

APPENDIX A

NEPA Assessment Checklist

## NEPA CHECKLIST

DATE: January 12, 2009

PREPARER: Frederick Wells, RLA

PIN and Project Title: Surplus Property Request  
 Wilder Balter Partners Marketplace  
 Town of Newburgh, Orange County

Answer the following questions by checking YES or NO.

YES

NO

### I. THRESHOLD QUESTION

1. Does the project involve unusual circumstances as described in 23 CFR §771.117(b)?

**Further  
Review  
Required**

- ◆ If YES to question 1, the project does not qualify as a Categorical Exclusion and an EA or EIS is required. You may STOP COMPLETING THE CHECKLIST.
- ◆ If NO, go on.

### II. AUTOMATIC CATEGORICAL EXCLUSION

2. Is the project an action listed as an Automatic Categorical Exclusion in 23 CFR §771.117(c) (C List) and/or is the project an element-specific project classified by FHWA as a Categorical Exclusion on July 22, 1996?

**X**

- ◆ If YES to question 2, the project qualifies for a C List Categorical Exclusion. You may STOP COMPLETING THE CHECKLIST. Include this checklist in the appendix of the Design Approval document, i.e., Final Design Report, etc. and send to the appropriate Main Office FHWA Design Liaison using the Categorical Exclusion determination transmittal memo.
- (Note - Even if YES to question 2, there may be specific environmental issues that still require an action such as an EO 11990 Wetland Finding or a determination of effect on cultural resources. The project is still an Automatic Categorical Exclusion but the necessary action must be taken, such as obtaining FHWA's signature on the wetland finding. Refer to the appropriate section of the Environmental Procedures Manual for guidance.)
- ◆ If NO, go on.

### III. PROGRAMMATIC CATEGORICAL EXCLUSION

3. Is the project on new location or does it involve a change in the functional classification or added mainline capacity (add through-traffic lanes)?

**X**

4. Is this a Type I project under 23 CFR 772 (Procedures for Abatement of Highway Traffic Noise and Construction Noise)?

**X**

5. If the project is located within the limits of a designated sole source aquifer or the associated stream flow sources area, is the drainage pattern being altered?

**X**

6. Does the project involve changes in travel patterns?

**X**

		YES	NO
7.	Does the project involve the acquisition of more than minor amounts of temporary or permanent strips of right-of-way (a minor amount of right-of-way is defined as not more than 10 percent of a parcel for parcels under 4 ha (10 acres) in size, 0.4 ha (1 acre) of a parcel 4 ha to 40.5 ha (10 to 100 acres) in size and 1 percent of a parcel for parcels greater than 40.5 ha (100 acres) in size)?	X	
8.	Does the project require a Section 4(f) evaluation and determination in accordance with the FHWA guidance?		X
9.	Does the project involve commercial or residential displacement?		X
10.	If Section 106 applies, does FHWA's determination indicate an opinion of adverse effect?		X
11.	Does the project involve any work in wetlands requiring a Nationwide Wetland Permit #23?	X	
12.	Does the project involve any work in wetlands requiring an individual Executive Order 11990 Wetland Finding?		X
13.	Has it been determined that the project will significantly encroach upon a flood plain based on preliminary hydraulic analysis and consideration of EO 119880 criteria as appropriate?		X
14.	Does the project involve construction in, across or adjacent to a river designated as a component proposed for or included in the National System of Wild and Scenic Rivers?		X
15.	Does the project involve any change in access control?		X
16.	Does the project involve any known hazardous materials sites or previous land uses with potential for hazardous material remains within the right-of-way?		X
17.	Does the project occur in an area where there are Federally listed endangered or threatened species or critical habitat?		X
18.	Is the project, pursuant to EPM Chapter 1A and Table 2 and Table 3 of 40 CFR Parts 51 and 93, non-exempt or does it exceed any ambient air quality standard?		X
19.	Does the project lack consistency with the New York State Coastal Zone Management Plan and policies of the Department of State, Office of Coastal Zone Management?		X
20.	Does the project impact or acquire any Prime or Unique Farmland as defined in 7 CFR Part 657 of the Federal Farmland Protection Policy Act <u>and</u> are there outstanding compliance activities necessary? (Note: Interpret compliance activity to mean completion of Form AD 1006.)		X
<ul style="list-style-type: none"> <li>◆ If NO for questions 3-20, go on to answer question 21.</li> <li>◆ If YES to any question 3-20, project will not qualify as a Programmatic Categorical Exclusion. Answer questions 21 and 22 for documentation only and go on to question 23.</li> </ul>			

		YES	NO
21.	Does the project involve the use of a temporary road, detour or ramp closure?		X
<p>◆ If NO for questions 3-20 and NO to question 21, then project qualifies as a Programmatic Categorical Exclusion. You may STOP COMPLETING THE CHECKLIST. The checklist and a copy of the Design Report (Design Approval document) must be sent to Main Office FHWA design liaison unit using the Categorical Exclusion determination transmittal memo. Include the checklist in the Design Approval document, i.e., Final Design Report, etc.</p> <p>◆ If YES to question 21, preparer should complete questions 22 i-v. If questions 3-20 are NO and 21 is YES, the project will still qualify as a Programmatic Categorical Exclusion if questions 22 i-v are YES.</p>			
22.	Since the project involves the use of temporary road, detour or ramp closure, will all of the following conditions be met?		
i.	Provisions will be made for pedestrian access, where warranted, and access by local traffic and so posted.		
ii.	Through-traffic dependent business will not be adversely affected.		
iii.	The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.		
iv.	The temporary road, detour or ramp closure does not substantially change the environmental consequence of the action.		
v.	There is no substantial controversy associated with the temporary road, detour or ramp closure.		
<p>◆ If questions 3-20 are NO, 21 is YES and 22 i-v are YES, the <u>project qualifies for a Programmatic Categorical Exclusion</u>. You may STOP COMPLETING THE CHECKLIST. The checklist and a copy of the Design Report (Design Approval document) must be sent to Main Office FHWA design liaison unit using the Categorical Exclusion determination transmittal memo. Include this checklist in the Design Approval document, i.e., Final Design Report, etc.</p> <p>◆ If any of questions 3-20 is NO, 21 is YES and any part of 22 is NO, go on to question 23.</p>			
IV. CATEGORICAL EXCLUSIONS WITH DOCUMENTATION			
23.	Is the project section listed in 23 CFR §771.117(d) (D List) or is the project an action similar to those listed in 23 CFR §771.117(d)?	X	
<p>For those questions which precluded a Programmatic Categorical Exclusion, documentation should be provided for any YES response to questions 3-20 or for a NO response to any part of questions 22 i-v. This documentation should be included in the Design Approval document, i.e., Final Design Report, etc., to be submitted to the Main Office/FHWA design liaison unit for submission to the FHWA Division for classification of the project as a D List Categorical Exclusion.</p>			

### NEPA Assessment Checklist

NYSDOT uses a NEPA Assessment Checklist to process a Cat. Ex. for projects that require FHWA approval. The Checklist form was approved by the FHWA. The Checklist has been completed and an item by item rationale to support the Checklist responses, with references, is provided below. Further elaboration on issues of concern is provided in Section V.B. of the Design Report.

I. Threshold Question - 23 CFR §771.117(b) states: Any Action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances could include:

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

This Design Report has been prepared to assist in said determination.

[Checklist #1: "Further Review Required"]

II. Automatic Categorical Exclusion - The proposed Action does not qualify as an Automatic Cat. Ex. It is not listed in 23 CFR §771.117(c) nor is it an element-specific project classified by FHWA as a Cat. Ex. [Checklist #2: No]

III. Programmatic Categorical Exclusion - The proposed Action does not qualify as a Programmatic Cat. Ex. where there is a positive response to one or more of the following Checklist items (3 through 20).

3. The proposed Action will facilitate construction on a new location (undeveloped site) although it will not change the functional classification nor add mainline capacity on the network, as documented in a Traffic Impact Study<sup>1</sup> contained in the EIS for the Marketplace. [Checklist #3: Yes]

4. The proposed Action will not result in significant noise impacts to adjacent areas where noise abatement must be considered (a Type I project under 23 CFR §722), as demonstrated by the noise assessment documented herein in Appendix E. [Checklist #4: No]

5. The site of the proposed Action is not located within the limits of a designated sole source aquifer nor the associated stream flow source area ("headwaters" of a sole source aquifer area) (reference NYS GIS Clearinghouse data). [Checklist #5: No]

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<sup>1</sup> Draft EIS for The Marketplace at Newburgh, April 4, 2006: Appendix G, Traffic Impact Study, September 14, 2005. and, Final EIS for The Marketplace at Newburgh, March 15, 2007: Appendix C, Updated Traffic Analysis, November 8, 2006.

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6. The proposed Action will not result in changes in travel patterns, as documented in the Traffic Impact Study contained in the EIS for the Marketplace. [Checklist #6: No]
7. The proposed Action involves acquisition of easement rights to construct the Access Road (reference Design Report: Section II, The Action). [Checklist #7: Yes]
8. The proposed Action does not involve the use of a significant public park, recreation area, wildlife or waterfowl refuge, or historic site as relates to Section 4(f) of the Department of Transportation Act of 1966 (49 USC §303) (reference Design Report: Section II, The Action). [Checklist #8: No]
9. The proposed Action does not involve displacement of commercial or residential uses. The site of the project encompasses completely undeveloped land. [Checklist #9: No]
10. Based on cultural resources investigations, the NYS OPRHP has issued its determination that disturbance of the DOT Parcel as proposed will not impact significant cultural resources (refer to Appendix B). This determination thereby satisfies the compliance requirements for Section 106 Review. [Checklist #10: No]
11. The proposed Action will result in the placement of fill in Federal wetlands and an individual wetland permit for this work has been obtained from the ACOE.<sup>2</sup>  
[Checklist #11: Yes]
12. The proposed Action will not require an individual wetland finding relative to Executive Order 11990 since an individual wetland permit has been obtained from the ACOE for the proposed wetland fill associated with the proposed Access Road.<sup>2</sup>  
[Checklist #12: No]
13. The proposed Action will result in a crossing of a FEMA 100-year floodplain utilizing a large culvert sized to convey the flows from a 100-year storm (reference the Draft EIS for The Marketplace: Appendix D, Stormwater Management Report). [Checklist #13: No]
14. The Quassaic Creek on the subject property is not included in the National System of Wild and Scenic Rivers, proposed as a Study River, nor included in the National Rivers Inventory according to the National Park Service web site and related links: <http://www.rivers.gov/index.html>. [Checklist #14: No]
15. The proposed Action does not involve a change in access control, but only facilitates construction of a through Access Road and stormwater basin (reference Design Report: Section II, The Action). [Checklist #15: No]
16. Based on the due diligence effort conducted by the Applicant, the proposed Action does not involve any known hazardous materials site or previous land use with potential for hazardous material remains (reference the Phase 1 Environmental Site Assessment, May 26, 2005). [Checklist #16: No]

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<sup>2</sup> Department of the Army Permit, Permit No. NAN-2004-814, Issued by New York District Corps of Engineers, October 21, 2008.

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17. The site of the proposed Action does not support known threatened or endangered species, or contain critical habitat for such species (reference the Final EIS for The Marketplace: Section 3.3, Terrestrial and Aquatic Ecology). [Checklist #17: No]

18. The proposed Action will not result in exceedence of any ambient air quality standard (reference Design Report Appendix E, Supplemental Air Quality and Noise Analyses). [Checklist #18: No]

19. The proposed Action is not inconsistent with the NYS policies relative to Coastal Zone Management as the site of the Action is not located within a designated coastal zone (reference Coastal Area Map Number 34). [Checklist #19: No]

20. The proposed Action does not affect or involve any protected farmland as the site of the Action is natural woodland unencumbered by any farmland protection. [Checklist #20: No]

21. The proposed Action does not involve the use of any temporary road, detour or ramp closure, but only facilitates construction of a through Access Road and stormwater basin (reference Design Report: Section II, The Action). [Checklist #21: No]

The negative response to Checklist item #21 renders item #22 not applicable.

IV. Categorical Exclusions with Documentation - The proposed Action is similar to item 6 listed in 23 CFR §771.11(d): 6. Approval for disposal of excess right-of-way (reference NYSDOT PERG Resolution, September 5, 2008, in Appendix B). The proposed Action entails land transfers necessary to implement the construction of the proposed Access Road. [Checklist #23: Yes]

The positive response to Checklist item #23 indicates that documentation should be provided for any Yes response to items 3 through 20. Section V.B. of the Design Report provides narrative descriptions of all relevant environmental areas of concern that relate to the construction of the proposed Access Road as facilitated by the proposed Action.