FHWA GUIDANCE
TRANSPORTATION ENHANCEMENT ACTIVITIES
23 U.S.C. AND TEA-21

December 17, 1999

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Introduction

On June 9, 1998, President Clinton signed into law the Transportation Equity Act for the 21st Century (TEA-21). This legislation updates Titles 23 and 49 of the United States Code (U.S.C.) and builds on the major changes made to Federal transportation policy and programs addressed in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The legislation includes numerous provisions that address improvements and changes to the implementation of transportation enhancement (TE) activities.

Policy

Federal transportation policy, as reflected in the strategic goals of the U.S. Department of Transportation (DOT), the Federal Highway Administration (FHWA), and its Environmental Policy Statement, continues to stress mobility, protection of the human and natural environment, and community preservation, sustainability, and livability. The achievement of these goals and objectives remains a high priority for the DOT. TEA-21 continues the opportunities to achieve these priority efforts through the further expansion and funding of the TE program activities initiated under the ISTEA.

TE activities are a sub-component of the Surface Transportation Program (STP). The policy and procedural requirements that apply to the STP program also apply to the provisions for funding and implementation of TE activities. The laws governing traditional Federal-aid projects funded under Chapter 1 of Title 23 U.S.C., such as the National Environmental Policy Act (NEPA) and related laws, apply to transportation enhancements as well, except where the Congress expressly provided additional streamlining provisions, innovative finance, and cost sharing provisions solely for the TE activities.

Through the TE activities Congress provided innovative opportunities to enhance and contribute to the transportation system. This is being carried out in a non-traditional fashion through implementation of a specific list of TE activities. The focus of these actions is to improve the transportation experience in and through local communities. The FHWA seeks to broaden TE program participation, and the rates of implementation of transportation and community enhancing projects. Therefore, it is the policy of the FHWA to foster and encourage partnerships with State and local officials and public interest groups to improve the delivery of these valuable transportation enhancements.
Where appropriate, public-private partnerships may also be encouraged.

Background

TEA-21 continued the provision in 23 U.S.C. 133(d)(2) requiring 10 percent of the STP funds be set-aside and be only available for TE activities. The specific language reads:

> *A(2) For Transportation Enhancement Activities. B 10 percent of the funds apportioned to a State under Section 104(b)(3) for a fiscal year shall only be available for transportation enhancement activities.@*

Section 1201 of TEA-21, amending 23 U.S.C. 101(a)(35), defines further TE activities. TEA-21 amended 23 U.S.C. 134(h), but it continues to specify that TE activities must be considered for programming as part of the development of metropolitan transportation plans and programs. In addition, 23 U.S.C. 135(f) continues to specify that the statewide transportation improvement program shall reflect the priorities for programming and expenditure of funds, including transportation enhancements. This document provides guidance concerning the interpretation of the TE provisions and their implementation. The program management information replaces two guidance memorandums issued by the FHWA on April 24, 1992 (Transportation Enhancement Activities) and June 6, 1995 (Eligibility of Historic Preservation Work for Transportation Enhancement Funding). This guidance does not attempt to address all the possible questions that have been or could be raised concerning transportation enhancements. However, the guidance does provide further information concerning the thought process to apply in determining whether or not activities qualify for TE set-aside funds.

Much of this guidance particularly focuses on the provisions related to TE activities as added to or amended by TEA-21. However, it does provide brief summaries of relevant information detailed in other related guidance memorandums. It does not seek to replace the guidance memo where the memo remains current and the information valid.

Over the life of ISTEA, the FHWA had two basic requirements regarding eligibility determinations. First, the proposed TE activity must be one of the qualifying activities listed in the legislation. Secondly, the activity must have a connection to transportation. These two basic requirements continue under TEA-21. The Congress broadened the language in TEA-21 addressing the connection to transportation. This is discussed in the guidance on project linkage.

From time to time, State DOTs will need to coordinate with the FHWA on specific eligibility determinations.

Qualifying Activities

The list of qualifying TE activities provided in 23 U.S.C. 101(a)(35) of TEA-21 is intended

to be exclusive, not illustrative. That is, only those activities listed therein are eligible as TE activities. They are listed below *(Items listed in italics are those added by TEA-21):*

TE Activities Defined**C**

1. Provision of facilities for pedestrians and bicycles.
2. *Provision of safety and educational activities for pedestrians and bicyclists.*
3. Acquisition of scenic easements and scenic or historic sites.
4. Scenic or historic highway programs *(including the provision of tourist and welcome center facilities).*
5. Landscaping and other scenic beautification.
6. Historic preservation.
7. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).
8. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).
9. Control and removal of outdoor advertising.
10. Archaeological planning and research.
11. *Environmental* mitigation to address water pollution due to highway runoff *or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.*
12. *Establishment of transportation museums.*

Many projects are a mix of elements, some on the list and some not. Only those project elements which are on the list may be counted as TE activities. For example, a rest area might include a historic site purchased and developed as an interpretive site illustrating local history. The historic site purchase and development would qualify as a transportation enhancement activity.

Activities which are not explicitly on the list may qualify if they are an integral part of a larger qualifying activity. For example, if the rehabilitation of a historic railroad station required the construction of new drainage facilities, the entire project could be considered for TE funding. Similarly, environmental analysis, project planning, design, land acquisition, and construction enhancement activities are eligible for funding.

The funded activities must be accessible to the general public or targeted to a broad segment of the general public.

Transportation Enhancement and Environmental Mitigation

Congress included the language on transportation enhancements as a means of stimulating additional efforts to create an improved transportation environment and system, while making a contribution to the surrounding community. This is to be done through implementation of the specific activities listed in the legislation. Enhancement measures in the activities listed, which go beyond what is customarily provided as environmental mitigation, are considered as transportation enhancements. However, transportation enhancement activities might consist of activities not immediately connected to a nearby project being mitigated. States may not use TE funds to finance normal environmental mitigation work eligible under the regular federal-aid highway program. The process of determining which activities will be considered as normal mitigation and which will be considered

TE activities may at times be difficult. The process will likely require close coordination between the State DOTs and their FHWA division offices on a case-by-case basis.

Project Linkage

To comply with Federal guidelines for eligibility there are two basic considerations.
10 Is the proposed action one of the listed activities in the TE definition in TEA-21?
20 Does the proposed action relate to surface transportation?

The definition of TE activities includes the phrase,

> A*transportation enhancement activities means, with respect to any project or the area to be served by the project, any of the following activities, if such activity relates to surface transportation:...*@

Congress provided that TE activities must Arelate to surface transportation.@ This makes clear that TE projects are to have a relationship to surface transportation. The nature of a proposed TE project=s relationship to surface transportation should be discussed in the project proposal. For example, where runoff from an existing highway contaminates an adjacent water resource and a transportation enhancement activity is proposed to mitigate the pollution caused by the run off a clear highway or transportation relationship exists. Another example might involve the acquisition of a scenic easement. The acquisition would be in connection with the preservation of a scenic vista related to travel along a specific route.

Where a TE activity is for acquisition for scenic preservation purposes, and proposes to contribute to the visual experience of the traveler, but is a substantial distance away with respect to a highway or transportation project, the TE activity must be determined to make a substantial contribution to the scenic viewshed.

Given the nature of the list of eligible activities, it is not necessary that each TE activity be associated with a specific surface transportation project to be eligible for funding. Examples which illustrate this include; the rehabilitation of a historic train structure, the provision of a bike or pedestrian path, or the establishment of a transportation museum.

Proximity to a highway or transportation facility alone is not sufficient to establish a relationship to surface transportation. Additional discussion, beyond proximity, is needed in the TE project proposal to establish the relationship to transportation. For example, an historic barn that happened to be adjacent to a particular highway facility would not automatically be considered eligible for TE funds simply because of its location; visibility to the traveler in a way that enhances the traveling experience could qualify. Specific documentation of the enhanced experience is required; conversely, a historic structure, such as the barn in the above example, could not be disqualified

from consideration because it was not adjacent to a particular Federal-aid facility, as long as some other relationship to surface transportation could be established.

It is not necessary to have a TE activity function as an active transportation facility, either past or current, to qualify as an eligible TE activity. For example, a scenic or historic site may have a relationship to transportation but not function as a transportation facility.

Once a relationship to surface transportation is established, TE activities can be implemented in a number of ways. For example, they can be developed as parts of larger joint development projects, or as stand-alone projects.

Where questions arise, closer coordination with the FHWA division office within each State will assist in the determination of a project=s relationship to surface transportation.

Surface Transportation

Surface transportation means all elements of the intermodal transportation system, exclusive of aviation. For the purposes of TE eligibility, surface transportation includes water as surface transportation and includes as eligible activities related features such as canals, lighthouses, and docks or piers connecting to ferry operations, as long as the proposed enhancement otherwise meets the basic eligibility criteria.

Functional Classification

Section 133(c) of Title 23 U.S.C. includes a general limitation that STP projects not be funded on Aroads functionally classified as local or rural minor collectors, unless such roads are on a Federal-aid highway system on January 1, 1991, except as approved by the Secretary.@ Given the nature of many of the 12 categories of TE=s, it is clear that the location limitation of Section 133(c) cannot apply to them. Thus, on October 25, 1999, the Secretary approved FHWA Administrator Wykle=s request for an exception in the law that would allow States more flexibility in determining where they can use their TE funds. With the Secretary excepting TEs from the general STP location restriction of ' 133(c), the FHWA can now administer TE projects in a manner more consistent with the apparent purpose of the Tes.

Summary of Streamlining Measures

A number of streamlining measures have been implemented to assist in the effective and efficient delivery of TE projects. Several of the measures were mandated by the National Highway Systems

Designation Act of 1995. TEA-21 also created opportunities to improve the delivery time for TE activities.

10 Except in unusual circumstances, a TE project may be environmentally processed as a categorical exclusion. The project then complies with the National Environmental Policy Act while it is excluded from being processed using a full blown environmental impact statement.
20 Except for unusual circumstances, TE projects are not normally required to undergo a Section 4(f) evaluation (FHWA memo of August 22, 1994).
30 Through use of a Nationwide Programmatic Agreement on Historic Preservation. TE projects involving historic properties can undergo a shorter review process to comply with historic preservation coordination requirements (FHWA memo of June 11, 1997).
40 TE Program funds may be advanced to a local government through the advanced payment option of TEA-21.
50 States now have the option to fund individual projects up to 100 percent of the cost of the TE activity provided that on an annual basis, TE projects as a group, comply with the Federal Share requirement.
60 States may allow consideration of the value of services as part of the non-federal match.
7. TE projects not located within the highway right-of-way may be procured using State procedures and do not need to follow Federal bidding procedures (FHWA memo November 12, 1996).
8. The Davis-Bacon predetermined minimum wage applies to TE projects greater than $2,000. However, Davis-Bacon requirements do not apply to TE projects located outside the highway right-of-way (FHWA memo July 28, 1994).

Summary of Requirements for Matching Funds

Most Federal-aid highway projects are funded with a maximum 80 percent Federal contribution and require a 20 percent State and local match of Federal funds as set forth in 23 U.S.C. 120(b). However, this maximum share is adjusted for States with substantial Federal land holdings. For these States a sliding scale up to 95 percent Federal funding is determined according to the percentage of Federal land holdings in the State.

Language included in TEA-21 provides an important exception regarding Federal share on TE projects. Section 1108(b)(2) of TEA-21 allows a State to use TE funds for up to 100 percent of the cost of individual projects without a corresponding match. However, for a fiscal year, the ratio of Federal funds to State match for all TE funded projects must comply with the maximum Federal share provisions in 23 U.S.C. 120(b). The language in this Section of TEA-21 also provides some additional innovative features.

Legislative language (23 U.S.C. 133(e)(5)):

A *(C) Cost Sharing.* -

A(i) REQUIRED AGGREGATE NON-FEDERAL SHARE. B
The average annual non-Federal share of the total cost of all projects to carry out transportation enhancement activities in a State for a fiscal year shall be not less than the non-Federal share authorized for the State under section 120(b).

A(ii) INNOVATIVE FINANCING. B Subject to clause (I), notwithstanding section 120C

A(I) funds from other Federal agencies and the value of other contributions (as determined by the Secretary) may be credited toward the non-Federal share of the costs of a project to carry out a transportation enhancement activity;

A(II) the non-Federal share for such a project may be calculated on a project, multiple-project, or program basis; and

A(III) the Federal share of the cost of an individual project to which sub-clause (I) or (II) applies may be up to 100 percent.@

Important features of this Section of TEA-21;

- **$** Allows other Federal funds, (not other U.S. DOT funds), to be credited toward the non-Federal share of the costs of a project.
- **$** Allows the **value** of other contributions (as determined by the Secretary or his designee) to be credited toward the non-Federal share.
- **$** Allows the non-Federal share to be calculated on a project, multiple-project, or program wide basis.
- **$** Allows the Federal share of the cost of a project to be funded with 100 percent Federal funds.
- **$** Makes it easier to utilize the advance payment option of Section 133(e)(3)(B) of Title 23. TEA-21 removed the requirement to have a certified public involvement process in order to be able to use the advance payment option provision. However, TEA-21 did not diminish the importance of public involvement in the Federal-aid transportation improvement process.

It is important to recognize that these provisions apply only to TE activities identified in the legislation and funded from TE set-aside funds.

23 U.S.C. 323(c) provides for the allowance of credit for donations of funds, materials, land or services. TEA-21 goes on to allow the consideration of the value of contributions. The value of Aother contributions@ may be credited toward the non-Federal share of TE projects funded with TE funds. These include:

- **$** The value of local and State government services, materials, and land applied to the project.
- **$** The costs of preliminary engineering prior to project approval.

Such a credit may be allowed provided that appropriate documentation in support of such expenditures would be available for review as needed by the FHWA. Where the cost of these services is incurred prior to approval of the applicable TE project, only the value of expenses determined to be reasonable, in coordination with the FHWA division office, will be allowed to be used toward the local match. In addition, if the costs incurred represent payment for consultant

services, the credit will only be allowed if these consultant services have been secured in accordance with the requirements in 23 CFR 172.

In accordance with the provisions of 23 U.S.C. 120(j), a State may use toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce as a credit toward the non-Federal share. Credit amounts are approved by FHWA and maintained by the State DOT. Establishment and use of toll credits is governed by separate implementing guidance. (See August 7, 1998 memorandum - Toll Credit for Non-Federal Share, Section 1111(c) of TEA-21, Implementing Guidance).

Advance Payment Option

Section 133(e)(3)(B) of Title 23 provides for an advance payment option for TE activities when necessary to make prompt payments for project costs. Since payments to States are governed by the Cash Management Improvement Act, this advance payment option is only available to local governments through the State DOT. The following procedures apply:

- Advances are limited to TE projects which are funded from the 10 percent set-aside of STP funds for TE activities.

- The advance will be considered a working capital advance (see 49 CFR Part 18.21(e)) and limited to the estimated amount needed for one billing cycle. The local government will then bill the State for costs incurred. The advance will be netted out at the time of the final billing.

- To reduce administrative burden, projects with a Federal share under $25,000 which will be completed in less than one year may receive an advance for the full amount of the Federal share.

- Agreements to provide for the use of this option should be developed through the cooperative efforts of the State and the FHWA division office.

The requirement to have a certified public involvement process in order to receive advance payments was removed by TEA-21.

Transferability of TE Funds

TEA-21 added a provision permitting limited transfer of TE set-aside funds for use on other activities. In accordance with Section 1310 of TEA-21, the maximum amount that a State may transfer of the State=s set-aside under 23 U.S.C.133(d)(2) for a fiscal year, may not exceed 25 percent of (1) the amount of the set-aside, less (2) the amount of the State=s set-aside for TE

funding for fiscal year 1997. For example: State AA=s@ set-aside for TE in FY99 is $2 million. In FY97 it was $1.8 million. Therefore, State AA@ may transfer up to $50,000 out of TE for use on other types of STP activities as identified in the TEA-21.

The funding for TE activities primarily comes from the set-aside of 10 percent of STP funds for activities listed in TEA-21. Therefore, the transferability of these funds must be consistent with the rules that apply to the STP. The transfer of TE funds must include consideration of the purposes of the set-aside and the categories of activities for which the funds are limited. TE funds may only be transferred to Interstate Maintenance, the Congestion Mitigation and Air Quality (CMAQ) Improvement Program, the National Highway Systems Program, Recreational Trails Program, and/or the Bridge Program.

Public Involvement

TEA-21 confirmed and continued the principle established in ISTEA that public involvement is an integral part of the Federal-aid planning, program, and project implementation process. Each State should develop and maintain a meaningful and inclusive public involvement process to select TE activities. This process should include regional, local agency, and citizen representation. Transportation enhancement activities involve somewhat different project goals and non-traditional partners. While many States use advisory committees to assist in the project selection and criterion development process for TE project activities, there may be other approaches that better achieve the appropriate participation needed. The FHWA strongly encourages the effective use of advisory committees to assist in gathering information and community feedback. Generally, public involvement should be encouraged at the metropolitan and local levels to foster improved communications and community compatibility. States should strongly consider encouraging effective public involvement in the correspondence, brochures, and guidance given to potential project sponsors. One of the criteria the State uses to rate projects when evaluating TE project proposals could be public involvement. Early and continuing public involvement in TE activities should also be sought to assure consistency with the requirements for public involvement in the metropolitan and statewide planning regulations, and with the National Environmental Policy Act (NEPA) project implementation guidance.

Implementing All TE Categories

In TEA-21 the Congress increased the number of eligible activities and added additional text to several of the ones that already had been included in the definition of transportation enhancement activities. Congress provided for each category to be considered separate and distinct from others. There must be sufficient opportunities for local communities to take advantage of a variety of TE options. Therefore, States are encouraged to avoid combining activity categories where such combinations eliminate the opportunity for fair and open competition based on the merits of the TE proposals. Where States previously have chosen to combine categories, program

implementation of the categories of activities should clearly allow for fair consideration of all eligible activities as defined in the legislation.

Planning Process

The metropolitan and statewide planning processes should occupy a central role in the identification, planning, and funding of TE activities. In particular, the planning processes are the appropriate mechanisms for determining funding priorities among competing TE activities, including those not part of larger transportation projects. The FHWA field offices should strongly encourage the State and metropolitan planning organizations (MPOs) to seek out and fully integrate TE activities into both their plan development and programming processes. To be funded, TE activities must be included in the appropriate metropolitan and statewide transportation improvement programs.

Given the widespread public interest in TE activities, they should be highlighted in public involvement activities implemented under the metropolitan and statewide requirements revised pursuant to TEA-21. Procedures for planning, programming, and developing TE activities are of particular concern to public interest organizations and members of the general public.

Project Development

Building on the work done in the planning process, State DOTs, MPOs, and FHWA field offices have a responsibility to actively pursue TE opportunities during the development of individual transportation projects. Accordingly, future environmental approvals should specifically take into consideration the potential for implementing transportation enhancement activities as part of these overall projects. During their involvement in these projects, FHWA field offices should promote TE activities as a means to more creatively integrate transportation facilities into their surrounding communities and the natural environment.

When appropriate, TE activities may be developed in cooperation with other State and local agencies and with private entities. However, the State DOT or other eligible transportation agency shall remain responsible to the FHWA for the project. Furthermore, TE activities, including stand-alone TE projects, must comply with all applicable environmental and other Federal requirements. Even though the express purpose of the project is to enhance an element of the natural, cultural, or human environment, the impacts of the proposed action must be assessed to assure compliance with Federal and State requirements.

Financial Accounting

The funds made available solely for TE activities are derived from one primary source. The main source is the STP, of which 10 percent is available only for transportation enhancement activities. In addition, funds from the minimum guarantee allocation to the STP pool of funds impact the available totals for transportation enhancements. However, these adjustments are added to the total STP pool prior to the State apportionment and are therefore already a part of the STP totals.

The FHWA Office of Budget and Finance has established appropriation code Q22 for TE activities and notified each State of the fiscal year=s STP sub-allocation amounts available only for TE activities. While 10 percent of each year=s STP apportionment may be obligated only for TE activities, the actual obligation can occur in a subsequent year. For example, if State AA@ receives $100 million in STP apportionments in FY2000, then $10 million must be reserved for TE and cannot be used for any other purpose unless transferred to another program. However, the State may chose to obligate only $8 million for TE in FY2000, reserving $2 million for TE obligations in subsequent years. The statute does not require that 10 percent of the funds for any given project be devoted to TE activities. There is also no requirement that STP funds used for TE activities be limited to only 10 percent. If a State chooses, STP funds beyond the 10 percent set-aside are eligible for use on TE activities.

23 U.S.C. 133(d)(2) specifies that the 10 percent of STP funds for TE activities are separate from the STP funds which are sub-allocated to the larger metropolitan areas and to other areas of the State. Accordingly, while the STP sub-State allocation funds can be used for transportation enhancement activities, any such use would not count toward the 10 percent requirement. Under the transferability provisions initiated under ISTEA and continued into TEA-21, States may transfer funds into the STP State flexible account. It should be noted that funds transferred into that account are not subject to the 10 percent set-aside for TE.

Monitoring Program Accomplishments

Updated guidance for reporting and tracking project obligations through the FMIS system, as required by Title 23 Section 104(j) as amended by TEA-21 Section 1103(h), has been published. States may need to prepare an annual report on overall STP obligations. To cover this contingency, States should maintain records on: (1) the amounts obligated for TE activities using the STP TE appropriation code Q22 (counting toward the 10 percent requirement) and other STP funds (not counting toward the 10 percent requirement) or other non-STP funds, and (2) how obligations for TE activities are distributed among the 12 qualifying activities. A brief description of each specific TE action for which STP funds have been obligated is useful.

State Project Selection Criteria

In keeping with the flexibility afforded under the ISTEA and that continues under TEA-21, States have adopted a variety of processes for determining how to use the TE set-aside funds. Some States utilize numerical point-based systems.

In accordance with the above guidance on eligibility, a project must first be shown to be one or more of the 12 activities identified in the legislation. It must then meet the test of a having a relationship to surface transportation in order to be considered for funding.
Any additional State criteria must also be satisfied.. States are permitted to have additional criteria if they choose, or may have weighting systems of their own design.

Maintenance and Operations

TE funds are generally not to be used for the operation and/or long term maintenance of eligible TE activities. The exception to this provision is the TE activity category defined in legislation as *Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).* A State may choose to participate in the operations of such facilities. Consistent with Section 101 of Title 23, the term operating costs is defined to mean all reasonable costs for the facility to function. These costs may include administrative costs, costs of utilities and rent, and other costs associated with the continuous operations of the facility. The determination of what constitutes reasonable costs should be by agreement between the State and the FHWA division office.

Under the provision of 23 U.S.C. 116, a State must maintain a project constructed with Federal-aid funds. Because of this provision, we encourage States to develop a plan of maintenance for TE eligible activities. Strategies for the upkeep and maintenance of the public investment should be considered at the time of the TE proposal.

Grandfathering of the Eligibility Guidance

It is recognized that the States and FHWA field offices have been operating in good faith based on the general guidance that FHWA has issued on transportation enhancements. A number of States have published State guidance documents and have had calls for projects under the new provisions of TEA-21. To minimize the potential for reversing funding determinations, this program guidance will not apply retroactively to projects for which the State DOT has already notified project sponsors of a decision to fund the proposed work. However, all other projects should be developed consistent with the policy guidance provided in this package.

Provision of Safety and Educational Activities for Pedestrians and Bicyclists

The A*provision of safety and educational activities for pedestrians and bicyclists*@ includes non-construction safety-related activities and the reasonable costs to provide safety and educational activities such as bike/pedestrian safety training, cost of facilitators and classes. It may also include related training materials such as brochures, videotapes, other training aids, as well as rent for leased space and limited staff salaries. Long term salary participation should be avoided. TE proposals should be written to reflect a definitive period for participation. Where salaries become an issue, they should be negotiated as part of the local buy-in to the project.

The funded activities must be accessible to the general public or targeted to a broad segment of the general public. The activities must show a relationship to the surface transportation system, and as with all bicycle and pedestrian activities under the STP, bike and pedestrian projects using TE funds need **not** be located on Federal-aid highway routes, and may be non-construction activities.

Project sponsors using TE funds are encouraged to integrate safety messages and educational opportunities for bicyclists and pedestrians into enhancement projects through the development of campaigns, programs, educational materials including maps and brochures, and pedestrian and bicycle enforcement activities. Project sponsors are encouraged to coordinate these activities with the National Highway Traffic Safety Administration and other modal administrations. This TE activity is not intended to replace or duplicate existing Section 402 funding opportunities for bicycle and pedestrian activities currently available through the State and Community Traffic Safety Program.

Scenic or Historic Highway Programs (including the provision of tourist and welcome centers)

ISTEA listed scenic or historic highway programs as an eligible funding activity. TEA-21 introduced the parenthetical A*including the provision of tourist and welcome centers*@ and attached it to the scenic and historic highway programs activity. Although linked with scenic and historic highway programs, the eligibility for tourist and welcome centers warrants further discussion as a separate activity. Congress provided additional language to assist in interpreting its intent regarding this activity. The Conference Report language notes:

A*Y In order to be eligible under the enhancement program, the tourist or welcome center (whether a new facility or existing facility) does* ***not*** *have to be on a designated scenic or historic byway, but there must be a clear link to scenic or historic sites.*@
The connection to a scenic site should take into account the intrinsic characteristics that make an area or site scenic as determined by a State or area commission, where one exists. Where these mechanisms are not available, the proposal should document those characteristics that give evidence of compliance with the provisions of the Conference Report language. While a tourist or welcome center does not have to be on a designated scenic or historic byway, many of the characteristics that determine what is scenic are similar to those of the scenic byways program. Activities eligible under the National Scenic Byways Program are generally eligible under TE

activities. A historic site should have evidence of documented consultation and concurrence with the State Historic Preservation Officer or similar authority for determining the historicity of a particular site.

The eligibility for TE funding for the provision of tourist and welcome centers applies to both existing and new centers. This means that TE funds may be used for the construction of a new facility and/or the restoration of an existing facility. This would include those related construction actions necessary to provide the facility, such as interior fixtures and parking areas. TE funds can be used to purchase and install items which support or interpret the scenic or historic highway program or site including brochure racks for interpretive materials or maps or kiosks. TE funds cannot be used for statewide programs, marketing, or promotion not related to the scenic or historic highway program. TE funds cannot be used for staffing, operating costs, or maintenance. TE funds should not be used to purchase items such as racks for advertising or brochures for local or national businesses.

The intent is not to use the category to simply repair and restore what are clearly rest areas. The intent is to fund those activities clearly linked to scenic or historic programs or scenic or historic sites.

The tourist or welcome center does not have to be immediately adjacent to an existing Federal-aid highway facility. However, where it is determined that a proposed tourist or welcome center would not be in connection with a particular Federal-aid highway facility, the requirement to demonstrate a relationship to surface transportation must still be taken into consideration. Additionally, evidence of a connection to a scenic or historic site must be established. An example could include efforts and materials to direct members of the traveling public to a specific local area site deemed to be of scenic or historic significance. The visitor or welcome center should be publicly owned and open to the public. Proposals for privately owned facilities to be used for a welcome or tourist center, and leased to a public entity, should be reviewed by the FHWA division office on a case-by-case basis.

Environmental Mitigation to Address Water Pollution due to Highway Runoff or Reduce Vehicle-Caused Wildlife Mortality While Maintaining Habitat Connectivity

TEA-21 expanded the category under transportation enhancements that addresses environmental mitigation for water pollution due to highway runoff and added measures to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity. These activities can be either stand-alone projects or part of a larger existing or proposed project under the TE activities as long as such activity is related to surface transportation.
Transportation enhancements are a means of promoting additional efforts, projects, and activities which relate to transportation but go beyond what is considered ordinary environmental mitigation for a project. As part of the NEPA process, all Federal-aid transportation projects are required to provide environmental mitigation based on their impacts. Mitigation efforts include measures to

avoid and minimize impacts. Where impacts are unavoidable, compensatory mitigation is provided. The TE program was created to expand on this concept. However, TE projects are not to replace mitigation currently eligible or required under regular Federal-aid funded projects. ISTEA and TEA-21 set aside TE funds to be used to rectify current or prior impacts from transportation facilities. Examples of such projects for the area of water quality improvement in this category of TE funding include:

- Retrofitting an existing highway by creating a wetland to filter highway runoff based on the impacts from the road in terms of water pollution.
- Improving streams and drainage channels through landscaping to promote filtering and improve the overall water quality conditions of receiving channels.
- Providing payment in-kind for existing highway water quality impacts that warrant mitigation to regional or watershed-based planned improvement projects.

This category in the TE program also addresses activities for the reduction of vehicle-caused wildlife mortality while maintaining habitat connectivity. This funding category is not limited to threatened and endangered species, but includes any wildlife mortality directly caused by vehicles. It will be up to the States to recognize and develop a statement of purpose and need for such projects. This determination will vary from State to State. The criteria used to determine a need for a wildlife crossing or control project in a specific location are determined by the States based on migration patterns, habitat use and distribution, and crossing characteristics of the wildlife through data collection on safety of motorists, habitat fragmentation, and wildlife mortality.

Examples of projects eligible for funding in this TE category include:

- Projects designated as wildlife underpasses or overpasses
- Measures at areas identified as crossings for wildlife, which include the necessary fencing and other markings and mitigation techniques associated with movement of wildlife across transportation corridors.
- Bridge extensions to provide or improve wildlife passage and wildlife habitat connectivity.
- Monitoring and data collection on habitat fragmentation and vehicle-related wildlife mortality.

If a direct measure to reduce wildlife mortality at a highway crossing area is determined to be unfeasible (i.e., too expensive, geologically impossible, or unsafe for motorists), it might be possible to provide for the loss of wildlife due to vehicle collisions by developing new habitat resources, or improving existing habitat resources to support additional population numbers. The results could be deemed to be reducing the effects of the highway-related mortality on the long term population stability or public use benefits of wildlife. When considering this approach coordination with appropriate wildlife management agencies must be initiated. The decision to undertake this approach should be made in cooperation with and approved by the FHWA division office.

Youth Conservation or Service Corps

TEA-21 requires the U.S. DOT to encourage the use of youth conservation or service corps in the implementation of TE activities where appropriate.

> Legislation: TEA-21 '1108(g):
>
> (g) ENCOURAGEMENT OF USE OF YOUTH CONSERVATION OR SERVICE CORPS. B*The Secretary shall encourage the States to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform appropriate transportation enhancement activities under Chapter 1 of Title 23, United States Code.*

The definition of a qualified youth conservation or service corps is taken from 42 U.S.C. Sec. 12572, and 42 U.S.C. Sec. 12656

Details describing the definitions and programs identified under the sections listed above are provided in the attached appendices.

Service corps and youth conservation corps organizations have effectively worked with States, local governments, and communities to assist in transportation enhancement projects. The FHWA has tracked many of these efforts and will be working with our division offices to encourage States to consider agreements with these organizations for enhancement activities where appropriate. Corps organizations often are able to recruit, hire, train, and provide opportunities for economically and/or educationally disadvantaged young people.

Where States and local officials are able to identify opportunities to enter into partnerships with these service organizations, they should fully consider the benefits to their own efforts and the benefits to the youth involved.

Establishment of Transportation Museums

Transportation Museums established using TE funds must meet the following definition of a museum. The facility must; (1) be a legally organized not-for-profit institution or part of a not-for-profit institution or government-entity; (2) be essentially educational in nature; (3) have a formally stated mission; (4) have one full-time paid professional staff member who has museum knowledge and experience and is delegated authority and allocated financial resources sufficient to operate the museum effectively; (5) present regularly scheduled programs and exhibits that use and interpret objects for the public according to accepted standards; (6) have a formal and appropriate program of documentation, care, and use of collections and /or tangible objects; and (7) have a formal and appropriate program of presentations and maintenance of exhibits.

Establishment of transportation museums is interpreted to mean funding of capital improvements. The funds are not intended to reconstruct, refurbish, or rehabilitate existing museums, nor portions

of museums, that are not for transportation purposes. It does not cover operations or maintenance of the facility. The museum must be related to surface transportation. Establishment of transportation museums is interpreted to include the costs of the structure and the purchase of artifacts necessary for the creation and operation of the facility. Displays, segments of buildings, or objects not directly related to transportation should not be funded with TE funds. TE funds may be used to build a new facility, add on a transportation wing to an existing facility, or convert an existing building for use as a transportation museum.

The museum must be open to the public and run by a public, non-profit or not-for-profit organization meeting the definition of museums stated above in this section. If entrance fees are charged for the museum a portion of the fee should be provided for the long term maintenance and operation of the facility.

The legislation governing the TE program specifically refers to TE activities Arelating to surface transportation.@ Therefore, TE funds are not to be used to preserve aircraft or create an airport or air museum. Objects or structures related to aviation are not normally eligible for TE funds. Landscaping and other eligible TE activities may be appropriate for consideration for the road leading to an aviation facility.

General Real Estate Guidance for Enhancement Projects

Real estate and property management issues must be addressed in many of the proposed TE activities identified in TEA-21. Several of the listed activities involve possible property acquisition, restoration and rehabilitation of structures, and lease agreements. As noted earlier, to be eligible for enhancement funding, the proposed project needs to satisfy both the Federal and State criteria for an enhancement project. The purpose and the need for the project should be clearly documented.

Property management issues to consider for transportation enhancement projects follow:

- Prospective applicants such as conservation groups or individuals should have a public co-sponsor to assure that there will be continued responsibility on the part of a public agency for the project. Measures to maintain the public investment over time must be considered and should be included in project proposals and/or agreements.

- The general rule of thumb for significant Federal-aid investments is that the public interest in and access to the activity should be in perpetuity. However, the extent of real property interest needed for the protection of the public interest in the expenditure of TE funds is somewhat dependent on the nature and magnitude of the expenditure. For example, if the project were simply to provide a gravel parking lot to be used to enhance a transportation use on lands under state ownership, a limited property use agreement would be sufficient. An expenditure of

$5,000 for a gravel parking lot with an agreement that the lot would be retained in that use for 5-7 years would seem to be reasonable.

- The expenditure of $1,000,000 to rehabilitate a historic train station would require a much longer time period to amortize the public investment. It would not be appropriate to spend the money to enhance the train station without a commitment that it would not be demolished, the historic integrity destroyed the next year, or the planned use for which the award was granted substantially changed. Major expenditures warrant that consideration be given to how, following the investment, the property will be maintained and what will be the source of financial resources for necessary repair, renewal and rehabilitation.

  It is important that the applicant discuss how and for what purposes the property will be utilized following the rehabilitation. Where properties are to be leased with the income going to the applicant, it is appropriate that consideration be given to a portion of the proceeds going to the future maintenance of the structure with accounting consideration to allow for reserve funds for replacements.

- Where the primary purpose of the project is to enhance a historic transportation facility, coordination with the appropriate historic agencies can help to assure that protective language is included in any agreement before the project is authorized for federal funding.

- The project agreement should clearly state the purpose of the project and outline how the property will be utilized and maintained in the future.

- Protection of property rights for the continued use of a facility, or for use over a specified period of time, should be captured in the form of a legal document which can be recorded in the land records. These types of property reservations could be leases, easements or other evidence of a property interest recognized in the State in which the enhancement funds are to be utilized.

- Reversionary clauses may be appropriate in some instances where the property is originally obtained at no cost from a Federal agency through a Federal land transfer. These clauses would assure that where the property is no longer needed for the purpose for which it was transferred it would be offered for return to the original owner.

- Control of outdoor advertising is an eligible activity. Non-conforming signs may be acquired with Federal funds from the STP. Effective controls must be in place to prohibit new signs from being erected where those removed with Federal-aid were located. These funds may also be used for sign inventory management and development activities.

- Acquisition of real property for TE projects is subject to the Uniform Act regarding acquisition procedures and relocation assistance. An agency or qualified organization without the power of eminent domain is subject to the limited requirements set forth in 49 CFR 24.101(a)(2).

- **$** TE projects can involve real property, funds, materials, or services provided by units of local government and private entities. A donation of this type may be eligible for a credit to the matching share. To be eligible for a credit, the real property may not be part of a current transportation facility. The fair market value of the real property, materials, or services may be credited against the non-federal share of the project.

Transit Enhancements Provision of TEA-21

Information is provided to help understand the Transit enhancement provisions of TEA-21 at Section 3003 - Definitions, and any similarities the Transit enhancement provisions may have to the FHWA TE program of activities. Additional details on the FTA enhancement provisions are discussed in the appendices of this document.

TEA-21. TEA-21 created the "transit enhancements" provisions in the Urbanized Area Formula Program administered by the Federal Transit Administration (FTA). TEA-21 established the requirement that a minimum of one percent of the part of FTA's Urbanized Area Formula Program funding for urbanized areas with populations 200,000 and over must be made available for activities that are transit enhancements.

FTA's Urbanized Area Formula Program. Under the FTA Urbanized Area Formula Program (Title 49 U.S.C. Section 5307), over $2 billion is apportioned annually to urbanized areas with populations of 200,000 and over for transit capital projects. In Fiscal Year 1999, $2.3 billion was apportioned to urbanized areas with populations 200,000 and over. One percent of each urbanized area=s apportionment, or a total of $23 million, must be used for transit enhancements. Funds are available for obligation by FTA for the Federal fiscal year in which the funds are appropriated, plus three years. Thus, FY 1999 funds are available to be obligated by FTA through FY 2002.

FTA makes grants in each urbanized area with a population 200,000 and over to a "designated recipient." A designated recipient is a public body that has the legal authority to apply for, receive, and dispense Federal funds in the urbanized area. There is usually one designated recipient in an urbanized area, but occasionally there is more than one. There are approximately 400 designated recipients of the FTA program. Recipients of FTA grant funds are referred to as "grantees."

Eligible Transit Enhancements. The term "transit enhancement" means projects or project elements that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities. The following activities are the transit projects and project elements that qualify as transit enhancements. All must be related to or serve mass transit.

- **$** Historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities);
- **$** Bus shelters;

- $ Landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights;
- $ Public art;
- $ Pedestrian access and walkways;
- $ Bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles;
- $ Transit connections to parks within the recipient's transit service area;
- $ Signage; and
- $ Enhanced access for persons with disabilities to mass transportation.

FTA Administration of the Enhancements Minimum-Expenditure Provision Requirements. One percent of the Urbanized Area Formula Program apportionment to each urbanized area with a population of 200,000 and over must be made available only for transit enhancements. When there are several grantees in an urbanized area, it is not required that each grantee spend one percent of its Urbanized Area Formula Program funds on transit enhancements. Rather, one percent of the urbanized area's funding must be expended on projects and project elements that qualify as enhancements.

TEA-21 Enhancements Compared C FHWA and FTA

	FHWA Transportation Enhancement Activities	**FTA Transit Enhancement Activities**
How much guaranteed funding is provided for these programs?	FY 1999: $632 million FY 2000:$639 million (estimate) FY 2001:TBD FY 2002:TBD FY 2003:TBD	FY 1999: $23 million FY 2000: $25 million FY 2001: $27 million FY 2002: $29 million FY 2003: $31 million
Who distributes funds?	State Department of Transportation	ADesignated recipient@ of Urbanized Area Formula Program funding within each urbanized area, usually a local transit agency or the Metro-politan Planning Organization

What are eligible activities?	List of eligible *highway* activities provided at the front of the guidance.	List of eligible *transit* activities attached.
How are enhancement funds applied for?	Varies. Generally, applicants submit request to State DOTs and MPOs.	FTA grantee applies to FTA Regional Office, once the MPO has approved the projects in the local Transportation Improvement Program and the State and FTA have approved the projects in the State Transportation Improvement Program.
Opportunity to Influence Selection of Enhancement Project	Citizen Advisory Groups or other public involvement activities.	Meet with local transit authority and MPO; and express interest to MPO in opportunities (that are required) for public involvement.
What is the Federal share for activities?	80/20 generally, although individual projects may have a 100% Federal match so long as the State=s overall Federal/local share is 80/20 for FY. 95/5 in States with heavy Federal Lands acreage.	80/20, except for bicycle projects giving access to transit, which are 95/5.

Americans with Disabilities Act (ADA) & TE

The Americans with Disabilities Act of 1990 (ADA) is legislation which prohibits discrimination on the basis of disability. Other Federal laws which affect the design, construction, alteration, and operation of facilities include the Architectural Barriers Act of 1968 (ABA), and the Rehabilitation Act of 1973. These laws apply to all Federally funded facilities. The ADA applies to facilities, both public (title II) and private (title III), which are not Federally funded. Newly constructed and altered facilities covered by titles II and III of the ADA must be readily accessible to and usable by people with disabilities.

The U.S. Department of Justice=s (DOJ) regulations which implement title II of the ADA (28 CFR part 35) describe the obligations of State and local governments for existing facilities and program operations. For newly constructed or altered facilities, the DOJ regulations require title II entities (State and local government entities) to comply with either: the Uniform Federal Accessibility Standards (UFAS), the standard referenced in the ABA; or the Americans with Disabilities Act Accessibility Guidelines (ADAAG), developed by the U.S. Architectural and Transportation Barriers Compliance Board (the Access Board). Future rulemaking is expected to eliminate differences between UFAS and ADAAG. Private sector entities, including lessees, concessionaires, and contractors to State and local governments, are governed by the DOJ title III implementing regulations (28 CFR part 36), which adopt ADAAG as the standard for accessible design.

In July 1999, the U.S. Department of Transportation issued an Accessibility Policy Statement pledging a fully accessible multimodal transportation system. Accessibility in Federally-assisted programs is governed by the USDOT regulations (49 CFR part 27) implementing Section 504 of the Rehabilitation Act (29 U.S.C. 794). The FHWA has specific ADA policies for statewide planning in 23 CFR 450.220(a)(4), for metropolitan planning in 23 CFR 450.316(b)(3), and for the NEPA process in 23 CFR 771.105(f). These regulations require application of the ADA requirements to Federal-aid projects, including Transportation Enhancement Activities.

ADAAG was intended to apply to all types of buildings and facilities. Special application sections apply to certain types of buildings and facilities, such as restaurants, medical facilities, transient lodging, and transportation facilities. However, some ADAAG requirements are not realistic in the outdoor environment because of conditions such as existing terrain or weather. Recent actions by the Access Board include proposed accessibility guidelines for play areas, and for certain recreation facilities. The Access Board expects to issue proposed guidelines for picnic and camping facilities, beach access routes, and trails (including trails which may be funded under the TE program) in early 2000. A committee was established in November 1999 to develop guidelines for public rights-of-way, including streets and sidewalks.

States must maintain *program access* under the TE program. *Program access* prohibits discrimination in programs, services, or activities. Program access does not necessarily require excessive retrofitting of existing facilities, if the program can be offered through alternative methods. For example, a public meeting to discuss a TE project may be moved from an inaccessible location to an accessible location to maintain program access.
Sponsors of TE projects should consider the potential uses of each project, consider what is reasonable and feasible, and provide for users in an appropriate manner. Some TE projects may not require installation

of accessible facilities, such as a project which consists solely of acquisition of a scenic easement. Others require full compliance with ADAAG, such as a newly constructed interpretive center for a scenic highway. Parking, restrooms, water fountains, telephones, and similar facilities built as part of a TE project must be accessible. Alterations of historic facilities are covered under 28 CFR 36.405, which provides some alternatives within ADAAG. Some projects require planning and coordination to determine the extent of program accessibility. For example, it might not be possible to construct every trail segment according to ADAAG, but trail project sponsors must not install barriers or other features which would make it more difficult for people with disabilities to use the trail.

Technical reports on accessible designs for pedestrian and bicycle facilities are available through FHWA division offices. FHWA and the Access Board are developing best practices to apply the ADA to sidewalks, trails, and similar facilities which may use Federal transportation funds.

APPENDICES

This section contains copies of current policy guidance memos as they exist at publication of this guidance. Further updating of these memos expected, as needed.

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Youth Conservation or Service Corps

TEA-21 requires the U.S. DOT to encourage the use of youth conservation or service corps. Legislation: TEA-21 '1108(g):

> (g) ENCOURAGEMENT OF USE OF YOUTH CONSERVATION OR SERVICE CORPS. **B***The Secretary shall encourage the States to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform appropriate transportation enhancement activities under chapter 1 of title 23, United States Code.*

The definition of a qualified youth conservation or service corps is taken from existing titles and chapters of the United States Code (U.S.C.). These sections of the U.S.C. are provided below.

42 U.S.C. Sec. 12572

> TITLE 42 - THE PUBLIC HEALTH AND WELFARE
> CHAPTER 129 - NATIONAL AND COMMUNITY SERVICE
> SUBCHAPTER I - NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

Division C - National Service Trust Program

> Part I - Investment in National Service
> Sec. 12572. Types of national service programs eligible for program assistance

(a) Eligible national service programs

The recipient of a grant under section 12571(a) of this title and each Federal agency receiving assistance under section 12571(b) of this title shall use the assistance, directly or through sub-grants to other entities, to carry out full- or part-time national service programs, including summer programs, that address unmet human, educational, environmental, or public safety needs. Subject to subsection (b)(1) of this section, these national service programs may include the following types of national service programs:

> (1) A community corps program that meets unmet human, educational, environmental, or public safety needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.
>
> (2) A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under division I of this subchapter, the Public Lands Corps established under the Public Lands Corps Act of 1993 (16 U.S.C. 1721 et seq.), the Urban Youth Corps established under section 12656 of this title, and other conservation corps or youth service corps that performs service on Federal or other public lands or on Indian lands or Hawaiian home lands), that -
>
> > (A) undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;

(B) includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvantaged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited-English proficiency, homeless youths, and youths who are individuals with disabilities) who are between those ages; and

(C) provides those participants who are youths and young adults with -

(i) crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and

(ii) the opportunity to develop citizenship values and skills through service to their community and the United States.

(3) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under part I of division B of this sub-chapter.

(4) A service program that is targeted at specific unmet human, educational, environmental, or public safety needs and that -

(A) recruits individuals with special skills or provides specialized pre-service training to enable participants to be placed individually or in teams in positions in which the participants can meet such unmet needs; and

(B) if consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.

(5) An individualized placement program that includes regular group activities, such as leadership training and special service projects.

(6) A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of -

(A) students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.);

(B) teams composed of such students; or

(C) teams composed of a combination of such students and community residents.

(7) A pre-professional training program in which students enrolled in an institution of higher education -

(A) receive training in specified fields, which may include classes containing service-learning;

(B) perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and

(C) agree to provide service upon graduation to meet unmet human, educational, environmental, or public safety needs related to such training.

(8) A professional corps program that recruits and places qualified participants in positions -

(A) as teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, human, environmental, or public safety needs in communities with an inadequate number of such professionals;
(B) that may include a salary in excess of the maximum living allowance authorized in subsection (a)(3) of section 12594 of this title, as provided in subsection (c) of such section; and
(C) that are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any national service educational award under division D of this subchapter) of the participants.

(9) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet -

(A) the housing needs of low-income families and the homeless; and
(B) the need for community facilities in low-income areas.

(10) A national service entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.

(11) An inter-generational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an inter-generational component for other national service programs described in this subsection.

(12) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such area, is governed by a board composed in significant part of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such area that meet unaddressed community and individual needs, including projects that would -

(A) meet the needs of low-income children and youth aged 18 and younger, such as providing after-school "safe-places", including schools, with opportunities for learning and recreation; or
(B) be directed to other important unaddressed needs in such area.

(13) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.

(14) A program that seeks to eliminate hunger in communities and rural areas through service in projects -

(A) Involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;
(B) involving the gleaning of prepared and unprepared food that would otherwise be discarded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;
(C) seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or
(D) providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.

(15) Such other national service programs addressing unmet human, educational, environmental, or public safety needs as the Corporation may designate.

42 U.S.C. Sec. 12656

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 129 - NATIONAL AND COMMUNITY SERVICE
SUBCHAPTER I - NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

Division J - Miscellaneous

Sec. 12656. Urban Youth Corps

(a) Findings

The Congress finds the following:

(1) The rehabilitation, reclamation, and beautification of urban public housing, recreational sites, youth and senior centers, and public roads and public works facilities through the efforts of young people in the United States in an Urban Youth Corps can benefit these youths, while also benefitting their communities, by -

(A) providing them with education and work opportunities;
(B) furthering their understanding and appreciation of the challenges faced by individuals residing in urban communities; and
(C) providing them with a means to pay for higher education or to repay indebtedness they have incurred to obtain higher education.

(2) A significant number of housing units for low-income individuals in urban areas has become substandard and unsafe and the deterioration of urban roadways, mass transit systems, and transportation facilities in the United States have contributed to the blight encountered in many cities in the United States.

(3) As a result, urban housing, public works, and transportation resources are in need of labor intensive rehabilitation, reclamation, and beautification work that has been neglected in the past and cannot be adequately carried out by Federal, State, and local government at existing personnel levels.

(4) Urban youth corps have established a good record of rehabilitating, reclaiming, and beautifying these kinds of resources in a cost-efficient manner, especially when they have worked in partnership with government housing, public works, and transportation authorities and agencies.

(b) Purpose

It is the purpose of this section -

(1) to perform, in a cost-effective manner, appropriate service projects to rehabilitate, reclaim, beautify, and improve public housing and public works and transportation facilities and resources in urban areas suffering from high rates of poverty where work will not be performed by existing employees;

(2) to assist government housing, public works, and transportation authorities and agencies;

(3) to expose young people in the United States to public service while furthering their understanding and appreciation of their community;

(4) to expand educational opportunity for individuals who participate in the Urban Youth Corps established by this section by providing them with an increased ability to pursue post-secondary education or job training; and

(5) to stimulate interest among young people in the United States in lifelong service to their communities and the United States.

(c) Definitions

For purposes of this section:

(1) Appropriate service project

The term "appropriate service project" means any project for the rehabilitation, reclamation, or beautification of urban public housing and public works and transportation resources or facilities.

(2) Corps and Urban Youth Corps

The term "Corps" and "Urban Youth Corps" mean the Urban Youth Corps established under subsection (d)(1) of this section.

(3) Qualified urban youth corps

The term "qualified urban youth corps" means any program established by a State or local government or by a nonprofit organization that -

(A) is capable of offering meaningful, full-time, productive work for individuals between the ages of 16 and 25, inclusive, in an urban or public works or transportation setting;

(B) gives participants a mix of work experience, basic and life skills, education, training, and support services; and

(C) provides participants with the opportunity to develop citizenship values and skills through service to their communities and the United States.

Transit Enhancements Provision of TEA-21
Administered by the Federal Transit Administration

TEA-21. TEA-21 created the "transit enhancements" provisions in the Urbanized Area Formula Program administered by the Federal Transit Administration (FTA). TEA-21 established the requirement that a minimum of one percent of the part of FTA's Urbanized Area Formula Program funding for urbanized areas with populations 200,000 and over must be made available for activities that are transit enhancements.

FTA's Urbanized Area Formula Program. Under the FTA Urbanized Area Formula Program (Title 49 U.S.C. Section 5307), over $2 billion is apportioned annually to urbanized areas with populations of 200,000 and over for transit capital projects. In Fiscal Year 1999, $2.3 billion was apportioned to urbanized areas with populations 200,000 and over. One percent of each urbanized area=s apportionment, or a total of $23 million, must be used for transit enhancements. Funds are available for obligation by FTA for the Federal fiscal year in which the funds are appropriated, plus three years. Thus, FY 1999 funds are available to be obligated by FTA through FY 2002.

FTA makes grants in each urbanized area with a population 200,000 and over to a "designated recipient." A designated recipient is a public body that has the legal authority to apply for, receive, and dispense Federal funds in the urbanized area. There is usually one designated recipient in an urbanized area, but occasionally there is more than one. There are approximately 400 designated recipients of the FTA program. Recipients of FTA grant funds are referred to as "grantees."

A designated recipient may allow another public agency to be the direct applicant for Urbanized Area Formula Program funds. On occasion, a grantee, whether a designated recipient or not, may choose to pass its grant funds through to another agency to carry out the purposes of the grantee's agreement with FTA. To do this, the grantee must enter into a written agreement with the sub-recipient that assures FTA that the grantee will be able to comply with its obligation to satisfy the requirements of the grant agreement.

Eligible Transit Enhancements. The term "transit enhancement" means projects or project elements that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities. Following are the transit projects and project elements that qualify as transit enhancements. All must be related to or serve mass transit.

- **$** Historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities);
- **$** Bus shelters;
- **$** Landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights;
- **$** Public art;
- **$** Pedestrian access and walkways;

- $ Bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles;
- $ Transit connections to parks within the recipient's transit service area;
- $ Signage; and
- $ Enhanced access for persons with disabilities to mass transportation.

FTA Administration of the Enhancements Minimum-Expenditure Provision

Requirements. One percent of the Urbanized Area Formula Program apportionment to each urbanized area with a population of 200,000 and over must be made available only for transit enhancements. When there are several grantees in an urbanized area, it is not required that each grantee spend one percent of its Urbanized Area Formula Program funds on transit enhancements. Rather, one percent of the urbanized area's funding must be expended on projects and project elements that qualify as enhancements

It will be the responsibility of the Metropolitan Planning Organization for the urbanized area to determine how the one percent will be allotted to transit projects. The one-percent is a minimum requirement; more than one percent of an urbanized area's formula program funds may be expended for transit enhancements. In fact, most of the enhancement activities listed have long been eligible for funding under the Urbanized Area Formula Program. However, one item - Aoperating costs for historic facilities@Cis only eligible for funding when classified as a transit enhancement activity. (The Urbanized Area Formula Program does not provide assistance for transit operating costs for areas with populations 200,000 and over.)

Project Budget. The project budget for each grant application that includes a request for enhancement funds must identify transit enhancements and use the specific budget activity line items established by FTA for transit enhancements. Assistance with this step is available from any FTA regional office (see regional office list below).

Enhancement Report. The recipient of a grant that contains an enhancement project must submit a report to the appropriate FTA regional office listing the projects or elements of projects carried out with those funds during the previous fiscal year and the amount expended. The report must be submitted in the Federal fiscal year's final quarterly report.

Bicycle Access. Projects providing bicycle access to transit assisted with the FTA enhancement funding are assisted with a 95 percent Federal share. All other transit enhancement activities are funded with a maximum 80 percent Federal share.

Enhanced Access for Persons with Disabilities. The costs of meeting transit requirements set forth by the Americans with Disabilities Act of 1990 are eligible under all FTA programs. Enhancement projects or elements of projects designed to enhance access for persons with disabilities must go beyond the requirements attendant to the Americans with Disabilities Act.

FTA Web Site. Information about the Federal Fiscal Year 1999 funding for enhancements can be found on the FTA web site at www.fta.dot.gov/library/legal/fr11698a.pdf. (Reader should scroll to page 19, for Table 4.)

FTA Regional Offices. Telephones of the FTA Regional Offices are listed below.

Region I, Cambridge, Mass., (617) 494-2055.
Region II, New York, NY., (212) 668-2170
Region III, Philadelphia, Pa., (215) 656-7100
Region IV, Atlanta, Ga., (404) 562-3500
Region V, Chicago, Ill., (312) 353-2789
Region VI, Ft. Worth, Tex., (817) 978-0550
Region VII, Kansas City, Mo. (816) 523-0204
Region VIII, Denver, Co. (303) 844-3242
Region IX, San Francisco, Cal. (415) 744-3133
Region X, Seattle, Wash. (206) 220-7954

Memorandum

U.S. Department
of Transportation
Federal Highway Administration

FORMATION: Applicability of Davis-Bacon For Transportation Enhancement Projects

Date: July 28, 1994

Reply to:
Attn. of: HNG-22

om: Acting Chief, Construction and Maintenance Division

: Mr. Andy Hughes Director,
Office of Engineering Services (HES-04)
Atlanta, Georgia

Your June 1 memorandum transmitted a request from the Alabama Division Office for guidance on the applicability of Davis-Bacon (D-B) wage rates to transportation enhancement projects. The following information is provided in response to this request.

The D-B predetermined minimum wage must be paid to all covered workers on Federal-aid projects exceeding $2,000 that are located on a Federal-aid highway. Title 23 defines a Federal-aid highway as any highway eligible for Federal-aid, other than highways classified as local roads or rural minor collectors. The D-B requirements do not apply to force account work performed by highway agency forces.

The applicability of D-B to a transportation enhancement project is dependent on the relationship or linkage of the project to a Federal-aid highway. If the project is Alinked@ to a Federal-aid highway based on proximity or impact (i.e., without the Federal-aid highway the project would not exist), then D-B requirements apply. Examples of such projects include the removal of outdoor advertising, a wetland to filter highway drainage, etc.

If the project is not Alinked@ to a particular Federal-aid highway and is eligible based solely on function (i.e., a transportation facility, such as an independent bike path, the restoration of a railroad station, etc.), then the D-B requirements do not apply. However, the D-B requirements apply to all projects greater than $2,000 that are physically located within the existing right-of-way of a Federal-

aid highway, regardless of the transportation enhancement characteristics.

Another D-B related issue, which has been raised on several occasions, is the acceptability of using volunteer labor on transportation enhancement projects. The Department of Labor states in its Field Operations Handbook ('15e23): AThere are no exceptions to D-B coverage for volunteer labor unless an exception is specifically provided for in the particular D-B Related Act under which the project funds are derived.@ The D-B Related Act for the Federal-aid Highway Program (23 U.S.C. '113) is silent on this subject.
Therefore, on transportation enhancement projects subject to D-B coverage, a contractor or subcontractor may not use volunteer labor. On the other hand, a State highway or local government agency may use volunteer laborers under their direct control as a force account effort.

If you have further questions on the matter, please contact Mr. Robert S,
Wright of my staff at (202) 366-1558.

David R. Geiger

Memorandum

U.S. Department
of Transportation
Federal Highway
Administration

bject: **ACTION:** NEPA Requirements for Transportation Enhancement Activities (Reply Due: December 15)

Date: October 28, 1996

Attn. of: HEP-30

Regional Administrators

Section 316 of the National Highway System Designation Act of 1995 has given us a mandate to further streamline the processing of transportation enhancement activities (TEA) projects under the National Environmental Policy Act of 1969 (NEPA). Accordingly, as part of the streamlining process, Section 316 of the 1995 act directs the Secretary of Transportation to develop categorical

exclusions under NEPA for TEA'S.

We already have considerable flexibility under the current regulation to streamline the NEPA process for TEA'S, consistent with the principles of environmental protection and enhancement. For example, Section 771.117(c) identifies actions that, by their nature, meet the criteria for CE's. Some of these actions cover TEA-type projects, namely construction of bicycle and pedestrian lanes, paths, and facilities; landscaping; acquisition of scenic easements; and such non-construction activities as publication of a scenic byways brochure, a historic bridge photobook, or a geographic information system for archaeological survey of a transportation project. As the provision states, these actions Anormally do not require any further NEPA approvals.....@

Thus, the fact that a TEA project falls within one of these listings is usually approval enough; NEPA documents and FHWA approval would be required only if unusual circumstances are involved in the proposed action or project. Such circumstances include the presence of significant environmental impacts, substantial controversy on environmental grounds, significant impact on properties protected by Section 4(f) of the Department of Transportation Act of 1966 or Section 106 of the National Historic Preservation Act of 1966, or inconsistencies with any Federal, State or local requirement relating to the environment.

Under another provision, Section 771.117(d), additional TEA actions may quality for a CE classification, but because of the greater possibility of impacts with these projects, FHWA

approval of the classification is required. The list in this section consists only of examples to illustrate the types of projects that may qualify; TEA's do not have to match one of the examples to qualify for a CE classification. The applicant (the State or other project sponsor) is responsible for providing information to allow the FHWA to decide if a CE classification is proper. It is important to state that because most TEA's are small-scale projects, they should almost always be processed as a CE. Only a modest amount of information is required to describe their potential environmental impacts and to demonstrate that they do not have significant impacts.

For types of projects not listed in Section 771.117(c) or covered by Section 771.117(d), our approval of a CE classification under Section 771.117(d) can be accomplished on a project-by-project basis or programmatically. As discussed in the attached guidance memorandum dated March 30, 1989, the programmatic approach allows a State transportation department and the FHWA to concur in advance that additional types of projects satisfy all the criteria for a CE classification. The use of programmatic CE approvals has been an effective way of ensuring that the letter and spirit of NEPA are satisfied in a way that reflects the particular nature of the environment and the program in each State.

I urge you to review the extent to which each State in your region has used the programmatic CE approach to ensure that TEA's receive the full advantage of this option. You are encouraged to use the programmatic CE process for TEA projects whether or not they are included in the lists of example projects in the Section 771.117(c) or (d). When we modify 23 CFR 771, a section will be included to state that all TEA projects normally should be processed as CE's. This change will be

consistent with Section 316 of the 1995 act.

To advise the Congress regarding the status of our streamlining efforts, I request that you provide us a brief description, by December 15, of any process used for streamlining NEPA approvals for TEA's in your States. Please describe how the CE classification has been applied to TEA projects under Section 771.117(c) and (d). Where programmatic approvals have been used, we would like to know which types of projects are covered, whether other types of projects have been proposed but not approved, and the process for securing approvals, including the roles of the State transportation department, the FHWA division office, and project sponsors in assembling and reviewing environmental documentation. We would also like to know about cases where a TEA project required preparation of an EA or an EIS.

Attachment

Memorandum

U.S. Department
of Transportation
Federal Highway
Administration

bject: **INFORMATION:** Procurement of Transportation Enhancement Projects

Date: November 12, 1996

lopment

: Regional Administrators

In response to several inquiries from the field, we have decided to authorize the State highway agencies (SHA's) to procure transportation enhancement projects, not located within the highway right-of-way, under the procedures of the ACommon Rule.@ This decision is consistent with 49 CFR 18.36(j) and our treatment of other nontraditional programs funded with Federal-aid funds, such as the Recreational Trails Program.

The Federal Highway Administration (FHWA) was one of the 23 Federal Agencies that adopted the AUniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments@ (also known as the Common Rule - 49 CFR 18). The FHWA adopted the Common Rule on March 11, 1988. The Office of Management and Budget approved certain exceptions to the Common Rule based on existing legislation specific to each agency that adopted the rule.

One of the FHWA's exceptions to the Common Rule provides for competitive bidding on highway construction projects. Specifically, 49 CFR 18.36(j) states:

A23 U.S.C. 112(a) directs the Secretary to require the recipients of highway construction grants to use bidding methods that are Aeffective in securing competition." Detailed construction contracting procedures are contained in 23 CFR part 635, subpart A.@

This exception to the Common Rule was developed prior to the passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and implementation of the transportation enhancement program established in the ISTEA. Since that time, SHA's and local public agencies have developed numerous enhancement projects that are transportation related, but may not always be located within the highway right-of-way. Some of these projects are relatively low cost (e.g.,

restoration of historic railroad stations, hiking/bicycle paths, landscaping and scenic beautification).

It is often not cost-effective to use the competitive bidding procedures in 23 CFR 635A to procure such services for low cost projects. The Common Rule offers more flexibility to the States with regard to the method of procurement for such low cost projects. Therefore, transportation enhancement projects not located within the highway right-of-way may be procured under State procedures.

Highway related projects must still meet the linkage criteria noted in our July 28, 1994, memorandum concerning the applicability of Davis-Bacon to Transportation Enhancement Projects (copy attached). A project would be highway related if it is Alinked@ to a Federal-aid highway based on proximity or impact (i.e., without the Federal-aid highway the project would not exist). For transportation enhancement projects that are within the highway right-of-way, a contracting agency will continue to follow the procedures in 23 CFR 635A.

We intend to address these and other FHWA Common Rule exceptions in a future rulemaking.

Thomas J. Ptak

Attachment

Memorandum

U.S. Department
of Transportation
Federal Highway Administration

bject: **INFORMATION:** Programmatic Agreement Date: June 11, 1997
on Transportation Enhancements

om: Chief, Environmental Analysis Division Reply to
Attn of: HEP-40

: Regional Administrators
Federal Lands Highway Program Administrator

Attached for your information, consideration, and use by State DOT=s is a copy of the new programmatic agreement on transportation enhancements. This nationwide agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers (SHPO=s) is expected to reduce the time spent by State DOT=s in project review, consultation, and processing of transportation enhancement activities. It will accomplish this by encouraging local coordination and public participation, and reducing the need for project-by-project coordination with out-of-State groups. In addition, the agreement permits the SHPO and the State DOT to exercise judgment in weighing the benefits of the project against minor, but measurable, adverse changes to historic qualities. The net result as one State DOT noted, will be to greatly assist in the implementation of the ISTEA, and to reduce the time to process projects by 30 to 60 days.

The Acting Administrator has signed this nationwide programmatic agreement on behalf of the FHWA. Individual States may activate this programmatic agreement by sending concurrent letters of acceptance to the three signatories and to the SHPO and the FHWA Division Office. The FHWA Division Administrator will be the Agency official with responsibility for ensuring that the agreement is carried out.

Use of this nationwide programmatic agreement is NOT mandatory. States DO NOT have to adopt it for their enhancements projects. Many States have already developed agreements that work for them; and those agreements remain in effect. Some States may wish to adapt the approach conveyed in this agreement and further tailor it for their specific program needs. Please advise the State that if they choose to adapt this agreement and create a new one, they will need to develop it in consultation with the FHWA Division, the SHPO, and the ACHP.

If you have any questions please contact Mr. Bruce Eberle, FHWA Historic Preservation Officer. He may be reached at (202) 366-2060.

James M. Shrouds

Memorandum

U.S. Department
of Transportation
Federal Highway
Administration

ıbject: ACTION: Interim Guidance on Applying Section 4(f) On Transportation Enhancement Projects and National Recreational Trails Projects

Date: Aug. 22, 1994

ɔm: Director, Office of Environment and Planning

Reply to Attn of: HEP-31

ı: Regional Administrators
Federal Lands Highway Program Administrator

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), in Section 1007(c), created ATransportation Enhancements@ and identified 10 specific types of activities which could receive such funds. The ISTEA, in Section 1302, also created the National Recreational Trails Funding Program (often referred to as the Symms Act), which is designed to fund Arecreational@ trails projects. The objective of both of these programs is to enhance resources. In many cases, these two programs would be considered to also fall under the strict interpretation of Section 4(f) requirements since both programs, especially the National Recreational Trails, could involve working on a 4(f) protected resource. This office has received numerous regulation/policy interpretation requests on whether and how to apply Section 4(f) to these two programs.

However, ISTEA and Section 4(f) are directed towards preserving, protecting and enhancing Section 4(f) properties. The ISTEA, by its very title, is looking for ways to make program and project delivery more efficient. Thus, it is inconceivable that these two statutes, both of which contain preservationist purposes should be interpreted in such a manner that potential enhancement and trail project applicants would be saddled with burdensome paperwork, a rigorous alternatives analysis process, and circulation requirements which would substantially delay project implementation when the sole purpose of the project is to enhance or create a 4(f) protected resource. In keeping with the goals of the current Administration and mandates from the National Performance Review, this guidance will simplify project processing by streamlining applicable environmental requirements and review times.

This office has determined that Section 4(f) should not be applied to the National Recreational Trails Funding Program and that it should only be applied to the ATransportation Enhancements@ Program when certain conditions are not met by each project. The attached interim guidance contains the basis for these determinations.

Because the Federal Transit Administration, the Federal Railroad Administration, and the Federal Highway Administration are currently in the early stages of issuing a Notice of Proposed Rulemaking to revise 23 CFR 771, which contains the Agency's environmental and 4(f) requirements, we are issuing these determinations as an interim measure until changes to 23 CFR 771 can be promulgated through the regulatory rulemaking process. In order to ensure that other resource agencies, organizations, and individuals with an interest in this area are aware of these determinations, we will publish this interim guidance in the *Federal Register* as a final policy interpretation. Once 23 CFR 771 has been revised to address this subject, the interim guidance will become null and void.

Kevin E. Heanue

Attachment

Section 4(f) Interim Guidance
on
Transportation Enhancement Activities
and the
National Recreational Trails Program

All of our current regulations, policy, and guidance on Section 4(f) has been written to comply with 49 U.S.C. Section 303, which is the recodified version of Section 4(f) of the 1966 DOT Act. Section 303 reads as follows:

It is the policy of the United States Government that special effort be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities and facilities.

The Secretary may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or site) only if:

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or programs includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

Section 138 of Title 23 U.S.C. (which applies only to the Federal-aid highway program), contains similar language, with one distinct difference. The portion of Section 138 that parallels Section 303(c) has an additional sentence at the end that reads, AIn carrying out the national policy declared in this section, the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.@

Because the TE program and the National Recreational Trails Funding Program are administered by the Federal Highway Administration (FHWA) which is an Agency of the U.S. Department of Transportation, both are subject to the provisions of Section 4(f) as programs or projects just as the Federal-aid highway program is subject to these provisions. Thus, determinations can be made at either the program or project level that the provisions of Section 4(f) do not apply provided certain conditions are satisfied. Because of past experience with highway projects having impacts ranging from no impact to total acquisition, when the FHWA has used a project level determination. Basically, a two-step process is used when determining whether or not to prepare a Section 4(f) evaluation for an individual project, and should one of the steps not be satisfied, the provisions of Section 4(f) would not apply to the project in question. This two-step process is as follows:

1. First, it must be determined that we are in fact dealing with a resource that is protected by the provisions of Section 4(f). These resources are parks, recreation areas, wildlife/waterfowl refuges, and historic/archeological sites on or eligible for the National Register of Historic Places.

2. Second, there must be a "use" of land from the Section 4(f) resource for a transportation facility/project. Title 23 CFR 771.135(p) defines Ause@ in three ways: (1) When land is permanently incorporated into a transportation facility, (2) When there is a temporary occupancy of land that is adverse in terms of the statute's preservationists purposes as determined by the criteria in paragraph (p)(7) of 23 CFR 771.135, and (3) When there is a constructive use of land.

Note: At this point we are only dealing with whether we have a resource and whether we are "using" land from that resource. We are not dealing with the "feasible and prudent" alternative test.

The FHWA's Section 4(f) Policy Paper dated September 24, 1987, provides additional information on implementing both of these steps on individual projects. But, as stated earlier, should one or both of the above steps receive a negative response, a 4(f) evaluation is not required. What is required is that this fact be documented in the NEPA document for the project in question. Although, the two new ISTEA programs have some commonalities, they are quite different, Thus, the remainder of this guidance will deal with how the two-step process should be implemented for each of these new ISTEA programs.

Transportation Enhancement Activities

Section 1007 of ISTEA established the Surface Transportation Program (STP) Funds, of which the Transportation Enhancement Activities are a part. Currently, only the following ten activities are eligible for funding as transportation enhancements:

1. Provision of facilities for pedestrians and bicycles.

2. Acquisition of scenic easements and scenic or historic sites.
3. Scenic or historic highway programs.
4. Landscaping and other scenic beautification.
5. Historic preservation.
6. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).
7. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).
8. Control and removal of outdoor advertising.
9. Archeological planning and research.
10. Mitigation of water pollution due to highway runoff.

While all of the above activities could potentially impact 4(f) resources, we have determined that of these ten activities, six (TEA=s 1, 2, 3, 4, 5, 6, and 9 as listed above) have the greatest likelihood of impacting a 4(f) resource. This is because the resource to be enhanced by the TEA project is in all likelihood a 4(f) protected resource. Therefore, the first step of the two-step process is usually satisfied, the resource is a 4(f) protected property. The second step must then be analyzed. Are we using the resource based on the three types of "use" contained in 23 CFR 771.135(p)? Upon reviewing existing regulations, policy, and guidance, we have determined that the question of "use" for TEA=s 1, 3, 9, 6, and 9 (as listed above) are already covered by existing regulations, policy, and/or guidance. The applicable regulation, policy, and/or guidance is as follows:

1. Bicycle and pedestrian facilities (TEA #1) is covered by our May 23, 1977 memorandum (copy attached) titled, ANegative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects.@ Although old, this memo is still valid.

2. Historic highway programs and the rehabilitation/operation of historic transportation buildings, structures, or facilities TEA #3 and 6 are currently covered by 23 CFR 771.135(f). This section of our regulation outlines conditions under which Section 4(f) would not apply to projects that restore, rehabilitate, or perform maintenance on transportation facilities that are on or eligible for the National Register of Historic Places. The term "facilities" is being broadly defined in this case to include buildings and structures, but they must have a transportation related history. The Scenic Highway Program (the other half of TEA #3) is merely a designation applied to existing facilities and does not grant Section 4(f) protection. Thus, a designation of scenic is an identification tool similar to designations such as a U.S. Route, State Route, AI@, etc. and alone does not invoke Section 4(f). TEA #9, Archaeological planning and research, is covered by the provisions of 23 CFR 771.135(g), which state that 4(f) does not apply should an archaeological resource on/eligible for the National Register be important only for the data which it contains, thus, not warranting preservation in place.

Thus, only TEA #2 and 5 require some form of regulation/policy interpretation at this time. TEA's #2 and 5 involve the acquisition of scenic easements and scenic or historic sites, and the preservation of

historic structures, respectively. It should be noted that the simple designation of something as scenic does not automatically grant it 4(f) protection. This protection would only be granted if the scenic designation is basically an adjective used to further describe a resource already granted protection, such as a scenic trail or historical scenic site. However, historic sites are 4(f) protected resources, provided they are on or eligible for the National Register. Thus, what must be analyzed is whether we are using land from the resource in keeping with the three types of use in 23 CFR 771.135(p). We have examined this matter extensively and render the following determinations:

(i) Section 4(f) is invoked whenever Section 4(f) land is acquired for permanent incorporation into a transportation facility. However, the simple act of acquiring land/property does not automatically invoke 4(f). It is the change in land use from 4(f) protected to a transportation facility that causes 4(f) to be invoked. If the land/property is being acquired solely for the protection, preservation, or enhancement of a scenic or historic site, the official with jurisdiction has been consulted and concurs with the acquisition, and conditions, such as historical covenants, deeding to other governmental land management agencies, etc., are in place to provide long-range protection. Then, the provisions of 4(f) do not apply since there is no permanent incorporation of land into a transportation facility.

(ii) Generally, there will not be many instances of temporary occupancy of scenic/historic land for these two TEA=s. However, should there be a temporary occupancy, as long as it can be documented that this occupancy is not adverse in keeping with the provisions of 23 CFR 771.135(p)(7).' Then, 4(f) does not apply.

(iii) Constructive use occurs when the proximity impacts from a transportation project (the TEA in this case) substantially impairs the activities, features, or attributes of an adjacent 4(f) protected resource. Because constructive use deals with adjacent resources, it must still be examined for these and other TEA=s.[2] However, we feel this would be a very rare occurrence. Coordination with the official with jurisdiction is required prior to making final determination on temporary occupancy and construction use.

The following examples were developed to aid in making determinations on whether there is a Ause@ of land from a 4(f) resource on a case-by-case basis. These examples were developed in keeping with existing guidance/policy and the three determinations made above.

- A bikeway constructed in a park in a case where the bikeway is under the park agency's jurisdiction would not be a 4(f) use since the parkland is not permanently incorporated into a transportation facility, but continues to function as parkland.

[2] Coordination with the official with jurisdiction is required prior to making final determination on temporary occupancy and constructive use.

- **$** A bikeway constructed in a park in a case where the bikeway is not under the park agency's jurisdiction would be a Section 4(f) use since parkland would be permanently incorporated in a transportation facility. In this case FHWA's May 23, 1977 memorandum titled, "Negative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects" would apply.

- **$** Acquisition of fee simple or easement interests in scenic or historic sites would not as a general rule be a Section 4(f) use unless the site were altered in an adverse way or the setting were disturbed in such a way that resulted in the site being permanently incorporated into a transportation facility, being temporarily and adversely occupied by a transportation facility, or being constructively used by proximity impacts from a transportation facility. Absent the above conditions, acquisition of a property interest in a scenic or historic site would not constitute a Section 4(f) use.

- **$** Installation of interpretive facilities (signs, kiosks, etc.) for scenic or historic highways located within parks or refuges done at the request of the park or refuge manager, would not be a Section 4(f) use since the improvements would be a park or refuge amenity rather than a feature of the transportation facility (i.e. the improvements support the park/refuge function, not the transportation function and are, therefore, more properly an element of the park or refuge rather than a permanently incorporated element of the transportation facility).

- **$** Rehabilitation of a historic transportation building structure, or facility would not be a Section 4(f) use (See 23 CFR 771.135(f)) provided the proposed work would not adversely affect the historic qualities of the facility.

- **$** Preservation of a historic non-transportation property would typically not be a Section 4(f) use since the property would ordinarily not be permanently incorporated into a transportation facility, and temporary adverse occupancy and constructive use would generally not be an issue.

- **$** Archeological planning and research activities would not constitute a Section 4(f) use in those cases where the archeological field work is restricted to sites that are not being permanently incorporated into a transportation facility, or if permanently incorporated, are not important for preservation in place (See 23 CFR 771.135(g)).

National Recreational Trails Funding Program (NRTFP)

With the inclusion of this program in ISTEA, FHWA has the task of administering this recreational program at the Federal level. As stated earlier, FHWA has used a project level 4(f) determination for complying with the provisions of Section 303 of 49 U.S.C. and Section 138 of Title 23 U.S.C.. However, both of these sections allow a program level determination (see wording on pg. 1 for both of these laws). We do have some precedent in this area. The Great River Road, program was excluded from the provisions of Section 4(f) at the program level rather than requiring normal

project level determinations. A determination was also rendered that 4(f) did not apply to projects involving the construction of access ramps to public boat launching facilities within 4(f) resources. In both cases, it was found that applying the test of "feasible and prudent alternatives" resulted in alternatives being developed that were impractical and unreasonable and that would result in positive benefits to the resource being precluded in order to totally avoid impacting the 4(f) resource. This is not in keeping with the goal and spirit of 4(f). Since the NRTFP is similar to these two programs for which 4(f) did not apply, we have determined that Section 4(f) does not apply to the NRTFP. This determination is based on the following facts and reasoning:

1. The NRTFP is officially designated a recreational program at the Federal level, and the projects to be funded under the program must be included in or shown to further the goals of the Statewide Comprehensive Outdoor Recreational Plan (SCORP) which is reviewed and approved by DOI. Thus, all NRTFP projects are recognized as recreational projects at the Federal level.

2. Section 4(f) applies when there is a "use" of land from a Section 4(f) protected resource. "Use" is defined in 23 CFR as being "(i) when land is permanently incorporated into a transportation facility; (ii) when there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes ... ; (iii) when there is a constructive use of land". None of these "uses" will occur under the NRTFP e.g., (1) land will not be permanently incorporated into a transportation facility since all facilities will officially be recreational facilities and seldom if ever will there be any transfer of land from one party to another, (2) since most projects will occur inside the boundaries of a 4(f) resource, the projects generally will not involve temporary occupancy of land. However, where temporary occupancy does occur, the program is intended to further and enhance, not hinder, the preservationist purposes espoused by Section 4(f), and (3) constructive use occurs when proximity impacts from transportation projects substantially impair 4(f) resources. Since NRTFP projects are recreational projects the provisions of "constructive use" do not apply.

3. Since most projects will occur within the boundaries of a 4(f) protected resource, owned in most cases by the funding applicant, it is unreasonable to request that the applicant seek land outside his own property to perform a project. Therefore, the evaluation of prudent and feasible alternatives to performing the project within the applicant's property boundaries is unreasonable and impractical.

4. The final receiver of funds will in most cases be either a public recreational agency or a private recreational entity. Therefore, the funds have no transportation linkage other than the role FHWA plays in administering this recreational program.

5. Discussions have been held with other Federal agencies normally involved in the funding of trail projects such as the U.S. Forest Service, the National Park Service, and the Bureau of Land Management. Although they did express some concerns about

overall program implementation, they were comfortable with the approach that 4(f) should not be applied to this program.

No further work is required by our region or division offices from a Section 4(f) standpoint for the NRTFP. However, it must be remembered that NEPA and other applicable Federal laws, such as the Clean Water Act, the National Historic Preservation Act, etc,, must still be complied with by the State/local applicant to obtain program funds. We suggest that this compliance be documented under our normal project development process using the NEPA document as the tool.

Memorandum

U.S. Department
of Transportation
Federal Highway
Administration

Subject: **INFORMATION:** The Uniform Act and Transportation Enhancements

Date: November 1, 1996

Reply to
Attn of: HRE-01

From: Associate Administrator for Program Development

To: Regional Administrators

New Federal-aid program partners, such as transportation enhancement sponsors, often view the Uniform Act as a complex set of requirements, though with an important purpose - to protect the rights of property owners and ensure equitable treatment for displaced persons. In order to relieve some of the concern about the complexity, we want to highlight the simplified acquisition procedures available under the Uniform Act regulations. The regulations [49 CFR 24. 1 01 (a)(2)] specifically allow so-called "voluntary transactions" by entities that lack condemnation authority, such as non-profit organizations.

The government-wide Uniform Act regulations have contained voluntary transaction provisions since 1989 in order to accommodate the program needs of other Federal agencies. For example, the property needs of many Department of the Interior (DOI) programs do not rely on invoking eminent domain authority, which typically is a necessary option in the highway program where project alignment dictates specific parcels. Many, if not most, Federal-aid transportation enhancement activities are quite similar to these DOI acquisitions. Although they were not initially thought of in terms of the Federal-aid highway program, voluntary transaction procedures clearly can be used to reduce the complexity of acquisitions, especially in certain transportation enhancement situations.

Voluntary transaction procedures may be used by a private entity if the acquisition--and this is the key--is, indeed, voluntary. Voluntary means that the owner is informed in writing by the private entity acquiring the property that it is unable to acquire the property if negotiations fail. In other words the potential buyer must convey clearly its intention to "walk away" if the owner does not agree to sell the property. When this condition is met, the acquiring entity then needs only to provide the owner with an estimate of the fair market value of the property. When these two conditions are met, no other Uniform Act requirements apply to the owner. If there are any tenants on the property, they remain eligible for relocation assistance as if they were displaced under the threat of condemnation.

Federal-aid transportation enhancements embody the new partnerships we are striving to build under ISTEA and our strategic plan. We encourage you to ensure Division office staff and State partners are fully aware of the voluntary transaction procedures and encourage their use in acquiring property for transportation enhancements wherever appropriate.

Thomas Ptak

Cover page to FHWA Memorandum, "Implementation Guidance - Section 315 NHS Act"

Property Acquisition by Conservation Organizations for Transportation Enhancement Activities

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (the Uniform Act) provides protections and benefits for persons whose real property is acquired and/or who are displaced by a Federal or Federally-assisted program or project. It is one of the most fundamental and wide-ranging cross-cutting Federal funding requirements. Its roots lie in the Constitution itself, and it is a recognition of the vulnerability of the average person faced with government's power of eminent domain.

In 1987, Congress expanded the Uniform Act's requirements beyond government agencies to apply to any person or organization acquiring property or causing displacement for a project receiving Federal financial assistance. This expansion meant that various persons and organizations that do not have eminent domain authority (the right to condemn property) must also comply with the requirements of the Uniform Act.

Voluntary Transactions

FHWA, in its government-wide regulations implementing the Act, provided much simplified requirements for these "voluntary transactions" by such persons or organizations. When the acquisition of property meets the "voluntary transactions criteria of the Uniform Act regulations, the person, organization, or government agency can considerably streamline the purchase of the property. The key to this expedited process is that the purchaser must not be able or willing to condemn the property is the owner refuses to sell it. Guidance on "voluntary transactions" is provided in the November 1, 1996 Memo,"The Uniform Act and Transportation Enhancements."

Conservation Organizations Exemption from Uniform Act (Section 315-N.S. Act)

Section 315 of the N.S., which applies to transportation enhancement activities only, exempts qualified conservation organizations from the requirements of the Uniform Act. This allows conservation organizations more flexibility in acquiring property from third parties which subsequently is used in Federally-assisted projects.

On February 20, 1996, guidance was issued on this new flexibility in applying the Uniform Act and the criteria for doing so, in the Memo,"Implementation Guidance-Section 315 N.S. Act." Conservation organizations are not required to be covered by the Act expect in two statutorily prescribed circumstances: (1) where they are acting not for themselves but as the agent of a recipient of Federal funds, or (2) when Federal approval to acquire real property occurred before the involvement of the conservation organization. Section 315 allows conservation organizations to participate in transportation enhancement activities with a minimum of administrative burden while maintaining the fundamental protections of the Uniform Act.

Environmental Mitigation to Address Water Pollution due to Highway Runoff or Reduce Vehicle Caused Wildlife While Maintaining Habitat Connectivity

Examples of TE projects in this category:

- Fletchers Creek Wetland Restoration, Millford, Connecticut. Minor drainage improvements which involved the retrofitting of culverts and tide gates to allow for additional tidal flow to enter the salt marshes within Fletchers Creek to help restore the marshes which had been degraded from the construction of a now abandoned service road and a trolley line.

- Kent=s Hill Section Highway Runoff Mitigation Project, Reedfield, Maine. This section of State Route 17 experienced road surface runoff that was causing erosion and sedimentation problems that were impacting a wetland and two lakes. The drainage section was very steep and roadside ditches were deep and unsafe. The Department of Transportation was performing emergency repair to the ditches after major storm events. The TE program helped provide funds to construct two ponds, a dry pond, and a wet pond and stabilize the steep slopes along the roadside.

- Runoff Mitigation on Searles Prairie, Arkansas. Searles Prairie Natural Area is a native tall grass prairie remnant located in northwest Arkansas in the City of Rogers. The 10-acre virgin prairie, which has never been plowed, is located near Arkansas State Highway 62 and Dixieland Road. With the increased development in the vicinity and the scheduled road improvements this natural prairie area, which was located in a natural low spot, was threatened with the potential of filtering a large increase in surface runoff. The City of Rogers, working with the Arkansas State Highway Department, developed a project that was financed through the TE program. The project involved the building of an upstream storm structure to intercept surface runoff and convey the runoff to up-sized drainage pipes that diverted flow around the native tall grass prairie to protect the highly valued natural prairie.

- Cucumber Creek Nature Preserve Expansion, Oklahoma. A TE project was completed in southeastern Oklahoma near State Highway 259 to improve the water quality conditions in Cucumber Creek. To mitigate the impacts of the existing highway runoff, the land between the highway and stream was regraded and stabilized to prevent future erosion and pollution problems in the creek.

Memorandum

U.S. Department
of Transportation

Federal Highway Administration

Subject: **ACTION:** Request for Approval of Exceptions — Date: July 28, 1999

From: Kenneth R. Wykle
Administrator

Reply to
Attn of: HCC-30
RBlack, x61359

To: The Secretary
THROUGH: The Deputy Secretary

This memorandum requests that you approve an exception in the law that would allow States more flexibility in determining where they can use their Transportation Enhancement (TE) funds. A general provision of the Surface Transportation Program (STP) law restricts the classes of highway projects for which STP funds may be used, unless the Secretary approves an exception. Because TE projects are part of the STP, this general provision has the effect of restricting the use of TE funds. In many cases, these restrictions make no sense in light of the TE program mandate and the restriction undermines the effectiveness of the TE program. This memorandum requests that you except all TEs from this restriction.

The STP was established by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and continued by the Transportation Equity Act for the 21" Century (TEA-21). The STP funds are available for 14 categories of eligible projects, 23 U.S.C. ' 133(b). Section 133(c) includes the general limitation that STP projects not be funded on "roads functionally classified as local or rural minor collectors, unless such roads are on a Federal-aid highway system on January 1, 199 1, and except as approved by the Secretary (emphasis added).

One of the eligible categories is TE projects, defined by 23 U.S.C. ' 101(35). The TE projects include provision of facilities for pedestrians and bicycles; landscaping and other scenic beautification; historic preservation; preservation of abandoned railway corridors; and environmental mitigation to address water pollution due to highway runoff. The definition of TE contains the requirement that each activity "relate[s] to surface transportation."

Because TEs are part of the STP, the general location restriction of ' 133(c) applies to them; TE projects cannot be located on local or rural minor collector roads. Given the nature of many of the 12 categories of TEs, however, it is clear that the location limitation of ' 133(c) cannot apply to them. Provision of safety and educational activities for pedestrians and bicyclists, preservation of abandoned railway corridors, or archaeological planning and research are not tied to a location on a highway. Even for TE projects which could be connected to a particular highway, such as historic preservation and scenic enhancements, the location restriction of ' 133(c) is often at odds with what the TE program seeks to accomplish. By granting a general waiver of TE projects, as permitted by ' 133(c), the administration of TE projects would be greatly simplified and made consistent with the apparent purpose of the statute. The TE activities will still have to relate to surface transportation. This definitional provision cannot be waived and provides adequate protection against potentially inappropriate expansion of the TE program.

RECOMMENDATION: I recommend that you approve the TE exception from the location of project limitation of ' 133(c) of Title 23 of the United States Code, thereby giving the States increased flexibility in determining where their TE projects will be constructed.

APPROVED: **X**
DISAPPROVED:
DATE: 10-15-17

Transportation Enhancement Q & A=s

1. The TE Guidance provides a lot of information, but does not cover all aspects of transportation enhancements. Where should we go for FHWA policies on areas not discussed in the Guidance?

Transportation Enhancement Activities have some special characteristics, but they are still part of the FHWA=s federal-aid highway program. The TE Guidance covers special characteristics and situations unique to enhancements. Otherwise, the general FHWA regulations on payment procedures, civil rights, planning, engineering and traffic operations, right-of-way, and environment apply. For more information on FHWA policies as applied to transportation enhancements, we recommend discussions with the FHWA transportation enhancements coordinator in the local FHWA division office, usually located in the state capital.

FHWA Division Office TE coordinators are encouraged to contact the FHWA headquarter=s office to discuss unusual or unclear eligibility situations. Often TE issues affect multiple operating offices and require coordination to assure compliance with applicable laws and regulations. Also many streamlining measures maybe available to expedite TE projects that can be provided through TE coordinators. (If you need to know your state FHWA TE representative's contact information, just call NTEC at 1-888-388-NTEC). The FHWA regulations appear in title 23 of the Code of Federal Regulations (CFR). You can find the Code of Federal Regulations in any law library and 23 CFR can also be down loaded from the FHWA website at: http://www.fhwa.dot.gov/legsregs/legislat.html.

2. The TE Guidance describes the new Arelates to surface transportation@ requirement. How will it change the TE application process?

Congress enacted this wording in TEA-21. The focus is now on a clear and credible description of how the proposed TE project relates to the surface transportation system. Surface transportation is defined to include all modes of travel with the exception of aviation and military transportation. The transportation is open to the general public and serves a transportation need for the general public. To determine a relationship to surface transportation a project proponent should ask themselves a number of questions about the proposal. For example, in what way(s) is the project related to surface transportation through present or past use as a transportation resource? Is there a direct connection to a person or event nationally significant in the development of surface transportation? What is the extent of the relationship(s) to surface transportation? What groups and individuals are affected by the relationship(s), when did the relationship(s) start and end or do the relationship(s) continue? Is a relationship substantial enough to justify the investment of transportation funds? The TE Guidance states that proximity to a transportation facility alone is not sufficient to establish a relationship. Transportation enhancements coordinators should encourage applicants to carefully think through this part of their application.

3. Under TEA-21, the value of donations of funds, materials, land or services made before a transportation enhancement project is approved can be credited towards the local match. Is there a limit as to how far in the past we can go in considering the value of such donations? How is their value calculated? Do you have an example of how to apply these credits?

The TE Guidance does not specify a time limit as to how far in the past we can go in considering the value of such donations. As a general principle, the Guidance invokes a test of reasonability, as determined in coordination with the FHWA division office. For determinations of what donated items can be used for the local match and how they are valued, the FHWA Division Office must also be contacted. Determining whether a donation can be credited may also include an evaluation of whether its original acquisition is in accord with the Uniform Relocation Assistance and Relocation Act of 1970 and Title VI of the Civil Rights Act of 1964. Land donations must be clearly documented to support the value placed on them. To verify how to value donated services by private people to a government unit, see 23 U.S.C. 323(b) and Office of Management and Budget (OMB) Circular A-87, attachment B, item 11(i). To verify how to value donated services by private people to a private project sponsor, see OMB Circular A-122, Attachment B, item 12. OMB circulars are available on the World Wide Web at: www.whitehouse.gov/WH/EOP/omb/html/circular.html *(you must use exact lower case and upper case)*. These Office of Management and Budget (OMB) circulars are also available through the FHWA division offices. The value of any donations should be reflected in the overall cost of the TE project. The FHWA Office of Finance and Budget issued a February 4, 1997 memo entitled ADonations to Federal-aid Projects,@ which gives a sample calculation of donation credits. It is available through the FHWA division offices. Refer to the TE guidance section ASummary of Requirements for Matching Funds.@

4. Some TE projects, such as restored historic facilities, may have parts of the space appropriately used for activities which are leased for a fee. Examples are restaurants etc., and leased offices in a portion of the historic building that would not necessarily be open to the public. How should states treat fees generated by activities in these spaces made available through TE funds?

Ideally for joint use activities that are part of the initial proposal for TE funds, a partnership is suggested to allow federal funds to be used only for the portion of the restoration for public use. Privately or commercially used segments of a restoration should have private investment.

Before the TE project is approved, the sponsor, state DOT, and FHWA, if necessary, should reach a clear agreement on which areas are to be leased, what activities are appropriate, and how income generated by the facility is to be used. As the Guidance notes under the heading AMaintenance and Operations,@ the state is responsible for long-term maintenance and operation of TE activities. The category ARehabilitation and operation of historic transportation buildings, structures, or facilities@ is the

only TE activity that specifically allows the use of federal-aid TE funds for operations. As part of their maintenance and operations responsibility, states are encouraged to develop maintenance plans for TE activities. In accordance with good business practices, these plans would include reserves for long-term maintenance and periodic repair. Part or all of the fees generated by the activity should be a component of the maintenance plan.

5. What is the meaning of Aa clear link to scenic or historic sites.@

Congress introduced this terminology regarding tourist and welcome centers. This phrase can be interpreted broadly, however a clear linkage must be demonstrated. For example, if a tourist or welcome center provides substantial information about a particular scenic or historic highway program, or a scenic or historic site this could be considered part of the needed justification. Such information could include literature, directions, interpretive displays or videos shown to the public. To clearly be consistent with the language the Congress provided, the tourist or welcome center should be within close proximity to the scenic of historic highway site. Close proximity should be determined to be within a reasonable walking distance. If visitors can park at the tourist and welcome center and walk to the scenic or historic site (i.e. on short connecting foot trails), see it from a vista at the tourist and welcome center or view some of it=s attributes, then there is clear linkage. For scenic sites, if the location proposed is on a designated scenic route, and the proposed building site itself contains some of the qualities that make the route scenic (special landforms, vistas, cultural resources, etc.) that can be viewed from the tourist and welcome center, then linkage may clearly be established. The placement of a visitor=s information facility on a scenic or historic route would allow for a more direct connection and more easily satisfy the linkage requirements.

6. Is reconstruction (i.e. building a replica) of historic transportation buildings an eligible TE activity?

There is no provision for replication of a historic structure in the list of TE activities fundable with enhancement dollars. Rehabilitation and restoration of historic structures is a listed activity. Building a replica of a historic structure is not the equivalent of restoration of an existing structures. There is no terminology called reconstruction in the list of TE activities.

7. If a town which has condemnation authority, is acquiring land for a TE project**,** can it use the "voluntary transaction provisions" if they are willing to state that they will not use condemnation to acquire the property.

A public agency that has condemnation authority can participate in the voluntary transaction process if they put in writing that they give up that right if negotiations with the property owner fail (per 49 CFR 24.101).

8. Can fish passages qualify for TE funds even though there is no direct traffic-caused fish mortality? The need for the traffic to cross the stream causes the need for a structure at the stream.

Congress included the language Avehicle caused wildlife mortality@ in the category of TE funding. Fish ladders or passages ordinarily would not qualify, except as a part of a larger project addressing mitigation of water pollution to address highway runoff where the runoff contributes to the mortality of aquatic species.

9. Can a locality donate land which could reasonably be called part of a TE project, even though it is outside the normal highway ROW?

The 23 U.S.C. 323 requires land that is donated be incorporated into the project to be eligible for a match. If not part of project scope, a donation of the property should not be used as a match. Land does not have to be within highway right-of-way to be eligible for donation for a TE project.

10. Is the 100% federal share financing allowed on enhancement projects under TE-045 no longer available to States under TEA-21?

While the TE-045 project relating to the TE program has concluded, similar flexible matching share polices were authorized by TEA-21. The value of other contributions may be considered to reduce the cost of the project. The remainder may be covered with 100% Federal dollars. Or the entire amount of project costs without reduction may be funded with 100% Federal funds. The difference is that by the end of the fiscal year the program for TE must balance out to the normal 80/20 split for funding. Before, a State=s entire TE program could be funded at 100% Federal for the fiscal year. Under TEA-21 that provision is more limited due to the end of the fiscal year balance provision requirement.

11. Is there specific language required in an easement agreement where TE dollars are used to acquire the easement?

FHWA=s real estate staff has indicated that there is no standard template for property acquisition or standard easement language. There is also not specific language for inclusion in easement agreements for TE funded projects. Appropriate language should be develop for the specific project circumstances in cooperation with the FHWA Division Office.

12. Could TE funds be used for planning documents even if the documents do not necessarily lead to a project?

The TE guidance recommends against funding statewide planning and related documents with TE dollars, except where specific language is provided in legislation, "archeological planning and research". Planning that is an integral part of the development of a project may be considered an eligible expenditure.

13. Is it true that we can only restore historic buildings to house museums?

It is not true that we can only restore historic buildings to house museums. Establishing a transportation museum is not strictly tied to the historic nature of the structure it is housed in. Historic buildings maybe restored that are not necessarily a museum where a relationship to transportation is shown and all other eligibility requirements are otherwise met.

14. Are TE project involving privately held property allowed under the regulations and policies of the TE program?

Yes, TE projects involving privately held property is allowed under the regulations and policies of the TE program. It requires extra care in the development of the project agreement to insure that there is public access to a TE restored property and that the term of public access is comparable to the nature and magnitude of the investment of public funds. A requirement is also needed to assure the protection of the investment and for future necessary maintenance.

15. Can TE funds be used to restore military transport vehicles/vessels or create military museums?

TE funds may not be used in connection with active military vehicles/vessels, or those owned, maintained or otherwise controlled by the military with limited access to the general public. TE funds are intended to be used for the enhancement of transportation and transportation related activities for the general public. TE activities must be those listed in law, open to the general public, and responsibly maintained directly or in partnership with a public entity (Specific Federal funds may be used to match Federal-aid highway funds.

16. Are TE funds allowed to be used for traditional highway projects?

TE funds are not allowed to be used for the preservation of transportation corridors for future highway development. TE funds are to be used only for the non-traditional projects identified in

TEA-21. TE projects are non-motorized transportation-related activities, except where specifically allowed in law. Exceptions are primarily limited to the rehabilitation and operation of historic transportation facilities, including historic railroad facilities, canals and water born vehicles.

17. Are snowmobiles allowed to be used on TE funded bike and pedestrian trails?

Snowmobiles generally may not be used on TE funded trails specifically designated for pedestrian and bicycles. However, they may be used on TE funded trails where local ordinances specifically allow their use. In other words, a local ordinance must be in place allowing snowmobile use.

18. May a State charge a user fee at a site in a program in which TE funds are involved?

A number of questions have been raised as to whether a fee may be charged for access to any property or services provided through funds made available for a TE activity. Generally, fees should not be charged for access to activities or projects funded with TE funds. Examples of limited situations in which a minimal fee may be charged are discussed below.

Examples might include admission fees to a transportation museum, or to an interpretive movie shown at a tourist center, and a fee for a scenic ride on a restored historic train. A fee may be appropriate where the proceeds from the charge are not excessive for the general public, and are by agreement instituted for the maintenance and operation of the TE funded resource. If charging a fee is prohibited by a Federal, State or local law, the State may not charge a user fee. For example, if a tourist or welcome center is on an Interstate Highway, no fee could be charged (see 23 U.S.C. Section 111(a)). Collected fees should be applied for the maintenance and long-term upkeep of museums, trails, or other TE-funded sites.

Where a State or project applicant proposes to use TE funds to acquire real property and lease or rent space, or otherwise charge a fee for access to the property, 23 U.S.C. Section 156, (unless an exception is granted by the Secretary), requires that fair market value be charged and that the Federal share of net proceeds from the transaction be applied by the State toward Title 23 eligible projects (i.e., Federal-aid projects of State-funded projects that are eligible for Title 23 funding). The term Areal property= refers to land and any improvements affixed to the land (i.e., the physical real estate), and all interests, benefits, and rights inherent (e.g., access control rights, air rights, etc.) in the ownership of the physical real estate. By agreement, provisions should also be made to have a portion of the funds used for the maintenance and operation of the TE funded resource. The common rule, 49 CFR Part 18, encourages grantees to earn income to defray program costs.

19. Should State DOT=s and project proponents work closely with State tourism agencies in the implementation of TE activities?

Yes, State DOT=s and project proponents should seek opportunities to coordinate with State tourism officials to help maximize economic benefits of the TE activity. State tourism agencies may provide helpful information such as; the identification of important area resources, assist in developing criteria for site selection, and offer suggestions towards implementation. States should consider including representation from the State tourism community as part of their TE advisory committee process. State tourism agencies should also be consulted with regard to the implementation of tourist and welcome centers.

20.What are the similarities and differences between Scenic Byways program and Transportation Enhancement program?

The Scenic Byways Program and Transportation Program are able to fund many similar activities. Some of the similarities include:

- Activities eligible under the Scenic Byways program are generally eligible under TE activities where all applicable criteria have otherwise been met.
- The eligibility for TE funding for the provision of tourist and welcome centers applies to both existing and new centers. This means that TE funds may be used for the construction of a new facility and/or the restoration of an existing facility. This would include those related construction actions necessary to provide the facility, such as interior fixtures and parking areas.
- TE funds can be used to purchase and install items which support or interpret the scenic or historic highway program or site including brochure racks for interpretive materials, maps, or kiosks, markers, and scenic overlooks.

Some differences include:

- TE funds cannot be used for statewide programs, marketing or promotion not related to the scenic or historic highway program.
- TE funds cannot be used for staffing, operating costs, or maintenance.
- TE funds should not be used to purchase items such as racks for advertising or brochures for local or national businesses.

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