



August 25, 2020

Jay M. Ciavarella
Director, Office of Planning and Program Development
Federal Transit Administration
200 West Adams Street, Suite 320
Chicago, IL 60606-5253

Re: Request for re-evaluation of the Categorical Exclusion (CATEX) issued to Madison Metro on Nov. 18, 2019 for the Oscar Mayer Bus Barn Storage Facility

Dear Mr. Ciavarella:

On [November 18, 2019](#), the Federal Transit Authority (FTA) issued the City of Madison (Madison Metro) a categorical exclusion (CATEX) under the National Environmental Policy Act based on Metro's [Nov. 8, 2019 categorical exclusion "checklist" document](#).

We submit to you that a categorical exclusion is inappropriate for this project; it should undergo an Environmental Analysis (EA) or Environmental Impact Statement (EIS) process under NEPA, which require more comprehensive environmental analyses and public engagement.

In particular, we ask that this CATEX be re-evaluated, because: 1) the project doesn't meet the criteria for the NEPA categorical exclusion that FTA applied to it; 2) the project involves significant environmental impacts and unusual circumstances; 3) the CATEX application included incomplete, incorrect, and/or misleading information; and 4) disclosure of critical new information since CATEX was issued. We outline these items further below.

1. Project doesn't meet the criteria for the NEPA categorical exclusion FTA applied to it

The November 18, 2019 letter says that "FTA finds that the proposed Project meets the criteria for a National Environmental Policy Act (NEPA) categorical exclusion in accordance with 23 C.F.R. § 771.118(c)(8), *Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.*"

According to the [Guidance for Implementation of FTA’s Categorical Exclusions](#) (23 C.F.R. §771.118), this type of categorical exclusion “*covers maintenance, rehabilitation, and reconstruction of certain facilities as long as the facilities occupy substantially the same geographic footprint (all areas already affected by the direct impacts of the facility) and the functional use of the facility is unchanged. The original construction of the facility would have been previously evaluated under NEPA. Note an improvement to the facility is not a change in functional use. For example, when a transit center is rehabilitated under this CE, it may be improved by incorporating the latest communications and passenger information technologies. If the transit center’s function is changed by converting it into a bus maintenance facility, then it would not qualify under this CE.*”

This type of categorical exclusion is not appropriate for this site because: 1) the buildings which Metro plans to use for the Oscar Mayer Bus Barn Storage Facility were not previously evaluated under NEPA; 2) bus barn storage, maintenance, and washing are clearly a change in functional use, since these buildings were previously used for plastics manufacturing and food spice production.

2. Project involves significant environmental impacts and unusual circumstances

According to 23 C.F.R. § 771.118, FTA categorical exclusions (CEs):

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

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

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

Based on § 771.118(b), Madison Metro should not have qualified for a categorical exclusion. Information available at the time the CATEX was issued strongly indicate that this project has the potential for significant environmental impacts, and it is generating substantial public controversy on environmental grounds. More recently, the project and related environmental controversy was featured in a front-page [article](#) in the Wisconsin State Journal entitled, “Environmental contamination concerns taint Oscar Mayer redevelopment plan.” In fact, Director of Transportation Thomas Lynch, who applied for the CATEX on behalf of Metro, wrote in an [email to alders on July 20, 2020](#) that “with the newspaper article this weekend, and multiple letters to multiple agencies – there is quite a bit of controversy surrounding Metro and Oscar Mayer.”

3. Metro’s CATEX application included incomplete, incorrect, and/or misleading information

The CATEX checklist submitted to FTA by Madison Metro, which informed the agency's approval of the categorical exclusion, was highly inadequate and problematic. Key problems include:

1. Ignoring or discounting significant environmental impacts related to:
 - Hazardous materials (see Attachment A)
 - Water quality, ecologically-sensitive areas, construction (see Attachment B)
 - Air quality (Attachment C)
2. Inappropriately and inaccurately discounting environmental justice impacts (see Attachment D)
3. Inadequate community outreach, incorrect information about outreach (see Attachment E)
4. Incomplete information on Section 106, National Historic Preservation Act (Attachment F)

4. Disclosure of new information since CATEX was issued on November 18, 2019

The Nov. 18 FTA letter says: "This NEPA determination applies only to the proposed Project as described in the aforementioned correspondence and supporting materials. *Any changes to the proposed Project which would result in significant environmental impacts not outlined in this documentation, including the disclosure of new information or previously unidentified environmental concerns, will require re-evaluation of this action.*" (highlights added)

Significant "[new information](#)" related to "previously unidentified environmental concerns" has come to light since the CATEX was approved. Consultant reports released in December 2019 and April 2020 revealed far higher trichloroethylene (TCE) levels in gas beneath one of the buildings on the parcel than was previously known. Also, a [May 2020 ESA Phase I](#) by the city, only first released to two city alders on June 23, 2020, mentioned several activities that raise new concerns about hazardous materials at the site, including: plastics and insecticide manufacturing onsite (possibly including PFAS), injection/landfilling of hazardous wastes onsite, at least three different sources of chlorinated solvents onsite, and more.

This new information raises serious concerns about environmental contamination in soils and groundwater on the site that have not yet been investigated. The contamination also raises significant concerns about health risks to workers in Metro buildings on the site and to residents in neighborhoods adjacent to the site, including multi-unit affordable housing being planned next to it. Moreover, any disturbance of shallow soils and groundwater at the site (which will occur for this project) will disrupt this contamination and send it down storm drains during runoff and into nearby Starkweather Creek, Yahara River, Lake Monona, and downstream.

Based on the above information, we request a re-evaluation of the categorical exclusion issued to Madison Metro for this project under 23 C.F.R. § 771.129, per [this guidance](#).

Please confirm that you have received this as soon as possible and what actions will be taken to address our request.

Thank you,

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