

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

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THIS PROGRAMMATIC AGREEMENT (“Agreement”), made and entered into this 7th day of December 2023, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION and the STATE OF IDAHO, acting by and through the IDAHO TRANSPORTATION DEPARTMENT, hereby provides as follows:

**WITNESSETH:**

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

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

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

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

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

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

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

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

## I. PARTIES

The Parties to this Agreement are the Federal Highway Administration (FHWA) and the Idaho Transportation Department (ITD).

## II. PURPOSE

The purpose of this Agreement is to authorize ITD to determine on behalf of FHWA whether a project qualifies for a CE action specifically listed in 23 CFR 771.117 (listed in Appendix A and B of this Agreement). This Agreement also authorizes ITD to certify to FHWA that an action that it cannot approve on behalf of FHWA according to the terms of this Agreement, but meeting the CE criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), qualifies for a CE as long as there are no unusual circumstances present that would require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS). This agreement applies to all projects by ITD and applicable sub-recipients using Federal-aid funds (e.g., LHTAC, ACHD), but does not apply to direct recipients of Federal-aid transportation funding.

## III. AUTHORITIES

This agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*
- B. Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, 126 Stat. 405, Sec. 1318(d) (July 6, 2012)
- C. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)
- D. Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429, (November 15, 2021)
- E. 40 CFR parts 1500 - 1508
- F. DOT Order 5610.1C
- G. 23 CFR 771.117
- H. Idaho Code Sections 67-2326 through 67-2333 and 67-2339, and any other provisions of state or federal law or regulation directly pertaining to the agreement

## IV. RESPONSIBILITIES

A. ITD is responsible for:

- 1. Ensuring the following process is completed for each project that qualifies for a CE:
  - a. For actions qualifying for a CE listed in Appendix A (CEs established in 23 CFR 771.117(c)), and Appendix B (CEs established in 23 CFR 771.117(d)), that do not exceed the thresholds in Section IV(A)(1)(b) below, ITD may make a CE approval on behalf of FHWA. ITD will identify the applicable CE from Appendix A or B, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any other environmental requirements, and complete the review with a signature evidencing approval. No separate review or approval of the CE by FHWA is required.
  - b. ITD may not approve actions listed in Appendices A and B that exceed the thresholds below, however, ITD may certify to FHWA that the action qualifies for a CE. (In the context of this agreement, ITD certification means that ITD has completed all necessary reviews of the documentation, found it satisfactory, and

recommends approval by FHWA). An action requires FHWA CE review and approval based on the ITD certification when the action:

- i. Is identified by a recognized American Indian Tribe requesting formal consultation or other direct involvement with FHWA regarding the project;
- ii. Results in a determination of Adverse Effect to a National Historic Landmark designated by the Secretary of the Interior, or on Property of Traditional Religious or Cultural Importance (PTRCI), or historic properties for which a Native American Tribe has expressed objections or significant concerns;
- iii. Requires the use of properties protected by Section 4(f) (49 USC §303/23 USC § 138, and 23 CFR 774) unless they can be documented with an FHWA *de minimis* determination or a programmatic Section 4(f) evaluation;
- iv. Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. §200305), the Federal Aid in Sport Fish Restoration Act (16 USC §777-777k, 64 Stat. 430), the Federal Aid in Wildlife Restoration Act (16 USC 669-669i; 50 Stat. 917), or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;
- v. May Affect/Likely to Adversely Affect federally listed or candidate species, or proposed or designated critical habitat or projects with impacts subject to the conditions of the Bald and Golden Eagle Protection Act;
- vi. Requires a U.S. Army Corps of Engineers Section 404 (33 USC §1344) permit other than a Nationwide Permit or a General Permit;
- vii. Requires a U.S. Coast Guard bridge permit (33 USC §401);
- viii. Results in an increase to the base (100-year) floodplain in a regulatory floodway that will require a flood map revision as determined by the appropriate state or local authority, pursuant to Executive Order 11988 and 23 CFR 650 Part A;
- ix. Requires a Wild and Scenic River Section 7 determination and the river administering agency has determined that the project has a direct and adverse effect on the river's free-flowing condition, water quality, or Outstandingly Remarkable Values (ORV's);
- x. Is defined as a "Type I project" for traffic noise per 23 CFR 772.5 and the ITD traffic noise analysis and abatement requirement document;
- xi. Involves acquisitions of property that includes any displacement or relocation of owners or tenants (either business or residential) or affects the primary use of the property;
- xii. Results in changes that substantially affect traffic patterns, either permanently or temporarily. Substantially is defined as closure of existing roads, bridges, or ramps, that would result in major traffic disruptions. Major disruptions are defined as adversely affecting through-traffic dependent businesses, and/or generate substantial controversy regarding temporary access, or road, bridge, or ramp closure;
- xiii. Involves any new access, change in location or use of existing access, change of access control type, or alterations affecting access on the interstate system (23 USC 111);
- xiv. Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 USC § 108(d));

- xv. Does not conform to the air quality State Implementation Plan (SIP) due to adverse effects to air quality as determined in accordance with Project Level Air Quality (PLAQ) Screening;
  - xvi. Is not included in or is inconsistent with the statewide transportation improvement program (STIP), and in applicable urbanized areas, the transportation improvement program (TIP);
  - xvii. Is identified subsequent to the execution of this agreement by FHWA via written notification to ITD.
- c. ITD may not approve actions not specifically listed as CEs in Appendices A and B. Instead, if ITD believes that an action meets the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a), ITD may certify that an action will not result in significant environmental impacts if ITD concludes that the action qualifies for a CE, and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS. ITD shall submit this certification (request for approval) to FHWA for approval prior to the time FHWA contemplates its next approval or grant action for the project.
    - i. In this case, ITD shall provide a copy of the CE documentation prepared for the action(s) in accordance with Section V of this Agreement.
    - ii. If any project requires a Section 4(f) *de minimis* determination or programmatic evaluation, ITD shall submit the 4(f) documentation for FHWA determination and approval.
  - d. The Division Office's objection to a ITD certification may not constitute a disapproval of the action but signifies that FHWA will need to conduct project-specific review to verify that the certification is adequate; this may include consultation with ITD and/or other agencies.
2. Providing a list of ITD approved and certified actions, pursuant to this Agreement to the Division Office on an annual basis by November 1<sup>st</sup> as further described in Section VII. B or other at other times as requested by FHWA. The list of actions will contain the following information:
    - a. The ITD project key number and a project name;
    - b. Identification of the CE action listed in Appendices A and B, or if the action is not specifically listed in 23 CFR 771.117, identification of type of action and labelled "CE not categorized;"
    - c. Whether the project included a Section 4(f) *de minimis* or programmatic evaluation.
  3. Consulting with FHWA for actions that involve unusual circumstances (23 CFR 771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. ITD may decide or FHWA may require additional studies to be performed prior to making a CE approval or proceeding with the preparation of an EA or EIS.
  4. Meeting applicable documentation requirements in Section V for State CE approvals on FHWA's behalf and State CE certifications to FHWA, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality, monitoring, and performance requirements in Section VII.
  5. Relying only upon employees directly employed by the State to make CE approvals or certifications submitted to FHWA under this agreement. ITD may not delegate its

responsibility for CE approvals or certifications to third parties (i.e. e.g., consultants, local government staff, and other State agency staff).

B. The FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to ITD, as requested.
2. Providing timely input on and review of certified actions. FHWA will base its approval of CE actions on the project documentation and certifications prepared by ITD under this Agreement. Under normal circumstances, a response will be provided to ITD within ten (10) business days.
3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

## V. DOCUMENTATION OF ITD CE APPROVALS AND CERTIFICATIONS

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

1. For actions listed in Appendices A and B, ITD shall identify the applicable action, ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with an ITD signature evidencing approval.
2. In addition, for actions listed in 23 CFR 711.117(d), ITD shall prepare documentation that supports the CE determination and that no unusual circumstances exist that would make the CE approval inappropriate.

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

1. Any checklists (see Appendix C), forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
2. A summary of public involvement complying with the requirements of the FHWA-approved public involvement policy;
3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
4. The name and title of the document approver and the date of ITD's approval or FHWA's final approval; and
5. For cases involving re-evaluations, the re-evaluation document (or email for a no-change re-evaluation), accompanied by the relevant supporting information.

C. ITD shall provide any electronic or paper project records maintained by ITD to FHWA at its request. ITD shall retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve ITD of its project or program recordkeeping responsibilities under 2 CFR 200.333 or any other applicable laws, regulations, or policies.

## **VI. NEPA APPROVALS AND RE-EVALUATIONS**

- A. ITD's CE approvals and certifications to FHWA may only be made by a qualified ITD Headquarters Environmental Services Manager (or his/her qualified designees on the ITD Headquarters Environmental staff on an interim basis).
- B. In accordance with 23 CFR 771.129, ITD shall re-evaluate its determinations and certifications for projects, consult with FHWA, and as necessary, prepare additional documentation to ensure that determinations are still valid.

## **VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE**

- A. ITD Quality Control and Quality Assurance
  1. ITD shall carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE submissions to FHWA for approval are made in accordance with applicable law and this Agreement.
- B. ITD Performance Monitoring and Reporting
  1. The FHWA and ITD agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.
  2. ITD agrees to annually submit to FHWA (electronically or hard copy) a report summarizing its performance under this Agreement. The report will identify any areas where improvement is needed and what measures ITD is taking to implement those improvements. The report will include a description of actions taken by ITD as part of its quality control efforts under Section VII(A).
  3. The annual report shall include a complete list of CEs not listed in Appendix A or B, but meeting the CE criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), and shall identify the type of project for each of these.
- C. FHWA Oversight and Monitoring
  1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of ITD, as well as ITD's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of ITD's CE approvals, CE submissions to FHWA for approval, adequacy, and capability of ITD's staff and consultants, and the effectiveness of ITD's administration of its internal CE approvals.
  2. FHWA will conduct one or more program reviews as part of its oversight activities, during the term of this Agreement. ITD shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. ITD should draft the corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by ITD shall be considered at the time this Agreement is considered for renewal.
  3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to ITD's performance under this Agreement. The FHWA may require ITD to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
  4. ITD agrees to cooperate with FHWA in all oversight and quality assurance activities.

## **VIII. AMENDMENTS**

If the parties agree to amend this Agreement, then FHWA and ITD may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

## **IX. LIMITATIONS**

Nothing in this Agreement between ITD and FHWA shall be construed as limiting or expanding the statutory or regulatory responsibilities of any involved individual in performing functions granted to them by law; or as requiring either entity to expend any sum in excess of its respective appropriation. Each and every provision of this Agreement is subject to the laws and regulations of the state of Idaho and of the United States.

Nothing in this Agreement shall be construed as expanding the liability of either party. In the event of a liability claim, each party shall defend their own interests. Neither party shall be required to provide indemnification of the other party. "

## **X. TERM, RENEWAL, AND TERMINATION**

- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. ITD shall post and maintain an executed copy of this Agreement on its website, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if ITD requests renewal, and FHWA determines that ITD has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- C. Either party may terminate this Agreement at any time only by giving at least 30 days written notice to the other party.
- D. Expiration or termination of this Agreement shall mean that ITD is not able to make CE approvals on FHWA's behalf.

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

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Peter J. Hartman  
Division Administrator  
Federal Highways Administration Idaho Division

Date



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L. Scott Stokes  
Director  
Idaho Transportation Department

Date

6 Dec 23

**Appendix A: CEs listed in 23 CFR 771.117(c)**

**Appendix B: CEs listed in 23 CFR 771.117(d)**

**Appendix C: Link to ITD CE Checklist**

**FHWA must review and approve of any significant changes to the on-line form that would have bearing on or require changes or updates to this ITD CE checklist subsequent to the implementation date of this Agreement.**



## APPENDIX A

### 23 CFR 771.117(c)

#### ("c-list CEs")

23 CFR 771.117(c) The following actions meet the criteria for CEs in the CEQ regulations ([40 CFR 1508.4](#)) and [paragraph \(a\)](#) of this section and normally do not require any further NEPA approvals by the FHWA:

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

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

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

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

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

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

(7) Landscaping.

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

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

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

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

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

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

(10) Acquisition of scenic easements.

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

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

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

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

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

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

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

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

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

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

(22) Projects, as defined in [23 U.S.C. 101](#), that would take place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the

roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

(23) Federally funded projects:

(i) That receive less than \$5,000,000 (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.fta.dot.gov](http://www.fta.dot.gov)) of Federal funds; or

(ii) With a total estimated cost of not more than \$30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see [www.fhwa.dot.gov](http://www.fhwa.dot.gov) or [www.fta.dot.gov](http://www.fta.dot.gov)) and Federal funds comprising less than 15 percent of the total estimated project cost.

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

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

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

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

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

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

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

## APPENDIX B

### 23 CFR 771.117(d)

#### ("d-list" CEs)

23 CFR 771.117(d) Additional actions that meet the criteria for a CE in the CEQ regulations ([40 CFR 1508.4](#)) and [paragraph \(a\)](#) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to [paragraph \(g\)](#) of this section. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied, and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1)–(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

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

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

(7) Approvals for changes in access control.

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

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

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

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning, and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be

required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

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

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

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

## APPENDIX C

### ITD CE Checklist

A live, on-line version of checklist is available on the ITD website

<https://apps.itd.idaho.gov/Apps/FormFinder2DMZ/>.