



U.S. Department
of Transportation
**Federal Highway
Administration**

Minnesota Division

February 10, 2020

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Margaret Anderson Kelliher
Commissioner of Transportation
Department of Transportation
MS 120, Transportation Building
St. Paul, Minnesota 55155

Re: Programmatic Agreement for Categorical Exclusions
In the Minnesota Federal-Aid Highway Program

Dear Commissioner Margaret Anderson Kelliher:

Enclosed find a copy of the executed Programmatic Agreement (PA) between the Federal Highway Administration (FHWA) and Minnesota Department of Transportation (MnDOT) for the processing of Categorical Exclusions (CE), signed by Division Administrator Meyer on February 6, 2020.

The enclosed PA includes the following:

- 1) Declarations of MnDOT's responsibilities for making CE determinations on behalf of the FHWA, and achieving aspects of quality control and quality assurance;
- 2) Provisions for both MnDOT's and FHWA's monitoring of compliance with the terms of the agreement and for MnDOT's execution of any needed corrective action.
- 3) Terms for amendment, termination, and duration.

We appreciate the Minnesota Department of Transportation Office of Environmental Stewardship's (OES) assistance in drafting this agreement and look forward to its implementation in May 2020. We will continue to work with MnDOT OES and MnDOT Office of State-Aid for Local Transportation to complete the update to Programmatic Categorical Exclusion Decision-Making Guide and delivering the tasks in the implementation plan. The guide will address the commonly held understanding of the PA terms.

Please contact me at phil.forst@dot.gov or (651) 291-6110 if you have any questions.

Philip Forst
Environmental Specialist

Enclosure

PJF

cc: 2 MnDOT

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PROGRAMMATIC AGREEMENT

BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, MINNESOTA DIVISION AND THE MINNESOTA DEPARTMENT OF TRANSPORTATION REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS

THIS PROGRAMMATIC AGREEMENT (“Agreement”), made and entered into between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of MINNESOTA, acting by and through its DEPARTMENT OF TRANSPORTATION (“MnDOT”) hereby provides as follows:

WITNESSETH:

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

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

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

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

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

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

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

Now, therefore, the FHWA and MnDOT enter into this Agreement for the processing of CEs.

I. PARTIES

The Parties to this Agreement are the Federal Highway Administration (“FHWA”) and the Minnesota Department of Transportation (“MnDOT”).

II. PURPOSE

The purpose of this Agreement is to authorize MnDOT to carry out signature action on behalf of FHWA for a project that qualifies for a CE specifically listed in 23 CFR 771.117(c) or (d) (listed in Attachments A-1 and A-2, respectively, of this Agreement).

III. AUTHORITIES

This Agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*
- B. Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, 126 Stat. 405, Sec. 1318(d) (July 6, 2012)
- C. Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)
- D. 40 CFR 1500 - 1508
- E. USDOT Order 5610.1C
- F. 23 CFR 771.117

IV. RESPONSIBILITIES

A. MnDOT is responsible for:

1. Ensuring the following process is completed for each project that qualifies for a CE:
 - For actions qualifying for a CE established in 23 CFR 771.117(c) (listed in Attachment A-1), MnDOT may make a CE approval on behalf of FHWA. For actions qualifying for a CE established in 23 CFR 771.117(d) (listed in Attachment A-2), that do not exceed the thresholds in Attachment B, MnDOT may make a CE approval on behalf of FHWA. MnDOT will identify the applicable listed CE, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No separate review or approval of the CE by FHWA is required.
 - MnDOT may not approve actions listed in Attachment A-2 (CEs established in 23 CFR 771.117(d)) that exceed the thresholds listed in Attachment B. These actions require FHWA review and approval.
 - MnDOT may not approve actions that are not specifically listed as CEs in 23 CFR 771.117(c) or 23 CFR 771.117(d), but that meet the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a). These actions require FHWA review and approval.

2. Consulting with FHWA for actions that involve or may involve unusual circumstances (23 CFR § 771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. MnDOT may decide, or FHWA may require, additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.
3. Meeting applicable documentation requirements in Section V for MnDOT CE approvals on FHWA's behalf, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality, monitoring, and performance requirements in Section VII.
4. Relying only upon employees directly employed by the MnDOT to make CE approvals under this Agreement. MnDOT may not delegate its responsibility for CE approvals or certifications to third parties (i.e., consultants, local government staff, and other State agency staff).

B. FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to MnDOT, as requested.
2. When there is tribal interest, as defined in the companion Programmatic Categorical Exclusion Decision-Making Guide. FHWA becomes the owner of the environmental document, which is signed by the FHWA Minnesota Division office.
3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

V. DOCUMENTATION OF MNDOT CE APPROVALS

- A. MnDOT shall ensure that it fulfills the following responsibilities for documenting the project-specific determinations made:
1. For actions listed in 23 CFR 771.117(c) (Attachment A-1), MnDOT shall identify the applicable citation (e.g., 23 CFR 771.117(c) (2)), ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply that would make the CE approval inappropriate, address all other environmental requirements, and complete the appropriate documentation of the review with a MnDOT signature evidencing approval.
 2. For actions listed in 23 CFR 771.117(d) (Attachment A-2) that do not exceed the thresholds listed in Attachment B, MnDOT shall identify the applicable citation (e.g., 23 CFR 771.117(d) (4)), ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply that would make the CE approval inappropriate, address all other environmental requirements, and complete the appropriate documentation of the review with a MnDOT signature evidencing approval.

3. For actions listed in 23 CFR 771.117 (c) and 23 CFR 771.117 (d), an environmental justice analysis and the appropriate documentation of the analysis shall be completed when there is a relocation of any residence or business.
- B. MnDOT shall maintain a project record for CE approvals it makes on FHWA's behalf and each CE submitted to FHWA for approval. This record shall include at a minimum:
1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
 2. A summary of public involvement complying with the requirements of FHWA-approved public involvement policy;
 3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
 4. The name and title of the document approver and the date of MnDOT's approval or FHWA's final approval;
 5. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary); and
 6. A list of environmental commitments will be part of each CE approved on FHWA's behalf.
- C. MnDOT shall provide any electronic or paper project records maintained by MnDOT to FHWA at their request. MnDOT shall retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction, defined as final voucher processed for fiscal close-out by FHWA. This 3-year retention provision does not relieve MnDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

VI. NEPA APPROVALS AND RE-EVALUATIONS

- A. MnDOT's CE approvals and submission of CEs to FHWA for approval may only be made by officers or offices specifically identified below:
1. Approval of 23 CFR 771.117(c) (Attachment A-1) CEs, and 23 CFR 771.117(d) (Attachment A-2) CEs that do not exceed the thresholds listed in Attachment B is delegated to District Engineers, State Aid Project Development Engineers or State Aid Engineer. District Project Managers, District State Aid Engineers, and Local Agency Engineers recommend, but do not approve, the CEs.
 2. Approval of the formal submission of CEs to FHWA for approval may only be done by the MnDOT Chief Environmental Officer, State Aid Project Development Engineer, or State Aid Engineer.

- B. In accordance with 23 CFR 771.129(c), after an action has been approved as a CE, MnDOT shall consult with FHWA prior to requesting any major approvals or grants, and as necessary, prepare additional documentation to ensure that determinations are still valid, and whether the project is still eligible to be processed by MnDOT under this Agreement.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. MnDOT Quality Control & Quality Assurance

- 1. MnDOT shall carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE submissions to FHWA for approval are made in accordance with applicable law and this Agreement. These activities will include, but are not limited to: maintaining up-to-date guidance, providing on-going staff training, conducting periodic internal reviews of categorical exclusion documentation approved under this Agreement, providing feedback to document preparers, and implementing corrective action for identified deficiencies.

B. MnDOT Performance Monitoring and Reporting

- 1. The FHWA and MnDOT agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.
- 2. MnDOT shall maintain a system to track CE actions that MnDOT processes under this Agreement.
- 3. Beginning two years after approval of this Agreement, and every two years thereafter, MnDOT shall submit to FHWA (electronically or hard copy) a report summarizing its performance under this Agreement. The report shall combine the data from both the Trunk Highway program and the Local Federal Aid program. MnDOT's Office of Environmental Stewardship (OES) shall be responsible for the Trunk Highway PCE performance review and MnDOT's State Aid for Local Transportation (SALT) Office shall be responsible for the Local Federal Aid PCE program review. FHWA has the option to participate in the review.
- 4. For the applicable program, the report will include a list of CE actions processed under this Agreement within the designated two year reporting period, include the results of MnDOT's review of the CE approval documentation for a random sample of CE actions statewide, describe MnDOT's monitoring activities during the reporting period, and identify any areas where improvement is needed and what measures MnDOT is taking to implement those improvements. The number of CE actions to be reviewed, the content of the review, and the format of the report will be agreed upon with FHWA. The report will also include a description of actions taken by MnDOT as part of its quality control efforts under Section VII(a).
- 5. The format of the list of CE actions processed under this Agreement will be agreed upon with FHWA within 60 days of the execution of this Agreement.

C. FHWA Oversight and Monitoring

- 1. Monitoring by FHWA will evaluate MnDOT's technical competency, organizational capacity, and performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of MnDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of MnDOT staff and consultants, and the effectiveness of MnDOT's administration of its internal CE approvals.

2. FHWA will conduct one or more program reviews as part of its oversight activities, during the term of this Agreement. MnDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. MnDOT shall draft the corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by MnDOT shall be considered at the time this Agreement is considered for renewal.
3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to MnDOT's performance under this Agreement. The FHWA may require MnDOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
4. MnDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

VIII. AMENDMENTS

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

IX. TERM, RENEWAL, AND TERMINATION

- A. This Agreement shall have a term of five (5) years, from the effective on the date of this agreement. MnDOT shall post and maintain an executed copy of this Agreement on its website, available to the public. MnDOT and FHWA will meet six (6) months prior to the expiration to discuss the performance of this Agreement and necessary changes. Any signatory may request a meeting to discuss the performance of the Agreement and necessary changes.
- B. This Agreement is renewable for additional five (5) year terms if MnDOT requests renewal and FHWA determines that MnDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- C. Either party may terminate this Agreement at any time only by giving at least 30 days written notice to the other party.
- D. Expiration or termination of this Agreement shall mean that MnDOT is not able to make CE approvals on FHWA's behalf.


X. RELATED DOCUMENTS

MnDOT and FHWA will collaboratively produce a Programmatic Categorical Exclusion Decision-Making Guide prior to delivering training or the effective date of this Agreement, whichever comes first. This guide will represent the commonly held understanding of the terms of this Agreement with FHWA concurrence.

XI. EFFECTIVE DATE

This Agreement shall be effective starting May 1, 2020.

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation.



Wendall L. Meyer
Division Administrator
Federal Highway Administration, Minnesota Division

2/6/2020

Date



Margaret Anderson Kelliher
Commissioner
Minnesota Department of Transportation

2/3/2020

Date

Attachment A-1: CEs listed in 23 CFR 771.117(c), including (c)(26),(27), and (28) constraints listed in 23 CFR 771.117(e)

Attachment A-2: CEs listed in 23 CFR 771.117(d)

Attachment B: Environmental Thresholds

**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.
- (5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
- (6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- (7) Landscaping.
- (8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- (9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):
 - (i) Emergency repairs under 23 U.S.C. 125; and
 - (ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:
 - (A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
 - (B) Is commenced within a 2-year period beginning on the date of the declaration.

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

(23) Federally funded projects¹:

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

(ii) With a total estimated cost of not more than \$30,000,000* (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov 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 CE.

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

¹ The dollar amount is adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see the Programmatic Categorical Exclusion Decision-Making Guide for the most up to date dollar figure.

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.

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]

(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.

**PROGRAMMATIC CATEGORICAL EXCLUSION AGREEMENT
ATTACHMENT “B”
THRESHOLDS**

Tribal:

- Consultation with the tribe has not identified any tribal interests, as defined by the Programmatic Categorical Exclusion Decision-Making Guide.

Section 4(f):

- The project does not use Section 4(f) lands or properties; or
- The project is an independent bikeway/walkway covered by the FHWA Section 4(f) Statement and Determination for Independent Bikeways or Walkways (Negative Declaration statement) dated May 23, 1977; and/or
- The project meets temporary occupancy conditions that do not constitute a Section 4(f) use per 23 CFR 774.13(d); or
- The project meets the conditions of a *de minimis* impact finding.

Section 6(f):

- The project requires no acquisition of real property interest subject to Section 6(f) or encumbered by similar public-use funding that restricts conversion to other uses.

Historic/Archeological:

- The provisions of the National Historic Preservation Act have been satisfied by a Section 106 finding of *no historic properties affected*; or,
- For NRHP-listed or eligible properties the provisions of the National Historic Preservation Act have been satisfied by a Section 106 finding of *no adverse effect* per the current Programmatic Agreement (PA) among FHWA, the Minnesota State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP), the United States Army Corps of Engineers (USACE) and MnDOT; and
- No Section 106 Agreement or known post-NEPA plan review by CRU and the MnSHPO or a Tribal Historic Preservation Office (THPO) is deemed appropriate by MnDOT and FHWA.
- The undertaking has not been formally elevated to dispute resolution with the Advisory Council on Historic Preservation per 36 CFR 800.7

Threatened and Endangered Species:

- The provisions of the Endangered Species Act (ESA) have been satisfied by a Section 7 determination of *no effect* to threatened or endangered species or critical habitat; or

- The provisions of the ESA have been satisfied by a Section 7 determination, per written correspondence with the USFWS, of *may affect, not likely to adversely affect* threatened or endangered species or critical habitat, or *may affect but will not cause prohibited take* of the Northern Long-eared Bat (NLEB); or
- The provisions of the ESA have been satisfied by a Section 7 determination of *no jeopardy* for any species proposed for listing under the ESA; or
- The scope of work and impacts fall within the applicability criteria of a USFWS-issued species-specific range wide programmatic agreement (PA) that outlines mitigation (e.g., avoidance and minimization measures - AMM). All terms and mitigation required by the USFWS-issued PA plus any measures deemed prudent by the MnDOT Wildlife Ecologist shall be incorporated into the scope of work as environmental commitments; and
- Tree clearing, if required, must be completed during the winter months (November 1 to March 31, inclusive), unless the MnDOT Wildlife Ecologist determines the area is unsuitable habitat.

Right of Way:

- The project does not require any new right of way, permanent easement, or temporary easement; or
- The project requires only minor amounts of new right of way, permanent easement or temporary easement, defined 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); and
- The project requires no more than four residential relocations; and
- The project requires no more than one business relocation ; and
- Property acquisition or change in access to property required for the project will not affect the use of the property; and
- An environmental justice analysis has been completed when there are relocations of any residences or businesses.

Highway Access Change:

- The project does not add or remove a ramp on an existing expressway or freeway interchange; and
- The project does not add an interchange to an expressway or freeway.

Traffic Disruption:

- The project does not involve construction of temporary access or closure of an existing road, bridge or ramp; or
- The project does involve construction of temporary access or closure of an existing road, bridge or ramp, but the following conditions are met:
 - For projects outside of the boundaries of a metropolitan planning organization (MPO), temporary access would not last for more than one construction season and road, bridge or ramp closure would not 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.
 - For projects within the boundaries of an MPO, the project would not require a Level 1 traffic management plan (TMP) per the Minnesota Work Zone Safety and Mobility Policy (or subsequent replacement policy). If the Level 1 traffic management plan is undefined, then temporary access would not last for more than one construction season and road, bridge or ramp closure would not 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.

Contamination Hazards:

- The project does not have a high risk of causing direct or indirect impacts to human health or sensitive environmental resources due to encountering contamination or hazardous materials.

Farmland:

- The Farmland Protection Policy Act (FPPA) does not apply; or
- Form AD-1006 or Form NRCS-CPA-106 has been completed and provided to NRCS.

Section 404:

- The project does not involve placement of fill into Waters of the U.S.; or
- The project is anticipated be covered by a USACE Section 404 Nationwide or Regional General Permit; and
- The project is anticipated to have no more than 10 acres of permanent wetland impacts.

Floodplains:

- The project does not encroach into a floodplain; or
- Floodplain encroachment will not have a significant impact, as defined in 23 CFR 650.105 and E.O. 11988 and documented by a Floodplain Assessment including Hydraulic Analysis and Risk Assessment.

Wetlands:

- The project does not impact or encroach into wetlands; or

- Wetland encroachment(s) are all of the following:
 - not greater than 10 acres of permanent impacts, and
 - not significant, as documented by a Two-Part Wetland Finding, demonstrating (1) no practical avoidance and (2) all measures to minimize harm are incorporated when avoidance is not practical.

Coast Guard Permit:

- The project does not require a Coast Guard bridge permit.

Sole Source Aquifer:

- No portion of the project is located within Crow Wing, Aitkin, Mille Lacs, or Morrison Counties; or
- Portions of the project are within Crow Wing, Aitkin, Mille Lacs, or Morrison Counties but the entire project is located outside of the Sole Source Aquifer (SSA) project review area designated by the US Environmental Protection Agency (USEPA) for any Minnesota SSA; or
- The project in part or in whole, is within the project review area designated by the USEPA for a Minnesota SSA but does not require a detailed groundwater impact assessment to be submitted to USEPA for review.

Wild and Scenic Rivers:

- The project does not require construction in, across, or adjacent to the boundaries a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers; or
- The project does not require construction adjacent to the boundaries a river designated as a component of, or proposed for inclusion in, the National System of Wild and scenic Rivers; and the project would take place entirely within the existing operational right-of-way; or
- The project requires work within the boundaries of a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers, but the scope of work (temporary and permanent) is within existing operational-right-of-way and is limited to maintaining the existing roadway profile and prism and will not induce an adverse effect to the Wild and Scenic River.

Noise:

- The project is not a Type I noise project as defined by 23 CFR 772 (e.g., construction of a highway on a new location which significantly changes either the horizontal or vertical alignment or changes the number of through-traffic lanes). In Minnesota, if a project is not a Type I noise project, then it is a Type III project; Or
- The project is a Type I project as defined by 23 CFR 772, but either has no receptors or no impacted receptors.

Air Quality:

- The project conforms to the state implementation plan; and
- The project does not add significant capacity to urban highways with design year average daily traffic of 140,000 or more (i.e., does not need a quantitative mobile source air toxics [MSAT] analysis).

International: The project is not an international project.

Controversy: The project is not anticipated to be controversial.