

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

THIS PROGRAMMATIC AGREEMENT (“Agreement”) made and entered into by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of MISSOURI, acting by and through its DEPARTMENT OF TRANSPORTATION (“MoDOT”) hereby provides as follows:

WITNESSETH:

Whereas, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370h (2014), 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 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;

Whereas, the Missouri Department of Transportation 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 MoDOT projects (23 CFR 771.109);

Whereas, the FHWA and MoDOT’s Stewardship and Oversight Agreement sets forth the roles and responsibilities of the FHWA and MoDOT with respect to Title 23 project approvals and related responsibilities, be it local or state-sponsored, and FHWA oversight activities;

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 the 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;

Now, therefore, the FHWA and MoDOT enter into this Programmatic Agreement (“Agreement”) for the processing of categorical exclusions.

I. PARTIES

The Parties to this Agreement are the FHWA and the Missouri Department of Transportation (“MoDOT”).

II. PURPOSE

The purpose of this Agreement is to authorize MoDOT to determine on behalf of FHWA whether a local or state-sponsored federal-aid project qualifies for a CE specifically listed in 23 CFR 771.117(c) and (d) (listed in Appendix A of this Agreement). This Agreement also authorizes MoDOT to certify to FHWA that an action not specifically listed in 23 CFR 771.117(c) (d), 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 environmental assessment (EA) or an environmental impact statement (EIS).

III. AUTHORITIES

This agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. 4321 - 4370
- B. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318(d)
- C. Fixing America’s Surface Transportation Act, P. L. 114-94
- D. 40 CFR parts 1500 - 1508
- E. DOT Order 5610.1C
- F. 23 CFR 771.117

IV. RESPONSIBILITIES

- A. MoDOT Environmental and Historic Preservation Office is responsible for:
 - 1. Ensuring the following process is completed for each project that qualifies for a CE:

- a. For actions qualifying for a CE listed in Appendix A (CEs established in 23 CFR 771.117(c) and (d), that do not exceed the thresholds in Section IV(A)(1)(b) of this Agreement, MoDOT may make a CE approval on behalf of FHWA. MoDOT will identify the applicable listed CE, ensure any conditions or constraints are met, verify 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. Referred to by MoDOT as a Programmatic CE (PCE).
- b. Actions listed in Appendix A that exceed the thresholds described below may not be approved by MoDOT. MoDOT may certify to FHWA that the action qualifies for a CE. An action requires FHWA CE review and approval (referred to by MoDOT as a CE2) based on MoDOT certification if the action:
 - i. Involves a significant floodplain encroachment as defined in 23 CFR 650.105(q), other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths).
 - ii. Involves acquisitions of more than a minor amount of right-of-way. A minor amount of right-of-way is defined as no more than five acres of new right-of-way, permanent easement, and temporary easement combined, except if the project construction cost is under five million dollars or for long corridors with right-of-way strips of 25 feet or less on each side of existing right-of-way;
 - iii. Involves acquisitions that result in five or more displacements. For those less than 5, none can occur within an Environmental Justice community. Public involvement will be carried out per MoDOT's Public Involvement Plan;
 - iv. Results in capacity expansion of a roadway by addition of through lanes, except if the project does not require new right of way resulting from the addition of the through lanes;
 - v. Involves the construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions. Public involvement will be carried out per MoDOT's Public Involvement Plan;
 - vi. Involve changes in access control for interstates and other freeways or expressways;
 - vii. Results in a determination of unresolved adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act;

- viii. Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) that cannot be documented with an FHWA *de minimis* determination, or a programmatic Section 4(f) evaluation;
 - ix. Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965, the Federal Aid in Fish Restoration Act, the Federal Aid in Wildlife Restoration Act, 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;
 - x. Requires a U.S. Army Corps of Engineers Section 404 permit other than a Nationwide Permit or a General Permit or an action that does not meet the terms and conditions of section 10 of the Rivers and Harbors Act of 1899;
 - xi. Requires a U.S. Coast Guard bridge permit;
 - xii. 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;
 - xiii. 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;
 - xiv. Does not include a next phase in the statewide transportation improvement program, and in the transportation improvement program, as applicable;
 - xv. The project requires formal Section 7 of the Endangered Species Act consultation that leads to “May Affect, Likely to Adversely Affect” or a “Jeopardy” opinion under the Endangered Species Act; or results in impacts, or requires a permit, subject to the conditions of the Bald and Golden Eagle Protection Act;
 - xvi. The project involves unresolved controversy with the public, interested agencies, or tribes. Public involvement will be carried out per MoDOT’s Public Involvement Plan;
- c. MoDOT may not approve actions not specifically listed as CEs in 23 CFR 771.117(c) or (d), but meet the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a). Instead, MoDOT shall certify that an action will not result in significant environmental impacts if MoDOT 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 MoDOT shall submit this certification to

FHWA for approval prior to the time FHWA contemplates its next approval or grant action for the project.

- i. MoDOT shall provide a copy of the CE documentation prepared for the actions(s) in accordance with Section V of this Agreement.
 - ii. The Division Office's objection to a MoDOT certification may not constitute a disapproval of the action, but signifies that FHWA will need to engage in project-specific review to verify that the certification is adequate, which may include consultation with other agencies.
2. Providing a list of PCEs that MoDOT has approved in accordance with Section IV(A)(1)(a) of this Agreement to the Division Office quarterly. FHWA will use this report for monitoring and quality control purposes as described in Section VII(C) of this agreement. The list of PCEs approved will contain the following information:
 - a. Project number (J number for MoDOT project, Federal number for locally sponsored projects) and a project name; including the county and route number or facility name where the project will occur;
 - b. Identify the CE action listed in the regulation (from Appendix A);
 - c. Consultations or technical analyses that are pending (if applicable);
3. Consulting early in project development 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. MoDOT may decide or FHWA may require additional studies 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 for State CE approvals on FHWA's behalf and State CE certifications to FHWA, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality, monitoring, and performance requirements in Section VII.
5. Relying only upon employees directly employed by MoDOT to make CE approvals or certifications in accordance with Section IV(A)(1)(a),(b), and (c) of this agreement. MoDOT may not delegate its responsibility for CE approvals or certifications to third parties (i.e., consultants, local government staff, and other State agency staff).

B. The FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to MoDOT, as requested.

2. Providing timely input and review of certified actions. FHWA will base its approval of CE actions on the project documentation and certifications prepared by MoDOT 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 MoDOT PCE APPROVALS AND CE2 CERTIFICATIONS

- A. For State PCE approvals and State CE2 certifications to FHWA for approval, MoDOT shall ensure that it fulfills the following responsibilities for documenting the project-specific determinations made:
 1. For actions approved at PCEs, MoDOT shall identify the applicable action, ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a MoDOT signature evidencing approval within the Request for Environmental Services (RES) or Request for Environmental Review (RER).
 2. In addition, for actions certified as CE2s, MoDOT shall prepare documentation that supports the CE2 determination and that no unusual circumstances as described in Section IV (A)(1)(b) of this agreement exist that would make the CE2 approval inappropriate.
- B. MoDOT shall maintain a project record for PCE approvals it makes on FHWA's behalf and each CE2 submitted to FHWA for approval. This record shall include at a minimum:
 1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
 2. A summary of public involvement complying with the requirements of MoDOT-approved public involvement policy;
 3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
 4. The name of the document approver and the date of MoDOT's approval or FHWA's final approval;
 5. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary);

6. Evidence documenting MoDOT's review and determination that the project has: (1) independent utility, (2) logical termini, and (3) does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;
 7. Evidence documenting that at the time of the CE approval or certification, MoDOT has complied, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.
- C. Any electronic or paper project records maintained by MoDOT shall be provided to FHWA at their request. MoDOT shall retain those records, including all letters 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 MoDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

VI. NEPA APPROVALS AND RE-EVALUATIONS

- A. MoDOT's PCE approvals and CE2s submitted to FHWA for approval may only be made by officers or offices specifically identified below:
1. Approval of PCEs in Appendix A is delegated to the MoDOT Environmental Compliance Manager, the designated Local Public Agency (LPA) Environmental Specialists, and the Environmental and Historic Preservation Manager.
 2. Certification of CE2s is delegated to the MoDOT Environmental Compliance Manager and the Environmental and Historic Preservation Manager.
- B. In accordance with 23 CFR 771.129, if a change in the project scope, project limits, existing conditions, or pertinent regulations occurs after the PCE has been approved, the approved PCE determination shall be re-evaluated, commensurate with the change, to ensure the PCE determination is appropriate. This should occur at the time the change is identified, but at a minimum, the project must be assessed for changes when the project moves to the next subsequent phase of development (final design, ROW acquisition, or construction obligation). If during the re-evaluation, the impacts exceed any threshold defined in section IV(A)(1)(b) of this Agreement or unusual circumstances defined in 23 CFR 771.117(b) exist, due to the change in scope of work or unforeseen conditions, MoDOT will send the re-evaluation to FHWA for review and a decision on how to proceed. The re-evaluation shall describe the project scope change(s) including an assessment of consequential impacts. Include any mitigation commitment changes resulting from the re-evaluation, and documentation of coordination with resource agencies and the public, as appropriate. MoDOT shall not remove or alter commitments that resulted from coordination with resource agencies without the applicable agencies prior approval. MoDOT shall not remove or alter commitments that resulted from public coordination without prior appropriate public involvement and FHWA approval. Based on the re-evaluation process described herein, MoDOT will have verified if the original

PCE determination remains valid at the time of the federal project approval request. Coordination should occur with FHWA, as appropriate, to determine if a CE2 review is warranted.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. MoDOT Quality Control & Quality Assurance.

MoDOT agrees to carry out regular quality control and quality assurance activities to ensure that its PCE approvals and CE2 submissions to FHWA for approval are made in accordance with applicable law and this Agreement. A MoDOT Planning Technician determines if a project falls under this Agreement and the MoDOT Environmental Compliance Manager reviews each project determination and approves the PCE to complete quality control and assurance. For LPA projects, the MoDOT LPA Environmental Specialists approve CEs in Appendix A and the MoDOT Environmental Compliance Manager review each project determination and approves the PCE to complete quality control and assurance.

B. MoDOT Performance Monitoring and Reporting.

The FHWA and MoDOT shall cooperate in monitoring performance under this Agreement and work to assure quality performance.


C. FHWA Oversight and Monitoring

1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of MoDOT, as well as MoDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of MoDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of MoDOT staff and consultants, and the effectiveness of MoDOT's administration of its internal CE approvals.
2. On a quarterly basis, FHWA will review MoDOT's list of approved PCEs (using a statistically valid approach) to determine whether MoDOT has adequately met the conditions of this Agreement. Any findings will be recorded and communicated to MoDOT immediately to be addressed appropriately. Based on these quarterly reviews, FHWA will determine if any risk to the program is evident. FHWA may conduct program reviews, if needed, as part of its risk-based stewardship and oversight activities, during the term of this Agreement. MoDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. MoDOT shall draft the corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by MoDOT shall be considered at the time this Agreement is considered for renewal.

Execution Clause


Name: Kevin W. Ward Date 10/10/2018

Title: Division Administrator, Federal Highway Administration Missouri Division


Name: Ed Hassinger Date 10/15/2018

Title: Chief Engineer Missouri Department of Transportation

Approved as to Form

Date 10/15/18

ATTEST:


SECRETARY TO THE COMMISSION

3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to MoDOT's performance under this Agreement.
4. MoDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

VIII. AMENDMENTS

If the parties agree to amend this Agreement, then FHWA and MoDOT may execute an amendment with new signatures and dates of the signatures. 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 term of five (5) years, effective on the date of the last signature. MoDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if MoDOT requests renewal and FHWA determines that MoDOT 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 based on the results of FHWA monitoring reviews of MoDOT's performance according to the terms of this agreement.
- C. Either party may terminate this Agreement at any time only by giving at least 30 days written notice to the other party.
- D. Expiration or termination of this Agreement shall mean that MoDOT is not able to make CE approvals on FHWA's behalf.

APPENDIX A: 23 CFR 771.117 (c) and (d) - CRITERIA FOR PROGRAMMATIC CEs

This programmatic CE applies to the types of projects listed below and also do not exceed thresholds defined in section IV(A)(1)(b) of this Agreement:

- (1) Activities that 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 locaters, 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 refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a

transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.

(23) Federally-funded projects:

(i) That receive less than \$5,000,000 (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 \$30,000,000 (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 23 CFR 771.117 (e).

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the action meets the constraints in 23 CFR 771.117 (e).

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the action meets the constraints in 23 CFR 771.117 (e).

- (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.
- (31) Transportation corridor fringe parking facilities.
- (32) Construction of new truck weigh stations or rest areas.
- (33) 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.
- (34) Approvals for changes in access control.
- (35) 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.
- (36) 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.
- (37) 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.
- (38) 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.
- (39) 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.

