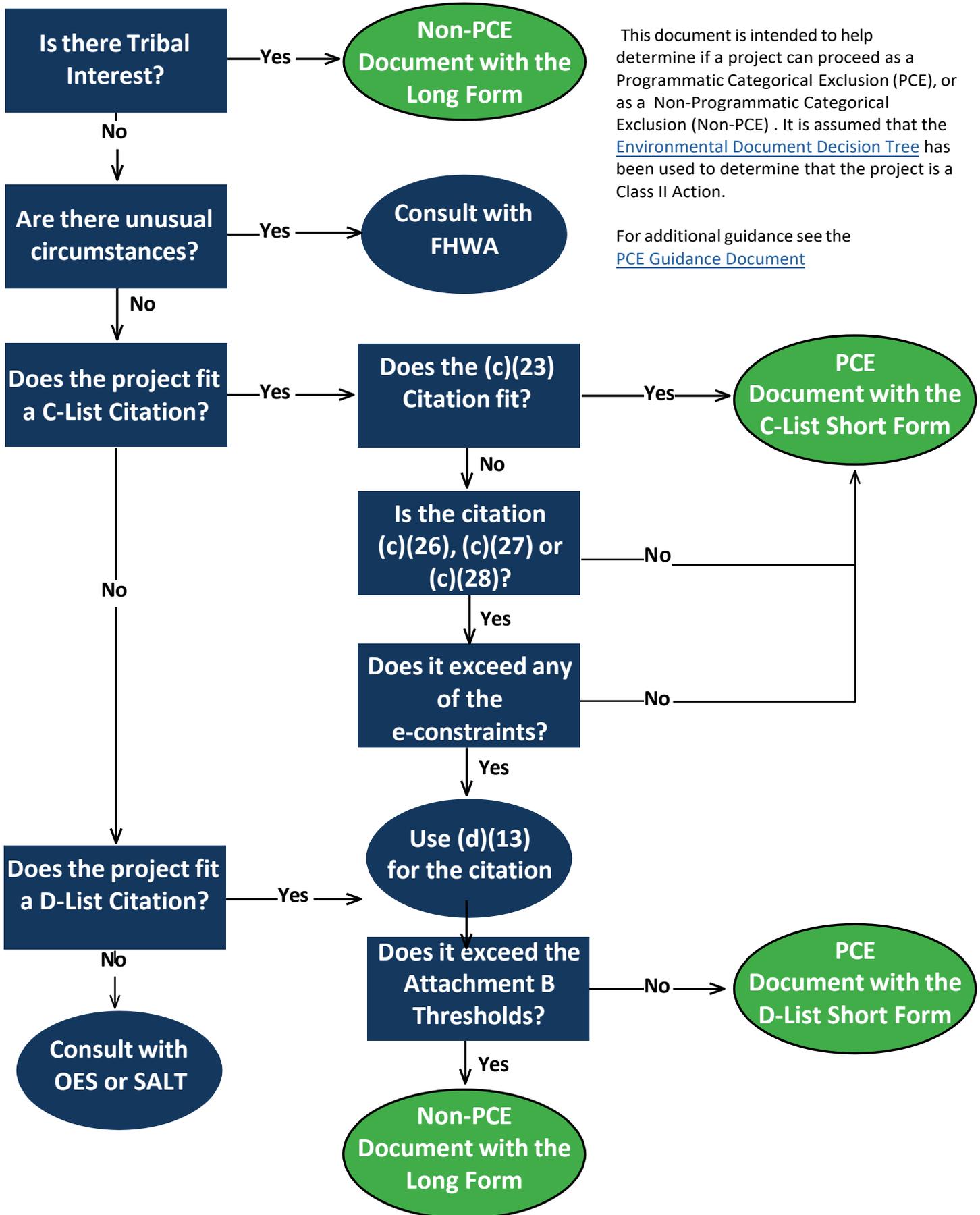


Is my project a PCE or Non-PCE Categorical Exclusion?

8/23/2022



This document is intended to help determine if a project can proceed as a Programmatic Categorical Exclusion (PCE), or as a Non-Programmatic Categorical Exclusion (Non-PCE). It is assumed that the [Environmental Document Decision Tree](#) has been used to determine that the project is a Class II Action.

For additional guidance see the [PCE Guidance Document](#)

Tribal Interest

Coordination with the tribal community needs to be conducted early in the process, including communication to determine whether the tribe or the project proposer (MnDOT or the Local Public Agency) sees value in a more direct relationship for project communications and approvals between the sovereign nation (tribe) and the Federal government (FHWA or other USDOT agency). This respects the Nation to Nation Status of Tribal Governments. Tribal interests include, but are not limited to:

- A request for more direct sovereign nation to Federal government relationship. At the time of the 2020 PCE Agreement, the Mille Lacs Band of Ojibwe is the only tribe in Minnesota that has expressed this desire for the more direct sovereign-nation-to Federal government relationship at a program level. The current process with Mille Lacs Band of Ojibwe lands is that any FHWA undertaking, in part or as a whole, within a federally-recognized reservation boundary or exterior trust lands will not be processed as a PCE.
- When there is a dispute between a tribe and MnDOT /local government
- Culturally sensitive areas, rice production areas, herb gathering areas and other traditional cultural properties within the study area.

If consultation with the tribe has identified tribal interests the project must proceed as a Non-Programmatic CE and be signed by the Division office. Construction that can be done entirely within MnDOT right of way with no indirect impacts to tribal lands can be processed as a PCE. A project within a tribes identified area, or involving a tribal related historic property doesn't automatically mean that there are tribal interests that would elevate the project to a Non-PCE. Purchasing tribal owned property that is not within federally recognized boundaries or exterior lands would also not necessarily be elevated to a Non-PCE.

Unusual Circumstances

Unusual circumstances are defined under 23 CFR 771.117(b) includes projects having:

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

[Return to main page](#)

**PROGRAMMATIC CATEGORICAL EXCLUSION AGREEMENT
ATTACHMENT “A-1”**

**PROJECT TYPES LISTED IN 23 CFR 771.117(c) and (c)(26),(27), and (28) constraints listed in 23
CFR 771.117(e)**

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

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

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

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

~~(4) Activities included in the State's highway safety plan under 23 U.S.C. 402. Do not use (c)(4) for MnDOT Categorical Exclusion projects unless approved by OES.~~

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

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

(7) Landscaping.

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

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

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

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

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

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

- (10) Acquisition of scenic easements.
- (11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.
- (12) Improvements to existing rest areas and truck weigh stations.
- (13) Ridesharing activities.
- (14) Bus and rail car rehabilitation.
- (15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- (16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- (17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities that themselves are within a CE.
- (18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.
- (19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
- (20) Promulgation of rules, regulations, and directives.
- (21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.
- (22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities. **Use caution when using (c)(22). Be sure to read the guidance provided in Appendix C of the [PCE Guidance Document](#).*

[Return to main page](#)

(23) Federally funded projects³:

(i) That receive less than ~~\$5,000,000~~ **\$6,546,000** (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) of Federal funds; or

(ii) With a total estimated cost of not more than ~~\$30,000,000~~ **\$38,185,000*** (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) and Federal funds comprising less than 15 percent of the total estimated project cost.

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

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

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

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

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

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

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

³ *Published in Fiscal Year October 2022 (June 2021 to June 2022 CPI increase of 9.1%). Effective immediately, projects relying on the limited Federal assistance categorical exclusion must use the adjusted figures.*

https://www.environment.fhwa.dot.gov/legislation/authorizations/bil/bil_guidance.aspx

- [The \\$6,000,000 monetary limit is now \\$6,546,000](#)
- [The \\$35,000,000 monetary limit is now \\$38,185,000](#)

23 CFR 771.117(e): Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:

- (1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;
- (2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;
- (3) A finding of “adverse effect” to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act;
- (4) Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions;
- (5) Changes in access control; or
- (6) A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

[Return to main page](#)

**ATTACHMENT “A-2”
PROJECT TYPES LISTED IN 23 CFR 771.117(d)**

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

~~(1)-(3) [Reserved]~~ *Do not use for MnDOT Projects.

(4) Transportation corridor fringe parking facilities.

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

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

(7) Approvals for changes in access control.

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

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

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

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

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

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

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

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

[Return to main page](#)

Application of e-constraints for 23 CFR 771.117 (c)(26), (c)(27), and (c)(28)

This memo provides guidance for applying the e-constraints to projects defined in (c)(26), (c)(27) and (c)(28) of [23 CFR 771.117](#). If any of these e-constraints are exceeded, the project would proceed to be cited as (d)(13). Some of the e-constraints are self-explanatory and some are not clearly defined in regulations. This memo explains how MnDOT and FHWA, MN Division apply the e-constraints in Minnesota.

Application of (e)(1)

- (1) *An acquisition of more than a **minor amount of right-of-way** or that would result in **any residential or non-residential displacements**.*

“Minor amount of right-of-way” is defined in the PCE Guidance Document under the thresholds for *Right-of-Way* as:

- *Up to 5 acres per linear mile (absolute, not average), but total permanent not more than 25 acres plus total temporary not more than 40 acres, or*
- *Up to 10 acres (permanent plus temporary) for spot improvements (such as bridge replacement);*

“Residential or non-residential displacements”: For (c)(26), (c)(27) or (c)(28) projects, any residential or non-residential displacements would violate the e-constraint and be cited as (d)(13).

Application of (e)(2)

- (2) *An action that **needs a bridge permit from the U.S. Coast Guard**, or an **action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit** under section 404 of the Clean Water Act and/or section 10 of the River and Harbors Act of 1899;*

At this time there is no Section 404 Nationwide Permit applicable to linear transportation projects in Minnesota. The threshold reference to “Nationwide” is included so that, should USACE add one, the PCE Agreement would not need updating. Early coordination with USACE liaison may be needed to determine the level of permit required for the project.

Application of (e)(3)

- (3) *A finding of **“adverse effect” to historic properties** under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (**section 4(f)**) **except for actions resulting in de minimis impacts**, or a finding of **“may affect, likely to adversely affect” threatened or endangered species or critical habitat** under the Endangered Species Act;*

“Adverse effect” to historic properties –The MnDOT Office of Environmental Stewardship (OES), Cultural Resources Unit (CRU), issues the Section 106 effect determinations. This finding is issued in an Early Notification Memo (ENM) response letter.

Section 4(f) Use – If a (c)(26), (c)(27) or (c)(28) project requires a Section 4(f) Temporary Occupancy (which does not constitute as “use”) and/or De Minimis impact Determination, the project does *not* exceed the (e)(3) constraint and may proceed on the C-List Short Form.

“May affect, likely to adversely affect” threatened or endangered species or critical habitat – The MnDOT, OES, Wildlife Ecologist issues the Protected Species determinations. These determinations are issued in an ENM response letter.

Application of (e)(4)

(4) *Construction of temporary access or the closure of existing road, bridge, or ramps **that would result in major traffic disruptions**;*

When a project requires construction of temporary access or the closure of any existing road, bridge, or ramps *that results in* “major traffic disruptions”, the project would violate the (e)(4) constraint.

What constitutes as **“Major traffic disruptions”** is defined in the [PCE Guidance Document](#) under the thresholds for “Traffic Disruption”.

Construction of temporary access or the closure of existing road, bridge, or ramps:

- *A. Outside the boundaries of a metropolitan planning organization (MPO) when:*
 - *temporary access would last for more than one construction season¹; or*
 - *road, bridge or ramp closure would result in a detour that would last for more than one construction season; or*
 - *increase one-way, out-of-direction travel distance² greater than 5 miles in an urban area³ or 25 miles in a rural area.*
- *B. Within the boundaries of a MPO and when:*
 - *The project requires a Level 1 traffic management plan (TMP) per the Minnesota Work Zone Safety and Mobility Policy (or subsequent replacement policy)⁴.*
 - *If the Level 1 TMP is undefined and,*
 - *temporary access would last for more than one construction season; or*

¹ If the detour ends at the end of the regular construction season (i.e. spring, summer, fall) but restarts at the beginning of next spring, that would not cross the threshold. If the detour extends into winter, the threshold would be crossed.

² The length of the detour is measured from the start to the end of the proposed detour route, minus the length of the roadway/project that requires the detour. For projects that require more than one detour (for example, when constructing a roundabout and two separate detours are needed for two separate groups of users), the total detour would be the sum of the proposed detour segments.

³ A population of 5,000 or greater is what distinguishes ‘urban’ vs. ‘rural’ for purposes of the detour length when the project is outside the boundaries of an MPO. The definition/threshold is not based upon cross section.

⁴ The Minnesota Work Zone Safety and Mobility Policy is currently being revised. Until the revised policy is published, the following applies: **1) Projects in District 5 (Metro) MPO will be assumed to require a Level 1 TMP if they are on interstate highways or other freeways with design year ADT of 35,000 or greater and will involve more than 30 days lane closure; 2) Projects in non-Metro District MPOs will be assumed to require a Level 1 TMP if they would require a full TMP under the current Work Zone Safety and Mobility Policy.** Projects that require less than a Level 1 (i.e. Level 2, 3, or 4) TMP per the policy are not considered a “major traffic disruption” and can be processed as a PCE.

- road, bridge or ramp closure would result in a detour that would last for more than one construction season; or
- increase one-way, out-of-direction travel distance greater than 5 miles in an urban area or 25 miles in a rural area.

Application of (e)(5)

(5) *Changes in access control;*

A change in access would violate the (e)(5) constraint if it changes the use of the property (e.g., farm severance, impacts to on-site parking, storage or internal circulation) or negatively affects the functionality of the site for its existing use and should be cited as (d)(13).

Application of (e)(6)

(6) *A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle, and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.*

“Encroachment” is defined as an action within the limits of the floodplain. For additional information refer to the [HPDP Floodplain guidance](#).⁵ **“Functionally dependent use”** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water (e.g., bridges and piers) ([44 CFR 9.4](#)).

If a proposed project is located within the limits of a floodplain (adjacent to or within) and:

- A. Involves only **“functionally dependent uses”** (“water-dependent uses” that have to be located close to water to serve their purpose, like bridge(s), culverts or wetland mitigation), then explain on the PCE form how the project does not violate the (e)(6) constraint and proceed as a (c)(26), (c)(27) or (c)(28); or
- B. Involves actions that facilitate the use of the floodplain for **open space** (projects that do not lead to additional base floodplain development and are compatible with the restoration and preservation of natural and beneficial floodplain values, for example recreational trails, and bicycle, or pedestrian paths) then explain on the PCE form how the project does not violate the (e)(6) constraint and proceed as a (c)(26), (c)(27) or (c)(28); or
- C. Involves actions other than those described in A. and B., (e.g., other project activities, in addition to bridge/culvert work, such as shoulder widening), then the project violates the (e)(6) constraint and should be cited as (d)(13). If you have questions, please contact OES.

Proximity to Wild and Scenic Rivers: At the time of the 2020 PCE PA, the St. Croix River is the only river in Minnesota that meets this definition. The National Park Service (NPS) website includes [maps of the Riverway boundary](#).

Any project located across or adjacent to the boundaries of the St. Croix River would violate the (e)(6) constraint and the project be cited as (d)(13).

⁵ Note: a project that encroaches the floodplain is required to conduct a Floodplain Assessment in order to determine the significance of the encroachment. If the Floodplain Assessment demonstrates a significant floodplain impact, then the project cannot be processed as a Categorical Exclusion, regardless of (c) or (d) citation.