



CHAPTER 10: FEDERAL TRANSIT ADMINISTRATION (FTA) NEPA PROCESSES AND COMPLIANCE

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10.0 FEDERAL TRANSIT ADMINISTRATION (FTA) NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) PROCESSES AND COMPLIANCE

This chapter discusses the coordination process and timelines for environmental involvement on projects using Federal Transit Administration's (FTA) funds administered through the Colorado Department of Transportation's (CDOT) Division of Transit and Rail (DTR). Please note that the majority of major transit projects receive funding directly from FTA and are not administered and managed by CDOT. These projects, like the Regional Transportation District's (RTD) FasTracks program and the Fort Collins Mason Bus Rapid Transit (BRT) system, are coordinated directly with FTA by the agency for the planning, design, engineering, environmental, construction and funding processes as required. This chapter solely focuses on those projects that receive state and federal transit funds administered by DTR; the majority of which are Categorical Exclusions (CatExs).

This chapter also discusses the FTA process and procedures for NEPA compliance. FTA's processes for Environmental Impact Statements (EIS), CatExs, and Environmental Assessments (EA) have similarities and differences compared to the Federal Highway Administration (FHWA) processes that are discussed in **Chapters 4, 5, and 6**, respectively. For the most part, FTA follows the same regulations and guidance as FHWA with the differences noted throughout this chapter as appropriate. The regulations found in 23 CFR 771 are issued jointly by FHWA and FTA and apply to projects funded by either agency. Currently, there is no Stewardship Agreement between FTA and CDOT as there is between FHWA and CDOT. For all FTA-funded projects, NEPA approval is granted by FTA only.

10.1 DTR Grant Application Process

CDOT's DTR is responsible for awarding and administering state and federal transit funds for public transit and human service transportation providers throughout Colorado. State transit funds are provided through the Funding Advancement for Surface Transportation and Economic Recovery (FASTER) Act passed by the state legislature in 2009. FASTER provides a fixed \$15 million per year for statewide, interregional, regional and local transit projects.

On the federal side, FTA provides funding for transit services through various grant programs. The FTA directly provides several grant programs to designated recipients, primarily in urbanized areas. For rural areas FTA transit funds are allocated by formula to the state and are administered by



FTA NEPA-Related Regulations and Guidance:

- FHWA/FTA Environmental Impact and Related Procedures. 23 CFR 771.101 – 771.131
- FTA Categorical Exclusions. 23 CFR 771.118
- Guidance for Implementation of FTA's Categorical Exclusions. (23 CFR § 771.118)
- FTA Region 8 Bulletin No: 2014-02. FTA NEPA Final Rule and Region 8 Categorical Checklist.



DTR through a competitive application process. These grant programs provide funding assistance for administrative, planning, capital and operating needs. For more information on the various FTA grant programs, visit the FTA website at: <http://www.fta.dot.gov/index.html>.

To begin the grant application process, DTR issues a Notice of Funding Availability (NOFA) and a “call for projects” for FASTER and FTA funds annually or bi-annually. Operating/administrative and capital calls for projects are conducted separately and at different times during the year. Applications for FTA operating and administrative funds are solicited every two years. Applications for FASTER and FTA capital funds (e.g., vehicles, stations, equipment, etc.) are solicited every year in a single application; DTR determines the appropriate source of funds (FASTER or FTA) for the capital project.

From the date of the NOFA, grant applicants have a minimum of 45 days to submit an application. The application process will be administered online through DTR’s new CoTRAMS grant management system and all applications will be processed electronically. Before submitting an application in CoTRAMS, each grant applicant must provide an agency profile and inventory of their capital assets. Applications will not be reviewed until this is complete.

In addition to the agency profile and capital inventory, the application for funds includes several sections that the grant applicant must complete. This includes a description and cost of project for which funds are being requested, project purpose and how the funds will be used, who will be served, how the project ties into other services, whether the project is consistent with the planning process, and whether the project is compatible with state and regional coordinated transit plans and any coordination activities.

Following the 45-day grant application period, applications for operating/administrative funds are then evaluated, scored and ranked by both internal DTR staff and an Interagency Advisory Committee comprised of individuals outside DTR (including the Colorado Department of Human Services and the Public Utilities Commission [PUC]). Applications for capital funds are evaluated primarily based on performance metrics (age, mileage and condition).

DTR provides a list of recommended projects to the Transportation Commission for award of FASTER funds. Transportation Commission approval is not necessary for FTA awarded funds. All awards require a local match—50% local match for operating funds and 20% for administrative and capital funds. All funds are awarded on a reimbursement basis—that is, grant recipients must first incur expenses before seeking reimbursement from CDOT.



Under FTA’s Section 5307 program, Congress has provided that the “designated recipient” (DR) is the entity selected by the State’s chief executive officer, responsible local officials, and publicly owned operators of public transportation to “receive and apportion” the amounts made available by Congress and FTA to a particular “transportation management area” (TMA) or a State or regional authority if the authority is responsible under the laws of the State for a capital project and for financing and directly providing public transportation.



Once funding awards are made, a scope of work for each awarded project is developed and negotiated between DTR and the grant recipient. During this time the project must be included in the Transportation Improvement Program (TIP) and/or State Transportation Improvement Program (STIP). If any environmental permits are required, they must be obtained.

Once the scope of work is complete, the project has been included in the TIP/STIP, NEPA documentation is complete and permits have been applied for and/or obtained, a state-funded project can be offered a contract. For FTA-funded projects, DTR applies to FTA on behalf of the grant applicant prior to issuing a contract. DTR will not apply to FTA until the project is included in the TIP/STIP, any required NEPA documentation is completed, and all necessary permits have been applied for and/or obtained.

Once a contract is fully executed by both DTR and the grant recipient, a notice to proceed is issued by DTR.

10.2 FTA NEPA Compliance

As discussed in **Chapter 2**, to address the NEPA responsibilities established by the Council on Environmental Quality (CEQ), FHWA and FTA jointly issued regulations, *Environmental Impact and Related Procedures* (FHWA and FTA, 23 CFR 771.101-771.131). The regulations set forth the agencies' policy of combining all environmental analyses and reviews into a single process. It defines the roles and responsibilities of FTA and its grant applicants in preparing documents, and in managing the environmental process within the various project development phases.

For all categories of NEPA documentation (EIS, CatEx, or EA) the class of action determination (**Section 2.4** and 23 CFR 771.115) is made by FTA. Grant applicants intending to apply for Federal transit funding should work with DTR during the CoTRAMS application process to ensure that all information required by FTA is complete. DTR will submit an application, along with any required NEPA documentation, on behalf of the grant applicant. FTA will use the information provided to determine the appropriate class of action and the related level of documentation required in the NEPA process. As mentioned previously, most projects receiving CDOT-administered FTA funds are eligible CatExs (see **Section 10.2.2**).

The vast majority of the projects that DTR administers on behalf of FTA are non-construction projects and include routine vehicle replacements and various procurements for professional services (typically technical assistance and planning consultants), technological tools (dispatching software, ticket vending machines, etc.) and other equipment (e.g., maintenance equipment). These types of projects are typically considered a c-list CatEx by FTA and, unless special circumstances exist, require no formal documentation by DTR or FTA (see **Section 10.2.2** for more



For more information on CDOT-DTR's grant application process, visit the DTR Transit Grants website at:

<http://www.coloradodot.info/programs/transitandrail/transit>



information on FTA CatEx requirements). While a project may be considered a CatEx, it is not exempt from other environmental laws that may apply to the project, such as Section 106 of the National Historic Preservation Act, Section 4(f) of the US Department of Transportation Act of 1966, Section 404 of the Clean Water Act, or Section 7 of the Endangered Species Act. Applicants need to apply and obtain applicable environmental permits and approvals even for projects that qualify as a CatEx. If a project has special circumstances, such as the presence of wetlands, historic buildings or structures, parklands, or floodplains in the project area, the grant applicant must work with DTR to determine what documentation may be required. DTR will coordinate with FTA on behalf of the grant applicant on applicable NEPA documentation.

10.2.1 Class I – Environmental Impact Statement (EIS)

The introduction of **Chapter 4** provides general information about Class I. If an EIS is deemed necessary, the FTA process is similar to the FHWA/CDOT process described in **Chapter 4** and can generally be followed with coordination and guidance from FTA.

Typical FTA projects requiring an EIS are:

- ▶ New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit)
- ▶ New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility

Unless it is a joint EIS process between FTA, FHWA, CDOT and a transit agency, such as RTD, CDOT will not be involved in the development, review or signing of the EIS. The Southeast Corridor EIS (TRES) is an example of a joint EIS process, where all parties were involved and signatories on the document. While CDOT staff may be part of a project team and provide input, the document will not be processed through CDOT for review or signature.

Differences to note between the FTA and FHWA/CDOT processes include:

- ▶ FTA conducts all contact and consultation with resource and regulatory agencies.
- ▶ Requirements for some analyses can be different. For example, noise and vibration should be assessed for proposed mass transit projects using FTA's *Transit Noise and Vibration Impact Assessment* guidance.



- ▶ FTA issues Letters of Intent to indicate the intention to obligate future funds for multi-year capital transit projects. FTA will not issue Letters of Intent until the NEPA process is complete.
- ▶ FTA is typically the only signatory on an EIS document. The exception occurs when it is a joint project, such as the Southeast Corridor EIS (TREX). On these documents FHWA, FTA, RTD and CDOT signed the signature page.
- ▶ FTA does not have a stewardship agreement with CDOT, and does not delegate environmental review and approval to CDOT.

10.2.2 Class II – Categorical Exclusion (CatEx)

The majority of transit projects funded through DTR-administered funds are classified as a CatEx, including the construction projects. FTA is responsible for determining whether the action described by the grant applicant falls within the CatEx category (i.e., the action meets all conditions listed in the CatEx regulations), whether the action is impermissibly segmented from a larger project, and whether there are unusual circumstances (e.g., substantial controversy on environmental grounds, significant impact to properties protected by Section 4(f) or Section 106) that would make a CatEx determination inappropriate.

Grant applicants should include sufficient project information for FTA to make a class of action determination (see **Section 2.4** for more information on classes of action). A description of the project in the grant application, as well as any maps, site plans or figures typically included with the application or as requested by the FTA Regional Office, will normally be sufficient for FTA to determine whether the CatEx class of action applies. Documentation demonstrating compliance with other environmental requirements, such as Section 106 or Section 7 may be necessary for processing of the grant. This information is required before DTR will submit an application to FTA on behalf of the grant applicant.

While most transit projects are non-construction projects and fall within c-list CatExs requiring no formal documentation, there are a few that require construction and additional environmental review. Prior to submitting an application for capital construction projects (e.g., facilities, stations, etc.), the grant applicant will initiate the design phase (conceptual design, preliminary engineering, and final design), the environmental review/clearance process, utility/3rd party coordination, determine right-of-way requirements, develop a financial plan, identify the amount and source of local match, and other related activities. Applicants should not move beyond conceptual design and preliminary engineering prior to NEPA review and clearance.



DTR requires a grant applicant to complete the following activities before an application will be submitted to FTA on their behalf:

- ▶ Complete Agency Profile and Capital Asset Inventory in CoTRAMS.
- ▶ Complete CoTRAMS application, providing information on project description, amount of funding needed, purpose and need for project, project location, consistency with planning process, and any coordination activities.
- ▶ Working with DTR, complete the *Region 8 Categorical Exclusion and Documented Categorical Exclusion Worksheet* (CatEx worksheet), if required (typically c-list projects do not require completion of the CatEx worksheet). This will be used by FTA to make a determination on whether the project is a CatEx or not and if no further environmental review and documentation is required.
 - Upon receipt of applications in CoTRAMS, DTR will identify projects requiring completion of the CatEx worksheet. Primarily these are facility construction projects. Most projects seeking funding will not require this. DTR can assist the grant applicant with completing the CatEx worksheet.
 - The CatEx worksheet will be reviewed by DTR and provided to CDOT Region environmental staff for their review and to determine if any special circumstances exist and if additional work or permits may be required.
 - DTR will then provide a project summary along with the completed CatEx worksheet to FTA for review for determination that the project is a CatEx prior to applying for FTA funds.
 - Final CatEx worksheet will be submitted as part of the application to FTA by CDOT on behalf of the grant applicant.
- ▶ All required environmental permits are obtained.
- ▶ For capital equipment projects, technical specifications and a procurement plan for once funding is secured.

Differences to note between the FTA and FHWA/CDOT processes include:

- ▶ The list of projects that qualify for FTA CatExs includes those from 23 CFR Part 771.118 and do not include those categories listed in 23 CRT Part 771.117 or as added or changed by the Programmatic Agreement CDOT has with FHWA.
- ▶ FTA conducts all contact and consultation with resource and regulatory agencies as needed.



All contact and consultation with resource and regulatory agencies is conducted by FTA.



- ▶ Requirements for some of the analyses can be different. For example, noise and vibration should be assessed for proposed mass transit projects using FTA's *Transit Noise and Vibration Impact Assessment* guidance.
- ▶ FTA CatExs, not falling in the c-list, should be submitted using the *FTA Region 8 Categorical Exclusion and Documented Categorical Exclusion Worksheet*.
- ▶ CDOT is not a signatory on FTA CatExs.
- ▶ FTA does not have a stewardship agreement with CDOT, and does not delegate environmental review and approval to CDOT.

FTA CATEx REGULATIONS

In February 2013, as 23 CFR 771.118, FTA published new CatExs tailored specifically to transit projects (separate from FHWA CatExs found in 23 CFR 771.117) in an effort to provide a more straightforward and efficient environmental review process. A year later, in February 2014, FTA issued, *Guidance for Implementation of FTA's Categorical Exclusions (23 C.F.R. § 771.118)*, to assist FTA region staff and grant applicants in applying specific CatExs to FTA projects. CatExs included in 23 CFR 771.117 (FHWA CatExs) should no longer be used for FTA's actions on projects. However, multimodal projects containing both FHWA-funded and FTA-funded elements (such as the reconstruction of a highway lane within existing right-of-way for express bus service) should be processed under both, as appropriate. **Chapter 5** includes information about CatExs in general and about FHWA/CDOT CatEx processes.

Per the CEQ's *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* guidance (November 2010), the CatExs in 23 CFR 771.118 are presented as general categories that include limitations, as appropriate, and provide an informative (but not exhaustive) list of examples. CatExs added pursuant to the Moving Ahead for Progress in the 21st Century Act (MAP-21) do not follow the same format because they were created pursuant to specific statutory criteria.

Table 10-1 shows a comparison between 23 CFR 771.118 and 23 CFR 771.117.



The *FTA Region 8 Categorical Exclusion and Document Categorical Exclusion Worksheet* is located here:
http://www.fta.dot.gov/documents/2014-02_New_NEPA_Catexs_DB_140113.pdf



Table 10-1. Comparison between 23 CFR 771.118 and 23 CFR 771.117

23 CFR 771.118(c)	23 CFR 771.117
(1) Utility and similar appurtenance action	(c)(2)
(2) Pedestrian or bicycle action	(c)(3)
(3) Environmental mitigation or stewardship activity	(c)(6), (7)
(4) Planning and administrative activity	(c)(1), (16), (20)
(5) Action promoting safety, security, accessibility	(c)(8), (9), (15), (21)
(6) Acquisition, transfer of real property interest	(c)(5), (10); (d)(12)*, (13)*
(7) Acquisition, maintenance of vehicles / equipment	(c)(14), (17), (19)
(8) Maintenance, rehab, reconstruction of facilities	(c)(18); (d)(3)*, (9)
(9) Assembly or construction of facilities	(d)(4), (8), (10), (11)
(10) Joint development of facilities	N/A
(11) Emergency actions (i) immediate repairs (ii) damage repairs, etc. in ROW within 2 years	(c)(9) (i) and (ii)
(12) Project in Operational ROW	(c)(22)
(13) Federally funded projects less than \$5M or total cost not more than \$30M with federal funds less than 15%	(c)(23)
23 CFR 771.118(d)	23 CFR 771.117
(1) Highway modernization	(d)(1)
(2) Bridge replacement or rail grade separation	(d)(3)*
(3) Hardship or protective property acquisition	(d)(12)*
(4) Acquisition of right-of-way	(d)(13)*
(5) Reserved	N/A
(6) Facility modernization	N/A

*Note, actions under these CatExs partially fall under Sections 771.118(c) and (d)
 Table adapted from FTA's *Guidance for Implementation of FTA's Categorical Exclusions (23 C.F.R. §771.118)* (February 2014)

The contents of 23 CFR 771.118 follow a similar format as FHWA's 23 CFR 771.117 by having Part (a), Part (b), Part (c) ("c-list"), Part (d) ("d-list"), and Part (e). Part (a) describes and defines CatEx actions; Part (b) explains "unusual circumstances"; Part (c) contains FTA categorically excluded



actions; Part (d) contains examples of actions that may be categorically excluded; and Part (e) addresses the addition of new CatExs in the future.

If an action could fall under multiple CatExs listed in section 771.118(c) due to their broad nature and/or one or more of the examples under section 771.118(d), then the best option is chosen (i.e., the CatEx that most closely fits the proposed activities) for the particular project in consultation with the FTA Region 8 Office. Ultimately, the selected Cat Ex must cover all aspects of the proposed project's scope, and the project description should include all project elements.

Text provided below is taken verbatim from 23 CFR 771.118 FTA Categorical Exclusions.

23 CFR 771.118 CATEGORICAL EXCLUSIONS

"(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts."

"(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require FTA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action."

"(c) Actions that FTA determines fall within the following categories of FTA CEs and that meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and paragraph (a) of this section normally do not require any further NEPA approvals by FTA.

- (1) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing



Note that the regulations use "CE" rather than "CatEx." CDOT has traditionally used "CatEx," and that is what the NEPA Manual reflects.



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 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.

(13) Federally-funded projects:

(i) That receive less than \$5,000,000 of Federal funds; or

(ii) With a total estimated cost of not more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost."

In a Notice of Proposed Rule-Making issued in September 2013, the FTA proposed to add three new CatExs to 23 CFR 771.118(c), which was prompted by enactment of MAP-21. The rule-making has not been completed as of the date of this NEPA Manual. The NEPA Manual will be updated with the new c-list CatExs once rule-making is complete.

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

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



For additional details and examples for each of the Part (c) categories, see the FTA's *Guidance for Implementation of FTA's Categorical Exclusions* (23 C.F.R. §771.118) (February 2014).





(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."

In a Notice of Proposed Rule-Making issued in September 2013, the FTA proposed to add two new CatEx examples to 23 CFR 771.118(d), which was prompted by enactment of MAP-21. The rule-making has not been completed as of the date of this NEPA Manual. The NEPA Manual will be updated with the new CatEx examples once rule-making is complete.

"(e) Where a pattern emerges of granting CE status for a particular type of action, FTA will initiate rulemaking proposing to add this type of action to the appropriate list of categorical exclusions in this section."



10.2.3 Class III – Environmental Assessment (EA)

As stated previously, the class of action determination (Section 2.4 and 23 CFR 771.115) is made by FTA. General information about Class III is included in the introduction of Chapter 6. If an EA is deemed necessary, the FTA process is similar to the FHWA/CDOT process described in Chapter 6 and the process described in that chapter can generally be followed with coordination and guidance from FTA.

Differences to note between the FTA and FHWA/CDOT processes include:

- ▶ All contact and consultation with resource and regulatory agencies is conducted by FTA.
- ▶ Requirements for some of the analyses can be different. For example, noise and vibration should be assessed for proposed mass transit projects using FTA's Transit Noise and Vibration Impact Assessment guidance.
- ▶ Letters of Intent are issued by FTA to indicate the intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by FTA until the NEPA process is complete.
- ▶ CDOT is typically not a signatory on FTA EA documents.
- ▶ FTA does not have a stewardship agreement with CDOT, and does not delegate environmental review and approval to CDOT.



10.3 References

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