

**Guidance for Implementation of FTA’s Categorical Exclusions  
(23 C.F.R. § 771.118)  
January 2023**

**I. Introduction**

The Federal Transit Administration (FTA) categorical exclusions (CEs), located at 23 CFR § 771.118, are tailored specifically to transit projects and provide for a more straightforward and efficient environmental review process. With this guidance, FTA aims to assist FTA Regional staff and project sponsors (or “applicants”) in applying specific CEs to FTA projects. This guidance is not, however, intended to address National Environmental Policy Act (NEPA) compliance in general; questions about NEPA compliance on FTA projects should be directed to FTA Regional staff. FTA has updated this guidance in response to statutory and regulatory changes, as well as the need for clarification on certain issues that have arisen on the application of CEs to particular projects.

**II. Background**

FTA’s CEs are located at 23 CFR § 771.118, which is organized as follows: paragraph (a) describes and defines CE actions; paragraph (b) explains “unusual circumstances;” paragraph (c) contains categories of actions that FTA has determined that normally do not have a significant effect on the human environment (“c-list CEs”); paragraph (d) contains examples of actions that *may* be categorically excluded with sufficient documentation (“d-list CEs”); paragraph (e) concerns the application of cross-agency CEs; and paragraph (f) addresses the addition of new CEs in the future. In general, FTA followed the Council on Environmental Quality’s (CEQ’s) [“Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act”](#) guidance (Dec. 2010) in developing this regulation.

**III. Applicability and Documentation**

The list of CEs in section 771.118(c) focuses on actions most applicable to FTA. It is FTA’s responsibility to determine whether the action described by the project sponsor falls within the CE category (i.e., the action meets the criteria for CEs in the CEQ regulation), whether the action is impermissibly segmented from a larger project, or whether there are unusual circumstances (e.g., substantial controversy on environmental grounds or a significant impact to properties protected by Section 4(f) requirements<sup>1</sup> or Section 106 of the National Historic Preservation Act<sup>2</sup>) that would make a CE determination inappropriate.

A project sponsor should include sufficient information in its grant application for FTA to make a CE determination. A description of the project, as well as any maps or figures typically included with the

---

<sup>1</sup> Section 4(f), originally enacted as part of the Department of Transportation Act of 1966, is a statute that provides substantive protection for certain sites of national, State, or local significance, including land from publicly owned parks, recreation areas, and waterfowl and wildlife refuges, as well as public or privately owned historic sites. FTA’s regulations that implement Section 4(f) requirements can be found at 23 CFR part 774.

<sup>2</sup> Section 106 is the short-hand name for a process required by the National Historic Preservation Act that involves consultation by a federal agency with a historic preservation officials, other federal agencies, Native American tribes, and consulting parties concerning the effects of federal projects on properties on or eligible for the National Register of Historic Places.

application or as requested by the FTA Regional Office, will normally be sufficient for FTA to determine whether the CE applies. Documentation demonstrating compliance with environmental requirements other than NEPA, however, such as Section 106 of the National Historic Preservation Act (“Section 106”), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Relocation Act”), or Section 7 of the Endangered Species Act, may be necessary. This supporting documentation can be included with the grant in FTA’s Transit Award Management System (TrAMS), which is preferred, or kept in the FTA Regional Office’s project files. For projects that propose to use CEs under section 771.118(c) that require additional information to ensure the CE applies or for compliance with laws other than NEPA, the submittal of that additional information does not mean that they must instead be approved under section 771.118(d). See Section VII for more information regarding “Special Considerations.”

Section 771.118(d), which is an open-ended categorical exclusion authority, lists example actions and requires documentation to verify the application of a CE is appropriate (i.e., the action meets the criteria established in the CEQ regulation). The list of examples is particularly helpful for those actions that do not meet the conditions of CEs found in section 771.118(c).

A CE must capture the entire proposed action, which includes all connected actions (see [CEQ, “Final Guidance on Establishing, Applying, and Revising Categorical Exclusions under NEPA,” 75 FR 75628, 75632, Dec. 6, 2010](#)). The requirement that a project demonstrates independent utility, connects logical termini, and does not restrict consideration of alternatives reflects FTA’s test for determining the full scope of a project for NEPA review purposes and avoiding impermissible segmentation. This does not prohibit the construction of a transportation facility in phases, so long as the project scope reviewed under NEPA meets the test described above. Typically, the documentation expectations described above will be sufficient to demonstrate impermissible segmentation is not occurring, but in some instances, additional information may be needed.

If an action could fall under multiple CEs listed at section 771.118(c) due to their broad nature and/or one or more of the examples under section 771.118(d), then recipients should choose the best option (i.e., the CE that most closely fits the proposed activities) for the particular project in consultation with the FTA Regional Office. Preventative maintenance is one such example. There are many different types of preventative maintenance, and different types might qualify under different CEs. The CEs at 771.118(c)(2), (c)(7), (c)(8) and (c)(15) might all apply to some aspects of preventative maintenance, but there are also other CEs, such as the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) prescribed CEs, that could potentially apply as well. For example, a project to rehabilitate vehicles that will be accommodated by the existing facilities is best described under 771.118(c)(7), and it would be better to use that particular CE in that case, even though the project also could be covered by 771.118(c)(13). Another example would be a corridor-based Bus Rapid Transit (BRT) project, which could be approved under 771.118(c)(9) but also under 771.118(c)(12). Because the CE at 771.118(c)(9) is more specific to the type of action involved with a corridor-based BRT project, that CE should be used instead of the more generic CE at 771.118(c)(12), as long as the project, for example, only “uses land primarily disturbed for transportation use” and meets the other CE conditions. **Ultimately, the selected CE must cover all aspects of the proposed project’s scope, including prospective acquisition, and the project description should include all project elements.**

Applicants may incur costs under pre-award authority for projects that clearly meet the criteria for any of the categorical exclusions under 23 CFR 771.118(c). This is at an applicants’ risk since if a project is subsequently found not to qualify as a CE under that paragraph, it will be ineligible for FTA assistance.

Any project sponsor that is concerned that a project may not clearly qualify as a CE is strongly encouraged to contact their local FTA Regional Office for assistance in determining the appropriate environmental review process and level of documentation necessary. This is especially important for actions that involve any construction as they may have requirements other than NEPA that must be satisfied and are more likely to have “unusual circumstances” such that additional environmental studies may be necessary to confirm that a CE is appropriate.

#### **IV. Section 771.118(c)**

This section provides guidance on each of FTA’s c-list CEs, including the text of each CE and important considerations for how each CE might be used.

##### Utility and Similar Appurtenance Action

*(1) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: utility poles, underground wiring, cables, and information systems; and power substations and utility transfer stations.*

This CE applies to utility-related activities when limited in scope and within or directly adjacent to the property considered the traditional transportation right-of-way. “Discrete utilities” are those that are separate and independent from a larger transit project or other larger project, such as the modernization of an entire rail transit line that includes station expansions or station redesign for improved access.

The traditional transportation right-of-way will likely have been disturbed by prior installation of utilities, and activities occurring there would have little potential for significant environmental impact. This CE covers utility activities occurring within the boundaries of the right-of-way, and utility activities that may extend onto adjacent property, as well as utility-related activities (e.g., landscaping or re-vegetation) occurring within the boundaries of the right-of-way or on immediately adjacent property.

Ownership of the utility is not a factor in determining the application of this CE, however. For example, a utility company may own an easement on the transportation right-of-way; an FTA utility action on the easement would require FTA NEPA approval, but if the utility company performs non-FTA-related work within its easement, no FTA NEPA approval is needed. This CE does not, however, relieve the project sponsor of giving notice to property owners where a new utility easement may be needed. If property rights are to be acquired for a utility project and the action complies with the conditions in this CE, it is still necessary to give the property owners notice early in the process pursuant to Uniform Relocation Act.

Additional examples of activities that could be covered by this CE include: catenary and signal work, given that these activities are substantially similar to the listed examples; and, maintenance and rehabilitation activities, as the environmental impacts of these activities are likely the same or less than an “improvement.”

## Pedestrian or Bicycle Action

*(2) Acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: a multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.*

This CE covers the expansion of existing recreational, pedestrian, or bicycle facilities, as well as acquisition, construction, maintenance, rehabilitation, and improvements of stand-alone recreation, pedestrian, or bicycle facilities. This CE is not limited to recreational facilities. FTA uses the term “stand-alone” to mean a facility that is capable of operating independently. For example, facilities that are part of a larger proposed project that has significant environmental impacts cannot be approved as a CE; the entire project would need to be evaluated with an environmental impact statement (EIS). “Transit plaza amenities” are those features of a facility that add to its desirability as viewed by the traveling public (e.g., wayfinding signs, bike lockers, ticket vending machines, benches, and landscaping).

FTA expects that actions occurring under this CE would have minor construction effects. FTA project sponsors usually construct these types of facilities in urbanized areas where sensitive habitat is not impacted. If sensitive habitat may be impacted, then that could be an unusual circumstance that would likely require FTA and the project sponsor to conduct appropriate environmental studies under 771.118(b)(1) to determine whether the CE classification is proper.

Additional examples of activities that could be covered by this CE include ferry terminal passenger overhead loading structures because these structures are virtually synonymous with the example of a “pedestrian bridge.” In addition, acquisition of a privately-owned sidewalk that connects a transit station with a commercial area would also be eligible for this CE, as would the construction of sidewalks near a transit station.

## Environmental Mitigation or Stewardship Activity

*(3) Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation.*

This CE covers environmental mitigation activities, as well as those activities that enhance environmental quality (sometimes referred to as “environmental stewardship” activities). The activities need to be eligible for FTA assistance and, therefore, would be limited by FTA’s funding program requirements in addition to the other conditions listed in the CE language (i.e., mitigate environmental harm and cause no harm themselves or maintain and enhance environmental quality and site aesthetics, and employ construction best management practices).

Additional examples of activities covered by this CE could include:

- Maintenance and rehabilitation of historic transportation facilities that may be adversely affected by the project;
- Replacement of in-water creosote-treated timber piles, berthing, and other structures, as this constitutes rehabilitation of public transportation buildings, structures, or facilities;

- Stormwater management activities designed to mitigate environmental harm;
- Roof replacement to the extent it fits within the CE's limitations; and,
- Rehabilitation of bridges and viaducts if they are considered public transportation structures.

#### Planning and Administrative Activity

*(4) Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.*

This CE covers routine administrative, engineering, and analytical functions that do not have an environmental impact, as well as operating assistance. These activities are often office-related and, while they may be frequent, are generally environmentally benign.

Note that geotechnical work has limited applicability under this CE. Some geotechnical work (such as the use of ground penetrating radar) could be approved under this CE as long as it does not involve construction or lead directly to construction. However, invasive work, such as soil borings or archeological test digs, would not be covered under this CE.

#### Action Promoting Safety, Security, Accessibility

*(5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.*

This CE applies only to stand-alone projects, such as the installation of communications equipment along an existing line and may not be an element impermissibly segmented from a larger project, such as construction of a new transit line that includes installation of communication equipment.

Additional examples of activities covered by this CE could include installation of fencing, signs, pavement markings, and small passenger shelters as these activities promote transportation safety, security, ADA accessibility, and effective communication. This CE does not extend to all safety actions, however. For example, closing a railroad crossing for safety reasons would not be eligible for this CE.

### Acquisition, Transfer of Real Property Interest

*(6) Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: acquisition for scenic easements or historic sites for the purpose of preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects that make use of the acquired or transferred property.*

This CE covers cases where the property is acquired and remains essentially unchanged from its previous use. Note that acquiring property pursuant to this CE must not limit the evaluation of alternatives when a future FTA-assisted project is evaluated in the environmental review process, which must allow for the possibility that the property will not be used for the project. The purchase must also comply with Uniform Relocation Act requirements and qualify for an exception to the general prohibition on property acquisition prior to a NEPA finding at 23 CFR section 771.113.

FTA uses the phrase “acquisition or transfer of an interest in real property” to mean the act of purchasing or otherwise acquiring a property right (e.g., absolute ownership, trackage right, easement, leasing). The “functional use” qualifying criterion is included because any substantial change in the functional use of the property, if FTA-assisted, would disqualify the use of this CE for the acquisition. The reference to “scenic easements or historic sites” (for preserving the site) provides examples of special cases where this CE might apply. Another example could be acquisition of a parking facility and maintaining the functional use as a parking facility.

For joint development projects funded with FTA grants, see “Joint Development of Facilities,” 771.118(c)(10).

### Acquisition, Maintenance of Vehicles/Equipment

*(7) Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.*

This CE focuses on activities associated with public transportation vehicles and equipment to improve operations and the transit riding experience. Installation of equipment under this CE would only be covered if it did not have substantial off-site impacts.

The phrase “located within existing facilities” means equipment located within a property that is already dedicated to a transportation function or within an existing building. FTA uses the phrase “that can be accommodated by existing facilities or by new facilities” to mean that the existing facilities have sufficient excess capacity to accommodate the vehicles or equipment (e.g., electric vehicle equipment), or, if the transit vehicles require new facilities, the new facilities also meet the requirements for a categorical exclusion. If the new facilities required by the new vehicles or equipment are part of a larger

undertaking, the vehicle acquisition would be evaluated as part of that larger project (a different CE, an environmental assessment (EA) or EIS); this CE would not be applied.

#### Maintenance, Rehabilitation, Reconstruction of Facilities

*(8) Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.*

This CE covers maintenance, rehabilitation, and reconstruction of facilities as long as the facilities occupy substantially the same geographic footprint (all areas already affected by the direct impacts of the facility) and the functional use of the facility is unchanged (for example, if a bus transfer center's function is changed by converting it into a bus maintenance facility, then it would not qualify under this CE). Note that an improvement to the facility is not a change in functional use. For example, when a transit center is rehabilitated under this CE, it may be improved by incorporating the latest communications and passenger information technologies. The facility could also be expanded slightly as long as it meets the requirement of occupying substantially the same geographic footprint.

Additional examples of activities covered by this CE could include reconstruction of ferry terminals, transit infrastructure rehabilitation, specific aspects of rehabilitation or reconstruction activities, such as renewal and/or component repair, and facility improvements to accommodate electric vehicles. The project sponsor and the FTA Regional Office should discuss the project and its NEPA class of action early in the environmental review/project development process.

Please review the pre-award authority language on page 3 before applying it to these types of projects.

#### Assembly or Construction of Facilities

*(9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations), and uses primarily land disturbed for transportation use, such as: buildings and associated structures; bus transfer stations or intermodal centers; busways and streetcar lines or other transit investments within areas of the right-of-way occupied by the physical footprint of the existing facility or otherwise maintained or used for transportation operations; and parking facilities.*

This CE focuses on construction of facilities that is in keeping with existing land use and zoning requirements and primarily uses land disturbed for transportation uses. The phrase "uses primarily land previously disturbed for transportation use" does not prohibit a negligible amount of land in its natural state (or land being used for other purposes) from being impacted by the proposed action. Thus, projects functionally similar to those listed (such as electric trolleybus lines) and requiring minor right-of-way acquisition may still be covered by the CE as long as "unusual circumstances" would not result.

Busways, streetcar lines, and other transit investments have the potential to result in significant impacts (e.g., noise and vibration, historic and Section 4(f) properties). Thus, particular attention must be paid to the conditions found in this CE. Documentation is likely to be requested by the FTA Regional Office when pursuing a CE for these larger investments in order to support the CE finding. The project sponsor

and the FTA Regional Office should discuss the project and its class of action early in the environmental review/project development process.

Additional examples of activities covered by this CE could include bus stations, passenger shelters, and electric vehicle charging stations or facilities.

Please review the pre-award authority language on page 3 before applying it to these types of projects.

#### Joint Development of Facilities

*(10) Development of facilities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: police facilities, daycare facilities, public service facilities, amenities, and commercial, retail, and residential development.*

This CE applies to those activities taking place within or at an existing public transportation facility that do not substantially expand the footprint. Note, the CE is not limited to public service facilities and amenities, such as government offices, but also includes commercial, retail, and residential facilities. The project sponsor and the FTA Regional Office should discuss the project and its class of action early in the environmental review/project development process.

Please review the pre-award authority language on page 3 before applying it to these types of projects.

For more information on Joint Development, see FTA's [Joint Development Guidance \(Circular 7050.1B\)](#) and [Joint Development Frequently Asked Questions](#).

#### Emergency Recovery Actions

*(11) 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 49 U.S.C. 5324; 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.*



This CE was created pursuant to MAP-21 and applies to emergency recovery actions. Paragraph (i) specifically covers activities under the Public Transportation Emergency Relief Program (49 U.S.C. § 5324), such as public transportation capital projects and operating assistance related to emergencies, including natural disasters.

Paragraph (ii) mostly tracks the language found in Section 1315 of MAP-21, though the language was expanded to include public transportation facilities. Under paragraph (ii), the transit facilities are not limited to ferry docks or bus transfer stations, and the ancillary transportation facilities are not limited to pedestrian/bicycle paths or bike lanes. Rather, examples were provided in those two cases, but the list of examples is not exhaustive. The application of the CE is limited by the conditions specified in the text of the CE. For example, the recovery work would need to occur within existing right-of-way, substantially conform to the preexisting design, function, and location (though upgrades to current standards or codes may occur), and be commenced within two years of the declaration.

Please review the pre-award authority language on page 3 before applying it to these types of projects.

#### Action within Existing Operational Right-of-Way

*(12) 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 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.*

This CE was created pursuant to MAP-21 and applies to actions taking place within existing operational right-of-way (ROW). The language is similar to the FTA-initiated CE at 771.118(c)(9), which will often be the better choice for projects that would potentially qualify for both CEs. Existing operational ROW, as interpreted by FTA, “means all real property interests acquired for the construction, operation or mitigation of a project.” A transportation facility and associated features must already exist at the time of the proposed project’s review when being considered for this CE. FTA may need to see evidence that the area was acquired for a transportation facility if staff are not familiar with the area or are unable to make that determination using online mapping tools, etc. The term “transportation facility” refers to an existing surface transportation facility or structure and includes bicycle and pedestrian facilities.

The phrase “all real property interests” includes areas that are associated with the construction or operation of a transportation project, such as clear zones, maintenance areas or facilities, and areas used for safety and security of the transportation facility. Mitigation sites, such as wooded areas mitigating the visual impacts of highways on historic districts, noise walls, and buffer zones used for transportation safety purposes, are part of the operational right-of-way. However, consideration of unusual circumstances and compliance with other environmental laws may trigger the need to identify substitute mitigation or compensatory measures, as appropriate (i.e., using mitigation areas for a new project may trigger other actions to meet the original mitigation commitments).

A transportation facility that has fallen into disuse may require an assessment to determine if it is still being maintained for a transportation purpose and, therefore, qualifies as an operational ROW. Examples of real property considered non-operational include uneconomic remnants or excess ROW that have no association with the operation of a transportation facility. When a proposed project would be located on property acquired for a future project but simply held in perpetuity with no associated transportation use, this CE does not apply; a transportation facility must already exist at the location where the proposed project will be built. Areas acquired and held for a future project would not constitute an existing operational ROW. Utility use and occupancy agreements, and other real property interests that are not maintained for existing transportation purposes would not be part of the existing operational ROW.

Public transportation facilities often have non-contiguous features that are part of a transportation system and are, therefore, part of the operational ROW. Examples include substations, including traction power substations, maintenance yards, venting structures, and parking facilities, which includes both surface lots and parking structures.

The final project must be entirely within the operational ROW, but the CE accounts for all connected actions. Temporary work taking place outside an operational right-of-way, including work under temporary easements, is covered by the CE as long as the work is necessary for the construction of the project and the final project is entirely within the existing operational ROW. As such, temporary easements and work are subject to review for any unusual circumstances. However, the CE does not apply to the construction of a permanent project within an area acquired through a temporary easement for the construction of past projects; temporary easements terminate once the original project is completed and cannot be considered “existing” transportation facilities when a new project is being evaluated.

Please review the pre-award authority language on page 3 before applying it to these types of projects.

#### Action with Limited Federal Funding

##### *(13) Federally-funded projects:*

*(i) That receive less than \$6,000,000 (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](http://www.fhwa.dot.gov) or [www.transit.dot.gov](http://www.transit.dot.gov) of Federal funds; or*

*(ii) With a total estimated cost of not more than \$35,000,000 (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](http://www.fhwa.dot.gov) or [www.transit.dot.gov](http://www.transit.dot.gov)) and Federal funds comprising less than 15 percent of the total estimated project cost.*

This CE was created pursuant to Section 1317 of MAP-21 and revised to be consistent with the threshold changes found in the section 11317 of the Bipartisan Infrastructure Law. The action has to involve some level of Federal assistance to qualify for the CE. Projects not funded with Federal funds but requiring other forms of approvals from the Agencies do not qualify for this CE. Federal funding alone is not a reliable indicator of the significance of the environmental impacts associated with a project. The uniqueness of this CE (that is, a CE determination based on dollar thresholds instead of a particular scope or description of the action) makes the consideration of unusual circumstances particularly

important. FTA must ensure that projects receiving Federal funds below the established thresholds are not processed as CEs when unusual circumstances warrant another level of NEPA review.

Because this CE is dependent on a limited funding threshold, it is important to obtain accurate cost estimates and to carefully evaluate whether application of this CE is appropriate, especially when a project's cost estimate is close to the established threshold. Per Section 1314 of the Fixing America's Surface Transportation Act, the thresholds for this CE will be adjusted annually to reflect any increases in the Consumer Price Index prepared by the Department of Labor. The figures will be updated annually in October of subsequent years and posted on [www.transit.dot.gov](http://www.transit.dot.gov). If the amount of Federal funds increases for the project beyond the established threshold (including inflation updates), and if there is still an FTA action that needs to be taken when these changes occur, a NEPA re-evaluation would be triggered. Prior to any request for further approvals or grants (including approval of project plans, specifications, or estimates), the project sponsor and FTA would need to consult in order to determine whether the CE designation remains valid.

Please review the pre-award authority language on page 3 before applying it to these types of projects.

#### Bridge Removal and Related Activities

*(14) Bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.*

This CE addresses bridge removal, specifically, which is related to the example at 771.118(d)(2) (bridge replacement or rail grade separation). Although a bridge is removed or temporarily taken out of service during a bridge replacement project, this CE covers actions that remove a bridge permanently and the resulting change to the associated transportation network. In addition to the bridge removal action itself, it is likely that the transportation facility to and from the bridge would need to be realigned, materials and debris would need to be disposed of in an approved manner per applicable regulations, and in-channel work performed to remove piers or reduce pier height for safer in-water navigation when conducting a complete bridge removal. Any in-water work, including whether to leave piers in place rather than remove them due to cost considerations or environmental considerations (e.g., avoidance of exposure in cases of contaminated sediments and other Clean Water Act considerations), is determined through discussions with stakeholders, permitting agencies, and project engineers.

#### Preventative Maintenance of Culverts/Channels

*(15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and, expanding existing culverts and drainage pipes.*

This CE is limited to culvert and channel maintenance within or adjacent to the transportation right-of-way in order to preserve the functionality of the culverts and channels, and to prevent damage to the transportation facility and adjoining property. The intent of this CE is to focus on rainwater conveyance methods that can be useful in preventing future flooding at transit facilities; this CE does not extend to drainage facilities. If the project sponsor would like to pursue stormwater management activities

(including treatment) outside the scope of this CE, FTA recommends considering the use of the CEs at 771.118(c)(3) or section 771.118(d).

Actions falling under this CE could be performed on an on-going, but as-needed, basis to maintain the continued operation of the structure.

#### Geotechnical and Other Similar Investigations

*(16) Localized geotechnical and other investigations 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.*

The focus of this CE is on geotechnical and other subsurface investigations that involve ground disturbance and inform preliminary engineering, environmental analyses, and permitting. Geotechnical and other investigations may be needed, for example, to determine the suitability of a location for a project but the project itself is not ripe for analysis. The CE applies when there is a Federal action involved or when Federal-aid is used for these preliminary study actions. It is not intended to federalize actions taken by the applicants in furtherance of their applications without the use of Federal funds.

#### **V. Section 771.118(d)**

This section provides guidance on each of the examples of projects or actions that FTA can categorically exclude through the d-list CE authority when documentation exhibits there are no significant impacts related to the project or action. The section includes the text of each CE example and important considerations for how each CE example might be used.

#### Highway Modernization

*(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).*

The language of the example in 771.118(d)(1) is written to cover the conversion of existing auxiliary lanes or shoulders to a transit purpose, not general-purpose travel lanes, but it is only an example, and other similar projects could potentially be categorically excluded if a reasonable amount of documentation can show there is no potential for significant environmental impacts. Note, 771.118(c)(9) can be used for busways if the conditions in the CE language are met.

#### Bridge Replacement or Rail Grade Separation

*(2) Bridge replacement or the construction of grade separation to replace existing at-grade railroad crossings.*

Under this CE, environmental documentation is required for bridge projects involving new construction or reconstruction of a bridge, or to replace existing at-grade railroad crossings (771.118(d)(2)). Documentation is required to demonstrate that the CE would apply and that no significant environmental impacts would result.

Note bridge rehabilitation and maintenance activities, which would have no anticipated significant environmental impacts, are covered by 771.118(c)(8) and under normal circumstances do not require additional NEPA documentation.

#### Hardship or Protective Property Acquisition

*(3) 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.*

FTA analyzes each situation to determine if there is “imminent development” based on a combination of factors, such as available developer plans, that would preclude future transportation use and result in development efforts inconsistent with a proposed transit project. FTA evaluates requests under (3)(ii) by considering all the circumstances surrounding the status of the subject property to determine whether it qualifies for a protective acquisition. At a minimum, for property that is listed “for sale,” documentation must be provided to show that there are other parties that have an interest in acquiring it and are likely to develop it in a manner inconsistent with the potential transit project.

When a project sponsor wants to pursue a hardship or protective property acquisition, FTA evaluates the documentation submitted by the project sponsor to determine whether FTA agrees that the conditions for a hardship or protective acquisition are met before FTA will approve the use of the CE and before FTA will allow the property acquisition to occur.

#### Acquisition of Right-of-Way

*(4) Acquisition of right-of-way. No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.*

Pursuant to MAP-21, Section 20016, and the associated changes to 49 U.S.C. § 5323, the example at 771.118(d)(4) was expanded from early acquisition authority of railroad ROW to any ROW needed for a transit project (i.e., “railroad” was deleted). Despite the expansion to any ROW needed for a transit project, the conditions found in sections 771.118(a) and (b) must be met in order to qualify for a CE,

which FTA evaluates based on the documentation submitted in support of the CE before the use of the CE is approved and before the property acquisition may occur.

(5) Reserved

Facility Modernization

*(6) Facility modernization through construction or replacement of existing components.*

Facility modernization projects that do not meet the conditions set forth in 771.118(c)(5) or (c)(8) may be eligible for a CE, with documentation, under this example. An example of an action that may qualify for a CE under this example is when a bus maintenance facility is expanded to meet modern building codes and to include a bus washing facility, where the facility footprint itself is expanded. Under 771.118(c)(8), a facility's functional use cannot change and it must occupy substantially the same geographic footprint, which means that only limited expansion of the footprint is permissible under the CE. Under 771.118(d)(6), greater expansion of the facility footprint could potentially be categorically excluded with proper documentation, and the functional use of the facility can be modified.

Minor Facility Realignment for Rail Safety Purposes

*(7) Minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, and improving sight distance at railroad crossings.*

This CE example is for those transportation facility realignments needed in order to improve rail safety for the project sponsor and its operations, and the public. As noted in the language above, this example can cover vertical and horizontal alignment changes, and improving site distance at railroad crossings, but those are only examples, and other similar realignment actions, in both scope and scale, could fall under 771.118(d)(7).

Facility Modernization/Expansion Outside Existing ROW

*(8) Modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations, or rail yards.*

This CE example provides for modernizing or providing minor expansions of transit structures and facilities outside the existing right-of-way (activities occurring within the existing transportation right-of-way could fall under 771.118(c)(8) or (12)). This example provides greater flexibility than the example found at 771.118(d)(6) by allowing modernization and minor expansions that clearly extend outside of the existing transportation right-of-way.

Other

As noted previously, section 771.118(d) provides a list of examples of the types of actions that can be categorically excluded with documentation. To accommodate the fact that this is an open-ended authority, rather than an exhaustive list of activities eligible for the CE, TrAMS contains an option to select "Other" under section 771.118(d). This box should be checked and completed (a) when processing an action as a CE not otherwise identified in section 771.118, or (b) when processing an

action as a CE not yet identified in TrAMS (e.g., a final rule was published implementing a new CE(s), but TrAMS has not been updated yet). Under scenario (a), appropriate documentation must be submitted to verify the actions meets the conditions for a CE. Under scenario (b), if the CE will fall under section 771.118(c), a notation of the CE number and a short project description will normally be sufficient documentation to satisfy NEPA, though additional documentation may be required to satisfy other environmental requirements as noted in the above guidance.

## **VI. Section 771.118(e)**

This section provides guidance on FTA's ability to use Federal Highway Administration (FHWA) or Federal Railroad Administration (FRA) CEs for FTA-funded projects.

### Cross-Agency CEs

*(e) Any action qualifying as a CE under §771.116 or §771.117 may be approved by FTA when the applicable requirements of those sections have been met. FTA may consult with FHWA or FRA to ensure the CE is applicable to the proposed action.*

This paragraph allows FTA to apply a CE found in FHWA's or FRA's CE lists when an FTA CE is not available for the proposed action. FTA has the option to consult with FHWA or FRA to ensure the appropriate application of another mode's CEs. The analysis of unusual circumstances would still be considered in the application of the Cross-Agency CE.

## **VII. Special Considerations**

This section provides guidance on several topics that are directly related to how FTA implements CEs, including multimodal projects, considerations involving real property acquisition, and consideration of other environmental requirements when using a CE.

### Multimodal Projects

Multimodal projects that require a NEPA approval by FTA along with FHWA and/or FRA may be processed as CEs under section 771.117 for FHWA, under section 771.116 for FRA, and under section 771.118 for FTA, as appropriate. FTA can also use FHWA's CEs or FRA's CEs if that mode's CE covers FTA's funded elements (and vice versa) through section 771.118(e).

Note that the scope requirements apply to multimodal projects as spelled out in 23 CFR 771.111(f). If individual elements funded or requiring approvals by different modes meet those scope requirements, each mode can comply with NEPA separately. But where an entire multimodal project must be evaluated as one NEPA action, each mode with an approval or funding must make its own determination as to NEPA compliance, even where it does so through adoption or use of another mode's CE.

### CE Adoption

FTA may adopt another agency's CE determination if the proposed FTA or joint project is substantially the same as the project covered by the other agency's CE determination. FTA must document the CE determination adoption pursuant to 40 CFR 1506.3(d). FTA should also consider Section 4(f) requirements when adopting a non-DOT Operating Administration's CE determination because Section

4(f) is unique to DOT and a separate Section 4(f) analysis may be required. Additional FTA-specific environmental requirements (e.g., noise and vibration, transportation conformity) may also need to be analyzed and included in FTA's adoption documentation if the original project did not meet all of FTA's requirements.

### Real Property Acquisition

The examples at 771.118(d)(3) and (d)(4) cover the traditional early acquisitions available through hardship and protective acquisitions and the acquisition of ROW, respectively. Under 771.118(c)(6), with certain conditions, acquisition of real property may be appropriate and categorically excluded even when the acquisition is not a protective, hardship, or ROW acquisition, as long as the acquisition itself is the entire action being categorically excluded (i.e., the property is not being acquired for another project and for which there is no substantial change in functional use of the property). The acquisitions covered by 771.118(c)(6) do have some constraints, however, regarding the environmental context of the property. FTA chose to retain the early acquisition authorities in section 771.118(d) because those types of acquisition require documentation to demonstrate that the acquisition meets the requirements of a protective or hardship acquisition.

In addition, FTA retained but modified the CE in section 771.118(d) that addressed railroad ROW acquisition to reflect the change made to the statute (49 U.S.C. 5323(q)) by MAP-21, Section 20016 (i.e., MAP-21 deleted the word "railroad"). As with 771.118(d)(3) and (d)(4), FTA chose to keep this CE in section 771.118(d) because documentation will be required to show that the property to be acquired is "right-of-way" such that the statutory exception applies.

One action not specifically mentioned above, but that may be categorically excluded, is the demolition of facilities where a structure creates an adverse condition if left standing, such as a potential fire safety hazard; the project sponsor should coordinate with the FTA Regional Office to determine whether to utilize a CE appropriate for actions involving demolition activities.

Also note that the Uniform Relocation Act provides requirements that federal agencies and project sponsors must comply with to acquire real property when federal funds are used in any part of a project (49 CFR part 24). The provisions of the Uniform Relocation Act apply to the acquisition of fee title, fee title subject to a life estate, leasing (where the lease term, including options for extension, is 50 years or more), permanent easements, and temporary construction easements.

### Consideration of Other Environmental Requirements

Although CE projects do not trigger the need for public involvement and review in the NEPA process through the preparation of an EA or EIS, these projects may trigger public involvement and consultation requirements for other environmental laws, such as Section 106 of the National Historic Preservation Act, or Section 4(f) requirements. The FTA Regional Office, in coordination with the project sponsor, will identify whether there needs to be information and documentation to meet the requirements of other environmental laws, which can be used to support a CE determination. Projects that warrant additional review typically involve ground disturbance or construction activities. Maps, engineering diagrams, and photographs can aid in supplementing a project description to identify whether these additional laws apply and can expedite the review of projects if they are reviewed before submitting the grant application. Compliance with other environmental laws and requirements must generally be completed before FTA concludes the environmental review process or makes a CE determination (23 U.S.C. § 139).



Executive Order (EO) 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” requires FTA to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” When FTA develops a categorical exclusion for the list at section 771.118(c), it develops an evaluation of past actions in terms of their environmental impacts, including potential impacts on minority and low-income populations (“EJ populations”). That evaluation of potential environmental impacts used to establish the c-list CE will, in most cases, satisfy the requirement to identify and address disproportionately high and adverse human health or environmental effects of actions that will later be approved through that CE. Some actions (especially those involving construction) that qualify for c-list CEs, however, have a higher likelihood of “unusual circumstances,” which could include greater than anticipated impacts on EJ populations. Thus, where such potential exists, project sponsors should consult with FTA over potential impacts of projects that otherwise qualify for c-list CEs to ensure that the requirements of EO 12898 are met. For example, if the project sponsor learns of “substantial controversy on environmental grounds” over a project for which it intends to request a c-list CE or has already received a c-list CE, the project sponsor must notify FTA so that FTA can consider whether the use of the CE is appropriate or whether an EJ screening analysis must be completed (23 CFR 771.118(b)). For d-list CEs, some individual evaluation of the effects of the action on EJ populations will generally be required where EJ populations are present in the vicinity of the project. That information can be obtained through an EJ screening analysis.

For Section 106, projects that have the possibility to cause effects on historic properties are required to go through the Section 106 process with the State or Tribal Historic Preservation Office. As noted above, this tends to result on projects that involve construction. Common potential effects include changes to visual setting of historic buildings or districts from construction or modification of a facility, disturbance of archeological sites due to construction, or physical disturbance of historic buildings through modification of a historic transportation facility, including stations or bridges, or an adjacent historic property. Section 106 consultation is completed by the FTA Regional Office, in coordination with the project sponsor and the State or Tribal Historic Preservation Officer. See FTA’s Environmental Standard Operating Procedures No. 21 - [Section 106 Process](#) for more information regarding Section 106.

Section 4(f) requirements apply to projects funded by FTA (or other Federal transportation modes) and protects publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance. If a project may “use” land from one of these protected properties (e.g., a bike path through a park), Section 4(f) compliance is required unless the activity is included in the Section 4(f) exceptions at 23 CFR 774.13. For categorically excluded actions, Section 4(f) compliance is likely to involve a *de minimis* determination, which can be applied when there is no significant use of the protected property, but land is still needed. Public involvement in these cases can be handled through Board or City meetings that are publicly announced and open to the public, or by posting notices in the local newspaper or at the site. If a *de minimis* finding is not possible for the proposed action, then avoidance alternatives will need to be investigated through a full Section 4(f) evaluation under 23 CFR part 774. The evaluation, depending on the environmental impacts that could result, may lead to a determination that a CE is not appropriate. See FTA’s Environmental Standard Operating Procedures No. 18 - [Section 4\(f\) Evaluations](#) for more information regarding Section 4(f).

Section 7 of the Endangered Species Act compliance is required when there is a threatened or endangered species or habitat within the project area. Section 7 is not generally a concern for categorically excluded projects, especially when the work is performed on previously disturbed land, though care should be given to projects that involve bridges, are near water or forested areas, or will involve previously undisturbed land. If coordination beyond the initial database search may be necessary, the project sponsor should contact the FTA Regional Office prior to any coordination/consultation with the US Fish and Wildlife Service or the National Marine Fisheries Services. See FTA's Environmental Standard Operating Procedures No. 23 - [Biological Resources](#) for more information on Section 7 consultation.

## Attachment 1: Comprehensive List of FTA Categorical Exclusions

### C-list

(1) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: utility poles, underground wiring, cables, and information systems; and power substations and utility transfer stations.

(2) Acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: a multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.

(3) Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation.

(4) Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

(5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

(6) Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: acquisition for scenic easements or historic sites for the purpose of preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects that make use of the acquired or transferred property.

(7) Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.

(8) Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.

(9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations) and uses primarily land disturbed for transportation use, such as: buildings and associated structures; bus transfer stations or intermodal centers; busways and streetcar lines or other transit investments within areas of the right-of-way occupied by the physical footprint of the existing facility or otherwise maintained or used for transportation operations; and parking facilities.

(10) Development of facilities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: police facilities, daycare facilities, public service facilities, amenities, and commercial, retail, and residential development.

(11) 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 49 U.S.C. 5324; 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.

(12) 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 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.

(13) Federally-funded projects:

(i) That receive less than \$6,000,000 (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](http://www.fhwa.dot.gov) or [www.transit.dot.gov](http://www.transit.dot.gov)) of Federal funds; or

(ii) With a total estimated cost of not more than \$35,000,000 (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](http://www.fhwa.dot.gov) or [www.transit.dot.gov](http://www.transit.dot.gov)) and Federal funds comprising less than 15 percent of the total estimated project cost.

(14) Bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.

(15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and, expanding existing culverts and drainage pipes.

(16) Localized geotechnical and other investigations 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.

#### D-list

(1) Modernization of a highway by resurfacing, restoring, rehabilitating, or reconstructing shoulders or auxiliary lanes (e.g., lanes for parking, weaving, turning, climbing).

(2) Bridge replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(3) 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.

(4) Acquisition of right-of-way. No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.

(5) [Reserved]

(6) Facility modernization through construction or replacement of existing components.

(7) Minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, and improving sight distance at railroad crossings.

(8) Modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations, or rail yards.

#### E-list

(e) Any action qualifying as a CE under §771.116 or §771.117 may be approved by FTA when the applicable requirements of those sections have been met. FTA may consult with FHWA or FRA to ensure the CE is applicable to the proposed action.