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June 16, 2023

Chad Frisinger
NDDOT

Jennifer Kern
NDDOT

Dear Chad and Jennifer,

Reference: I-29/40th Avenue N Interchange: Recommended NEPA Document Decision

Understanding the North Dakota Department of Transportation (NDDOT) intends to reconstruct the I-29/40th Avenue N Interchange (Project), and it is anticipated the Project would be a federal undertaking (i.e., funded in whole or in part under the direct or indirect jurisdiction of FHWA, including those carried out on behalf of FHWA), the appropriate National Environmental Protection Act (NEPA) documentation must be considered.

Our team conducted the following review and determined that a Documented Categorical Exclusion (DCE) is the appropriate NEPA document for the Project.

- 1) *Is the project considered to be of the type that would trigger an Environmental Impact Statement (EIS) under 23 CFR 771.115(a): 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 or 4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility?***

Conclusion: No, the Project is not one of the types listed above and therefore, would not trigger an EIS.

- 2) *Would the project involve unusual circumstances set out in 23 CFR 771.117(b): 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.***

Conclusion: No, the project would not involve any of these unusual circumstances and therefore, would not trigger an Environmental Assessment (EA). Additionally, an Environmental Screening Technical Memo (Environmental Screening Technical Memo for Project 8-029(213)069, NDDOT PCN 23596) was prepared to screen the Project for potential impacts to environmental and social-economic resources, and compliance with federal and state requirements. Overall, the Project is anticipated to have little impact

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outside of the existing transportation corridor. Following is a summary of the Environmental Screening Technical Memo:

- **Wetlands** – the Project has the potential for wetland impacts. Impacts to wetlands will be minimized to the extent possible for the final design and permitting process. If mitigation is required, the NDDOT wetland mitigation program/bank may be utilized, or onsite mitigation may be pursued.
- **Water Quality** – the Project is anticipated to increase impervious surface area and would comply with National Pollutant Discharge Elimination System (NPDES). A Stormwater Pollution and Prevention Plan (SWPPP) would be prepared for the Project including Best Management Practices (BMPs).
- **Floodplain/Floodway** – the Project would be designed to avoid contributing to flooding and minimize any potential impacts to the floodplain. Coordination would occur with the local floodplain administrator of the City of Fargo and Reed Township in order to achieve compliance with EO 11988 and local regulations.
- **Threatened and Endangered Species** – the US Fish and Wildlife Service Information for Planning and Consultation (IPaC) tool was reviewed. Two species were identified – northern long-eared bat (NLEB) and the monarch butterfly. The Project Area does not provide suitable habitat for the NLEB. It is still advised that any Project tree clearing occur within the NLEB inactive season (November 1 – March 31). For the monarch butterfly, suitable habitat is highly limited in the Project Area; however, further review would be based on the most current regulations and final listing status closer in time to Project construction. The North Dakota Natural Heritage biological conservation database was also reviewed. No known records of plant or animal species of concern or other significant ecological communities were identified for the Project Area.
- **Farmland** – it is possible that a small amount of farmland acreage may be required for the Project and that a small acreage exemption (per Part 523.11 E(1)) could apply. A Farmland Conversion Impact Rating Form (AD-1006) would be prepared and submitted to the National Resource Conservation Service.
- **Noise** – the Project is likely to trigger the need for a detailed noise analysis (i.e., due to substantial horizontal or vertical alteration). Type 1 Projects, triggering detailed noise analysis, include those that result in physical alteration of an existing highway where there is either: substantial horizontal or vertical alteration; bridge replacement that results in horizontal or vertical alteration, addition of through lanes, addition of auxiliary lanes (unless a turn lane), restriping of existing pavement for purpose of adding a through lane or auxiliary lane. If the noise analysis identifies the potential for noise impacts, abatement would need to be evaluated per state and federal requirements.
- **Potentially Contaminated Properties** – based on review of North Dakota Department of Environmental Quality Spill Investigation Incidental Reporting database, which did not identify any reported incidents in the Project Area, it is not anticipated there would be impacts to contaminated properties.
- **Airport Coordination** – it is anticipated the Project may require a Federal Aviation Administration (FAA) Form 7460-1 for temporary condition/construction and

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permanent structures due to the Project's proximity to the Hector International Airport (located approximately 0.8-mile southeast of the Project).

- **Rail** – Coordination with the Burlington Northern Santa Fe/Union Pacific (BNSF/UP) would occur as a part of developing and carrying out the Project due to the Project's proximity to the rail and plans for a new BNSF/UP overpass.
- **Community and Public Facilities** – the North Dakota National Guard Armory and the Hector International Airport have been recognized as public facilities in the Project Area. There may be temporary access changes for both facilities during construction; however, no long term/permanent impact are anticipated to result from the Project.
- **Environmental Justice (EJ)** - Based on the results of the EJ analysis, no low-income or minority populations were identified within the broader Project Area. Therefore, it is not anticipated that the potential future interchange project would have the potential to cause disproportionately high and adverse human health or environmental effects to EJ populations.
- **Section 4(f)** – there is an on-street bikeway along 40th Avenue N which would need to be reviewed for qualification as a Section 4(f) resource. There are no other 4(f) resources in the Project Area.
- **Section 6(f)** – an inquiry was provided to the North Dakota Parks and Recreation Department, and they concluded that the Project would not impact Section 6(f) resources.
- **Section 106** – additional coordination with the State Historic Preservation Office (SHPO) and the NDDOT Cultural Resource Section would need to occur once a final design is determined for the Project.
- **Right of Way** – the Project may require additional permanent right of way acquisition/use. Additionally, it is likely there would be temporary right of needs during construction. At this stage of Project development, no property acquisitions/relocations are anticipated.
- **Economic Impacts** – there may be temporary access impacts or detours during construction. Permanent access impacts would be avoided unless required to accommodate the Project including management of traffic conflicts at direct access points/driveways. Therefore, the Project is not anticipated to result in economic impacts.
- **Land Use** – there is the possibility for right of way or access impacts; however, the Project is not anticipated to impact land use in the Project Area.

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3) *Would a Categorical Exclusion (CE or CATEX) be the appropriate NEPA document? 23 CFR 771.117(a) describes the type of actions that can be addressed with a CE as follows:*

- ***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***
- ***Do not otherwise, either individually or cumulatively, have any significant environmental impacts***

Conclusion: The Project is consistent with the type of actions that can be addressed with a CE. Refer to the conclusion under Item 2.

Additionally, 23 CFR 771.117(c) (also referred to as the c-list) lists the actions that normally do not require any further NEPA approvals.

Conclusion: The Project is anticipated to align with the action described in (c)(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 23 CFR 771.117 (e). The project meets the constraints listed in paragraph (e). The following provides a brief summary of the constraints in 23 CFR 771.117(e): 1) more than minor acquisition of right of way; 2) need for US Coast Guard bridge permit or US Army Corps of Engineers permitting beyond Nationwide or general permit; 3) adverse effects under National Historic Preservation Act, use of Section 4(f) resources (except de minimis), a “may affect, likely to adversely affect” finding under Endangered Species Act; 4) closure of a bridge that results in major traffic disruptions; 5) access control changes and 6) floodplain encroachment other than functionally dependent uses (e.g., bridges) or actions that facilitate open space use, 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.

Based on the conclusions outlined above, the use of a Documented Categorical Exclusion (DCE) would be the appropriate documentation for the Project. Furthermore, utilizing the NDDOT PCE or DCE Environmental Impact Checklist at: [PCEorDCE Environmental Impact Checklist.xlsx \(live.com\)](#) found on the [NDDOT - Design Manual References and Forms](#) webpage (accessed June 13, 2023), because of the Project’s anticipated need to complete a detailed noise analysis as a Type 1 project, the Project requires completion of a DCE versus a Programmatic Categorical Exclusion (PCE).

The DCE would be completed in accordance with the NDDOT Design Manual Section II-02.02. The DCE would contain an Executive Summary and a detailed list of environmental questions contained in the Environmental Impact Checklist (referenced in the paragraph above) and outlined in the NDDOT PCE/DCE Template [found at [Programmatic CATEX \(PCE\) or Documented CATEX \(DCE\).docx \(live.com\)](#) and revised 12/19/2022].

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Respectfully,

STANTEC CONSULTING SERVICES INC.

A handwritten signature in dark ink that reads "Courtney Bot". The signature is written in a cursive, flowing style.

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