

PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION, GEORGIA DIVISION
AND
THE GEORGIA DEPARTMENT OF TRANSPORTATION
REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR FEDERAL-AID
HIGHWAY PROJECTS

Whereas, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508) direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded;

Whereas, the Federal Highway Administration's (FHWA) distribution and spending of Federal funds under the Federal-aid Highway Program and approval of actions pursuant to Title 23 of the U.S. Code are major Federal actions subject to NEPA;

Whereas, the Secretary of Transportation has delegated to FHWA the authority to carry out functions of the Secretary under NEPA as they relate to matters within FHWA's primary responsibilities (49 CFR 1.81(a)(5));

Whereas, the FHWA's NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS (23 CFR 771.117(c)-(d));

Whereas, the Georgia Department of Transportation (GDOT) is a State agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and must assist FHWA in fulfilling its obligations under NEPA for GDOT projects (23 CFR 771.109);

Whereas, Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allows FHWA to enter into programmatic agreements with States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State to determine whether a project qualifies for a CE on behalf of FHWA;

Whereas, the FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014 (23 CFR 771.117(g));

Now, therefore, the FHWA, Georgia Division (FHWA) and GDOT enter into this Programmatic Agreement ("Agreement") for the processing of categorical exclusions.

I. PARTIES

The parties to this Agreement are FHWA and GDOT.

II. PURPOSE

The purpose of this Agreement is to authorize GDOT to determine on behalf of FHWA whether a project qualifies for a CE action specifically listed in 23 CFR 771.117 (c)-(d) (listed in Appendices A and B of this Agreement) and approve such projects on behalf of FHWA. This Agreement also authorizes GDOT to certify to FHWA that an action that it cannot approve on behalf of FHWA according to the terms of this Agreement, but meeting the CE criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), qualifies for a CE as long as there are no unusual circumstances present that would require the preparation of either an EA or an EIS.

III. AUTHORITIES

This Agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. 4321 et seq.
- B. Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, 126 Stat. 405, Sec. 1318(d) (July 6, 2012)
- C. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)
- D. 40 CFR parts 1500 – 1508
- E. DOT Order 5610.1C
- F. 23 CFR 771.117

IV. RESPONSIBILITIES

A. The GDOT is responsible for:

1. Ensuring the following process is completed for each project that qualifies for a CE:
 - a. For actions listed in 23 CFR 771.117(c)-(d) that do not exceed the thresholds in Section IV(A)(1)(b), the GDOT may make a CE approval on behalf of FHWA. The GDOT will identify the applicable CE from 23 CFR 771.117(c)-(d) and ensure any conditions or constraints are met, certify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No separate review or approval of the CE by FHWA is required unless the thresholds in Section IV(A)(1)(b) are exceeded.
 - b. The GDOT may not approve actions listed in 23 CFR 771.117(c)-(d) that exceed the following thresholds. The GDOT may certify to FHWA that the action qualifies for a CE. An action requires FHWA CE review and approval based on GDOT certification if the action:

- i. Involves acquisitions of more than a minor amount of right-of-way, defined as: no displacements (of structures, people, or businesses) or impairment of existing land functions (such as net loss of parking, and substantial loss of residential front yards);
- ii. Involves the construction of temporary access, or the temporary closure of existing roads, bridges, or ramps during construction, that would result in major traffic disruptions, defined as: adverse effects to businesses; or detours or ramp closures that would interfere with any special event or festival or with transport of goods or agricultural products; or substantial public controversy regarding temporary access changes as evidenced by public or stakeholder involvement conducted in accordance with GDOTs Public Involvement Plan; or lack of support of local government, including school systems and emergency responders;
- iii. Involves a permanent change in access, such as adding or removing intersections, adding or removing median access (median cuts), and roadway closures that would result in: any change in access to the Interstate system or a controlled access highway; or conversion of a local street into a higher classification of roadway; or substantial public controversy regarding permanent access changes as evidenced by public or stakeholder involvement conducted in accordance with GDOTs Public Involvement Plan;
- iv. Results in a determination of adverse effect on historic properties pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. 306108);
- v. Requires the use of properties protected by Section 4(f) (49 U.S.C. 303/23 U.S.C. 138) that cannot be documented with a *de minimis* determination;
- vi. Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. 200305), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k, 64 Stat. 430), the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i; 50 Stat. 917), or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;
- vii. Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. § 1344) Individual permit;
- viii. Requires a U.S. Coast Guard bridge permit (33 U.S.C. § 401);
- ix. Requires work encroaching on a regulatory floodway or work affecting base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR 650 subpart A;

- x. Requires construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture;
 - xi. Is defined as a "Type I project" per 23 CFR 772.5 and future noise levels are expected to exceed the Noise Abatement Criteria or are considered substantial according to the GDOT noise manual;
 - xii. Requires formal consultation under Section 7 of the Endangered Species Act of 1972 (i.e., a finding of "may affect, likely to adversely affect" is made for a federally listed, proposed, or candidate species, or a finding of "adverse modification" to proposed or designated critical habitat);
 - xiii. Will result in a "take" under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c);
 - xiv. Does not conform to the State Implementation Plan which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment areas;
 - xv. Is not included in or is inconsistent with the Statewide Transportation Improvement Program, and in applicable urbanized areas, the Transportation Improvement Program;
 - xvi. Is not consistent with the State's Coastal Zone Management Plan;
 - xvii. Exceeds a Farmland Impact Rating Score of greater than 160;
 - xviii. Involves any impact which reduces the quality and/or quantity upon Essential Fisheries Habitat as designated under the Magnuson-Stevens Fisheries Conservation and Management Act;
 - xix. Involves a disproportionately high and adverse effect to any minority or low-income population;
 - xx. Involves contaminated underground storage tank or hazardous material sites, or affects remedial or monitoring systems for cleanup of hazardous waste, hazardous materials, or underground storage tanks; and
 - xxi. Involves widening and improving existing transportation facilities by adding capacity beyond the existing operational ROW.
- c. The GDOT may not approve actions that exceed the above thresholds or actions not specifically listed in (Appendices A and B). Instead, if GDOT believes that an action meets the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a), the GDOT may certify that an action will not result in significant environmental impacts if the GDOT concludes that the action qualifies

for a CE, and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS. The GDOT shall submit this certification to FHWA for approval prior to the time FHWA contemplates its next approval or grant action for the project.

- i. Upon request, by the FHWA, the GDOT shall provide a copy of the CE and all associated special studies and correspondence relating to the project, prepared for the action(s) in accordance with Section V of this agreement;
 - ii. If any project requires a Section 4(f) *de minimis* determination, the GDOT shall provide FHWA with a copy of the GDOT request to the official with jurisdiction over the Section 4(f) resource for a *de minimis* determination and the written concurrence from the official with jurisdiction when received; and
 - iii. The GDOT may request notice to proceed with final design, acquisition of right-of-way, or construction from FHWA once GDOT has completed its certification that a project is a CE.
2. Providing a list of CEs approved by GDOT or by FHWA pursuant to this Agreement to the FHWA quarterly (July, October, January, and April) no later than the 10th of each month. The list of actions will be in spreadsheet format (e.g. Microsoft Excel) and shall include the following information:
 - a. GDOT project information including: GDOT PI number, county, route number or facility name, date the CE development was started, date the CE was approved, and project sponsor (GDOT or local government name);
 - b. Whether the project involved a *de minimis* determination under Section 4(f);
 - c. Environmental commitments;
 - d. Identification of the CE action listed in Appendices A or B.
3. Timely consultation with FHWA for actions that involve unusual circumstances (23 CFR 771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. The GDOT may decide or FHWA may require additional studies, agency coordination or public involvement to be performed prior to making a CE approval, or the preparation of an EA or EIS.
4. Meeting applicable documentation requirements in Section V and applicable approval and reevaluation requirements in Section VI, and applicable quality control/quality assurance (QC/QA), monitoring, and performance requirements in Section VII.
5. Relying only upon employees directly employed by the GDOT to make CE approvals or certifications submitted to FHWA under this agreement. The GDOT may not delegate its responsibility for CE approvals or certifications to third parties (i.e., consultants, local government staff, and other State agency staff).
6. Consulting with FHWA when there is any uncertainty about whether the CE may be approved on behalf of FHWA.

7. Requesting that FHWA review and approve a project action that could be approved by GDOT under this agreement, when deemed necessary.
8. Establishing roles and responsibilities for all CEs approved on behalf of FHWA and conduct monitoring to ensure that QA/QC is conducted as described in Section VII.

B. The FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to GDOT, as requested.
2. Providing timely input on and review of CE actions (pursuant to the Stewardship and Oversight Agreement on Project Assumption and Program Oversight, including the Memorandum of Agreement regarding Responsibilities and Commitments for Environmental Process Program/Project Actions for Federal-aid Highway Projects in effect at the time of the review). FHWA will base its approval of CE actions on the project documentation and certifications prepared by GDOT under this Agreement.
3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

V. DOCUMENTATION OF GDOT CE APPROVALS AND CERTIFICATIONS

A. For GDOT CE approvals and GDOT CE certifications transmitted to FHWA for approval, the GDOT shall ensure that it fulfills the following responsibilities for documenting the project-specific determinations made:

1. For actions listed in Appendices A and B, the GDOT shall identify the applicable action, ensure any conditions specified in FHWA regulation are met, prepare documentation as appropriate that supports the CE determination, demonstrate and certify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a GDOT signature evidencing approval if the project meets the conditions for GDOT approval stated in this Agreement.
2. GDOT will document programmatic CE approvals on FHWA's behalf using the appropriate CE Checklists approved by FHWA.
3. CE actions that do not qualify to be approved on FHWA's behalf shall be submitted to FHWA for its approval.

B. The GDOT shall maintain a project record for CE approvals it makes on FHWA's behalf and each CE submitted to FHWA for approval. This record should include at a minimum:

1. Any checklists, forms, and/or other documents (e.g., special studies) and exhibits that summarize the consideration of project effects and unusual circumstances.
2. A summary of public involvement complying with requirements of GDOT's Public Involvement Plan.

3. Any stakeholder communication, correspondence, consultation, or public meeting documentation, public comments, including all GDOT responses to public and stakeholder comments.
 4. The GDOT or FHWA approved CE, including the name and title of the document approver.
 5. For cases involving reevaluations, compliance with any agreement between FHWA and GDOT regarding reevaluation processes and policies in effect at the time of reevaluation.
- C. The GDOT should provide any electronic or paper project records maintained by GDOT to FHWA at its request. The GDOT should retain those records, including all letters, electronic correspondence and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve GDOT of its project or program recordkeeping responsibilities under 2 CFR 200.333 or any other applicable laws, regulations, or policies.

VI. NEPA APPROVALS AND REEVALUATIONS

- A. Only GDOT personnel specifically identified below may make GDOT CE approvals and CE certifications submitted to FHWA for approval:
1. Approval of CEs listed in Appendices A and B that meet the stipulations of this Agreement are delegated to the GDOT State Environmental Administrator.
- B. In accordance with 23 CFR 771.129 and the GDOT/FHWA 2016 NEPA Reevaluation Memorandum of Agreement (MOA), or subsequent reevaluation agreements, the GDOT shall reevaluate its determinations and certifications for projects, consult with FHWA, and as necessary, prepare additional documentation to ensure that determinations are still valid.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

- A. Monitoring of the compliance with this Agreement shall be undertaken through annual internal reviews to be conducted by GDOT, and joint reviews to be conducted periodically by FHWA and GDOT.
1. GDOT Internal Process Reviews:
 - a. CE Agreement Project Review: GDOT shall annually review at least 10 percent of the projects approved as CEs on behalf of FHWA during the GDOT fiscal year for consistency with the Agreement, applicable laws, QC/QA requirements, and records retention. Projects reviewed shall include samples from across the seven different GDOT Districts and project types.
 - b. FHWA shall be notified when a review is scheduled by GDOT. Copies of the findings associated with these reviews, along with proposed corrective action(s), if necessary, shall be provided to FHWA within thirty (30) days of completion of the reviewing an annual monitoring performance report.
- B. FHWA Oversight and Monitoring
1. FHWA monitoring will include consideration of the technical competency and organizational

capacity of GDOT, as well as GDOT's performance of its CE processing and oversight functions and responsibilities. Performance considerations include, without limitation, the quality and consistency of GDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of GDOT staff and consultants, and the effectiveness of GDOT's administration of its internal CE approvals.

2. FHWA will conduct one or more program reviews as part of its oversight activities, during the term of this Agreement. The GDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. The GDOT should draft the corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by the GDOT shall be considered at the time this Agreement is considered for renewal.
3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to GDOT's performance under this Agreement. The FHWA may require GDOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
4. The GDOT agrees to cooperate with FHWA in all oversight and quality assurance activities related specifically to this agreement.

VIII. AMENDMENTS

Either GDOT or FHWA may propose amendments to this Agreement. If the parties agree to amend this Agreement, then FHWA and GDOT may electronically amend the Agreement via email concurrence. Where no consensus can be reached, the Agreement will not be amended. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.


IX. TERM, RENEWAL, AND TERMINATION

- A. This Agreement shall have a five (5) year term, effective on the date of the last signature.
- B. This Agreement is renewable for additional five (5) year terms if GDOT requests renewal, and FHWA determines that GDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- C. Either party to this Agreement may terminate it by providing thirty (30) days written notice to the other party, provided that the signatories and concurring parties consult during the period prior to termination to seek Agreement on amendments or other actions that would avoid termination.
- D. GDOT will make this agreement available to the public by posting it to GDOT's external website.
- E. Expiration or termination of this Agreement shall mean that the GDOT is not able to make CE approvals on FHWA's behalf.

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.


Acting Jermaine Hannon
Division Administrator
Federal Highway Administration

8-28-18
Date


Russell R. McMurry
Commissioner
Georgia Department of Transportation

8/28/18
Date

APPENDIX A – 23 CFR 771.117(c)

(c) The following actions meet the criteria for CEs in the CEQ regulations (40 CFR 1508.4) and §771.117(a) and normally do not require any further NEPA approvals by the FHWA:

(1) Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's highway safety plan under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

(i) Emergency repairs under 23 U.S.C. 125; and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locators, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

(23) Federally-funded projects:

(i) That receive less than \$5,403,484.88 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) of Federal funds; or

(ii) With a total estimated cost of not more than \$32,420,909.28 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) and Federal funds comprising less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

APPENDIX B – 23 CFR 771.117(d)

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1)-(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities 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.

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.