

**WMATA
JOINT DEVELOPMENT
POLICIES AND GUIDELINES**

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Office of Property Development & Management
600 Fifth Street, NW
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JOINT DEVELOPMENT POLICIES AND GUIDELINES

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1.0 INTRODUCTION

WMATA has been involved in the joint development of real estate since the early 1970s. These Joint Development Policies and Guidelines (“Guidelines”) set forth the general practices of the joint development program of the Washington Metropolitan Area Transit Authority (“WMATA”).

WMATA defines joint development as a creative program through which property interests owned and/or controlled by WMATA are marketed to office, retail/commercial, recreational/entertainment and residential developers with the objective of developing transit-oriented development projects. Projects are encouraged that:

1. integrate WMATA’s transit facilities
2. reduce automobile dependency
3. increase pedestrian/bicycle originated transit trips
4. foster safe station areas
5. enhance surrounding area connections to transit stations
6. provide mixed-use including housing and the opportunity to obtain goods and services near transit stations
7. offer active public spaces
8. promote and enhance ridership
9. generate long-term revenues for WMATA
10. encourage revitalization and sound growth in the communities that WMATA serves

WMATA's joint development opportunities consist of property interests owned or controlled by WMATA and approved by the WMATA Board of Directors for inclusion in the joint development work program.

1.1 Goals and Standards

1.1.1 Goals

The goals of WMATA’s joint development program are to:

1. Promote Transit-Oriented Development (TOD) by giving priority to joint development proposals that contain the following smart growth development principles: reduce automobile dependency; increase pedestrian/bicycle originated transit trips; foster safe station areas; enhance surrounding area connections to transit stations, including bus access; provide mixed-use development, including housing in compliance with local laws and requirements; and the opportunity to obtain goods and services near transit stations and offer active public spaces.

2. Attract new riders to the transit system—particularly riders who will use underutilized transit capacity in outbound directions and in off-peak time periods—by fostering commercial and residential development projects on WMATA-owned or controlled land and on private properties adjacent to Metro stations.
3. Where appropriate to station setting, market dynamics, and local policy, support the establishment of employment centers consistent with TOD design principles and transit system operating and investment needs.
4. Implement station access improvements that support pedestrian, bicycle, bus, ADA (Americans with Disabilities Act), and automobile access consistent with each station area's particular station access needs as determined by WMATA's station access planning program.
5. Support other transit agency goals as they may arise, including potentially the provision of affordable housing for staff to support recruitment of employees from outside the region and/or other goals. Implementation of this goal will be subject to WMATA Board adoption of a policy governing the application of this goal.
6. Create a source of revenue for WMATA to operate and maintain the transit system by negotiating joint development agreements between WMATA and public or private development entities.
7. Assist the WMATA local jurisdictions to recapture a portion of their past financial contributions and to continue making subsidy payments by expanding the local property tax base and adding value to available local revenue.

1.1.2 Standards

Station access planning should be done according to the WMATA standards for replacement facilities. Should conflicts arise between standards and project goals, the conflicts should be identified and solutions proposed to be resolved as stated in these Guidelines.

1.2 Definitions

1.2.1 Joint Development

A creative program through which property interests owned and/or controlled by WMATA are marketed to office, retail/commercial, recreational/entertainment and residential developers with the objective of developing transit-oriented development projects.

1.2.2 Joint Development Solicitation or "JDS"

The joint development solicitation or "JDS" refers to any solicitation document that WMATA may use to offer and market joint development opportunities.

1.2.3 WMATA Board of Directors or "WMATA Board" or "the Board"

The policy and governing body for WMATA, as created by Article III section 5 of the WMATA Compact.

2.0 PURPOSE

The purpose of these Joint Development Policies and Guidelines is to:

1. Disseminate information about WMATA's joint development program to developers, local jurisdictions, the local community and the general public.
2. Identify the roles and responsibilities of the WMATA Board of Directors, the General Manager, local jurisdictions, developers and the community in the joint development process.
3. Establish procedures for the marketing of joint development sites and the selection of private and public sector joint development participants.
4. Define a policy for the replacement of on-site WMATA facilities.
5. Define terms under which WMATA will sell joint development properties to constituent jurisdictions.
6. Define WMATA's community involvement process in the joint development program.
7. Define processes for evaluating and estimating joint development project benefits, including cash value, the development of new transit facilities, fiscally positive operating impacts, provision of housing to support staff recruitment, and other benefits.
8. Define processes for dealing with unsolicited proposals and special situations involving adjacent property owners.

3.0 SCOPE OF POLICIES AND GUIDELINES

These Joint Development Policies and Guidelines apply to joint development projects to which WMATA is a party. They do not apply to:

1. System interface projects: Projects that have direct connections between WMATA's facilities and adjacent development owned by others. These projects are managed under separate procedures established by the Board.
2. Adjacent construction projects.
3. Interim leasing of WMATA-owned land.
4. Excess property dispositions: Properties that are no longer needed by WMATA with no ongoing WMATA interest.

4.0 POLICIES OF LOCAL JURISDICTIONS AFFECTING JOINT DEVELOPMENT

WMATA coordinates closely with local jurisdictions to implement its joint development program. Additionally, WMATA requires its selected developers to work with local jurisdictions throughout the joint development process. The policies that influence joint development activity in local jurisdictions are generally contained in planning, land use and related documents, such as comprehensive plans, sector or station area plans, zoning ordinances and maps, adequate public facilities ordinances and capital improvement programs. These policies may also be reflected in regulations or laws related to the replacement of transit access facilities and/or the availability of funding for transit access investments, such as pedestrian and bicycle paths, sidewalks, parking spaces, pedestrian bridges and tunnels, etc. Interested parties may obtain these documents and plans by contacting the jurisdiction involved. In addition, developers are required to seek the views of the local jurisdiction prior to submitting a proposal to WMATA.

WMATA welcomes the participation of jurisdictional representatives in all phases of its developer selection process, however, only WMATA staff may participate in assigning ratings to each proposal received.

5.0 MAJOR ROLES AND RESPONSIBILITIES IN THE JOINT DEVELOPMENT PROGRAM

The WMATA joint development program is implemented through the combined efforts of the Board, the General Manager, WMATA staff, local jurisdictions, developers and the community. Their major roles and responsibilities are outlined below:

5.1 The WMATA Board of Directors

The WMATA Board of Directors establishes joint development policies, exercises specific approvals within the joint development process, and maintains oversight of the joint development program. The Board has specific responsibilities to authorize joint

development solicitations, approve developer selection and a non-binding term sheet based on a staff recommendation, and approve terms of a lease or sales agreement (the final contract) with the designated developer. Additionally, the WMATA Board authorizes a public hearing, prior to final site plan approval by the local jurisdiction, when such hearing is required because of a substantial change to WMATA facilities on site or a change to the site access.

5.2 General Manager and WMATA Staff

The General Manager is responsible for the overall management, administration and conduct of joint development activities on behalf of WMATA. Included among these responsibilities are:

1. Establishment of development goals and station access needs through planning.
2. Establishment of a process leading to internal and external decisions on use of WMATA property.
3. Prioritization of projects and establishing overall program pace to achieve highest quality project outcomes.
4. Establishment of annual work programs that broadly emphasize enhancement of land development potential and, ultimately, development of land, and more specifically, include: station access planning; participation in, and advocacy for, station area TOD planning; marketing of development opportunities; selection of development partners; and negotiation of final agreements.
5. Minimization of time required to reach agreement with development partners.
6. Presentation of development projects to communities along with local jurisdictions and developers.
7. Collaboration with developers to obtain zoning and development approvals (with the level of WMATA involvement dependent on project specifics).
8. Use of mechanisms that maximize developer interest and competitive pricing of joint development projects.

As used in these Policies and Guidelines, "staff" means the General Manager or staff designated by the General Manager.

5.3 Local Jurisdictions

Jurisdictions with joint development policy interests in the WMATA Transit Zone include: the District of Columbia, Arlington, Fairfax, Montgomery and Prince George's counties, and the cities of Alexandria, Falls Church, Fairfax and Rockville. While not strictly a "local jurisdiction", the State of Maryland as a transit operator and funder of WMATA

operations and capital projects has a clear policy interest in WMATA's joint development program, and is treated as a local jurisdiction for the purposes of these Guidelines.

Reflecting the fact that different agencies of each local jurisdiction bring to bear different information and diverse policy perspectives, WMATA understands that the term "local jurisdiction" does not suggest that any single agency or elected representative of a local jurisdiction completely represents local jurisdictional policies. The term "local jurisdiction" as used here implies a broad range of agencies and jurisdictional representatives taken together, including planning, transportation, housing, economic development, parks and recreation, etc. As used herein, "consultation," "coordination," and "collaboration" with local jurisdictions (excepting the State of Maryland) means coordinated efforts with: designated representatives of the executive branch; an appropriate or designated representative of the legislative branch; and – where it may be an independent agency – appropriate representatives of the local land use planning authority. Should a particular station or transit facility be located within both a "local jurisdiction" and a local municipality that is a political subdivision of the local jurisdiction, "consultation," "coordination," and "collaboration" will be similarly understood to include representatives of executive, legislative, and – if separate – planning authorities.

The District of Columbia, Arlington, Fairfax, Montgomery and Prince George's counties, the cities of Alexandria, Falls Church, Fairfax and the State of Maryland may be referred to herein as "Constituent Jurisdictions".

Each local jurisdiction plays an important role in the planning and implementation of WMATA joint development projects.

- A. WMATA and local jurisdictions maintain ongoing, informal communications regarding planning and zoning changes at and around WMATA sites; developer interest in such sites; and jurisdictional TOD planning and initiatives.
- B. Local jurisdictions participate with WMATA and consultants in identifying sites to be assessed for joint development potential, analyzed in terms of their station access needs, and/or offered as joint development projects.

Local jurisdictions, at their discretion, are encouraged to directly sponsor joint development projects within their boundaries. Provided that these projects are consistent with WMATA transit planning goals and TOD principles, WMATA will collaborate with local jurisdictions to advance these projects and to establish, through coordinated planning, the maximum transit-oriented development benefits possible.

1. Local jurisdictions participate in the review and evaluation of non-economic aspects of developer proposals. WMATA recognizes that certain local jurisdiction policy positions may depend on economic values offered to WMATA by joint

development project proposals. WMATA will share project economic information with local jurisdiction representatives to the extent possible without compromising proposer confidentiality requirements and without unduly weakening WMATA's ability in negotiations with proposers to achieve the greatest transit and/or economic return possible.

2. WMATA's joint development solicitations encourage developers to contact local jurisdictions to obtain land use and zoning information about a site prior to submitting joint development proposals to WMATA. In addition, developers are required to meet with community organizations that have been identified by the local jurisdictions as those that would be interested in the development of a site within their area.
3. Local jurisdictions are asked to designate a person or office as the liaison to WMATA for joint development activities.
4. Local jurisdictional representatives receive a briefing from WMATA staff when proposals are received.
5. Local jurisdictional representatives are invited to participate in any oral presentations by the developer to WMATA's technical evaluation committee. Developers are required to organize their presentations into two segments:
 - a) land use proposals, zoning actions required, construction schedules; and
 - b) financial offer to WMATA. (Local jurisdictional representatives do not participate in the discussion of the second segment.)
6. If desired, the local jurisdictions participate with the developer in informational meetings with the community organizations that have been identified by the affected jurisdiction.
7. Local jurisdictions are invited to submit formal comments during the evaluation of development proposals submitted in response to a formal solicitation or unsolicited proposal.
8. After selection of a developer by the Board, local jurisdictions continue their involvement.
9. Local jurisdictional staff are provided periodic updates and status reports by WMATA staff.
10. Developers' site plans are reviewed by WMATA with input from local jurisdictional staffs.
11. Local jurisdictions may sponsor community forums and invite WMATA staff and developers to participate.
12. WMATA works cooperatively with local jurisdictions on any required zoning and other actions by the local jurisdictions.

13. Local jurisdictions review and approve (or disapprove) the developers' site and project plans through local policies, land use plans, zoning and development-related capital improvements.
14. Following approval of the development by the local jurisdiction, but prior to final site plan approval, when such is required due to a major change to transit facilities such as customer parking or access to the site, a WMATA Compact public hearing is required. The affected local jurisdiction will be invited to be a participant in that public hearing process.

5.4 Developers

Public and private development entities, land owners or their agents may participate in planning as well as in implementation phases of the joint development program. Examples of such participation and implementation are as follows:

1. Developers or other interested parties may initiate unsolicited proposals for a
2. WMATA property at any time. Such proposals are processed in accordance with the procedures provided in Section 14 (Unsolicited Proposals).
3. Potential developer(s) are required to meet with the local jurisdiction and interested community organization(s) to share information about a pending proposal submission to WMATA and to seek their views prior to submitting the proposal to WMATA. At these meetings, the developer is expected to share as much detailed information as possible about his/her proposed project. As part of the submission to WMATA, the developer will provide information about the meetings held with the local jurisdiction and interested community organizations, including an identification of issues raised at the meetings and how his/her proposal addresses them. The developer will also include in the submission how the proposed project meets the goal of achieving transit-oriented development.
4. Proposals will be processed as set forth in Sections 6.0, 7.0 and 8.0 herein.
5. A selected developer will, with WMATA's assistance, obtain all necessary plan approvals, zoning and permits from the local jurisdiction.
6. In coordination with WMATA, a selected developer will plan and construct, typically at their cost and expense, any and all required replacement facilities at the joint development site.
7. A selected developer will plan, construct and operate a joint development project in accordance with pertinent joint development agreements and jurisdictional laws and requirements.

5.5 Community

WMATA staff is required to meet with local jurisdictions and potentially affected communities prior to the solicitation of development proposals. If WMATA staff has participated in a recent jurisdictional planning process at which future development of the site is discussed, that may satisfy the requirement of this section. Potential developer partners will also be required to meet with the local jurisdiction and interested community organizations to share information about pending proposal submissions to WMATA and to seek local and community views prior to submitting proposals to WMATA. At these meetings, developers are expected to share as much detailed information as possible about proposed projects. As part of submissions to WMATA, developers will provide information about the meetings held with local jurisdictions and interested community organizations, including identification of issues raised at the meetings and how proposals address them.

6.0 OBJECTIVES AND PROCEDURES

Sections 6.0, 7.0 and 8.0 describe the procedures followed for joint development. The stages are illustrative; they are not mandatory; and they may not be necessary for each joint development project. A separate set of procedures applies to the processing of unsolicited proposals.

6.1 Joint Development Objectives

The program objectives listed below have been developed to address issues that are critical to achieving high-quality joint development outcomes quickly and with broad support.

1. Before soliciting price-competitive proposals, create as much development certainty as possible via planning in conjunction with stakeholders as to land use and station access.
2. Streamline the proposal process as much as possible.
3. Have flexibility to match developer selection processes to transit needs and site specifics.
4. Use the station access planning process—whether prior to an RFP or broker-managed process, or simultaneously with an RFQ process—to build value into transit development projects through such techniques as shared parking, etc.
5. Have the flexibility to incorporate fiscal impacts and benefits into the overall assessment of project economic benefits.
6. Use all available approaches to maximize development industry interest, including use of private partners, agents, and/or brokers where appropriate to maximize awareness and interest.
7. Promote innovative transit-oriented land development practices.

6.2 Procedures

6.2.1 Introduction

Joint Development employs a competitive selection process to which the provisions of the WMATA Procurement Procedures Manual do not apply.

6.2.2 Outline of Steps in Competitive Selection Process (as further detailed in subsequent Sections):

- A. Staff creates a list of sites which potentially could be offered for joint development
- B. Station access planning to include
 - (i) consultation with relevant WMATA offices,
 - (ii) consultation with local jurisdictions, and
 - (iii) community input
- C. Assessment of zoning and market readiness
- D. Board approves solicitation for a particular site and method of solicitation

6.2.3 The Staff List of Joint Development Sites

The list of sites to be studied for possible joint development will be derived from requests from local jurisdictions, general market readiness as determined by staff but which may be based on advice or rankings provided by an outside consultant(s), and staff resources.

6.2.4 Station Access Planning

“Station access planning” as used herein includes, where appropriate, planning for joint development projects at non-station WMATA facilities such as bus garages or air rights over right of way, in addition to planning at Metrorail stations.

Before soliciting interest in any given joint development project, WMATA will complete a station access planning study—in coordination with any affected local jurisdiction and with relevant WMATA offices, and with any affected community—to establish the station access needs at a station or other property experiencing joint development.

It will be a goal of WMATA's joint development program – to the extent that staff and funding resources permit, and that local planning priorities coincide with WMATA station access planning and joint development program priorities – to undertake station access planning in concert with local sector plan or other relevant planning exercises so that,

at the conclusion of local planning studies, WMATA's station access plan needs are well understood and can be reflected in local sector plan documents.

WMATA station access planning studies will typically have two key components: (1) a functional needs assessment that is not design or location specific; and (2) concept designs that identify potentially feasible transit facility locations. Certain station access designs – such as those for second entrances – may be more independent of station area development planning needs than others and in these cases a range of potential design schemes will likely be identified. Certain other station access facilities – such as parking – may be more difficult to assign locations and designs in the absence of a development partner with which development schemes can be negotiated. For these facilities, station access plans will give greater attention to functional needs and “performance standards” compared to specific designs.

In general, though, WMATA station access plans will address both the amount of each specific type of transit access facility that is needed, and at a concept level subject to the considerations described above will also identify where, optimally, such facilities might be located on or around the station site, and will evaluate operational impacts. (This is not intended to foreclose new ideas that may be submitted through the solicitation process.) The study will make use of existing studies, such as the WMATA Regional Bus Study.

The amount, kind, and location of planned transit access facilities will be complementary to the station area development environment as it has developed, is developing, or is expected to develop compared to the prevailing or expected station area development environment at the time the station was originally built, and consistent with the most current station area planning documents.

Station access planning studies will also consider the role that station bus facilities play in the structure of bus services that serve the station. Subject to the design considerations described above, the study may also include the location of new or relocated WMATA facilities on the site.

The local jurisdiction and the WMATA Board members from that jurisdiction will be asked to provide WMATA with a list of community organizations, including municipalities, community groups, civic associations and ANCs, that could be interested in participating in the station access planning process. (Note: The list of interested organizations will be included in the joint development solicitation, if available. Otherwise, the list will be provided to potential developers upon request.) As described above, it will be the goal of the joint development and station access planning programs to coordinate station access and joint development studies as closely as possible with local planning studies and exercises.

In certain cases, it may be desirable to create a Memorandum of Understanding (“MOU”) with the local jurisdiction and possibly other stakeholders to specify outreach and procedures, including potential developer proposal evaluation factors, developer selection and negotiation timetables, or other joint development project elements that may be of interest to local jurisdiction and other stakeholders. If this is done, the MOU shall be subject to WMATA Board approval. WMATA staff will have the sole responsibility for preparing materials related to this section for Board approval.

6.2.5 Assessment of Zoning and further Market Readiness

Once the Station Access Plan is complete, staff will assess whether the current zoning and/or jurisdictional comprehensive plan align with the Station Access Plan. If changes are needed, staff will consult with jurisdictional representatives as to the local process and whether a possible solicitation should move forward or whether it should wait for changes to the current zoning and/or jurisdictional comprehensive plan. WMATA will also assess the general readiness of the site for development based on market conditions.

6.2.6 Board Authorization

The General Manager will request that the Board authorize the issuance of a solicitation document for a specific site. The request shall specify which of the solicitation processes given in the Guidelines will be employed, and the reasons for selecting that process. Upon Board approval, the solicitation will be issued.

6.2.7 Development and Issuance of Solicitation Document

The solicitation document will reflect the Board approved method according to the process given in the following sections. Normally, a solicitation will include the following competitive selection procedures:

1. Advertisement of the availability of the solicitation in local and national newspapers.
2. A pre-proposal conference, if needed, to respond to questions from prospective respondents.
3. A proposal due date and a schedule for WMATA to evaluate proposals and make a selection.
4. Review and evaluation of proposals as set forth in Sections 7.0 or 8.0.

6.2.8 Alternate Processes

Sections 7.0 and 8.0 below outline alternate processes that may be used to conduct a solicitation. These alternates are intended to provide flexibility to design a solicitation document best suited to the particular situation of a given property. Some may be in areas with established land use patterns and recent, local zoning and/or comprehensive plan reviews; others may have unique site conditions or be in areas about to go through a thorough review and updating of land use and transportation access options. In either process, WMATA will dispose of property via long-term lease, sale, combination lease/sale, or other arrangements. (WMATA prefers transactions other than the sale of its property, but will consider a sale, if it is determined to be consistent with WMATA's interest, necessary to pursue an effective project, or necessary to meet important transit needs.)

WMATA encourages developers to include Disadvantaged Business Enterprises in their joint development projects, and will assist developers in identifying such firms.

7.0 COMPETITIVE SELECTION PROPOSAL (“RFP”) PROCESS

7.1 Outline of the Process

- A. Station access plan
- B. Alternate Step—Request for Prior Experience (“RFPE”)
- C. Advertise solicitation, by staff or (subject to advice of Counsel) third party advisor; obtain WMATA Board approval, including step “B” above if utilized
- D. Order appraisal
- E. Initial evaluation
- F. Community forum
- G. Final evaluation
- H. Select developer, negotiate Term Sheet, and obtain WMATA Board Approval
- I. Negotiate Joint Development Agreement and related documents; obtain WMATA Board approval
- J. Compact Public Hearing; obtain WMATA Board approval
- K. Federal Transit Administration (“FTA”) approval

7.2 Station Access Planning

Conduct station access planning process as outlined in Section 6.2.4.

7.3 Alternate Step—RFPE

An optional first step in the solicitation process is to seek Requests for Prior Experience from developers in order to create a “short list” of qualified developers. This step might be used when there are doubts about the marketability of a site, and to elicit developer interest without requiring the time and expense of a response to a formal solicitation.

The step might also be used when numerous responses are anticipated in order to pre-qualify respondents. The criteria for selecting such developers shall include prior experience in developing projects of the type and size contemplated, financial capacity to complete the project, prior experience in dealing with communities, members of the project team, and the specific personnel to be assigned to the project. Prior experience in public/private transactions may also be considered.

7.4 Advertise Solicitation

To promote fair and open competition, WMATA will publicize its joint development opportunities in print media with wide circulation and on WMATA's web site, and as necessary, through public events. WMATA may conduct the solicitation itself or may employ a third party such as a real estate advisor to conduct the solicitation. If the latter, staff will provide an explanation of why the use of a third party is desirable in the particular case, and the use of such third party must be approved by the WMATA Board. The solicitation shall contain a description of the station access needs resulting from the station access planning process including those that are requirements of the solicitation, jurisdictional zoning classification, information on pre-proposal conferences and response due dates, a requirement that developers meet with community groups, and any other relevant requirements of the solicitation.

7.5 Appraisal

Based on the terms of the solicitation, WMATA staff will order an appraisal of the property typically from a third party appraiser, but according to the policies in effect at the time.

7.6 Initial Evaluation

In evaluating proposals, WMATA will use commercially reasonable business practices, consistent with FTA's requirements, which include the following:

Technical

1. Degree to which the project reflects transit-oriented development principles

2. Market/financial viability of the joint development project
3. Development team experience and prior performance
4. Innovation and creativity
5. Compatibility of development with local requirements and transit area
6. Effect on WMATA facilities

Economic

1. Enhanced Metrorail and Metrobus ridership
2. Financial benefits accruing to WMATA and the local jurisdiction
3. Joint development project completion time-line

WMATA may also consider non-direct compensation benefits such as the provision of affordable housing for WMATA employees or special enhancements to transit system ridership over and above those normally provided by joint development.

7.6.1 Material Change

If, after receipt of proposals, material change occurs with respect to matters published in the marketing document or the joint development site, notice of such change shall be provided only to developers who submitted proposals and they shall be afforded an opportunity to amend their proposals accordingly.

7.6.2 Unresponsive Proposals

WMATA will review the proposals, and identify those proposals reasonably acceptable of being selected for award screening against the selection criteria established above, including developer competency and financial capacity, and satisfaction of the requirements set out in the marketing or solicitation document, including the community contact requirement. Any proposals which do not meet published requirements and guidelines, and any proposals not reasonably acceptable for selection, may be rejected by WMATA staff as unresponsive.

7.6.3 Evaluation Meetings

WMATA may, but is not required to, meet with each developer who submitted a proposal to receive a developer presentation and conduct specific discussions about the proposal. The discussions will include identifying areas of the proposal that require clarification, improvement, or do not comply with the marketing document. Developers may be requested to submit revised proposals based on the discussions. (Local jurisdictional representatives will be invited to participate in evaluating a proposer's development concept and provide questions/comments to WMATA for discussion with the developer.)

7.7 Community Forum

After the initial evaluation, WMATA staff may organize, in cooperation with the local jurisdiction, a community forum to explain proposed changes to WMATA facilities, and to obtain community input as to the technical (non-financial) aspects of the proposals.

7.8 Final Evaluation

Staff may request best and final offers from developers and then will rate each responsive proposal and rank the proposals in accordance with Section 7.6. Staff will then make a tentative developer selection and commence negotiation of a non-binding term sheet that outlines the major business terms of the project. If negotiations are unsuccessful, Staff may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking. Alternatively, Staff may enter into competitive negotiations with two or more ranked developers. In the situation in which WMATA receives competitive proposals but only one proposal meets or exceeds the appraised value of the WMATA site, and there are no other special or transit benefits to WMATA, the proposals do not have to be scored and ranked. Rather, the one proposal which meets or exceeds the appraised value of the joint development site will be considered using the criteria in accordance with Section 7.6 above.

7.9 Developer Selection

Once the principal terms of a potential developer's project have been reduced to a term sheet, staff will forward the developer selection recommendation and the term sheet to the WMATA Board for approval. A term sheet entered into with a developer is non-binding and does not constitute a contract; there is therefore no binding agreement between WMATA and the selected developer until the Board has approved the final negotiated contract.

7.10 Joint Development Agreement

If the Term Sheet is approved, staff will negotiate a Joint Development Agreement with the selected developer that incorporates the terms of the term sheet. A summary of the completed Joint Development Agreement, highlighting significant new terms as well as material changes from the term sheet, will then be forwarded to the WMATA Board for approval.

7.11 Compact Public Hearing

If a WMATA Compact Public Hearing is required due to a major change to transit

facilities such as customer parking or access to the site, the selected developer will be required to participate in the public hearing process and fund the costs of the public hearing.

7.12 FTA Approval

If required, the station changes and terms of the Joint Development Agreement will be submitted to the Federal Transit Administration for approval under FTA's requirements, including those stated in Section 13 of these Policies and Guidelines.

7.13 Unsolicited Proposals

Proposals received for development of a site owned by WMATA that were not in response to a specific marketing effort (Unsolicited Proposals) will be evaluated as provided in Section 14.

7.14 Adjacent Property Owner

WMATA may negotiate a joint development agreement with an adjacent property owner without competition and without advertising the availability of the WMATA site provided that there is only one adjacent property owner or only one interested adjacent property owner, who WMATA has determined can take advantage of the joint development opportunity due to site constraints or other limiting factors. (One example would be the situation in which the WMATA parcel is small and one party owns all of the surrounding property.) Such a negotiation must be conducted consistent with principles given in Sections 6.2.4 and 6.2.5, and Sections 7.5 through 7.12 (modified to reflect a non-competitive selection process).

7.15 Confidentiality of Financial Proposals

WMATA will hold in confidence the financial benefits accruing to WMATA of all proposals until a Joint Development Agreement is approved and executed. Upon approval by the Board of Directors, WMATA staff will maintain all information received for joint development projects, including any confidential business information, in accordance with WMATA's *Privacy and Public Access to Records Policies* (PARP). All other aspects of the proposals may be reviewed and publicized at public hearings, town meetings, and similar public forums, or as otherwise provided in these Guidelines.

7.16 Subsequent Process

The selected developer will then go through any land use, zoning, permitting or entitlement processes required by the local jurisdiction, including any public hearings.

8.0 COMPETITIVE SELECTION QUALIFICATION (“RFQ”) PROCESS

8.1 Outline of the Process

- A. Obtain WMATA Board approval to advertise for developers based on qualifications
- B. Select developer; obtain WMATA Board approval
- C. Jointly with developer, enter into planning process with jurisdiction, community and other local stakeholders. Establish plan for station access needs and land use
- D. Order appraisal
- E. Negotiate price and term sheet; obtain WMATA Board approval
- F. Negotiate Joint Development Agreement; obtain Board approval; negotiate related documents
- G. Compact Public Hearing (*Could be after C*); obtain Board approval
- H. FTA approval

8.2 Introduction

This process is intended to be used when there are special site conditions, when the jurisdiction is about to begin a master plan revision or rezoning, or other situations for which it would be desirable to have a developer in place to provide input as to the effect of options on potential development, and to participate in the process.

8.3 Advertise for Developers Based on Qualifications

To promote fair and open competition, WMATA will publicize its developer selection opportunities in print media with wide circulation and, as necessary, through public events. The solicitation shall contain a description of the developer qualifications sought, the subject station and processes in which the developer would be asked to participate (such as comprehensive plan amendment), the requirements of the solicitation, information on pre-submission conferences and response due dates, information on the WMATA process leading to price determination and Board approvals, and any other relevant requirements of the solicitation.

8.4 Developer Selection and WMATA Board Approval

8.4.1 Criteria

The criteria for selecting such developers shall include prior experience in developing projects of the type and size contemplated, financial capacity to complete the project, prior experience in dealing with communities, qualifications and experience of members of the project team, and the specific personnel to be assigned to the project. Prior

experience in public/private transactions may also be considered. A submittal from a proposer in response to these criteria shall be collectively referred to herein as the proposer's "Qualifications." Where local jurisdiction stakeholders desire to participate in the process, evaluation criteria for reviewing developer Qualifications should be established in collaboration with local jurisdiction stakeholders. Evaluation criteria may include evaluation factors of mutual WMATA and local jurisdiction interest including, for example, demonstrated experience in hiring local contractors, DBE contractors, etc. It is clearly understood, however, that WMATA staff will be solely responsible for making recommendations to the Board regarding the criteria that will be used for evaluation of Qualifications submitted under the RFQ process.

8.4.2 Material Change

If, after receipt of Qualifications, material change occurs with respect to matters published in the marketing document or the joint development site, notice of such change shall be provided only to developers who submitted Qualifications and they shall be afforded an opportunity to amend their Qualifications accordingly.

8.4.3 Threshold Evaluation

WMATA will review the Qualifications, and identify those Qualifications reasonably acceptable of being selected for award screening against the selection criteria established above, including developer competency and financial capacity, and satisfaction of the requirements set out in the marketing or solicitation document. Any Qualifications which do not meet published requirements and guidelines, and any Qualifications not reasonably acceptable for selection, may be rejected by WMATA staff.

8.4.4 Developer Meetings

WMATA may, but is not required to, meet with each developer who submitted Qualifications to receive a developer presentation and conduct specific discussions about the Qualifications. The discussions will include identifying areas of the Qualifications that require clarification, improvement, or do not comply with the marketing document. The proposers may be requested to submit revised Qualifications based on the discussions.

8.4.5 Selection

Staff will rate responsive Qualifications and rank the Qualifications based upon the selection criteria. Where a local jurisdiction and other stakeholders express interest in participating in the Qualifications evaluation process, WMATA staff will accommodate that interest by sharing Qualifications information and by including stakeholders in evaluation discussions. In the event that local jurisdiction and other stakeholders desire

to participate in Qualifications evaluation in this manner, they will be invited to participate in a developer selection advisory committee and to participate in all developer interviews and all Qualifications information submitted to WMATA will be made available to stakeholders participating in the advisory evaluation process. All evaluations prepared by stakeholders will remain strictly advisory. WMATA staff will be solely responsible for conducting evaluations and making selection recommendations for submission to the WMATA Board.

Staff will then make a tentative developer selection and commence negotiations on a Memorandum of Understanding which outlines the terms of how the parties will proceed with the project, and the responsibilities of each. If negotiations are unsuccessful, staff may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking. Alternatively, staff may enter into competitive negotiations with two or more ranked developers.

8.4.6 Memorandum of Understanding

The Memorandum of Understanding sets out agreement on a process, but does not contain a price for development rights and other terms of a development agreement. Once the Memorandum of Understanding has been agreed upon by WMATA and the developer, staff will forward the developer selection recommendation and the Memorandum of Understanding to the WMATA Board for approval. There is no binding agreement for a development project between WMATA and the selected developer, and any Developer investment is at risk, until the Board has approved a final negotiated Joint Development Agreement.

8.5 Establish Plan for Station Access and Land Use

WMATA and the selected developer will enter into the process to develop the access needs of the station and land use parameters around the station, pursuant to the terms of the approved Memorandum of Understanding.

8.6 Appraisal

Based on the results of the station access and land use process, WMATA staff will order an appraisal of the property development rights typically from a third party fee appraiser, but according to the policies in effect at the time. The appraisal should reflect the station access needs, which are intended to become the cost of the developer in subsequent development of the station site.

8.7 Price and Term Sheet

Staff will commence negotiations on a term sheet that outlines the major business terms of the project, including price to be paid for the development rights. If negotiations are unsuccessful, Staff may terminate negotiations and re-advertise the station development rights pursuant to section 7.0 (excluding 7.13 and 7.14) herein. As soon as the principal terms of a term sheet have been agreed upon, staff will forward the recommended selected developer and the term sheet to the WMATA Board for approval. A term sheet entered into with a developer is non-binding and does not constitute a contract; there is therefore no binding agreement between WMATA and the selected developer until the Joint Development Agreement is signed by both parties.

8.8 Joint Development Agreement

If the Term Sheet is approved, staff will negotiate a Joint Development Agreement with the selected developer that incorporates the terms of the term sheet. A summary of the completed Joint Development Agreement, highlighting significant new terms as well as material changes from the term sheet, will then be forwarded to the WMATA Board for approval.

8.9 Compact Public Hearing

If a WMATA Compact public hearing is required due to a major change to transit facilities such as customer parking or access to the site, the selected developer will be required to participate in the public hearing process and fund the costs of the public hearing.

8.10 FTA Approval

If required, the station changes and terms of the Joint Development Agreement will be submitted to the Federal Transit Administration for approval under FTA's requirements, including those stated in section 13 of these Policies and Guidelines.

9.0 WMATA TRANSIT ACCESS FACILITY REPLACEMENT

WMATA will work with the local jurisdiction to determine the appropriate transit access facility replacement for each joint development project at a Metrorail station. It is WMATA's policy that transit facilities displaced by joint development be replaced to ensure that the same number of transit riders is accommodated and the balance of transit access facilities at a given station can be altered to reflect the transformation of the station and the area around it to a pedestrian-friendly, transit-oriented community. An analysis of the costs and benefits of alternative transit facility replacement scenarios will be conducted and will be shared with the local jurisdiction as well as public agency staff and community members in public meetings. Part of such an analysis must include

maintaining appropriate access via bicycle, bus (including local jurisdictional systems), and pedestrian (including ADA). The documentation of this analysis will be incorporated into concise and comprehensible public presentation materials. If not incorporated into a prior Board presentation for its review and approval, the materials will be included in any final compact hearing staff report materials presented to the Board for review and decision.

10.0 SALE OF PROPERTY TO CONSTITUENT JURISDICTIONS

10.1 Policy for Sale of Property to Constituent Jurisdictions

When WMATA offers a property for sale, and one of its constituent jurisdictions wishes to purchase the property, WMATA will sell it to the jurisdiction provided: 1) WMATA receives a price equal to at least the appraised market value; 2) the jurisdiction agrees to the station upgrades, changes, and/or reservations contained in the offer, and agrees to bear the cost thereof; and 3) the jurisdiction agrees that if the value of the property is increased due to approval of a higher density allowance or other similar zoning action, or if the property is sold by the jurisdiction at a sale price in excess of the price paid to WMATA, then WMATA will shall receive one hundred percent (100%) of the additional value so created or obtained. If required, the transaction will be subject to FTA approval.

In the case where the constituent jurisdiction initiates a proposed sale, the same standards as above will apply with the following modifications: (a) WMATA shall screen the property internally and may refuse to sell if WMATA has an intended use for the property; (b) WMATA may require certain station upgrades or changes to be made by the jurisdiction; (c) there will be no adverse impact on WMATA operations or facilities; and (d) in the situation where the sale is for a non-transit purpose, the appraised fair market value will take into consideration loss of potential development revenue in situations where there are impacts beyond the property being purchased.

11.0 ADVOCACY FOR JOINT DEVELOPMENT AND TRANSIT-ORIENTED DEVELOPMENT IN LOCAL PLANNING PROCESSES

Provided that adequate staff resources are available, and there are meaningful opportunities for WMATA staff input, WMATA staff will participate cooperatively in local planning processes to advocate for conditions that will facilitate joint development projects that will create TOD, value for WMATA, and will create improvements in WMATA's transit facilities.

12.0 RESOLUTION OF CONFLICTS WITHIN THE AUTHORITY

The Chief of Staff (or the person occupying any successor position) will be designated

to quickly resolve conflicts within the Authority in evaluating plans for joint development.

13.0 FTA REQUIREMENTS

WMATA joint development projects must meet the following FTA-mandated requirements: projects must (1) enhance economic development or incorporate private investment; (2)(a) enhance the effectiveness of a public transportation project and relate physically or functionally to that public transportation project, or (b) establish new or enhanced coordination between public transportation and other transportation; and (3) provide a fair share of revenue for public transportation that will be used for public transportation. Private investment need not be monetary; it may take the form of cash, real property, or other benefit to be generated initially or over the life of the joint development improvements.

WMATA will submit to FTA a Joint Development Checklist and Certificate of Compliance, or whatever successor documents as may be required by future amendments to the FTA regulations. WMATA should substantiate compliance with all of the statutory elements discussed in the FTA Joint Development Guidelines. Reference FTA's joint development authority (49 U.S.C. 5302 (A)(1)(G) and section (1)(a) of FTA Guidance on the Eligibility of Joint Development Improvements under Federal Transit Law (72 Fed. Reg. 5788,5790 (February 7, 2007); also 49 CFR 18.31 and 49 U.S.C. 5334(h).

In approving a joint development project, the Board shall determine, following reasonable investigation, that the terms and conditions of the joint development improvement (including without limitation, the share of revenues for public transportation that shall be provided as part of the project) are commercially reasonable and fair to WMATA, and that such revenue shall be used for public transportation.

14.0 UNSOLICITED PROPOSALS

14.1 General

Proposals received for development of a site owned by WMATA that were not in response to a specific marketing effort (Unsolicited Proposals) will be evaluated as follows:

14.2 Screening

The proposal will be screened with internal WMATA departments. If such screening reveals an operational use of the property, the unsolicited proposal will be rejected.

(Unlike screening of excess properties, this is intended to apply to, for example, bus garages for which no replacement site has been identified, or a joint development site for which WMATA is planning a new WMATA facility, such as the Ft. Totten police station.)

14.3 Threshold Criteria

The local jurisdiction will be notified in a timely manner in the event that WMATA receives an unsolicited proposal for a property in that jurisdiction. If no station access planning analysis of the site has been conducted—and if, after consultation with the local jurisdiction, joint development project planning is either not supported by local development policy or there are obstacles to conducting station access planning contemporaneously with private project planning and development—then WMATA will not have any obligation to further evaluate the unsolicited proposal, and may reject it.

14.4 Advertising a Proposal

If not rejected pursuant to Sections 14.2 or 14.3, notice of receipt of the unsolicited proposal will be published in the print media along with WMATA's procedure for processing unsolicited proposals, as provided for in this Section. Any proposal or site specific requirements will be included in the notice. Such notice shall contain a reasonable time period for competing proposals to be submitted. When the stated time period expires, no further proposals will be entertained for that site.

14.5 Evaluation – Unsolicited Proposal Only

WMATA will begin evaluating the unsolicited proposal in accordance with Section 7.6 to determine if the proposal merits selection for award of a contract. WMATA may hold a Community Forum as described in Section 7.7. If the proposal does merit selection, staff will negotiate a non-binding term sheet and Joint Development Agreement and forward each to the WMATA Board for approval. Sections 7.11, 7.12, 7.15, and 7.16 will also apply.

14.6 Evaluation – Unsolicited and Competing Proposals

If WMATA receives additional proposals during the time period provided in Section 14.4, any new proposals, including the unsolicited proposal, will be evaluated in accordance with Sections 7.6 through 7.12, 7.15, and 7.16.

COMPARISON AND EXPLANATION OF PROPOSED CHANGES TO WMATA JOINT DEVELOPMENT POLICIES AND GUIDELINES

COMPARING BOARD ADOPTED JULY 2005 POLICIES AND GUIDELINES WITH PROPOSED FEBRUARY 2008 REVISION

Section 1: Introduction

The section on goals has been expanded to include four new goals in Section 1.1.1:

2. Attract new riders to the transit system—particularly riders who will use underutilized transit capacity in outbound directions and in off-peak time periods... .
3. Where appropriate to station setting, market dynamics, and local policy, support the establishment of employment centers consistent with TOD design principles and transit system operating and investment needs.
4. Implement station access improvements that support pedestrian, bicycle, bus, ADA (Americans with Disabilities Act), and automobile access consistent with each station area's particular station access needs as determined by WMATA's station access planning program.
5. Support other transit agency goals as they may arise, including potentially the provision of affordable housing for staff to support recruitment of employees from outside the region and/or other goals. Implementation of this goal will be subject to WMATA Board adoption of a policy governing the application of this goal.

The first of these goals is a recognition of the financial benefit of making productive use of underutilized capacity. Section 1.1.1.3 recognizes that local policy for some stations may be to create employment centers and that where appropriate, that would become an additional goal. Goal 1.1.1.4 is in response to the Task Force recommendation that facility plans be prepared for each station for which joint development is contemplated. It also responds to feedback from local communities that want station access needs addressed as part of the joint development process. Goal 1.1.1.5 recognizes that the high cost of housing is often a detriment to attracting quality talent to work at WMATA, and that this new goal requires further direction from the Board before implementation.

Section on Standards (1.1.2) is new. It recognizes that WMATA standards are necessarily written in the abstract and there may be site specific constraints that

need to be addressed on a case by case basis. Definitions (1.2) is also new, but is added for clarity and does not introduce any new concepts.

Section 2: Purpose

This Section contains additions which are a preview of items that will be addressed later in the Guidelines.

4. Define a policy for the replacement of on-site WMATA facilities.
5. Define terms under which WMATA will sell joint development properties to compact jurisdictions.
7. Define processes for evaluating and estimating joint development project benefits, including cash value, the development of new transit facilities, fiscally positive operating impacts, provision of housing to support operator recruitment, and other benefits.
8. Define processes for dealing with unsolicited proposals and special situations involving adjacent property owners.

Sub-section 7 indicates that there will be more flexibility in considering things other than monetary value in evaluating proposals; sub-section 8 is included for clarity. Both processes are contained in the 2005 Guidelines although detail has been added to each.

Section 3. Scope of Policies and Guidelines

References to specific WMATA offices have been deleted, since the names of specific offices may change in future reorganizations, and the names of the offices are not needed to clarify the scope of the Guidelines.

Section 4. Policies of Local Jurisdictions Affecting Joint Development

This Section is very similar to the 2005 version with some added language indicating that local jurisdictional policies may affect replacement of and funding for WMATA facilities.

Section 5. Major Roles and Responsibilities in the Joint Development Program

In this Section, and throughout the document, the concept of a Board approved Annual Work Program and the issuance of a single, large solicitation each year has been eliminated. It was the very strong recommendation of the Task Force that WMATA join with the jurisdictions and communities in planning changes in and around our joint development properties, and only offer them when that process is complete. The properties would be offered either singly or in groups,

but only when they are “ready,” meaning that the pre-planning process has been completed, and staff has determined that they are also market ready.

Section 5.2 formerly referred only to the General Manager, but has now been expanded to include WMATA staff. It now reads as follows:

- The General Manager is responsible for the overall management, administration and conduct of joint development activities on behalf of WMATA. Included among these responsibilities are:
1. Establishment of development goals and station access needs through planning.
 2. Establishment of a process leading to internal and external decisions on use of WMATA property.
 3. Prioritization of projects and establishing overall program pace to achieve highest quality project outcomes.
 4. Establishment of annual work programs that broadly emphasize enhancement of land development potential and, ultimately, development of land, and more specifically, include: station access planning; participation in, and advocacy for, station area TOD planning; marketing of development opportunities; selection of development partners; and negotiation of final agreements.
 5. Minimization of time required to reach agreement with development partners.
 6. Presentation of development projects to communities along with local jurisdictions and developers.
 7. Collaboration with developers to obtain zoning and development approvals (with the level of WMATA involvement dependent on project specifics).
 8. Use of mechanisms that maximize developer interest and competitive pricing of joint development projects.

“Staff” is defined as the General Manager or staff designated by the General Manager.

Most of the responsibilities listed above are based on recommendations from the Joint Development Task Force including but not limited to advocacy for TOD planning, station access planning (which is defined earlier to include WMATA joint development properties that are not stations), minimizing time to reach developer agreements, and use of mechanisms to maximize developer interest.

Section 5.3 contains a change in policy. Formerly, information related to financial proposals was not shared outside of WMATA. The new draft permits such sharing with jurisdictions on a limited basis, and reads as follows:

WMATA recognizes that certain local jurisdiction policy positions may depend on economic values offered to WMATA by joint development project proposals. WMATA will share project economic information with local jurisdiction representatives to the extent possible without compromising proposer confidentiality requirements and without unduly weakening WMATA's ability in negotiations with proposers to achieve the greatest transit and/or economic return possible.

Section 5.3 also states that the State of Maryland, as a transit operator and WMATA funder, should be treated as a "local jurisdiction" for the purposes of the Guidelines, and also includes the following: "Reflecting the fact that different agencies of each local jurisdiction bring to bear different information and diverse policy perspectives, WMATA understands that the term "local jurisdiction" does not suggest that any single agency or elected representative of a local jurisdiction completely represents local jurisdictional policies. The term "local jurisdiction" as used here implies a broad range of agencies and jurisdictional representatives taken together, including planning, transportation, housing, economic development, parks and recreation, etc." The section goes on to specify that designated representatives of the executive and legislative branches, and independent planning agencies must be included both at the jurisdictional level, and if there is a municipality that is a political subdivision of the local jurisdiction, at that level as well. The proposed 2008 Guidelines continues the policy that local jurisdictions may sponsor their own joint development projects, and specifies "Provided that these projects are consistent with WMATA transit planning goals and TOD principles... ."

Section 5.4 once again deletes the reference to the Annual Work Program, and moves the references to the Compact Public Hearing to Sections 7 and 8.

Section 5.5 adds the following: "WMATA staff is required to meet with local jurisdictions and potentially affected communities prior to the solicitation of development proposals."

Section 6. Joint Development Objectives and Procedures

Section 6 deletes the reference to the Annual Work Program. The objectives listed in Section 6.1 are all based on recommendations from the Task Force. Most have been discussed earlier in this Comparison. Section 6.2 outlines the process that replaces the Annual Work Program. The process is a collaborative one that includes consultation with local jurisdictions, communities, and internal

WMATA offices, and assessment of zoning and market readiness. It emphasizes that thorough station access planning be completed before offering any properties.

It will be a goal of WMATA's joint development program – to the extent that staff and funding resources permit, and that local planning priorities coincide with WMATA station access planning and joint development program priorities – to undertake station access planning in concert with local sector plan or other relevant planning exercises so that, at the conclusion of local planning studies, WMATA's station access plan needs are well understood and can be reflected in local sector plan documents.

WMATA station access planning studies will typically have two key components: (1) a functional needs assessment that is not design or location specific; and (2) concept designs that identify potentially feasible transit facility locations.

Concept designs are not intended as mandated results, and there is recognition that developer input may inform the final plan. The process culminates in the General Manager requesting Board authorization to issue a solicitation for a specific site. This section introduces the concept of alternate processes for offering properties (as described in the next two sections).

Section 7. Competitive Selection Proposal (“RFP”) Process

This process is very similar to that which has been historically employed at WMATA. An alternate process will be described in Section 8. The Section begins with an outline of the process (7.1) that is intended to provide a quick overview. Following the recommendation of the Task Force, the first step is to conduct station access planning (7.2). Section 7.3 provides for an optional next step of short listing qualified developers by seeking Requests for Prior Experience (“RFPE”). The circumstances in which this step might be used is described as follows: “This step might be used when there are doubts about the marketability of a site, and to elicit developer interest without requiring the time and expense of a response to a formal solicitation. The step might also be used when very numerous responses are anticipated in order to pre-qualify respondents.”

Section 7.4 in regard to advertising the solicitation contains new provisions as follows: “WMATA may conduct the solicitation itself or may employ a third party such as a real estate advisor to conduct the solicitation. If the latter, staff will provide an explanation of why the use of a third party is desirable in the particular case, and the use of such third party must be approved by the WMATA Board. The solicitation shall contain a description of the station access needs resulting from the station access planning process including those that are requirements of the solicitation... .”

The Section on Appraisal (7.5) follows prior practice, but for clarity of presentation now has its own Section. The Initial Evaluation Section (7.6) deletes Highest and Best Transit Use as an evaluation standard since that is no longer used by FTA, and following FTA's guidance substitutes "commercially reasonable business practices." The list of technical criteria now includes "effect on WMATA facilities." This has been part of prior practice in evaluating proposals, but staff felt it important to provide the emphasis of listing it as a separate criteria. Section 7.6 also now adds the following: "WMATA may also consider non-direct compensation benefits such as the provision of affordable housing for WMATA employees or special enhancements to transit system ridership over and above those normally provided by joint development."

New Section 7.6.2 documents the understanding that if a response to a solicitation is not responsive to the criteria listed in the solicitation, it may be rejected without going through the formal rating process.

One of the task force suggestions was to obtain community input earlier in the process perhaps by holding the Compact Public Hearing at a time when comments could possibly influence the WMATA Board action on approving the Joint Development Agreement. The difficulty with this is that the WMATA Compact places rigid requirements on the Hearing such as advance notice timeframes and the "freezing" of the plan for a given time before the Hearing. Since the plan may change substantially during the local entitlement process, there is the real possibility that the Hearing would have to be repeated, involving much expense and time delay which violates one of the other Task Force recommendations to make the process faster and less cumbersome. As a solution, the new Section 7.7 provides for an optional Community Forum that would provide WMATA with comments on the proposals without the predetermined process of the Compact Public Hearing. While this might be used more frequently with respect to large parcels with many WMATA facilities to be replaced, it could be employed anywhere it is appropriate.

The remainder of Section 7 is very similar to the 2005 Guidelines except that the references to a specific WMATA office evaluating the proposals have been deleted in favor of saying that "staff" will conduct the evaluation. Thus if there is a reorganization, the Guidelines will not need to be changed to reflect the new office names. The provision for unsolicited proposals, formerly part of Section 7, has been expanded into a new Section 14.

Section 8. Competitive Selection Qualification ("RFQ") Process

This is a new, alternate process created as the result of another Task Force recommendation. It expands what was referred to as "Special Sites" in Section 8

of the 2005 Guidelines, which anticipated the need to do things differently on some sites, but was limited in scope and did not explain what process would be used.

In the RFQ Process (outlined in Section 8.1), WMATA would advertise for developers based on "Qualifications" (as defined in Section 8.4). After evaluation, a proposed selection would be brought to the WMATA Board for approval (8.3 & 8.4). Jurisdictions and stakeholders are offered significant roles in setting criteria for proposers and selecting developers.

Where local jurisdiction stakeholders desire to participate in the process, evaluation criteria for reviewing developer Qualifications should be established in collaboration with local jurisdiction stakeholders. Evaluation criteria may include evaluation factors of mutual WMATA and local jurisdiction interest including, for example, demonstrated experience in hiring local contractors, DBE contractors, etc. It is clearly understood, however, that WMATA staff will be solely responsible for making recommendations to the Board regarding the criteria that will be used for evaluation of Qualifications submitted under the RFQ process. Where a local jurisdiction and other stakeholders express interest in participating in the Qualifications evaluation process, WMATA staff will accommodate that interest by sharing Qualifications information and by including stakeholders in evaluation discussions. In the event that a local jurisdiction and other stakeholders desire to participate in Qualifications evaluation in this manner, they will be invited to participate in a developer selection advisory committee and to participate in all developer interviews and all Qualifications information submitted to WMATA will be made available to stakeholders participating in the advisory evaluation process. All evaluations prepared by stakeholders will remain strictly advisory. WMATA staff will be solely responsible for conducting evaluations and making selection recommendations for submission to the WMATA Board.

Once approved, WMATA and the selected developer would enter into a planning process with the local jurisdiction, community and other stakeholders to create a plan to address land use in and around the station and station access needs (8.5). The process could apply to a joint development site that is not a rail station. Once the planning process is completed, an appraisal would be ordered (8.6), reflecting the station access needs to be paid for by the developer. The remainder of the process tracks the RFP process with term sheet, Joint Development agreement, and Compact Public Hearing, each of which requires approval by the WMATA Board. One additional difference from the RFP process is that the Compact Public Hearing could be held immediately after the planning process, because changes to WMATA facilities would all be identified at that point, and the local jurisdiction would have been an active participant in determining those changes.

It is anticipated that this process might be utilized when a jurisdiction is planning to rezone or re-masterplan an area including one of WMATA's joint development sites, and it would be beneficial to have all stakeholders participate, including WMATA and its selected developer.

Section 9. WMATA Transit Access Facility Replacement

This Section deletes the specific reference to 1:1 parking replacement contained in the 2005 Guidelines. In its stead, it sets forth a policy that the same number of transit riders be accommodated. This is to be accomplished by a cost/benefit analysis of alternative replacement options, leading to concise conclusions embodied in materials to be presented to public agencies and the community, and that also must be approved by the WMATA Board.

Section 10. Sale of Property to Constituent Jurisdictions

When the sale of a property on Georgia Avenue to Montgomery County was approved, the Board asked staff to develop a policy with regard to sale of WMATA properties to constituent jurisdictions. This Section establishes such a policy with respect to both joint development properties offered for sale and properties for which the jurisdiction initiates a sale. While, as part of the Policies and Guidelines, the policy would apply only to joint development properties, the Board could elect to apply it to excess properties as well.

Section 11. Advocacy of Joint Development and Transit-Oriented Development in Local Planning Processes

This new Section results from a Task Force recommendation that WMATA be an active participant in local planning processes to advocate for transit-oriented development projects that would create value and facility improvements for WMATA.

Section 12. Resolution of Conflicts Within the Authority

This new Section results from a staff recommendation supported and adopted by the Task Force. It designates the Chief of Staff to quickly resolve conflicts within the Authority in evaluating plans for joint development.

Section 13. FTA Requirements

FTA has requested that the Guidelines be more descriptive of FTA requirements, particularly since FTA guidance has changed since 2005. This new Section has been developed in consultation with FTA staff. It should be noted that FTA now

requires "In approving a joint development project, the Board shall determine, following reasonable investigation, that the terms and conditions of the joint development improvement (including without limitation, the share of revenues for public transportation which shall be provided as part of the project) are commercially reasonable and fair to WMATA, and that such revenue shall be used for public transportation." References to specific sections of Federal code have also been added at FTA's request.

Section 14. Unsolicited Proposals

While contained in the 2005 Guidelines, this concept has been expanded and moved to its own section. A new Section 14.2 provides that WMATA may reject a proposal if it has an operational use for the property. New Section 14.3 states that WMATA will inform the local jurisdiction of the unsolicited proposal and may reject the offer if appropriate planning has not been completed. The section provides that unsolicited proposals be advertised, and that after the stated time period has expired, the unsolicited proposal and any new competitors will be processed according to the relevant provisions of Section 7, which include approval by the WMATA Board.