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Managing the Environmental Process in High Capacity Transit Corridors

Categorical Exclusions for Federally Funded Transit Projects: Due Diligence in Compliance with Environmental Regulations

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I. INTRODUCTION

This paper describes the background of the Categorical Exclusion (CE) as a Class of Action under the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ), and current and recently proposed rules set forth jointly by the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA). It also describes the use of a CE as a decision-making document and describes other environmental requirements that commonly require review in addition to the process dictated by the Class of Action under 23 CFR Part 771: Environmental Impact and Related Procedures.

On February 7, 2013, FTA, jointly with FHWA, published 10 FTA actions qualifying for CEs in the Federal Register (23 CFR 771.118) and expanded the discussion and description of actions which qualify as CEs. As noted in the Federal Register notice, the revisions responded to the August 31, 2011 Presidential Memorandum titled "Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review" and to the Executive Order (EO) 13563 "Improving Regulation and Regulatory Review" directive to periodically review existing regulations to determine if they can be made more effective and/or less burdensome. In addition, and in response to the enactment of the Moving Ahead for Progress in the 21st Century (MAP-21), FTA also issued a final rule that applies to Emergency Recovery CEs on February 19, 2013 [23 CFR 771.118 (c)(11)]. Most recently, on February 28, 2013, additional language has been put forth by FTA and FHWA under a Notice of Proposed Rulemaking to specifically address categorical exclusions for projects within an existing operational right-of-way (ROW) and projects receiving limited Federal funding. These changes are proposed as a result of the provisions set forth in MAP-21.

The CEQ defines CE as "a category of actions which do not individually or cumulatively have a significant effect on the human environment…and…for which, therefore, neither an environmental assessment nor an environmental impact statement is required (40 CFR 1508.4)." The FTA/FHWA regulations provide lists of actions that can be approved as CEs with minimal documentation with provisions for additional actions that may be found to meet CEQ CE requirements. The new rules specifically applicable to FTA (23 CFR 771.118) define 11 CEs which would "normally not require any further NEPA approvals by FTA" as well as the opportunity to submit documentation for additional actions that may meet the definition of a CE as noted in 23 CFR 771.118 (d). It should be noted that 23 CFR 771.117 no longer applies to FTA actions. The 11 CEs include many activities to be conducted within or adjacent ROW and/or facilities such as actions involving utilities, repairs and rehabilitation of the transportation system, maintenance of the facility and/or equipment, and construction of some types of transportation facilities. In

addition, there is one CE specifically covering emergency recovery actions. These CE categories have been in place since the original rules were published in 1987; however, the recent changes have provided a section specifically related to FTA actions and include the following:

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 promoted 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 track 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):
    a. Emergency repairs under 49 U.S.C. 5324; and

b. 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:
   i. Occurs within the existing right-of-way and in a manner that substantially conforms to the pre-existing 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
   ii. Is commenced within a 2-year period beginning on the date of the declaration.

In addition to the CEs, the examples of typically excluded categorical actions that are required to be supported with documentation include the following:

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.
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. Construction of bicycle facilities within existing transportation right-of-way.
6. Facility modernization through construction or replacement of existing components.

NEPA provides a context to work with all state, federal, and local laws so that even if something falls into a CE class of action, it does not mean that the project does not need to follow environmental laws; it is still necessary to conform to individual regulations and what is written under 771.118 (b) and due diligence would suggest that applicants would always need to check to be sure there were no unusual circumstances. This paper discusses environmental compliance for categorically excluded transit projects in the context of federal, state, and local regulations and considerations for early steps in the decision-making process that can be taken to make sure that the CE is the correct level of analysis for the project and to minimize the risk that other issues related to the environmental process would not cause project delays in the future. **It is important to note that the information contained in this paper is meant to better inform the overall project planning and environmental decision-making process; not to add additional steps or paperwork to the environmental process that has been successfully streamlined over the course of several years through legislative mandates and agency guidance.**

II. CE APPLICATION

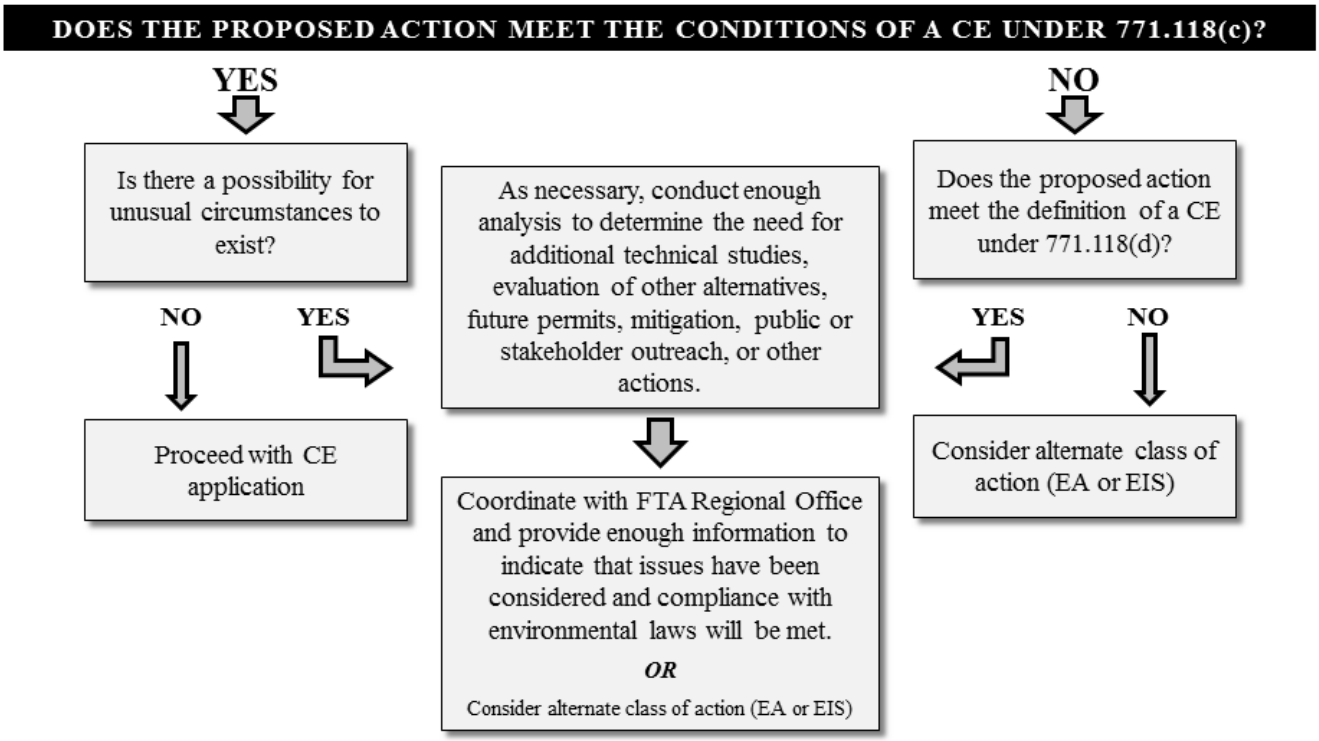
In regards to the new CEs rules that have been published, several questions have arisen—some in the context of FTA sponsored webinars—regarding the paperwork necessary for CEs and the necessity of complying with other laws if a particular action is considered to be a CE. The answer to this second question, and verified by FTA during the webinars hosted in February 2013, is that the exclusion of an action under NEPA does not exempt that action from the need to comply with other laws and regulations. In response to these questions, and with the intent of providing clarity to practitioners and those with the responsibility of overseeing NEPA compliance, this paper will provide some guidance on the question of compliance with other laws and regulations and will give examples of the other types of laws that require compliance with or without actual CE documentation.

The application for a CE can be somewhat confusing, especially with the differences in the CEs under 771.118(c) and other actions that meet the definition under 771.118 (d). Circumstances could arise in the review of a CE where FTA would need more information to approve the action based on the breadth and context of what is being proposed. The decision matrix shown in Figure 1 provides an overview of the considerations that should be given when considering the application of a CE. The additional laws and studies are discussed in subsequent portions of this paper.

It is typically easier to assess potential issues up front and to take the time to make sure that enough is known about a project to make sound decisions moving forward in terms of NEPA compliance. The consequences of moving too quickly in determining that a CE is the appropriate level of documentation can ultimately cause project delay if other considerations are not given in a broader NEPA context. Specifically in regards to FTA funded projects, the following could result from a hasty application process:

a) The sponsoring agency could be required to conduct additional studies to satisfy federal questions about unusual circumstances;
b) There could be delay caused by stopping the process to identify alternatives to satisfy specific environmental laws such as Section 4(f) of the Department of Transportation Act;
c) Not providing adequate opportunity for public/ agency comment could cause delays due to concerns that are raised once the project is made public; and/or
d) Ultimately not considering potential environmental issues, even for something that seems to fit a CE category, could cause delays if an environmental assessment or environmental impact statement is the document that is more appropriate for the action.

The following sections provide some basic background on legislation related to NEPA and CEs, considerations for unusual circumstances, and the studies that should be considered if there is a question regarding the potential environmental impact of a proposed action.



III. FEDERAL LEGISLATION DESCRIBING CATEGORICAL EXCLUSIONS

The National Environmental Policy Act, the Council on Environmental Quality, and Subsequent Implementing Regulations

NEPA was signed into law on January 1, 1970, and was the first of several major environmental laws passed in the 1970s. It declared a national policy to protect the environment and created a CEQ in the Executive Office of the President. The CEQ promulgated regulations that require all federal agencies to develop individual regulations or procedures that detail the requirements for compliance with NEPA. The current FTA/FHWA environmental regulations were published in 1987, with substantive updates in 2009. Most recently, the FTA CEs were published after extensive review by a committee to substantiate that the actions do meet the regulatory definition.

NEPA provides an umbrella under which compliance with all other environmental laws can be combined and organized into one process that includes a public outreach component. Although NEPA provides this coverage, and can also cover many State environmental regulatory processes, there are exceptions including in the State of California where the California Environmental Quality Act (CEQA) has additional requirements for compliance.

IV. RECENT HIGHWAY AUTHORIZATION BILLS AND APPLICABILITY TO ENVIRONMENTAL REVIEW FOR CE PROJECTS

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law in 2005 and allowed for the establishment of new procedures specifically for environmental impact statement preparation for highway, transit, or multimodal transportation projects. In addition to procedural changes that were adopted as a result of SAFETEA-LU, in the context of this paper, one significant provision is important to note.

The first substantive revision to Section 4(f) of the Department of Transportation Act was made under Section 6009 of SAFETEA-LU. Under these provisions, once the transportation agency (for purposes of this paper, FTA) determines that a transportation use of Section 4(f) property will result in a *de minimis* impact, analysis of avoidance alternatives is not required and therefore there is no further documentation required. In general, and as applied to all resources protected by this law, *de minimis* impact means that the use of a Section 4(f) property by a transportation project will not adversely affect the activities, features, and attributes of the Section 4(f) property. An implementation study of the Section 6009 provisions for both highway and transit projects was conducted in 2011: http://www.environment.fhwa.dot.gov/4f/Section_6009Study/Sept2011.asp.

Specifically with regard to historic sites, a *de minimis* impact means that FTA has determined (in accordance with 36 CFR Part 800) that either no historic property is affected by the project or that the project will have "no adverse effect" on the historic property. Coordination is necessary with the State Historic Preservation Office and other entities; however, once it is determined that there is "no adverse effect," additional alternatives analysis that would normally be conducted for a 4(f) impact is not required. Although most of the provisions of SAFETEA-LU were focused on projects of a larger scale, the opportunity for sponsoring agencies to apply the *de minimis* provisions can streamline the approach for CE documents.

The Moving Ahead for Progress in the 21st Century Act

The Moving Ahead for Progress in the 21st Century Act (MAP-21) was signed into law on July 6, 2012. This law has specific language regarding CEs. Specifically, Sections 1315-1317 mandated rulemaking which, as noted previously, is either complete or in progress. In addition, under Section 1318, the U.S. Department of Transportation Secretary is required to consider the addition of new CEs based on a survey of the Department's use of CEs since 2005 and to conduct a rulemaking to propose to reclassify three categories of actions formerly in the list of 23 CFR 771.117 [(d) list] to the (c) list.

V. FEDERAL TRANSIT ADMINISTRATION CATEGORICAL EXCLUSIONS AND COMPLIANCE WITH 23 CFR 771.118(b)

Overview

The FTA discusses NEPA compliance and lists several of the related laws, regulations, orders and guidance on their website at http://www.fta.dot.gov/15154_225.html#NEPA-Related_Federal_Laws_Regulations_Orders__Guidance. This information is a useful reference when considering the

potential impacts of a proposed project. This list also includes an example CE Worksheet from FTA Region 10 that is provided to assist sponsoring agencies in compiling and submitting information under this class of action. FTA does not have a standard CE worksheet.

As stated previously, the current FTA list of CEs includes 11(including Emergency Recovery Action) that would typically not require documentation to FTA and the opportunity to submit documentation regarding other actions that may fit the definition under 771.118 (d). In general, the steps taken to process CEs are the same; however, additional documentation is required by FTA for those CEs under 771.118 (d). The applicant, in conjunction with FTA, would first determine whether or not an action is a CE under 771.118 (c), determine if there is a potential for unusual circumstances to exist, and then move forward on the basis of those findings. If unusual circumstances exist, it is prudent to consider whether or not the CE is still the tool to be utilized under NEPA or perhaps if an environmental assessment or environmental impact statement would be required.

Defining Unusual Circumstances

Although there are now several FTA CEs, compliance with 23 CFR 771.118 (b) is still required under regulation. This section states: *Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, 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 administration determination relating to the environmental aspects of the action.*

The example CE Worksheet provided by FTA includes a comprehensive overview of the potential considerations for a project submitted as a CE under 771.118 (c) or (d). This example worksheet, combined with additional review of the project characteristics, may inform the sponsoring agency as to whether or not unusual circumstances exist such that additional documentation is needed for project compliance.

Significant Environmental Impacts: In order to understand whether "significant environmental impacts" exist, technical studies may need to be conducted by the sponsoring agency to determine any potential issues. These studies are listed and described in the subsequent section. The sponsoring agency should look closely at the project area and consider likely impacts and consider coordinating review with the local FTA Regional Office.

Substantial Controversy on Environmental Grounds: "Substantial Controversy" is not defined and requires outreach on the part of the sponsoring agency to the extent that the project may cause concern to the public, especially adjacent residential areas and business districts. The surrounding community and adjacent sensitive uses should be taken into consideration. These may include schools, churches, hospitals, or other areas where there may be special considerations. Controversy on environmental grounds could include any specific issue related to other environmental laws that apply to the project. This could potentially also be related to compliance with EO 12898 on Environmental Justice which is discussed in a subsequent section. Generally speaking, it is prudent to consider a common-sense approach to public outreach and make sure the public is aware of the proposed action through some type of process that can, and may typically occur during the planning phase or through other local processes. FTA does not define how this process should be undertaken for actions other than environmental impact statements and normally does not recommend scoping for CE actions.

Section 106 of the National Historic Preservation Act: The National Historic Preservation Act (NHPA) was signed into law in 1966 and amended most recently in 2006 and has a goal to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. Compliance with Section 106 of the NHPA is triggered under many different circumstances on transit projects due generally to the location of the project. Many newer streetcar projects for example are located in downtown settings that can have impacts to visual settings in historic neighborhoods (including from catenary wires), physical impacts to historic structures, and/or actual ground disturbance in areas that have not been touched since the roadway was constructed. Not all impacts, especially for projects within existing ROW, may be immediately apparent. Section 106 of the NHPA is also related to another law, Section 4(f) of the Department of Transportation Act that is further described here.

Section 4(f) of the Department of Transportation Act: As described in the FHWA Section 4(f) Policy Paper, published July 20, 2012, Section 4(f) of the Department of Transportation Act covers *parks and recreational areas of national, state or local significance that are both publicly owned and open to the public; publicly owned wildlife and waterfowl refuges of national, state, or local significance that are open to the public to the extent that public access does not interfere with the primary purpose of the refuge; and historic sites of national, state, or local significance in public or private ownership regardless of whether they are open to the public*. It stipulates that agencies under the Department of Transportation cannot approve the use of land from these resources unless there is no feasible and prudent alternative to the use of the land and the action includes all possible planning to minimize harm to the property resulting from use.

As discussed in the prior section, SAFETEA-LU amended Section 4(f) to allow for *de minimis*, and FTA/FHWA subsequently published rules which specified how to apply *de minimis* findings, which reduces the amount of analysis necessary for such actions. It would be expected that in a project with minimal impacts, this could be applied. However, if there is a Section 4(f) use to be evaluated as part of the project action, it may be necessary to review alternatives to satisfy the requirements of the law.

Addressing Other Regulations

As noted previously, there is a large body of material available from FTA that is comprehensive in the discussion of NEPA-related laws and regulations. However, in addition to the aforementioned NHPA and Section 4(f) of the Department of Transportation Act, some of the more commonly encountered laws and regulations are discussed here in the context of transit projects.

Clean Air Act

The Clean Air Act section 176(c) (42 U.S.C. 7506 (c)) requires that federally funded projects are incorporated and conform to State Air Quality Implementation Plans. This requirement seeks to ensure that transportation activities will not cause new air quality violations, worsen existing conditions/violations, or interfere with attainment of the national ambient air quality standards. It is important to consider the application of the Clean Air Act to the proposed project, to make sure that as applicable the project is in conformity and that if necessary a hot-spot analysis is conducted.

Clean Water Act

The Clean Water Act pertains to both water quality and wetland regulations. Although most projects listed as CEs would typically fall within existing ROW and not impact wetlands, it is important to consider potential impacts under both Section 404 of the Clean Water Act as well as EO 11990 as described in the next section. All activities that may create stormwater runoff and those that could potentially contain pollutants should be considered under the provisions of the Clean Water Act.

Executive Orders

Executive Order 12898, Environmental Justice: This is also commonly triggered for consideration particularly because of the nature of transit projects and the desire for public transportation to serve transit-dependent populations. The FTA provides specific guidance; however, it should be a consideration early on, because mitigation under EO 12898 requires early coordination with populations that could potentially be affected.

Executive Order 11990, Protection of Wetlands: This EO requires federal agencies to take all actions to minimize the destruction, loss, or degradation of wetlands and can require an evaluation of alternatives to ensure that "all practicable" measures have been taken to minimize harm.

Executive Order 11988, Floodplain Management: Similar to EO 11990 in terms of potentially requiring additional alternatives to be considered, EO 11988 was enacted to provide protection to long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.

Limited Technical Studies Helpful in Determining Potential Impacts Early in Project Planning

Ideally, projects should be designated through the planning process to avoid or minimize impacts that could potentially elevate a project that would otherwise be a CE to a higher class of action. This could potentially avoid the need for technical studies by demonstrating that the project was designated and planned in a way to prevent impacts. However, as this is not always the case, there may instances when additional analysis is required before a project can be cleared as a CE. The following is a brief list of technical studies and analyses that should be considered within the context of a project, to determine whether unusual circumstances could exist for a project

being considered as a CE under 771.118 (c) or would meet the definition provided in 771.118 (d) and require additional documentation to be provided to FTA. The suggestion of these studies is not meant to create additional paperwork or process steps that have been eliminated through recent legislation, but rather to aid sponsoring agencies in the consideration of potential issues and unusual circumstances early in the project planning process. It is not comprehensive, but meant to cover typical areas of potential impact for these types of project. Use of the FTA CE worksheet as noted previously would provide a comprehensive checklist of areas of potential concern.

Community and Land Use Evaluation: Evaluating the surrounding land uses and determining whether or not the proposed project fits in with adopted plans is one of the single most critical evaluation needs of a project. Understanding the context of the project and generally the expectations of the public in terms of implementation is important. Studies may need to be conducted on sensitive areas and alternatives that may have already been evaluated in the past to move the project forward should be considered. This evaluation should consider aesthetics, zoning, and other considerations in relationship to the surrounding community.

Cultural Resources Records Review: In many cases, information on potential cultural sites can be determined through a database search conducted by qualified individuals. For projects that are adjacent to or within existing transportation rights of way, it would typically be expected that areas would have been previously surveyed; however, this should be considered on a case-by-case basis and based on local knowledge of the project area, as well as the depth and adequacy of previous surveys.

Historic Property Inventory: The specific characteristics of "eligible" properties under the NHPA will vary state by state; however, in general, it is important to consider the context of each project and the relationship to potentially historic-age properties. This is important not only for individual properties, but also for areas that may be located within existing or potential historic districts.

Traffic: Although a traffic study may be conducted for other reasons, especially for transit projects proposed to be constructed within existing ROW, a traffic study can provide useful information for analysis of potential air quality, noise, and other impacts. Both parking and traffic should be taken into consideration to determine whether or not existing roadways have the capacity to handle increased traffic that could result from the project.

Noise and Vibration: Depending on the proximity of the project to residential and business areas, it may be prudent to conduct a noise and vibration study to determine any potential impacts. Noise in particular is a typical concern for the public due to the fact that it is something that can be immediately sensed and has the potential to change the overall environment on a day-to-day basis, and can be significant in the context of historic and/or Section 4(f) properties as well. The FTA Transit Noise and Vibration Impact Assessment should be used as a reference: www.fta.dot.gov/documents/FTA_Noise_and_Vibration_Manual.pdf. Chapter 4 describes a noise screening procedure that is designed to determine the locations where a project may cause noise impacts. If there are no noise-sensitive land uses determined to be present in the area of project noise influence, no further noise assessment is required.

Socioeconomic: Review of data in the project areas is important to evaluate whether disproportionate impacts to low income or minority impacts could be a consequence of the project.

Hazardous Materials: Performing a Preliminary Initial Site Assessment (PISA) may be required by the local jurisdiction that may have responsibility for purchase of or maintenance of a project; however, it may be a tool to provide initial information on the potential impacts of work to be conducted and ongoing potential issues and risks associated with property ownership such as acquisition of ROW.

Water Resources: Understanding the potential to affect both surface and groundwater resources is important for any project with ground disturbing activities and some special considerations may apply to wetland areas and the need for permits under the U.S. Army Corps of Engineers. In addition, areas within designated floodplain zones should be considered especially for projects proposing impervious cover in areas designated by the Federal Emergency Management Agency as being within the 100-year floodplain.

VI. STATE, LOCAL, AND AGENCY ENVIRONMENTAL PROCESSES

A comprehensive list of States with NEPA-like planning procedures can be found at: http://ceq.hss.doe.gov/nepa/regs/states/states.cfm. Although it is generally unlikely these processes would require additional information if a project is a CE, it is important to be aware of the overall requirements.

VII. SUMMARY AND ADDITIONAL RESOURCES

In summary, it is important to take the time in project development to adequately assess whether or not the CE is the best level of documentation under NEPA to address the potential effects of a project and, if so, what information can be provided to FTA as back-up information. Four important areas of decision-making should be considered:

- **Breadth and Context of Project Action:** It is important to consider the project action in the context in which it is being proposed to determine what, if any, questions could be raised during the federal review process and what information could be provided to help expedite this review.
- **Outreach:** Are there reasons to apply a more rigorous outreach process to provide the public, stakeholders, or other agencies the opportunity to comment on the project actions? If so, should this outreach occur prior to CE application to FTA?
- **Other Environmental Laws and Requirements:** Through the initial review of the project action, if it is determined that there are several potential effects that would need to be addressed; it may be prudent to move forward with an environmental assessment.
- **Alternatives:** Is there a need to consider other alternatives to a proposed action and are these dictated by other laws such as Section 4(f)?

The content of this paper is meant to summarize background legislation and regulations that may arise as part of the transportation decision-making process for transit projects that may be considered as CEs. It is important to note that the local FTA Regional Office is the best resource for sponsoring agencies to gain information on FTA policy and the appropriate class of action for any proposed project. Contacts for each of these offices can be found at:
http://www.fta.dot.gov/12317_1119.html.

There are many resources for NEPA and transportation planning, three of which are listed here.

Federal Transit Administration Environmental Analysis and Review:
http://www.fta.dot.gov/13835_5222.html.

Federal Highway Administration Environmental Provisions and Related Information:
http://www.environment.fhwa.dot.gov/strmlng/es2safetealu.asp.

Center for Environmental Excellence by AASHTO: http://environment.transportation.org/.