

Trunk Highway Environmental Document Decision Tree

2022-02-03

Purpose: The purpose of this document is to give guidance for selecting the appropriate environmental documentation for a project.

When to use the Decision Tree: Use the Decision Tree when you are:

- Scoping a project,
- Creating the P6 project schedule, or
- Discover environmental impacts that may require changing the type of environmental document you planned to write.

Who should use the Decision Tree? Project managers and those involved in choosing the appropriate environmental documentation for a project.

How do I confirm and document my decision regarding the appropriate environmental document?

Use the Early Notification Memo (ENM) to state the anticipated environmental document type based on the Decision Tree. The Decision Tree is largely a general rule-of-thumb based upon a combination of regulation, agreements in place, and past experience. The lead federal agency has discretion on the appropriate class of NEPA document on a project-by-project basis.

Where do I get a copy of the Decision Tree? The Decision Tree is posted on MnDOT's [TPDP website](#).

Note: the phrase Categorical Exclusion is abbreviated as CatEx and CE in this document. CatEx is the common abbreviation used in MnDOT. CE is the abbreviation used in federal regulation to comply with the National.

Is FHWA involved in the Project?

1. Is the project a FHWA undertaking or is it possible that it will become a FHWA undertaking?

- If yes, go to Step 2.
- If no, skip to Step 11 to assess the Minnesota Environmental (MEPA) Policy Act Requirements.


What is an FHWA undertaking?

An FHWA undertaking is a project, activity, or program meeting one of the following:

- funded in whole or in part under the direct or indirect jurisdiction of FHWA, including those carried out on behalf of FHWA;
- carried out with FHWA financial assistance; or
- requiring a FHWA permit, license or approval. This includes situations where an approval is taken on behalf of FHWA by MnDOT (e.g. Interstate Access Request) via delegation OR FHWA must take an approval action on an IAR.

National Environmental Policy Act (NEPA)- Federal EIS?

2. Is the project similar to examples below of actions that require an EIS under 23 CFR 771.115(a), or exceed a mandatory EIS threshold at Minnesota Rules 4410.4400?

- If yes, it is likely that the required document is an EIS, contact OES and FHWA to confirm. In the ENM, under General Project Information, Environmental Document, mark according to OES direction. A federal EIS will meet state EIS requirements. **END-consult OES and FHWA.**
- If no, go to step 3. 

What are the examples of actions that require an EIS under 23 CFR 771.115(a)?

Class I (EISs). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

- (1) A new controlled access freeway.
- (2) A highway project of four or more lanes on a new location.
- (3) Construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way.
- (4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

National Environmental Policy Act (NEPA)- Federal Categorical Exclusion?

For more detail about determining if the type of CatEx document, refer to the [Categorical Exclusion Flow Chart](#) and [2020 Programmatic CATEX Agreement](#) between FHWA and MnDOT.

3. *Is there tribal interest?*

- If yes, the project needs to involve FHWA and should be processed as a non-programmatic categorical exclusion using the [long form](#).
- If no, then go to step 4.



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 (non-PCE) and be signed by the FHWA 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.

4. *Does the project have unusual circumstances under 23 CFR771.117(b)?*

- If yes, or if the impact significance is unclear, an EA or EIS may be the appropriate class of NEPA document; consult with OES and FHWA. END-consult OES and FHWA.
- If no, Go to Step 5



What are unusual circumstances under 23 CFR 771.117(b)?

Any action which normally would be classified as a CE but could involve unusual circumstances will require the FHWA, 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) of the DOT Act 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.

[See Appendix D – “Significance” of Environmental Effects under NEPA for considerations in determining “significance”.](#)

While not “unusual circumstances” as defined by 23 CFR 771.117(b), there are occasions when an FHWA undertaking also requires another federal agency to issue a NEPA decision document.

Examples include Forest Service involvement in a federally-funded MnDOT project through Forest Service lands or Federal Aviation Administration involvement in a federally-funded MnDOT project in an airport area. In instances such as these, it is recommended that project manager contact OES to discuss options for best addressing NEPA requirements. (Note that this recommendation is not meant for projects where the involvement of other federal agencies is limited to the typical Federal permits and approvals (e.g. Section 404, Section 10, Section 6(f), Section 7) and related coordination.)

Federal regulations require formal public review of only EIS (Class I) and EA (Class III) document. However, public involvement is tailored to the needs of every project, regardless of NEPA class of action. These public involvement processes should be well documented.

5. Does the project fall under [23 CFR 771.117\(c\)](#)?

- If yes, go to Step 6.
- If no, go to Step 7.



23 CFR 771 prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA).

23 CFR 771.117(a) describes FHWA categorical exclusions. Categorical exclusions (CEs) are actions, based on past experience with similar actions that do not involve significant environmental impacts. They are actions which: 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.

WHAT IS 23 CFR 771.117(c)?

23 CFR 771.117(c) is a regulation section of the Federal environmental regulation within the Code of Federal Regulations (CFR).

The actions listed under 23 CFR 771.117(c) are commonly referred to as 'c-list CEs'.

23 CFR 771.117(c) lists actions that normally do not require any further NEPA approvals by the FHWA.

Documentation of the Categorical Exclusion is still required by, completing as a minimum, a short-form CE.

An action in the (c)-list merely means that the actions listed tend to be CEs. An EA or EIS is still possible for the circumstances of a project. All laws (wetlands, section 4f, section 106, endangered species act, etc.) still apply and must be fulfilled by the process that includes producing a NEPA document. All state and federal agencies retain their approval authority and are responsible for their respective approval actions (not just permits).

6. Does the project meet the citation [c\(23\)](#)?


- If yes, the project qualifies as a Programmatic CatEx document, and should be documented using the [C-List Short Form](#). Next- go to step 11 to determine Minnesota Environmental Policy Act (MEPA) process requirements.
- If no, the go to Step 7.

7. Does the project meet the citation [c\(26\)](#), [c\(27\)](#), or [c\(28\)](#)?

- If yes, go to Step 8.
- If no, the project qualifies as a Programmatic CatEx document, and should be documented using the [C-List Short Form](#).



8. Does the project violate any of the [e-constraints listed in 23 CFR 771.117\(e\)](#)?

- If yes, the appropriate citation is d(13) and go to Step 9. 
- If no, the project qualifies as a Programmatic CatEx document, and should be documented using the using [C-List Short Form](#).
- Next - go to step 11 to determine Minnesota Environmental Policy Act (MEPA) process requirements.

What is 23 CFR 771.117(e)?

23 CFR 771.117(e) is a regulation section of the Federal environmental regulation within the Code of Federal Regulations (CFR).

Actions listed under 23 CFR 771.117(e) are commonly referred to as 'e-constraints'.

Actions listed in (c)(26), (c)(27), and (c)(28) that do not meet the constraints in [paragraph \(e\)](#) of 23 CFR 771.117 cannot be processed as a c-list CE. These projects must be cited under (d)(13) and processed as a d-list CE (go to step 8).

9. Does the project fall under [23 CFR 117\(d\)](#)?

- If yes, go to Step 10.
- If no, END – consult with OES and FHWA.

What is 23 CFR 771.117(d)?

23 CFR 771.117(d) is a regulation section of the Federal environmental regulation within the Code of Federal Regulations (CFR).

Actions listed under 23 CFR 771.117(d) are commonly referred to as 'd-list CEs'.

If a project is not a CE under 23 CFR 771.117(c), it may be processed as a CE if it is an action listed under 23 CFR 771.117(d) and shown to meet the CE criteria through documentation, which is reviewed and approved by FHWA, **UNLESS** it is listed in the *Programmatic Categorical Exclusion Agreement between MnDOT and FHWA* (the *Programmatic Agreement* test is in step 8, so first check to see if the project is listed in CFR 771.117(d), then go to step 8).

10. Does the project exceed any threshold in [Attachment B](#) of the 2020 Programmatic CATEX Agreement Between FHWA and MnDOT?

Refer to the [Programmatic Categorical Exclusion \(PCE\) Guidance Document](#) for detail on applying the thresholds.

- If yes, the project likely requires a Non-Programmatic (Documented) CatEx document using the [Long Form](#). Contact OES to confirm FHWA approval.
- If No, the project qualifies as a Programmatic CatEx document and should be documented using the [D-List Short Form](#).
 - If there is a legitimate reason, a PCE can be documented using the long form. However not all of the thresholds are included on the long form. These must be addressed when using the long form to document a PCE. Appropriate documentation must be attached to comply with the 2020 PCE Programmatic Agreement.
 - A Long Form is also appropriate on a project that requires detailed information to explain SEE impacts, mitigation, or tell the story of balancing competing impacts (e.g. Section 106 vs. R/W) to arrive at preferred alternative.
- Next Step: In either case, go to step 11 to determine Minnesota Environmental Policy Act (MEPA) process requirements.

What is the [2020 Programmatic CATEX Agreement Between FHWA and MnDOT](#)?

This agreement allows MnDOT to act in place of the FHWA in determining that federal environmental requirements are met on the types of categorical exclusion actions identified in the agreement.

What is Attachment B?

Attachment B is attached to the *Programmatic Agreement* and lists environmental conditions and criteria that must be met before MnDOT can act for FHWA. FHWA concurred, on a programmatic basis, with MnDOT's determination that those types of actions satisfying conditions and criteria in Attachment "B" will not result in significant environmental impacts, either individually or cumulatively, and are therefore categorical exclusions and satisfy the requirements of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

What is the [Programmatic Categorical Exclusion \(PCE\) Guidance Document](#)?

The guide is a companion to the Environmental Document Decision Tree and provides additional detail for the steps that project staff can follow to determine (1) if a project can be processed as PCE and (2) how to document the PCE.

Minnesota Environmental Policy Act (MEPA)- State Exemption?

11. Is the project exempt according to Minn. Rule [4410.4600](#)?

- If yes, complete an ENM Summary Table memo and attach all of the ENM review responses. Mark the ENM documentation section accordingly. END

The ENM Summary Table is designed to be used for state funded only projects and is intended to document that no EAW is needed. If a NEPA document is prepared for the project, the ENM Summary need not be completed.

- If no, go to Step 12.



What is an exemption according to Minn. Rule [4410.4600](#)?


Exempt projects do not require state environmental review documents. Common exemptions for highway projects are listed below:

- Subpart 2 – Standard exemptions
- Subpart 14 – Highway projects
 - A. Highway safety improvement projects.
 - B. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles.
 - C. Modernization of an existing roadway or bridge by resurfacing, restoration, or rehabilitation that may involve acquiring minimal amounts of right-of-way.
 - D. Roadway landscaping or construction of bicycle and pedestrian lanes, paths, and facilities within an existing right-of-way.
 - E. Any stream diversion, realignment, or channelization within the right-of-way of an existing public roadway associated with bridge or culvert replacement.
 - F. Reconstruction or modification of an existing bridge structure on essentially the same alignment or location that may involve acquiring minimal amounts of right-of-way.
- Subpart 26 – Governmental activities

Check if other exemptions apply to your project at Minn. Rule [4410.4600](#).

Minnesota Environmental Policy Act (MEPA)- State EIS?

12. Does the project likely exceed a threshold for an EIS under Minn. Rule [4410.4400](#)?


- If yes, END- consult with OES to prepare an EIS. In the ENM, under General Project Information, Environmental Document, mark “EIS” per OES direction.
- If no, go to step 13. 

Minn. Rule 4410.4400 has 28 subparts listing various types of projects, dealing with items from nuclear fuels and nuclear waste to genetically engineered wild rice. Highway projects requiring a mandatory state EIS are listed under subpart 16.

Subp. 16. Highway projects. For construction of a road on a new location which is four or more lanes in width and two or more miles in length, the DOT or local government unit is the RGU.

State EAW?

13. Does the project likely exceed a threshold for a mandatory EAW under Minn. Rule [4410.4300](#)?

- If yes, END - consult with OES to prepare an EAW. In the ENM, under General Project Information, Environmental Document, mark “EAW”.
- If no, go to step 14. 

EAWs for federal projects are most often done as part of a combined EA/EAW however there are circumstances where a project requires a federal CatEx document and a state EAW.

Minn. Rule 4410.4300 has 37 subparts listing various types of projects, dealing with items from nuclear fuels and nuclear waste to genetically engineered wild rice. Highway projects requiring a mandatory state EAW are listed under subpart 22.

[SEE Appendix C -- Minn. Rule 4410.4300 FOR A LIST OF MANDATORY EAW THRESHOLDS MOST COMMONLY AFFECTING HIGHWAY PROJECTS.](#)

Subpart 1. Threshold test. An **EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 37**, unless the project meets or exceeds any thresholds of part [4410.4400](#), in which case an EIS must be prepared.

Minn. Rule 4410.4300 has 37 subparts listing various types of projects, dealing with items from nuclear fuels and nuclear waste to recreational trails. Highway projects requiring a mandatory state EAW are listed under subpart 22.

Subp. 22. Highway projects. Items A to C designate the RGU for the type of project listed:

- A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or local governmental unit is the RGU.
- B. For construction of additional through lanes or passing lanes on an existing road for a length of two or more miles, exclusive of auxiliary lanes, the DOT or local governmental unit is the RGU.
- C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local government unit is the RGU.

Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part and part 4410.4400.

Under 4410.0200, subp. 9c, two projects are “**connected actions**” if:

- A. One project would directly induce the other;
- B. One is a prerequisite for the other and the prerequisite project is not justified by itself; or
- C. Neither project is justified by itself.

Under 4410.0200, subp. 60, “**phased actions**” mean two or more projects to be undertaken by the same proposer that:

- A. Will have environmental effects on the same geographical area; and
- B. Are substantially certain to be undertaken sequentially over a limited period of time.

The “3-year look back rule” is an extension of the phased action concept found in the second paragraph under 4410.4300, subp. 1:

If the proposed project is an **expansion or additional stage of an existing project**, the cumulative total of the proposed project and any existing stages or components of the existing project must be included when determining if a threshold is met or exceeded if construction was begun within three years before the date of application for a permit or approval from a governmental unit for the expansion or additional stage but after April 21, 1997, except that any existing stage or component that was reviewed under a previously completed EAW or EIS need not be included.

14. Does the project approach an EAW threshold in Minn. Rule 4410.4300 for an EAW or have circumstances that may warrant a voluntary EAW?

- If yes, consult with OES to decide whether to prepare a voluntary EAW or an ENM Summary Table. In the ENM, under General Project Information, Environmental Document, mark according to OES direction.
- If no, complete an [ENM Summary Table](#). In the ENM, under General Project Information, Environmental Document, if no CatEx, EAW, EA/EAW or EIS, mark "None".

Unless specifically exempted by Minn. Rule 4410.4600, a discretionary or voluntary EAW can be done for projects that **may** have the potential for significant environmental effects, individually or cumulatively. The following examples illustrate circumstances that warrant further discussion with OES:

- When a new road or an additional lane approaches the mandatory threshold and there is known potential for controversy on environmental grounds.
- Projects that separately do not exceed a mandatory threshold for an EAW but are geographically located near each other and together, could potentially create a significant impact. One of the projects may be proposed by a local governmental unit.
- When there is strong opposition from organized groups and/or agencies.

Appendix A – C-List Citations- 23 CFR 771.117(c)

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(c) The following actions meet the criteria for CEs in the CEQ regulations (40 CFR 1508.4) and §771.117(a) and normally do not require any further NEPA approvals by the FHWA.

This text was taken from 23 CFR 771.117(c) at: <http://www.ecfr.gov>

- (1) Activities which 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 which 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 PCE or Non-PCE Projects****
- (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 which 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 refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way. **** Use Caution when using c(22). See the definition of Operational ROW FAQ in the PCE Guidance Document ****

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(23) Federally-funded projects¹:

- (i) That receive less than ~~\$5,000,000~~ (see most recent monetary limits below) (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~~* (see most recent monetary limits below) (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.

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(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.

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. Based on the formula required by Section 1314 of the Fixing America's Surface Transportation (FAST) Act, the following adjustments for Categorical Exclusions for Projects of Limited Federal Assistance for the current year are as follows:

- The \$6,000,000 monetary limit is now \$6,546,000.
- The \$35,000,000 monetary limit is now \$38,185,000.

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

- (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 which 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.

Appendix B- D-List Citations 23 CFR 771.117 (d)

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(d) Additional actions which 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 shall submit documentation which 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 which 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.

(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:

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(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;

(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.

Subparts for Mandatory EAW Thresholds Most Commonly Affecting MnDOT Highway Projects

Subp. 22 Highway Projects.

- A. Construction of a road on a new location over one mile in length that will function as a collector roadway.
- B. Construction of additional through lanes or passing lanes on an existing road for a length of two or more miles, exclusive of auxiliary lanes.
- C. Addition of one or more new interchanges to a completed limited access highway.

Subp.26. Streams and Ditches: Diversion, realignment or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles*

Subp. 27. Wetlands and Public Waters

- A. Projects that will change or diminish the course, current or cross-section of one acre or more of any public water or public waters wetland.*
- B. Projects that will cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, regardless of type, excluding public waters wetlands, if any part of the wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area. This item does not apply to projects exempted by part 4410.4600, subp.14.

Subp 31. Historical Places: Destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places.**†

Minn. Rule 4410.4300 has 37 subparts listing various types of projects, dealing with items from nuclear fuels and nuclear waste to recreational trails. The subparts above are the most applicable to MnDOT projects, however all subparts should be reviewed to ensure no mandatory thresholds apply due to unusual circumstances (e.g. airports (4410.4300 Subp. 21); barge fleeting (4410.4300 Subp. 23); forest clear cutting (4410.4300 Subp. 28(B); national/state parkland encroachment (4410.4300 Subp. 30), land use conversion (4410.4300 Subp. 36 and 36a), and recreational trail construction (4410.4300 Subp. 37).

Mandatory EAW threshold categories are also listed in Chapter 7 of the Minnesota Environmental Quality Board (EQB) Guide to Minnesota Environmental Review Rules.

<https://www.eqb.state.mn.us/sites/default/files/documents/Guide%20to%20MN%20ER%20Rules-May%202010.pdf>

* Minnesota Rule 4410.4300 provides exceptions to this threshold, not listed here due to space considerations. If the proposed project does exceed this threshold, review the applicable Subpart to determine if project is an exception to the threshold.

† This threshold only applies to properties that are actually listed on the NRHP; it does not apply to properties that are only eligible for listing on the NHRP as is the case for federal Section 106/NEPA review.

Appendix D – “Significance” of Environmental Effects under NEPA

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Under NEPA, a Categorical Exclusion (CE) is issued for an action that does not individually or cumulatively have a significant effect on the environment. An Environmental Assessment (EA) is prepared for actions in which the significance of the environmental impact is not clearly established. An Environmental Impact Statement (EIS) is prepared for an action that has a significant effect on the environment.

The following is from the FHWA Environmental Review Toolkit:

According to the Council on Environmental Quality (CEQ) regulations (40 CFR §§ 1500-1508), the determination of a significant impact is a function of both *context* and *intensity*.

Context: This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

Intensity: This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

-- 40 CFR 1508.27