express (MAX). MAX was built at a cost of approximately $3 million/mile. The MAX project would have met all criteria for the Smalls Starts program, if that program had been in place at that time. Instead, federal funding was achieved through a series of discretionary grants spread over four federal fiscal years. The uncertainty of funding presented significant challenges in making construction awards and phasing implementation of the plan.

MAX has been an unqualified success. Ridership in the corridor is up over 40% in a little more than two years. Customer satisfaction on MAX is exceptional and the service has been successful in attracting new markets to transit. Almost 30% of MAX riders are new to public transit.

We believe MAX is also a factor in continuing economic development within the corridor. A first step towards this continuing development was the formation this year by corridor businesses of the Main Street Community Improvement District to provide funding for related improvements in the MAX corridor, including enhanced security and litter control.

Because of the success of MAX and its rapid implementation (operational in less than four years) compared to traditional New Starts projects, FTA has been very supportive of KCATA's effort to expand MAX to other transit corridors in the community. In fact, the next MAX route has already received federal funding commitments of $24 million under the Small Starts guidelines. KCATA expects to enter into a Project Construction Grant Agreement (PCGA) with FTA soon.

General Comments

KCATA applauds the Congressional decision to establish a separate Small Starts category of New Starts funding in SAFETEA-LU. This program will allow projects such as our Troost Bus Rapid Transit (BRT) line - which has a relatively low cost compared to typical New Starts projects - to be rapidly implemented, thereby allowing the benefits of such an improvement to accrue quickly to the community.

KCATA supports continued efforts to distinguish funding opportunities and regulatory processes between very large capital investment projects, such as extensive light and heavy rail projects, and smaller, less complex projects, such as streetcars and bus rapid transit projects. The NPRM is a positive move to create a more level playing field for federal funding and a means to encourage innovation in transit planning in metropolitan regions of all sizes.

Further, KCATA recognizes and supports the changes FTA made in the proposed rulemaking, from the time of the initial guidelines issued on June 9, 2006, to the

NPRM issued August 3, 2007. KCATA believes that the changes, particularly as they apply to the Very Small Starts program, are very positive.

Comments on Small Starts Programs

The NPRM defines a Small Starts project as one with a total project cost under $250 million, with Section 5309 funding not to exceed $75 million. While we strongly support the concept of Small Starts, we are concerned that the proposed changes do not go far enough toward streamlining the New Starts process for projects in the Small Starts category. The process of getting to an FTA funding decision on a Small Starts project still appears to be arduous and time consuming, requiring nearly the full range of FTA New Starts criteria and processes. In this regard, there is not a significant difference between the New Starts and the Small Starts Programs.

The intent of the Small Starts program was to enable recipients to expedite implementation of significant capital investments. Yet, the Small Starts evaluation criteria require a full Alternatives Analysis, as well as a NEPA environmental study, regardless of the nature of project. These two elements are among the most burdensome and deliberative steps in receiving federal funds.

There is little advantage to seeking Small Starts funding as long as these requirements are not changed. KCATA understands the need for the traditional New Starts Alternatives Analyses and NEPA evaluation on a $250 million project. However, to enhance streamlining, appropriate consideration should be given to either raising the Very Small Starts category level beyond $50 million or to lowering the Small Starts total project cost ceiling, so that more streamlined procedures may be applied.

Additionally, KCATA believes FTA should reconsider the provision that prohibits a corridor project from being divided into several Small Starts projects. KCATA concurs that a corridor should not receive Small Starts funding for several projects concurrently and that projects should not be artificially segmented just to qualify as a Small Start. However, given the long lead times and high capital costs for implementation of major capital investment projects, phased implementation is a realistic approach and the benefits of such approaches should be recognized.

For example, a metropolitan region that may seek to build a light rail system in a 20-mile corridor, might chose to implement the system in three separate phases over several years, rather than all at one time. If the phasing is appropriate and

NEPA requirements are met, FTA should consider each phase for Small Starts funding eligibility – even though the total 20-mile line might otherwise qualify for New Starts funding – as long as Small Starts funds were being used for each phase independently.

Comments on Very Small Starts

KCATA believes the program directives outlined for the Very Small Starts are particularly useful and appropriate. Kansas City has already benefited from the Very Small Starts procedures, using the concept of warrants and standardized elements in our Troost BRT project. As a result of the less stringent requirements of the Very Small Starts program, KCATA will be able to deliver this important project within four years of starting corridor planning.

While generally supportive of FTA's Very Small Starts requirements, KCATA believes that the FTA should consider eliminating the local financial commitment criteria (Section 611.33) regarding local over-match of federal funds. KCATA recognizes that FTA will not rate any project below "medium" for failure to over-match, but questions whether this should be an evaluation criterion for this size project at all.

It can be expected that many Very Small Starts projects will tend to be in metropolitan areas like Kansas City that have no history of large capital investment projects. These areas often do not have the resources for large projects and will naturally migrate towards Very Small Starts. Projects of this size will seek 80% federal match and should not be disadvantaged because of this lack of over-match

Similar to comments made regarding Small Starts, KCATA believes FTA should reconsider and clarify how the requirement that all projects in a corridor must be considered together for evaluation purposes will be implemented. KCATA concurs that a corridor should not be artificially segmented just to receive Very Small Starts funding and several projects should not be funded in a corridor concurrently.

However, given the long lead times and high capital costs for implementing capital investment projects, phasing is a viable approach. Many metropolitan areas may want to consider building transit corridor improvements in phases over a period of a number of years. KCATA believes each phase should be independently evaluated as a Very Small Start project for federal funding purposes, provided each phase qualifies for a Very Small Starts project and is appropriately defined with independent utility.

Finally, KCATA reacts very favorably to the concept of the Project Construction Grant Agreement (PCGA) as proposed for Small Starts and Very Small Starts. In the past, and as we experienced with our first BRT line, a transit authority planning to engage in a transit investment project of this scope had to seek federal funding on a grant by grant basis.

This process leads to uncertainty of overall funding, difficulty in issuing and managing construction contracts, and challenges in determining the timing of any necessary bonding. The PCGA gives a system the same assurance as a Full Funding Grant Agreement (FFGA) for larger projects. KCATA believes this to be one of the strongest elements of the NPRM.

Concluding Comments

Overall, KCATA supports the direction being taken by Congress and the FTA to streamline the New Starts processes and the new Small Starts program. We appreciate the numerous revisions made to the requirements in this NPRM, since the "Interim Guidance and Instructions" were issued on June 9, 2006. We believe continued efforts to streamline the process – especially as applied to the Small Starts program – will provide significant benefits and we support your continued focus on this effort.

RECONNECTING AMERICA
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"Opportunities to Strengthen Transit-Oriented Development through the New Starts Process"

Congressional Testimony of Shelley Poticha, President
Reconnecting America

Presented before the
Subcommittee on Highways and Transit,
United States House of Representatives
September 26, 2007

Chairman DeFazio, Ranking Member Mica and members of the Subcommittee, thank you for the opportunity to appear before you today. I am Shelley Poticha, President of Reconnecting America, a national non-profit dedicated to using transit investments to spur a new wave of development that improves housing affordability and choice, revitalizes downtowns and urban and suburban neighborhoods, and creates lasting value for our communities. We host the Center for Transit-Oriented Development, and thanks to language included by this Committee in SAFETEA-LU, receive federal funding to provide standards, guidance, and research on transit-oriented development (TOD). The Center for TOD includes a web-based resource of best practices and cutting edge research, as well as the National TOD Database, the only database of every fixed transit station in America, and we provide technical assistance to the 40 regions that either have transit or are planning to build new transit lines. We study the market for TOD and look at the impact of policies at all levels on the affordability of housing that is well-served by transit. CTOD is a partnership with two other groups: the Center for Neighborhood Technology and Strategic Economics.

Today I would like to share with you some of the larger trends that are reshaping consumer preferences, business trends and the real estate market, creating an unprecedented opportunity for the role of transit in defining the future of our communities. The way the federal transit administration evaluates proposed transit investments has a direct bearing on whether or not regions are able to fully realize the potential of these trends.

As I go from region to region, it is clear that there is a thirst for new and increased investments in transit. First of all, transit ridership is at a 40-year high; since 1990, ridership has increased 11.5% with three-quarters of the growth coming from heavy, light, and commuter rail. Mayors value transit in helping to spur urban regeneration and reduce traffic congestion. Businesses value transit because employees can get to work on time and transit is viewed as a key amenity in attracting the highly desirable "creative class" to local economies. Developers see an untapped market for housing near transit and are designing new products and new neighborhoods to meet this demand. And, communities recognize that when all the pieces come together, transit can be a powerful tool to improve quality of life and help lower costs of living.

Some of this new interest in transit and TOD is coming from the fact that the housing market in America is changing as households get older, smaller and more diverse, and as traffic makes long commutes to the suburbs less and less appealing. Indeed, "Emerging Trends in Real Estate," a highly regarded report reflecting the views of 500 leaders in the real estate, development and investment industries has ranked sites near transit "the Number One choice for all development."

But demographic trends are only part of the story. Regions are aggressively seeking to use transit investments to help focus growth, create a sustainable foundation for economic development and provide mobility options for residents. Take into consideration Denver. In 2004, residents of the region voted to tax themselves to build five new transit lines in 15 years. They're making a $4.7 billion investment in their future and focusing a significant percentage of regional growth into neighborhoods around each station. Virtually every major job center will now be connected by transit and the remaining 50 stations will accept about a quarter of the region's housing. In Orlando, the Central Florida commuter line will not only provide much needed congestion relief, but will provide the impetus for community revitalization in those towns with transit stops. The proposed Gold Line in Los Angeles is seen as a central strategy to curb sprawl in the Inland Empire and focus growth around the Claremont Colleges and a thriving medical complex. We're seeing similar investments in the Twin Cities, Houston, Dallas-Fort

Worth, Salt Lake City, Atlanta, Sacramento, Norfolk and Charlotte, North Carolina – regions that even a few years ago wouldn't immediately come to mind as transit-based places.

A common thread in every one of these places is the recognition that transit is a powerful tool that is made more powerful when combined with proactive land use and economic development strategies.

The Federal Transit Administration and US Department of Transportation are developing the rules for allocating Federal transit dollars to fund new transit lines. These rules will have a significant impact on whether or not local efforts to use transit investment to shape future regional growth, support economic development, address environmental challenges, and enhance quality of life are successful.

Despite these encouraging trends, we hear frequent complaints about the Federal partnership:

- Funding for transit is not keeping up with demand or rising construction costs.

- The length of time, complexity and added cost of trying to navigate the Federal New Starts process is increasing and placing an undue burden on transit projects, while highway projects are given much less scrutiny.

- There is a growing concern, whether real or perceived, that including a full range of amenities, streetscape improvements, and pedestrian safety enhancements in a proposed transit project will jeopardize Federal funding. Yet these are the very features that help maximize walking trips to transit and create high value urbanism.

- Local concern over meeting the federal Cost Effectiveness Index has lead some communities to shortchange the number of transit stations, rail cars, or corridor enhancements that would help meet or even exceed 20 year ridership projections.

Our research shows that actual ridership on many recently built transit lines is higher than predicted by the FTA's Transit System User Benefit or "TSUB" model. This raises significant concerns about the substantial weight placed on these model results.

Attachment A summarizes actual versus projected ridership on a number of recently opened transit lines and new systems. The overall data show that the majority of recent rail lines built with Federal funding through the New Starts program are performing at least as well as pre-construction projections. Some lines, such as Minnesota's Hiawatha Light Rail and the Metro Red Line in Houston are outperforming their ridership estimates 15 years ahead of projections. It is interesting to note that some of these lines would not have been funded if rated solely on their Cost-Effectiveness rating. For example, the Hiawatha Line received only a low-medium Cost Effectiveness rating. This presents both good and bad news.

The good news is that over performing lines give transit agencies and communities the momentum and political capital to expand their transit systems to benefit more of the region. The bad news is that these over performing lines indicate that cost reductions in the planning stage are resulting in a shortage of transit vehicles, parking spaces, inadequate tracking or maintenance facilities or may have contributed to a downgrading of technology. Ridership numbers are the primary input into the TSUB model used by the FTA to compute cost effectiveness. If we can not trust them to be more accurate, how can we expect to make multi-million dollar decisions using them as the basis? And should they be the basis for primary decision making?

FTA staff has noted that there are indeed problems with this model's ability to accurately estimate ridership, particularly as more and more riders are walking to transit, not just driving to transit. I postulate that the sea change in the real estate market – the unprecedented interest in dense, walkable neighborhoods around transit stations – cannot be accurately predicted by the FTA model alone and this is one reason why actual ridership is higher than expected. Giving the primary weight in the evaluation process to the results of the TSUB model in the New Starts evaluation process may lead to inaccurate results and seems unwise.

I strongly commend Congress, through SAFETEA-LU, for its work to raise the significance of land use, and add economic development to the list of project justification criteria. These are not insignificant changes. They recognize what we know about the potential power of transit investments to generate a host of benefits, beyond cost and travel time savings.

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 federal funding. Such an approach is similar to that taken by Canada and the United Kingdom in allocating their national transportation funding. Those two countries give much stronger consideration in their analysis to a full range of benefits including environmental impacts, specifically the reduction of greenhouse gas emissions, and for Canada, consideration of economic development benefits as measured by public/private rates of return. I find it curious that other countries, and indeed American developers, companies and even local economic development agencies can separate and evaluate land use and economic development, but our federal government appears at a loss.

Last fall, in response to requests by FTA for specific guidance on how economic development could be evaluated and defined apart from the land use criteria, our Center for Transit-Oriented Development commissioned research on the topic and convened several meetings with academics, practitioners, and economists. In this work we found that there are different definitions of the term "economic development" and these definitions impact how the government looks at potential economic development benefits as a factor when evaluating transit projects. FTA could play an important role in helping to clearly define economic development benefits in the context of transit investments, and through the New Starts evaluation process give greater weight, guidance and direction to help local communities identify implementation strategies for linking transit investment, housing and economic development policies and funding. These practices are termed value capture, and reflect the opportunity to leverage the transit investment to create economic value that can help provide one-going revenue streams for transit agencies and local governments.

Strictly-defined from a traditional economist's perspective, economic development is the measure of productivity derived from a specific investment – a difficult and abstract concept. The practitioners' definitions encompass the much easier to measure realm of real estate development, employment gains, access to jobs, concentration of economic activity and return-on-investment. This approach can include the capitalization of user benefits (e.g. users expending less on transportation costs and travel time which can be spent on other goods and services), redistributive economic development benefits represented through revenue generation from increased property values and ridership, and the benefits of agglomeration, or the potential for increased business transactions due to densification and proximity of uses. There are a number of proxies that could be used to evaluate potential economic development impacts of transit investments, 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. In short, we believe that there are a number of commonly used indicators of economic development that could be incorporated into the transit project evaluation process.

Why is a focus on economic development and land use so critical?

The Center for Transit-Oriented Development has estimated the demand for housing near transit to increase to almost 15 million U.S. households by the year 2030, roughly a quarter of all renters and buyers, and a more than doubling of demand from the 6 million households that live near transit today. This is a tremendous potential increase. If we are to come even close to achieving it, we need more transit investment and we need to reduce regulatory barriers that still make mixed-use, more compact development illegal in many communities. In addition, we need to maximize opportunities to leverage public resources and reduce the funding and bureaucratic silos between housing, transportation, and economic development.

In addition to strengthening the focus on transit's role in leveraging and spatially focusing economic development, I'd also like to highlight some of the social equity needs of transit-supportive land use policies. A recent report funded by the Ford Foundation and prepared by our

Center for TOD finds that neighborhoods near transit already support more racial and economic diversity than the average census tract, and that they are home to a greater share of a region's lower-income households. The data also shows that in three-quarters of these "transit zones" – defined as the half-mile radius around stations -- households have one car or no cars. This low-rate of auto ownership indicates that residents do realize the cost-savings that comes from lower auto ownership. Our work, sponsored by the Brooking Institution, found that while the average American family spends roughly 19 percent of its household budget on transportation, households with good access to transit spend just 9 percent.

But as the demand increases and the market heats up for land and housing in these neighborhoods, the threat of displacement is very real, forcing households to lose potential affordable transportation and affordable housing options if they are pushed out of transit accessible neighborhoods.

One way to ease affordability pressures and keep rents and home prices down is to increase the overall supply of housing near transit. If more mixed-income housing is built near transit, displacement pressures in desirable neighborhoods could lessen. Another option is to increase the amount of frequent transit that is available in regions. Thus, the rules that we use to evaluate proposed transit projects should not get in the way of building transit.

In 2005, the Federal Transit Administration (FTA) and the US Department of Housing and Urban Development (HUD) commissioned their first collaborative research effort to examine the linkages between transit-oriented development and the effectiveness of strategies to ensure mixed-income housing near transit. My organization led this research effort, and earlier this summer released the final report, called *"Realizing the Potential: Opportunities for Expanding Housing Near Transit."* We examined five case study regions – Boston, Massachusetts; Charlotte, North Carolina; Denver, Colorado; the Twin Cities, Minnesota; and Portland, Oregon – and their proactive strategies to create and preserve mixed-income housing near transit. The study was cited in the FY08 House Transportation, Housing and Urban Development Appropriation's Committee Report, including a recommendation to continue the work of the initiative.

The Federal New Starts and Small Starts program sets the rules for engagement in how communities coordinate proposed transit investments with larger regional decisions about population growth and economic development. Our nation is facing significant challenges to maintain our economic competitiveness, address global climate change, meet the demands of projected population growth, and preserve our quality of life. Expanding the number of regions with high quality transit, and growing existing transit systems is critical to achieving these goals. Congress has recognized the importance of these issues by ensuring that federally-funded transit projects are financially sound, cost-effective, leverage economic development and include transit-supportive land use policies. These criteria help put America on the path to success.

I urge you to remain steadfast in your intent to implement this Congressional directive. We need a strong partner for communities trying to create new transit investments that provide residents with greater transportation choice, use transit as a development strategy, and promote more travel options that reduce greenhouse gas emissions. We cannot afford a Federal transit policy that may result in less transit being built, or that makes it more costly and uncertain to obtain Federal funding.

The Center for TOD would welcome the opportunity to work with FTA to make progress in identifying strategies to give greater clarification and weight to economic development, land use and transit-oriented development in the New Starts evaluation process.

Thank you very much for this opportunity to appear before the Committee today.

Attachment A

Table A. Projected versus Actual Ridership on New Rail Lines

System	System/Line Start	Estimate	Estimated Year	Most Recent	Date
Denver System (Pre SE^)*	1994#	22,000	2015	37,400	Q3 06
Salt Lake City System*	1999	34,600	2010	47,900	Q3 06
St. Louis System**	1993	86,340	2020	88,000	8.07
Houston Main Street*	2004	33,100	2020	40,000	Q3 06
Minneapolis Hiawatha*	2004	24,800	2020	34,000	Q3 06
Sacramento Folsom Ext.	2005	3,154	2015	6,455	10.06
Tacoma Link	2003	2,000	2010	2,873	Q1 07
Portland Westside Max*	1998	27,100	2005	32,700	10.05
Portland Streetcar	2001	3,200	2001	8,800	10.06
St. Louis St. Clair Ext Line*	2001	13,502	2010	14,083	11.03
Denver Southeast Corridor*	2006	38,100	2020	33,323	3.07
NJ Riverline	2004	5,900	2004	7,700	Q4 06

* New Starts Estimated Project

** Projections for 2020 done in conjunction with estimations for 2006 Cross County Line, not a New Start

\# Projections for Denver System made with Southwest & Platte Valley Extensions built in 2000 and 2002 respectively

^ Southeast Corridor Completed in 2006

Statement of
James S. Simpson
Administrator
Federal Transit Administration
U.S. Department of Transportation

Before the
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives
FTA Implementation of the New Starts and Small Starts Programs

September 26, 2007

Good morning, Chairman DeFazio, Ranking Member Duncan, and Members of this Subcommittee. Thank you for the opportunity to testify today on the recent Notice of Proposed Rulemaking (NPRM) on the Federal Transit Administration's (FTA) New Starts and Small Starts programs, which are among the Federal government's largest discretionary programs. This Proposed Rule is intended to continue and strengthen our successful management of this important program. Our goal for New Starts remains to deliver the best projects, on time and within budget, that realize the benefits projected. At the same time, we want to streamline the New Starts process so that decisions are made more quickly and projects are delivered sooner.

As I testified in May, we believe FTA's management of the New Starts program fosters highly successful Federal-local partnerships that benefit millions of Americans across the country on a daily basis, with additional transportation capacity and increased travel choices available to both transit riders and users of our Nation's highway system. At that time, I reported that we were focusing on continuous improvement of the New Starts program, by planning to implement a number of management changes and by issuing the NPRM which is the subject of this hearing. I am pleased to report today that we have made substantial progress on these process improvements. In addition, the NPRM proposes to codify a number of regulatory improvements to the New Starts process that we have already implemented as policy.

New Starts Program Status

Since the passage of the Intermodal Surface Transportation Efficiency Act of 1991, FTA has provided nearly $13.7 billion in New Starts funds to help build 27 light rail, 19 commuter and heavy rail, and a number of streetcar, bus, and other transit projects with total project costs of approximately $41.8 billion. Since June 2006, FTA has executed 6 Full Funding Grant Agreements (FFGAs) with a Federal share of $3.42 billion, and total project costs of approximately $10 billion. Our most recent FFGA, with the Tri- County Metropolitan Transportation District for the Portland, Oregon, I-205/Downtown Mall Light Rail Transit project, was executed on June 19, 2007. On August 1, 2007, we transmitted an FFGA for the Norfolk Light Rail project to Congress for 60-day review and on September 18, we transmitted an FFGA for the Second Avenue Subway project in New York City to Congress.

In its May 10, 2007 report, the U.S. Government Accountability Office reiterated that our New Starts evaluation process "could serve as a model for other transportation programs." The NPRM we are discussing today continues our efforts to ensure that we make the best investment choices and provide strong oversight. Granted, we have some work to do in streamlining the Small Starts application and implementing other changes in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), but the New Starts program remains the gold standard of Federal funding programs. FTA's current portfolio of projects under construction, which total $21.5 billion in project costs, is being managed to within 0.5 percent of the FFGA baseline and cost estimates; this demonstrates that our processes are working. The challenge of producing accurate travel forecasts remains significant, as our forthcoming Contractor Performance Report will indicate, even as we have seen recent improvements. While we have done well in the post-FFGA world, it is clear that we need to increase our focus on improving the accuracy of traffic and revenue forecasts in order to ensure that Federal transit investments are cost beneficial. Improving the reliability of project cost and benefit estimates will help ensure that Federal investment in transit is directed to the most worthwhile projects and also improves the information available to support local decision-making. The result is successful projects that ultimately foster Federal and local commitment to additional investment in transit.

Progress in New Starts Process Improvements

As I testified last May, FTA strives for continuous process improvement, quality, and increased customer satisfaction. At that time, we had just completed our New Starts Process Review conducted by Deloitte Consulting, LLP, and were beginning to implement several of its recommendations. The Report made a series of recommendations in each of four general areas: project development and evaluations processes; New Starts process management; FTA's organizational structure; and, improved communications. Let me briefly describe our progress to date in each area.

With respect to **streamlining project development and evaluation** processes, in our June 2007 *Final Policy Guidance on New Starts and Small Starts*, FTA eliminated a number of New Starts reporting requirements, including, for many projects, the need to re-report any criteria on an annual basis. Second, as part of the NPRM to be discussed in more detail later, we are proposing the use of Project Development Agreements under which a New Starts project sponsor and FTA would agree to key project development deliverables and schedule and clarify FTA and local expectations for demonstrating project development progress. Third, FTA unveiled a program of guidance and training in project risk management. Finally, FTA has made significant progress in implementing the Public-Private-Partnership Pilot Program, by selecting three projects in which to participate. We believe Penta-P will be a successful extension of the Federal-local partnership, which can result in more efficient Federal investments in new major public transit capital projects.

New Starts process management improvements are exemplified by our recent publication of several important new industry guidance documents. These include methods to capture previously unmeasured benefits in local travel forecasting procedures and a Preliminary Engineering "checklist," which clarifies in one source document, the distinct requirements for advancing projects into this project development stage. Further, FTA released the first set in a series of New Starts "fact sheets" – one page synopses geared to local policymakers and agency staff alike. These fact sheets describe the guiding principles supporting New Starts activities, including project development, evaluation, technical competencies, and FTA requirements. Finally, FTA is implementing a pilot internet-based case management system designed to respond to the need for better tracking of project deliverables, FTA review periods, FTA comments and direction, and grantee responses to that direction.

The third theme focuses on **FTA's own organizational structure**. FTA has made substantial progress in implementing the "New Starts Team" concept, designed to bring together technical and programmatic resources to deliver responsive technical assistance and to bring a "problem-solving" attitude to the implementation of our program. We recently published internal standard operating procedures for the New Starts Teams and earlier this month provided training to key members of the New Starts Teams from Headquarters and the Regional Offices on a wide range of New Starts program operational issues. This training included over 60 staff from FTA Regional Offices, making it the largest internal meeting the agency has held in almost 10 years.

Finally, we have made significant progress in improving **communications** with program stakeholders. Many of FTA's initiatives, such as enhanced guidance, FTA procedural and technical requirements and expectations training, a transparent New Starts case management system, and clearer lines of FTA responsibility contribute to improved communications. During this year, we continued the popular "New Starts Roundtable" discussions with transit agency staff and will be conducting extensive outreach on the New Starts NPRM.

Development of the Notice of Proposed Rulemaking and Final Rule

As you know, FTA published a Notice of Proposed Rulemaking (NPRM) on New Starts and Small Starts in the *Federal Register* on August 3, 2007. This document represents the culmination of a significant effort to obtain input from key stakeholders. The issuance of the NPRM is consistent with requirements in SAFETEA-LU for FTA to provide notice of any changes in policy or procedures in general, and in the New Starts program in particular. Accordingly, on January 19, 2006, FTA published a Federal Register Notice of Proposed New Starts Policy Guidance that included as Part 2 a series of key questions that would become the subject of this NPRM. Because of the wide range of issues that needed to be addressed in some detail on the new Small Starts program, on January 30, 2006, FTA published an Advance Notice of Proposed Rulemaking (ANPRM) on Small Starts. FTA provided further opportunity for public involvement by holding three listening sessions (in San Francisco, Fort Worth, and Washington, D.C.) in February and March of 2006.

FTA received over 70 written comments on the draft of the New Starts Policy Guidance and its related policy issues and over 90 comments on the Small Starts ANPRM. In response, on May 22, 2006, FTA published final New Starts Policy Guidance and FY 2008 Reporting Instructions for the New Starts program. FTA is also providing further responses to these comments in this NPRM. After a period of public review and comment, FTA published additional policy guidance on June 4, 2007, which included the aforementioned streamlined reporting of the New Starts criteria for annual evaluation.

I would note that we are planning extensive outreach on the NPRM we have just issued. We have already held two outreach sessions (in Los Angeles and Denver) and one is being held in Chicago today. Two more outreach sessions are scheduled, one in Washington, D.C., on October 2, 2007, and a final session, in coordination with the American Public Transportation Association's Annual Meeting in Charlotte, N.C., next week. At these sessions, FTA staff will provide further explanation of our NPRM and related proposed evaluation measures, and invite public comment to the docket, which closes on November 1, 2007.

Once the docket closes, we plan on closely examining the comments we have received. Given the apparent stakeholder interest on this topic, and on the NPRM itself, we expect that it will take some time to carefully consider input and to prepare a Final Rule. We expect that the Final Rule will be issued some time in 2008.

Summary of the Notice of Proposed Rulemaking

The NPRM implements the changes made in the New Starts Program and in the establishment of the Small Starts Program, as provided for in SAFETEA-LU. Key features include:

- Formal establishment of a streamlined Small Starts program for projects requesting less than $75 million in Federal Capital Program funds and with a total cost of not more than $250 million;
- Codification of an even-more-streamlined Very Small Starts program for projects costing less than $50 million which have certain characteristics;
- Making substantial bus corridor improvements (like Bus Rapid Transit) eligible for Small Starts funds;
- Full consideration of all statutory project justification criteria (including the land use and economic development benefits of New Starts projects);
- Enhanced attention to the congestion mitigation impacts of New Starts projects; and
- Continued emphasis on assuring that only cost-effective projects are recommended for Federal funding.

Small Start and Very Small Starts

The Small Starts program is a significant departure from the traditional New Starts program, which has long required as a defining feature of eligibility a "fixed guideway," that is, either an exclusive or semi-exclusive transit right-of-way or in-street rail operations. SAFETEA-LU established the Small Starts program to advance lower-cost fixed guideway and non-fixed guideway projects such as bus rapid transit, streetcars, and commuter rail projects through an expedited and streamlined evaluation and rating process. Many of the Small Starts program features included in the NPRM were initiated in the Interim Guidance on Small Starts that we issued in August 2006. For example, the NPRM provides details on requisite features of a non-fixed guideway project in order for a project to qualify. Small Starts project justification includes only cost effectiveness and two measures of project effectiveness: land use and economic development benefits and mobility. Project justification may be made based on simplified travel demand forecasts based on year of opening, rather than a complex, twenty-year forecast. Local financial commitment is assessed based on a short-term financial plan that demonstrates the capacity to build and operate the proposed project, again in the first years of operation.

In the Interim Guidance issued in August 2006, FTA introduced a project concept called "Very Small Starts." The NPRM proposes to continue this approach for simple, low-risk projects. These types of projects would qualify for a highly simplified project evaluation and rating process by FTA. A project would be required to be a bus, rail or ferry project, contain certain features and have a total project cost of less than $50 million. Such projects, by their nature, have sufficient benefits to rate well without further analysis.

Project Justification and Local Financial Commitment Criteria

A key feature of the New Starts portion of the NPRM is the consideration of all of the project justification criteria provided for in SAFETEA-LU. In recent years, while FTA has gathered and reported information on all of the criteria, only cost-effectiveness and land use have been weighed in assessing overall project justification. The NPRM changes this by reorganizing the justification criteria into cost-effectiveness and several measures of effectiveness (land use and economic development benefits, mobility improvements, and environmental benefits) and by clarifying that operating efficiencies are covered by cost-effectiveness.

In doing so, FTA expands the evaluation of the economic development benefits of proposed New Starts and Small Starts projects in a new combined measure of land use and economic development benefits. FTA continues to believe that it is extremely difficult to discern economic development benefits from land use benefits. FTA's current measures for transit supportive land use do, in fact, qualitatively capture the potential for economic development in a New Starts corridor. However, the NPRM provides an opportunity for input on how we might better distinguish between land use and economic development effects of transit investments. We have engaged a consultant to assist us in this matter and to provide us with technical advice on how to improve our approach to measuring these important benefits. Finally, the NRPM continues to include an assessment of transit supportive land use policies and patterns, which is a current part of our evaluation criteria, as part of the assessment of the reliability of the project justification evaluation.

While we believe that the approach we have proposed for evaluation of the land use and economic development benefits of proposed investments is workable, it would be desirable to develop approaches that could measure these benefits more directly. At present, our measure of effectiveness includes the mobility benefits attributable to the proposed transit project, and hence forms the core of our analysis of cost-effectiveness. However, that measure is necessarily limited to those benefits which can be reliably measured using well-defined travel demand models. The NRPM includes a question seeking input on how FTA might implement improved measures of project merit that would include the land use and economic development benefits more directly.

The NPRM continues our current approach for evaluating local financial commitment. Project sponsors must develop financial plans that indicate sufficient resources to build and operate the proposed project, as well as to maintain and operate the transit system as a whole. For New Starts projects, the financial plan must cover a 20 year planning horizon. For Small Starts projects, the plan can cover the period up through revenue service, which reflects the smaller scale, and relative simplicity of these projects. The NPRM continues to emphasize the importance of the amount of the local financial contribution, providing a higher rating for those projects which overmatch the Federal investment, thus continuing our longstanding practice of rewarding those projects which help leverage the scarce Federal investment dollar, allowing for more worthy projects to be funded with Federal support.

Traffic congestion is a major issue in the urban areas where New Starts projects are being considered. When investments in transit are made in coordination with congestion reduction plans that include effective road pricing strategies, we believe such projects have greater potential to relieve road congestion. Accordingly, the NPRM proposes to consider the relationship of the project to road pricing strategies as an "other factor" in evaluating project justification. In addition, the NPRM includes evaluation of the congestion reduction potential of the proposed investment in the assessment of the mobility benefits of the project. Finally, the NPRM asks for input into how FTA could include highway system user benefits as part of the measure of mobility improvements counted in calculating the cost-effectiveness of the proposed project. While the definition of "user benefits" is proposed to continue to include such benefits, FTA has not been able to do so because the forecasts of such benefits have not been consistent or reliable. Input on this topic, as well as research DOT will initiate on this topic, could provide a basis to include these benefits in our calculations.

While cost-effectiveness is only one portion of the project justification criteria, the NPRM proposes to make permanent our current policy of recommending for funding only those projects which rate at least "medium" on this measure. Projects that have lower cost-effectiveness ratings may continue through the project development process and be approved for Preliminary Engineering and Final Design, in order that they have an opportunity to continue project development. Such projects could either find ways to reduce costs or improve on the benefits forecast, and thus qualify for a funding recommendation, or to develop an alternative financing plan which would not involve New Starts funds (but could use other FTA formula funds, flexible Title 23 funds, or local funds). However, we would not expect such projects to receive Full Funding Grant Agreements (for New Starts) or Project Construction Grant Agreements (for Small Starts).

We believe that it is appropriate to include this requirement in the NPRM and Final Rule since cost-effectiveness is the only measure that compares a project's benefits to its costs. The measure of effectiveness we use—user benefits—is an objective, quantifiable measure of benefits. It is based on the same travel models that forecast the project's ridership and that support the metropolitan planning process. User benefits are made up of travel time savings and other less tangible benefits such as improved reliability and predictability, ride quality, sheltered waiting and other comfort and convenience factors. User benefits are a good surrogate measure for other benefits such as improved accessibility and mobility (the more travel time savings which can be measured the more accessible certain locations become). User benefits also can reflect the propensity for increases in property values (which is likely to occur based on how much more accessible certain locations become).

Our assessment of cost-effectiveness essentially considers such other benefits as mobility improvements, environmental benefits, congestion reduction, and land use and economic development to be directly proportional to the user benefits we measure. A project with a high rating on cost-effectiveness almost always has high ratings on other factors such as mobility improvements and environmental benefits, in particular.

Conclusion

Chairman DeFazio, Ranking Member Duncan, and Members of this Subcommittee, FTA is committed to the New Starts and Small Starts programs. We believe that the NPRM we have issued provides a good basis on which to make continued improvements to the management of this important program. We remain committed to streamlining project delivery while providing strong project management oversight. We strive to bring good projects in on-time and within budget. We are enhancing customer service through improved communications. We look forward to working with Congress on these and other issues facing our Nation's public transportation system. I will be happy to respond to your questions.

Administrator James S. Simpson's Responses to Questions for the Record
From the Subcommittee on Highways and Transit
Hearing on FTA's Proposed Rule on New Starts and Small Starts Programs
September 26, 2007

Responses to Questions from Representative Peter DeFazio, Chairman

1. Regarding the inclusion of congestion pricing into a project's summary rating, you testified that, "It would only help, it wouldn't hinder." Additionally, you said, "we know of no area where anybody would be penalized as a result of not implementing a congestion strategy." How was your testimony consistent with language in the NPRM on page 43368 which states, "Other factors will be considered and applied by adjusting, either upward **or downward**, the summary project justification rating." (Emphasis added.)

Response

Section 611.21 (e) contains the proposed language you cite. It is conditioned upon section 611.21(b)(3)(ii), which states "Depending upon the applicability, also considered will be the following factors." Following this text is a description of the congestion pricing factor, factors that the project sponsor believes are not captured in the other project justification criteria, and factors deemed important by the Secretary. If an area does not have a congestion pricing strategy, the provision in section 611.21(b)(3)(ii) means that factor would not be applicable.

This condition is also described in FTA's document titled, "Proposed Policy Guidance on Evaluation Measures for New/Small Starts," issued concurrently with the NPRM. Quoting from section 2.1.4 of the proposed guidance, "FTA proposes to incorporate under "other factors" two specific considerations. 1) if a proposed Small Starts project is a principle [sic] element of a congestion management strategy, in general, and a pricing-strategy, in particular, the project justification rating will be increased if near a breakpoint. 2) FTA proposes to rate the degree to which a Small Starts project addresses significant transportation problems or opportunities in a corridor and the appropriateness of the preferred alternative as a response by reviewing the contents of the 'make-the-case document' as a standard criterion under 'other factors.' In cases where a project's justification rating is near a breakpoint, a 'high' make-the-case rating will increase the project's rating, and a 'low' make-the-case rating will decrease the rating. Moreover, FTA will continue to encourage the reporting, under 'other factors,' of any information on significant project benefits that project sponsors do not think is captured under the other criteria."

2. There have been concerns voiced about the proposed rule's expanded eligibility, specifically to allow New Starts funds to be used to build high occupancy toll (HOT) lanes. What is FTA's express statutory authority to amend the regulatory definition of a fixed guideway?

Response

On many occasions FTA has awarded New Starts funds for the construction of Bus and High Occupancy Vehicle (HOV) lanes. Recent experience has proven that buses and high occupant vehicles can operate very effectively on roadways shared with vehicles that pay tolls, and specifically, that Bus Rapid Transit systems can operate well in mixed traffic. Moreover, a number of HOV lanes across the United States offer a good deal of excess (unused) capacity, which makes them ideal for conversion to High Occupancy/Toll (HO/T) lanes, for the twin purposes of managing traffic and raising revenue for operation and maintenance of the lanes. Thus, consistent with longstanding practice and the most fundamental objectives of public transportation, FTA now proposes to allow the use of section 5309 Major Capital Investment (New Starts) funds for the construction of the transit elements of HO/T lanes, under certain specified conditions. *See,* the proposed regulatory definition of "fixed guideway system," 72 Fed.Reg. at 43362 and the preamble to the proposed rule, 72 Fed.Reg. at 43329 (August 3, 2007).

The use of section 5309 New Starts funds is limited by statute to projects that use a "fixed guideway." In pertinent part, 49 U.S.C. § 5302(a)(4) defines a "fixed guideway" as "a public transportation facility . . . using and occupying a separate right-of-way or rail for the *exclusive* use of public transportation and other high occupancy vehicles . . ." (emphasis added). In interpreting and carrying out this statute, FTA has always required a grantee to ensure that the public transportation service on the Federally-funded facility will be "exclusive" – even if the fixed guideway is shared by other forms of traffic – in that the service will be reliable and free-flow, uninterrupted by congestion. For example, FTA-funded commuter rail projects often share their fixed guideways and rights-of-way with freight and inter-city passenger rail operations, and FTA-funded ferry boats, which operate on *de facto* fixed guideway routes, often accommodate passenger automobiles in their hulls, without any loss of travel time or trip reliability to the users of the public transportation system, and in concert with freight vessels in the same waters.

As a practical matter, the term "exclusive" in the statutory definition of "fixed guideway" is in harmony with the principle of permissible "incidental use" of Federally-funded public transportation facilities and equipment. FTA defines "incidental use" as "the authorized use of real property and equipment acquired with FTA funds for purposes other than provision of [public transportation] service. Such use must be compatible with the approved purposes of the project and not interfere with intended [public] transportation uses of project assets." *See,* FTA's Circular 5010.1C (Grant Management Guidelines, Oct. 1, 1998)), Chapter II, Section 1.h. Consistently, courts have allowed the "incidental use" of Federally-funded infrastructure; one such instance is the case of *Town of Secaucus v. U.S. Dept. of Transportation*, 889 F.Supp. 779 (D.N.J. 1995), in which the court held that FTA funds could be used to help finance building foundations and utility work that would accommodate both a multiple-track-and-platforms rapid rail transit center and office towers on top of that center. More routine examples of "incidental use" are the use of transit park-and-ride lots for commercial, retail, and entertainment establishments, and the use of transit tunnels for fiber-optic cables. And in several instances, FTA grantees are allowing single-occupant vehicles the "incidental use" of FTA-funded Bus and HOV lanes in off-peak commuting hours.

Earlier this year, FTA issued a statement of policy regarding permissible conversion of FTA-funded Bus and HOV lanes to HO/T lanes and parameters under which HO/T lanes may be counted as "fixed guideway miles" in the National Transit Database (NTD) and for purposes of participation in the section 5307 Urbanized Area and section 5309 Fixed Guideway Modernization formulae programs. 72 *Fed. Reg.* 1366 (January 11, 2007). (FTA has long classified High Occupancy Vehicle (HOV) lanes as "fixed guideway miles" for the purpose of participation in the sections 5307 and 5309 formulae.) The proposed terms for HO/T lane eligibility for New Starts funds under the August 3, 2007 Notice of Proposed Rulemaking (NPRM) for New Starts are consistent with those of FTA's January 11, 2007 statement of policy on counting HO/T lane mileage as "fixed guideway miles" in the NTD. Most notably, the New Starts NPRM proposes to limit the use of section 5309 New Starts funds to the transit elements of HOT lane facilities, and the facilities must be "designed so that in any given month (i) transit vehicles utilize the transportation facility on a barrier-separated right-of-way; and (ii) by means of tolling or other enhancements, 95 percent of the transit vehicles using the facility will be able to maintain an average speed of not less than 5 miles per hour below the posted speed limit for the time they are on the facility." FTA is confident that these two conditions would continue to ensure trip reliability and travel time savings for bus and HOV riders on fixed guideway facilities that are also used on an "incidental" basis by drivers of single-occupant vehicles who pay tolls to gain access to those facilities.

3. How many streetcar projects have received federal New Starts funds to date? Please provide the Committee a list of such projects.

Response

Since the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), FTA has funded two streetcar projects through Full Funding Grant Agreements (FFGA). The table below identifies those projects.

Project	**City**	**State**	**FFGA Approval**	**Total Cost**	**New Starts Amount**
Medical Center Extension	Memphis	TN	Dec.-00	$74,584,773	$59,667,818
Canal Street Corridor	New Orleans	LA	Feb.-03	$161,308,763	$129.047,010

Outside of an FFGA, FTA has also funded the River Rail Project in Little Rock, Arkansas. The project is a 2.6-mile vintage streetcar system with nine stops. Its capital cost was $15.1 million with a New Starts share of $8.6 million, making it exempt from both the New Starts criteria and FTA's ability to fund it under an FFGA.

4. How many rail projects have been built, using federal New Starts funds, for less than $3 million per-mile? Please provide the Committee a list of such projects.

Response

Since ISTEA, FTA has not funded any major capital investment projects costing less than $3 million per-mile.

5. Nothing in SAFETEA-LU states that quantitative measures are to be given greater value than qualitative measures among the project justification criteria. Nevertheless, FTA is undervaluing land use and economic development until it can develop a complex predictive model, which may be an inappropriate method to evaluating a project sponsor's commitment to coordinating land use and development, and market dynamics. What steps is the agency taking to develop a range of both qualitative and quantitative indicators?

Response

FTA is not undervaluing land use and economic development until it can develop a predictive model. For the assessment of economic development/land use, FTA proposed a qualitative evaluation process in the NPRM. FTA proposed to evaluate five key factors that the transportation economics literature suggests are necessary for transit investments to have an impact on economic development. The factors are:

1) the degree to which the project improves accessibility in the project corridor,
2) the existence of developable property in the project corridor,
3) the economic conditions in the corridor and region,
4) the degree to which land-use plans and development policies promote additional development in the corridor, and
5) the permanence of the proposed transit investment

FTA will combine these factors into an indicator of the likelihood that a proposed project will result in significant economic development impacts and rate this factor accordingly as a measure or project justification.

Further, FTA is pursuing a research project to explore whether or not a predictive tool could be developed to estimate the economic development benefits of transit investments. If this effort is successful, FTA may replace the proposed qualitative approach described in the NPRM with a quantitative measure at some point in the future. FTA's pursuit of this research project has no bearing on the implementation of the qualitative measure described in the NPRM.

6. SAFETEA-LU states that DOT cannot require a local match above 20 percent, but in the NPRM, FTA states that it will not rate local financial commitment below medium so long as the project sponsor demonstrates that the 20 percent match is based on limited fiscal capacity of the state and local governments.

a. How is FTA's requirement that projects demonstrate that its 20 percent match is based on the limited fiscal capacity of the state and local governments consistent with this SAFETEA-LU provision?
b. How will FTA consistently evaluate whether the 20 percent match is based on the limited fiscal capacity of the state and local governments?

c. What type of documentation will DOT ask sponsors to submit to ensure this requirement is met?

Response

a. FTA believes the proposed method in the NPRM for evaluating local financial commitment of New Starts projects is consistent with direction in SAFETEA-LU. Although 49 U.S.C. 5309(h)(5) states that FTA cannot require a local match above 20 percent, section 5309(d)(4)(B)(v) states that, "the Secretary shall consider the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project." Further, section 5309(d)(4)(C) states that, "if the Secretary gives priority to financing projects under this section that include more than the non-federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of state and local governments."

In the NPRM and corresponding policy guidance, FTA proposes to develop the local financial commitment rating for New Starts projects by equally weighting the ratings of the capital and operating financial plans. If the amount of New Starts funding requested is less than 50 percent of the total project cost and the project has an overall local financial commitment rating of "medium" or "medium-high," the rating would be increased one level.

FTA stated in the NPRM and policy guidance that while it will not use the section 5309 funding request to reduce the overall local financial commitment rating below "medium," it will reward projects for requesting a lower section 5309 share as discussed above and by giving them funding priority.

b. The NPRM is silent on how FTA will evaluate the limited fiscal capacity of state and local governments and the type of documentation project sponsors will be required to produce to prove such a limitation. Many such details are left out of the NPRM and will be determined at a future date through the notice and comment process established for FTA's New Starts policy guidance.

c. See answer to 6.b. above.

7. You testified that, "The station area forecasting method was also somewhat unsatisfactory in that the impact of the transit investment on development patterns was not significant in FTA's test cases." Which cases did FTA test and what were the results?

Response

FTA attempted to devise an econometric model that would measure the impact of proximity to rail stations on actual development activity. FTA used over 10 years of building permit data from Portland, OR and Baltimore, MD in this analysis. Based on previous empirical studies, FTA expected the Portland model to produce the strongest results. However, the Portland model indicated that zoning and the economic climate were the dominant factors explaining variation in development densities. Proximity to transit was not a significant factor in explaining the amount of development in Portland.

Surprisingly, distance to a rail station was a significant determinant of development densities in Baltimore though still less important than zoning and economic trend variables. However, the Baltimore results are very likely to be misleading because of data problems. The researchers speculated that the inclusion of some large re-developable former industrial parcels near commuter rail stations appear to have biased the results. These parcels offered exceptional development opportunities and would have likely been redeveloped regardless of their proximity to commuter rail. The likely result in the model is a false correlation.

8. You registered concern with possibly double counting economic development and land use benefits, but doesn't FTA's process often double count mobility and user benefits?

Response

FTA's approach to addressing project justification in the NPRM is to divide project benefits into two major categories – those that relate to the project's effectiveness in addressing problems that have been identified and the cost effectiveness of the project. Effectiveness criteria address what the project accomplishes in terms of the magnitude of the benefits it provides. Cost effectiveness addresses the magnitude of the project's accomplishments, but considers the costs associated with this. User benefits are used in both the effectiveness criteria and the cost effectiveness criterion, but using that measure in no way results in double counting as effectiveness and cost effectiveness address very different impacts of projects. A project that has enormous mobility impacts (and possibly a high rating for effectiveness) could have poor cost effectiveness because its high costs are not commensurate with its benefits. The converse is also true that a project with a less robust impact on mobility (and possibly a low rating for effectiveness) could have superior cost effectiveness because it has lower costs that are commensurate with its benefits. FTA believes, and its guidance has reflected for over two decades, that the principle that a project's effectiveness and cost effectiveness are both important considerations in evaluation. The measure for cost effectiveness is the incremental capital, operating and maintenance costs of the project divided by the user benefits as compared to a baseline alternative. FTA aspires to make the cost effectiveness measure more robust by eventually including benefits other than those for transit users. These could include reliable measures of highway congestion relief and economic development when these effects can be forecasted with a level of reliability similar to our current procedures for transit user benefits.

9. FTA states in the NPRM that developing a measure for economic development would be "overly burdensome and costly" to create. Please provide the Committee with the cost estimate or regulatory analysis that serves as the basis for this conclusion.

Response

In the referenced section of the NPRM, FTA is referring to the application of regional economic models that can be used to estimate the economic impact of any transportation investment. Several companies market regional economic models with prices ranging from $50,000 to

$100,000. Once the model is purchased considerable effort is required to assemble the information needed to populate the model. As with all models, additional agency staff time and consultant expense would be needed for calibration, validation, and application to make any necessary modifications to improve its operations. FTA concluded that these costs and staff effort, if they were required of every agency, would be overly burdensome and costly. FTA remains open to implementing such an approach if other quantitative or qualitative methods prove unsatisfactory.

10. Several witnesses testified to the burden and cost of implementing FTA's Summit software and the Transportation System User Benefit calculation. Please provide the Committee with a cost estimate for the implementation of TSUB and Summit software used to determine the cost effectiveness of a project. Please include in the cost estimate costs borne by Federal, State and local governments.

Response

Summit is a stand-alone computer program developed by FTA staff that does two things. First, it uses locally prepared ridership forecasts for the baseline and build alternatives to compute user benefits for proposed New Starts projects. Second, it provides a variety of analytical reports on the computed user benefits and the locally prepared ridership forecasts. FTA needs the user benefits calculation to quantify the mobility and cost-effectiveness measures used to evaluate New Starts projects. FTA needs the analytical reports to support quality-control reviews of the underlying ridership forecasts and ensure their usefulness for project evaluation and rating.

Implementation of Summit requires a small modification of local forecasting tools to write out computer files that are read by Summit. When FTA introduced user benefits and Summit in 2002, FTA contracted with two consulting firms to make these modifications for local agencies with projects in the New Starts pipeline at that time. The typical cost for these retrofits was between $5,000 and $6,000 per project. Since then, the modifications have become standard practice for local updates of forecasting tools and the incremental effort needed to include the Summit interface is certainly less than for the earlier retrofits. These costs are now born either by agencies sponsoring New Starts projects or by metropolitan planning organizations (MPOs) making routine updates of area-wide forecasting tools. There are no other implementation costs for either Summit or the calculation of transportation system user benefits (TSUB) that are computed automatically by Summit. Assuming 15 new implementations annually at an average cost of $5,000, the annual implementation cost of Summit is approximately $75,000 nationally.

Since implementation, Summit has proven to be a highly effective mechanism for improving the reliability of ridership forecasts for New Starts projects. FTA reviews of initial results for various projects in 2002 and 2003 identified serious and widespread distortions in the existing forecasts. Subsequent work by sponsoring agencies led to substantial improvements in local forecasting tools, the definitions of the alternatives themselves, and the usefulness of the revised forecasts of ridership, mobility benefits, and cost-effectiveness. Since then, project sponsors have routinely used Summit reporting of local prepared ridership forecasts to ensure the usefulness of information used by local agencies and by FTA to understand and evaluate the mobility benefits of proposed New Starts projects. Summit is finding non-new starts applicability as well, in its use as a tool for evaluation of transportation alternatives. For example, the MPOs for the Boston and Atlanta metropolitan areas are now using Summit for quality control and evaluation in the development of the transit and highway projects included in their metropolitan transportation plans.

The impact of FTA's activities has been recognized by the National Academy of Sciences in a June 2007 report, "Metropolitan Travel Forecasting: Current Practice and Future Direction" (Transportation Research Board Special Report 288) in the following statement:

> "The committee believes the Federal Transit Administration (FTA) is to be commended for taking steps to ensure quality in the travel forecasting methods used for major project planning. In particular, FTA initiatives to ensure the quality of New Start ridership, revenue, and cost information have been useful in uncovering weaknesses in model practice and form." (See page 4 of the report.)

FTA views the minor costs of Summit implementation to be well worth the substantial improvements that have resulted in the quality of information available to evaluate the merits of proposed New Starts projects.

11. Please provide the Committee with a list of those New Starts projects which, at the time of the signing of the FFGA, had achieved and maintained a "High" cost effectiveness rating, since 2001.

Response

Since 2001, FTA has executed FFGAs for 2 projects that achieved and maintained a "High" cost-effectiveness rating. They are as follows:

Project	City	State	Total Cost	New Starts Amount
Oceanside Escondido Rail Project	San Diego	CA	$351,520,000	$152,100,000
Canal Streetcar Corridor	New Orleans	LA	$161,308,763	$129,047,010

Administrator James S. Simpson's Responses to Questions for the Record from the Subcommittee on Highways and Transit Hearing on FTA's Proposed Rule on New Starts and Small Starts Programs September 26, 2007

Responses to Questions from Representative Grace Napalitano

1. Mr. Simpson, the CEO of L.A. County Metro Roger Snoble has testified in this committee saying that the New Starts Process adds 1-2 years to a project's schedule and increases the cost of the project 10-15%. He suggests that this is due to the ineffective use of a Transportation user benefits system, the overburdensome requirements imposed within the environmental review process, and the requirements by FTA to analyze and review every stage of the project. His concerns are shared by many other transportation authorities around the country. What is FTA proposing in your rulemaking that would alleviate these concerns and speed up the new starts process?

Response

The NPRM provides more clarity for what is to be accomplished at each stage of project development so that projects can move through the process without addressing issues that could have been more effectively addressed in other stages. For example, to avoid past problems that create delays and additional engineering costs in preliminary engineering when planning issues have surfaced, or when costs have significantly increased in final design, FTA has clarified what is to be accomplished in alternatives analysis and preliminary engineering. The NPRM also proposes a project development agreement at entry into preliminary engineering. This agreement identifies principal issues to be resolved, products to be completed during project development, all significant strategies to address them, and schedules for reaching significant milestones during the course of development. Establishment of this understanding between the project sponsor and FTA on major project activities and roles should result in better project delivery.

We do not agree with either the additional time or the increase in costs cited by Roger Snoble. The NPRM continues to require the computation of transportation system user benefits, which have proven to be a more effective measure than previous measures we have used. Any delays in producing forecasts of the transportation benefits of projects have been a result of the inability of local travel models to produce reliable forecasts, not the use of transportation system user benefits. By working with project sponsors early in alternatives analysis and in systems planning, FTA and project sponsors have been able to resolve issues that could cause project delays.

FTA and project sponsors are required to comply with the provisions of the National Environmental Policy Act, as amended. FTA endeavors to ensure compliance as expeditiously as possible. However, because the environmental process requires the coordination and often concurrence by other agencies, FTA is unable to control response times, although the planning and environmental process provisions of SAFETEA-LU, with which we have not had a great deal of experience with to date, should enable FTA to better control response times and other aspects of the NEPA process.

Finally, the reviews that FTA performs address Congressional requirements that FTA funding is directed to only the most meritorious projects. By ensuring project costs, benefits and impacts are reliable; FTA confirms that funding recommendations are made on the best information available. Nevertheless, FTA believes that there is room for reducing the time a project moves through the process. Over a year ago, FTA hired an outside firm to recommend ways that FTA can better streamline the planning and project development process. FTA has received those recommendations, has implemented a number of them, and has established a schedule for addressing the others. The Administrator has set a goal of reducing the time for a project to go through the process by a year. FTA is committed to making constant improvements in the New Starts process both to identify only the best projects for funding and to plan, develop and build those projects as quickly as possible within the stewardship responsibilities we have.

2. Many colleges in my district are teaming up with local transit agencies to create dedicated routes for students to take transit to campus. Additionally, they are finding ways to pay for the fares of students, so that students are able to take transit to school for free. This gives students a life long lesson in the importance of taking transit to school and eventually to work. How can the FTA assist transit agencies and colleges in implementing programs to provide transit service to college campuses?

Response:

Increasing transit ridership is the number one goal of FTA's 2008 Performance Plan, and encouraging transit agencies to work closely with colleges and universities to promote the use of public transportation by students is a critical component of that goal.

Currently, numerous transit agencies, from cities as large as Denver, CO, St. Louis, MO, and Pittsburgh, PA, to smaller towns like Blacksburg, VA, Santa Cruz, CA, and Ames, IA, partner with local colleges and universities to promote students' use of transit. Many transit agencies have added or restructured their routes to serve university students. In fact, FTA has funded light rail extensions in Salt Lake City and San Diego which directly serve major universities and carry thousands of students a day. If a college or university provides its students with free or reduced fare access to the fixed-route transit system, the institution should also make efforts to ensure that comparable service is available to students with disabilities that prevent them from using the fixed route system. FTA is currently working with the Department of Justice and the Department of Education to produce guidance in this area.

It is important to understand that funds provided to a transit system by a local college or university must *not* be used for specific trips by university students and faculty. In this scenario, service must also be open to the public and included in the transit operator's published schedule. For example, funds provided to a transit agency by a university that allow for the expansion of service is permissible. However, if money were provided to a transit system by a local university for rides/trips *specifically* for that university's students and faculty it would be considered farebox revenue and not useable as local match toward Federal transit assistance.

FTA's charter service regulations prohibit FTA recipients from providing any charter service using FTA-funded equipment or facilities if there is at least one private charter operator willing and able to offer charter service in the area. The charter service regulations apply to bus or van service provided by direct recipients, subrecipients, or third party contractors. What is permissible is if a local transit agency is providing a regular fixed route that is open to the public. The fact that a university may be subsidizing student and faculty rides on this route does not turn the service into charter.

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TESTIMONY OF MICHAEL S. TOWNES
PRESIDENT/CHIEF EXECUTIVE OFFICER, HAMPTON ROADS TRANSIT

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
HIGHWAYS AND TRANSIT SUBCOMMITTEE HEARING ON

PROPOSED RULE FOR NEW STARTS PROGRAM

September 26, 2007

Mr. Chairman and the other distinguished members of the Subcommittee, thank you for the opportunity to present testimony to you today regarding the Notice of Proposed Rulemaking ("NPRM") for the New Starts and Small Starts programs that was published on August 3, 2007. While I am the incoming Chairman of American Public Transportation Association ("APTA"), the testimony that I present today represents my views and is not those of APTA regarding the NPRM.

On October 1, 2007, Hampton Roads Transit, the city of Norfolk, Virginia and the entire Hampton Roads region will celebrate the signing of the Full Funding Grant Agreement ("FFGA") for the $232.2 million, 7.4 mile light rail line in the city of Norfolk. I want to thank Congresswoman Thelma Drake for her strong and consistent support for this project, as well as James Simpson, Administrator of the Federal Transit Administration ("FTA"), for his commitment to making this project a reality. We have been through many peaks and valleys in the eight year process of bringing the project to this point in time. We plan on taking some time out to celebrate this momentous occasion and then proceed with the hard work of completing construction for a revenue operations date of January 1, 2010.

Turning to the NPRM, I think I speak for many transit authorities when I express my grave concerns regarding the impact of the NPRM on the future of the New Starts and Small Starts program. The NPRM raises many issues and there is not sufficient time to address each and every one of them in my testimony. Therefore, I would like to focus on the following key issues.

1. *NPRM includes provisions not included by Congress in SAFETEA-LU*

The NPRM also contains provisions that were not addressed by Congress when it adopted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU') but represent substantial changes to the New Starts program. The NPRM would amend the definition of "fixed guideway" and allow New Starts and Small Starts funds to be used for High Occupancy Toll ("HOT") lanes. FTA proposes to allow these monies to be utilized for HOT projects if the project is designed so that "in any given month" transit vehicles are using a "barrier separated" right of way and incorporating tolling resulting in 95 percent of the transit vehicles being able to maintain an average speed of not less than 5 miles below the posted speed limit for the time they are using the facility. FTA proposes to fund that portion of the construction of the HOT lane on which transit vehicles would run or where transit would benefit.

This proposed change is not found anywhere in 49 U.S.C. 5309. Congress is fully capable of amending the definition of what is a "fixed guideway" project, as was done for "corridor-based bus projects" in the Small Starts program. This change is intended to alter the purpose and focus of the New Starts program. HOT lanes are already eligible under the highway program. The only conclusion that can be drawn from this proposed change is that FTA intends to diminish the historical investment in traditional fixed guideway projects.

I would also note that there is no requirement that the transit service which served to establish the amount of section 5309 investment be maintained after the project is built. Why would FTA support funding a project where there is no ongoing commitment to maintaining transit service?

The NPRM includes the following changes to the Small Starts program that were not included in SAFETEA-LU and do not reflect neutrality as to project eligibility.

- Add a service standard of 10 minutes peak and 15 minute off peak.
- The project eligibility criteria in the statute are not incorporated into the regulation as FTA did include "substantial transit stations", "traffic signal priority/preemption", and "low floor buses", but did not incorporate ITS technology, off-board fare collection, park-and-ride lots, next bus technology, and other features.
- Establish a Very Small Starts program in the NPRM but limited eligibility to those projects that cost no more than $50 million and must be less than $3 million per mile.
- Very Small Start projects automatically receive a "medium" rating for each of the project justification criteria while all other Small Starts projects are subject to a much more rigorous review.

The NPRM does not establish a simplified project review process for all Small Starts projects as was intended by Congress and erects a process that clearly favors those advancing under the Very Small Starts program by allowing these projects to proceed with little or no demonstration that they meet the project justification criteria. From my view, this is inconsistent with the statutory provisions of SAFETEA-LU which require all projects with a project cost of $250 million or below and which seek no more than $75 million in New Starts funds to be cost effective, demonstrate their impact on land use and effect on economic development under a simplified project review process.

By not including all project eligibility criteria and adding criteria not included in the statute, FTA proposes to penalize those communities seeking to build Bus Rapid Transit projects that have a different idea regarding the goals and objectives of their projects. The lack of mode neutrality is evident as the NPRM seeks to reward lower cost bus projects and penalize cities that seek to build rail projects which are subject to a much greater and lengthier project review process. It is also very important to note that FTA seeks to include each of these provisions that were not included in SAFETEA-LU in the final rule rather than seeking a statutory change or keeping them in guidance documents.

2. Land Use and Economic Development Measures and Weights

Congress amended section 5309 in the SAFETEA-LU by emphasizing the importance of land use and economic development when it moved these criteria from the "considerations" subsection to the project justification subsection. This is the same subsection that includes cost effectiveness as a project justification factor. To the outside observer, it seems clear that the intent of Congress was to put greater weight and emphasis in the New Starts project evaluation and review process on land use and economic development. Under the current regulations, land use and cost effectiveness each receive 25 percent of the overall project weight with the other 50 percent allocated to the local financial commitment. Instead, the NPRM diminishes the weight to be given to land use by combining it with economic development as a single factor and assigning 20 percent of the weight to the combined criteria.

Moreover, section 5309 establishes separate criteria for land use and economic development which would appear to clearly indicate an intent by Congress to develop separate measures for each. Instead, the NPRM not only reduces the weight and emphasis given to land use and economic development but merges them into a single criteria rather than developing separate measures.

Furthermore, FTA states that the cost to develop a measure for economic development that is distinctive from land use is "overly costly and burdensome. I am aware that several groups, including Reconnecting America, have presented ideas for developing a means for measuring economic development but those ideas have not been well received. In response to the statement that the development of the measure would be "overly burdensome and costly," I don't recall the cost or burden on transit authorities was an issue when FTA developed the Summit software and implemented the Transportation System User Benefit ("TSUB") measure for cost effectiveness in 2002. To my knowledge, neither the financial impact on FTA nor on state and local project sponsors was considered when moving forward with TSUB. While I don't know what it cost FTA to develop the software and implement TSUB, many communities, including mine, were required to spend several hundred thousand dollars to revise travel demand models to be able to interact with Summit and capture user benefits and ridership. Moreover, there has been a considerable cost to my region to continuously modify the travel demand model resulting in many model simulations to properly interact with Summit software and satisfy the cost effectiveness criteria. If cost was not an issue at the time Summit was developed and the TSUB was introduced, I don't understand how or why FTA can raise the issue of cost at this time. I think it is very important to develop separate measures for land use and economic development to fully reflect the intent of Congress.

Finally, FTA should be 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 measured solely in terms of mobility improvements but also in their impact on shaping economic development patterns. We have seen a dramatic change in downtown Norfolk along the alignment in anticipation of the project. Furthermore, this development has occurred more quickly and with greater intensity than predicted by local economic development forecasts. I invite you to Norfolk to observe these impacts for yourselves and to meet with the downtown business community.

3. Weight Given to Cost Effectiveness Not Consistent with SAFETEA-LU

The decision to place land use, economic development and cost effectiveness in the same subsection was regarded by the transit industry as reflecting a clear Congressional intent to have FTA rely on a broader set of factors in justifying a project and making funding recommendations than cost effectiveness. The transit industry supported this change in the statute since it appropriately recognized how important it is to address land use and demonstrate the impact of a project on economic development when considering a substantial investment in a fixed guideway project.

Furthermore, prior to the March and April 2005 Dear Colleague letters, 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 March and April 2005 Dear Colleague letters changed FTA's policy, but were not implemented as a permanent change to the regulation. FTA has not only chosen to continue to require a 50 percent weight for cost effectiveness, which effectively trumps all of the other project evaluation and review criteria, but has also attempted to make a permanent change in the law through its inclusion of this revision in the NPRM as opposed to keeping it in guidance documents.

I hope the Committee would agree that the proposed allocation of the weights and the excessive emphasis on cost effectiveness is contrary to your intent when you adopted SAFETEA-LU in August 2005. Moreover, I hope that you would agree that the incorporation of specific weighting of the criteria should not be included in the final rule but continue to be left to guidance documents to enable FTA to shift the allocation of the weights as might be appropriate in the future.

4. Other Factors - Focus on areas with greatest congestion reduction and use of pricing strategies and not economic development opportunity

A final concern relates to the decision by FTA to add a number of "other factors" that it would consider in evaluating and rating projects. These "other factors" were not included in the statute. Specifically, FTA proposes that all projects be evaluated and rated based on severity of the transportation and economic problem or opportunity in the corridor, as well as, the identification of the project as a principal element of a congestion reduction or pricing strategy. 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 the "other factors."

The effect of the proposed change could curtail the growth of the New Starts program to enable communities in rapidly growing areas such as the Hampton Roads region from obtaining New Starts funds since our congestion may not compare to larger cities, such as New York City, Los Angeles or Washington, DC. One of our project goals was to address congestion before it became severe as well as to shape economic development. Depending upon what factors FTA uses to judge the "severity" of the problem; this could result in many communities having project ratings lowered.

Further, the NPRM emphasizes and rewards congestion pricing in furtherance of the policy decision made by FTA. This is being promoted while a statutory criterion, such as economic development, is being minimized in the NPRM. FTA should be in the business of promoting transit use, impacting congestion by causing a shift in mode choice, and promoting permanent changes in travel patterns through good land use and economic development decisions at the local level. We have considerable evidence in the United States regarding the impact of New Starts projects in shifting travel patterns and concentrating economic development in corridors well served by transit which provide real mode choice for commuters.

Thank you for the opportunity to testify today. I appreciate the time and attention given to the NPRM by the Subcommittee. The New Starts program has been instrumental in providing transportation choices to citizens and permanently changing economic development patterns in many communities. We should be seeking to increase the Federal investment in these projects rather than looking for ways to undercut a highly effective program.

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Testimony of Christopher Zimmerman,Member,
Arlington County Board, Virginia

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

September 26, 2007

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.