

21.0 ENVIRONMENTAL REQUIREMENTS

Presently, the use of Federal transit funds is an option for planning, design, or implementation of the initial phase of the streetcar project. This option might or might not be exercised in the initial project phase. Federal funds may also be requested, however, for subsequent phases of the project. To qualify for Federal transit funding, the proposed City of Miami Streetcar project would need to comply with the Federal Transit Administration's (FTA's) environmental policies. Coordination with FTA would confirm the environmental classification and process for complying with the agency's requirements.

Additionally, the City (and/or local or state partners) may request that local funds expended for the project qualify for credit toward the local match for subsequent Federal funding. The FTA must first give its approval to use non-Federal funds for final design, construction, or other capital costs, such as rolling stock, in advance of the availability of Federal funds. Similarly, FTA approval is required to qualify for reimbursement of eligible expenses or credit for eligible expenses toward the local matching share of Federal funding, should the project be approved by FTA at a later date.

21.1 Letter of No Prejudice Option

FTA has several mechanisms that allow projects to advance beyond planning and preliminary engineering without first receiving formal FTA approval. The mechanism that could allow the proposed Miami Streetcar to incur final design and construction costs without first receiving formal FTA project approval is known as a "Letter of No Prejudice" (LONP). The LONP allows a project proponent to spend local funds on the project and be eligible for reimbursement or credit toward the local match if and when FTA approves and funds the project. The LONP would have an expiration date beyond which funding cannot be requested retroactively for the project. Typically, the period covered by a LONP does not exceed two years.²⁷ The LONP approach has been used on other urban transit projects where potential grant applicants desire to proceed before receiving Federal funding.

21.2 Environmental and Planning Requirements

National Environmental Policy Act (NEPA) and Environmental Laws

In order to receive a LONP, the applicant must meet the requirements of NEPA and environmental laws and executive orders²⁸ (such as the Endangered Species Act, Section 4(f) of the Department of Transportation Act, the National Historic Preservation Act, and environmental justice considerations) before state or local funds are spent on a project that may subsequently be funded with FTA funds.

NEPA (42 USC 4321 et seq.) provides a framework for considering the potential environmental impacts of major Federal actions such as the approval and funding of urban transit projects. FTA has promulgated

environmental regulations implementing NEPA (23 CFR 771), which provide specific environmental review and documentation requirements for the agency's actions. Under these regulations, projects are classified with regard to the level of environmental review and documentation they require.

FTA's environmental rules encourage local governments that may apply for Federal transit funding to coordinate with FTA so that FTA can advise the applicant of the probable class of action and the related level of documentation required in the NEPA process (23 CFR 771.115). Projects that fall within categories of actions that do not typically have significant environmental impacts are considered to be categorical exclusions, or Class II actions, and do not require detailed environmental review (23 CFR 771.117). Actions that are larger in scope or may result in significant impacts require more detailed review in the form of an environmental assessment (EA) or an environmental impact statement (EIS). Both EAs and EISs require that the public be afforded the opportunity to comment.

According to FTA's guidance, projects qualifying for a LONP may not be advanced "beyond planning and preliminary engineering before FTA has approved either a categorical exclusion, a finding of no significant impact (for an EA), or a record of decision (for an EIS)."²⁹

The Miami Streetcar project would be constructed almost exclusively within existing public rights-of-way. The guideway, overhead power wires, power substations, and platforms would be constructed primarily within the public right-of-way. A portion of the project is proposed within a plaza in the Midtown

Miami Redevelopment Area, which is on private property. As noted above, several candidate sites for a maintenance and operations facility are under consideration. This facility would not be within existing right-of-way, but it is likely that the site would be in an industrial area and compatible with surrounding land uses.

Based on the project characteristics described above, the Miami Streetcar project may qualify as a Categorical Exclusion under FTA's environmental rules, as it appears to be consistent with the following types of actions that meet the criteria for Categorical Exclusions:

- Track and railbed maintenance and improvements are carried out within the existing right-of-way (23 CFR 771.117 (c)(18)), and
- Rail storage and maintenance facilities are constructed in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community (23 CFR 771.117(d)(11)).

The proposed integration with Bay Link may affect how FTA assesses the project with respect to its environmental classification.

FTA Region 4 should be contacted to discuss the environmental classification of the project and confirm this assessment as well as the documentation that would be required. If the project were classified as a categorical exclusion, summary documentation would need to be prepared, describing the project, its potential impacts on environmental resources, and procedures for complying with environmental laws and requirements. The Bay Link Draft EIS provides

²⁷ FTA Circular 9300.1A, Chapter 6, Section 21.

²⁸ Ibid.

²⁹ Ibid.



substantial recent information on environmental conditions in the project area. This information would be very useful in preparing documentation for a categorical exclusion.

If FTA does not concur that the project is a categorical exclusion, then an EA or EIS would be required if the City wishes to pursue Federal funding. An EA or EIS would require more extensive analysis and documentation than a categorical exclusion, and would have longer time frames to complete.

Planning Requirements

In addition to meeting NEPA and other environmental requirements, conformity with the Clean Air Act and inclusion of the project in the local Transportation Improvement Program (TIP) and Federally approved State Transportation Improvement Program (STIP) must be demonstrated. Presently, the Miami Streetcar project is included in the City’s Draft Five-Year TIP (along with reconstruction, resurfacing, sidewalk repair,

traffic control) for public streets in the study area. If the project is incorporated into the local TIP and STIP, an individual conformity analysis would not be required.

21.3 Process to Meet Environmental Requirements

Coordination with FTA regarding the project’s environmental classification and documentation requirements should be initiated as the project proceeds to ensure eligibility for Federal funding. The request for an LONP would allow the project to move forward while the appropriate environmental review is conducted. A categorical exclusion would be more expedient and require less effort to process than would an EA or EIS.

It is also important is to ensure that the project is in the TIP and STIP, or that the process is underway and likely to result in the project being adopted prior to the expenditure of local funds on the project. The City of Portland submitted its categorical exclusion documentation and request for a LONP prior to

incorporation of the project in the STIP; however, the process to incorporate and approve the project was underway when the request was submitted and it was completed prior to project initiation.

Finally, a public involvement process would provide useful information on public interest, support, and/or concerns regarding the project.