

Transportation Committee

For the Metropolitan Council meeting of January 10, 2018

Subject: MPO Memorandum of Understanding with MnDOT

Proposed Action

That the Metropolitan Council adopts the attached Memorandum of Understanding with the Minnesota Department of Transportation.

Summary of Committee Discussion/Questions

Katie White presented this item. Dorfman asked that once this MOU is signed, what is the term. White answered that the MOU is only changed when updates are needed, which usually occur during TMA Certification reviews which are every 4 years.

Motion by Reynoso, seconded by Schreiber and passed. CONSENT to Council.

Transportation Committee

Meeting date: December 11, 2017

For the Metropolitan Council meeting of January 10, 2018

Subject: Memorandum of Understanding Between the Metropolitan Council and the Minnesota Department of Transportation

District(s), Member(s): All

Policy/Legal Reference: FAST-Act

Staff Prepared/Presented: Katie White, Senior Planner, 651-602-1716

Amy Vennewitz, Deputy Director of MTS,

Nick Thompson, Director of MTS

Division/Department: Metropolitan Transportation Services

Proposed Action

That the Metropolitan Council adopts the attached Memorandum of Understanding with the Minnesota Department of Transportation.

Background

Federal regulations require that the mutual transportation planning responsibilities of the Metropolitan Planning Organization (MPO), the state, and the public transportation operator be incorporated into a written agreement, or Memorandum of Understanding. The MOU is signed by the Council as both the MPO and the public transit operator, and MnDOT.

In November 2016 the Federal Highway Administration and Federal Transit Administration conducted a Transportation Management Area Certification Review, which is a routine activity occurring every four years to ensure that the MPO activities of the region comply with federal requirements.

One of the recommendations from the TMA Certification Review was that the Metropolitan Council and MnDOT update their memorandum of understanding. The current MOU was signed in December of 2008 and there have been changes in federal law and regulation, as well as planning activities, since that date. This updated MOU includes language to acknowledge those changes, and better reflects the regional planning process currently being conducted.

Rationale

The MPO MOU is a requirement of the TMA Certification Review completed by FHWA and FTA in November 2016. The final report in early 2017 provided a deadline of March 2018 to complete this item.

Thrive Lens Analysis

This action has no impact on the Thrive outcomes.

Funding

There is no funding attached to this action.

Known Support / Opposition

This item passed through the TAB and its TAC subcommittees. There is no known opposition.

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN
THE MINNESOTA DEPARTMENT OF TRANSPORTATION (MNDOT) and THE METROPOLITAN COUNCIL OF
THE TWIN CITIES (COUNCIL)

The purpose of this MOU is to document and agree to carry out a continuing, cooperative, and comprehensive (3C) metropolitan transportation planning and programming process as defined and required by federal law (49 USC 5303 and 5304.) and the U.S. Department of Transportation regulations 23 CFR 450; 23 USC 134 and 135.

1. RESPONSIBILITIES. MnDOT and the Council recognize and agree to conduct a continuing, cooperative, and comprehensive transportation planning and programming process for the Twin Cities Metropolitan Area and that their mutual responsibilities for carrying out this process are documented in the following sections.

1.1. SCOPE OF THE METROPOLITAN TRANSPORTATION PLANNING PROCESS. The Council, MnDOT and other public transportation operators will conduct a metropolitan transportation planning process that is continuing, cooperative, and comprehensive and provide for the consideration of projects, strategies, and services that will address the planning factors specified in 23 CFR 450.306, Scope of the Metropolitan Transportation Planning Process. This metropolitan planning process will be carried out in coordination with the state transportation planning process required under 23 CFR 450 Subpart B, Statewide Transportation Planning and Programming.

1.2. MPO STRUCTURE, PLANNING BOUNDARIES AND MISSION. The Minnesota Legislature established the Metropolitan Council in 1967 (MN Statute 473.123, subd. 1.) As required by federal law, the Council has been designated as the MPO for the Twin Cities Metropolitan Area by the Governor since 1973 and in state statute (MN Statute 473.146 Subd. 4 a). This designation was affirmed by the US DOT in a letter dated Feb 1, 2016 (Figure 1). The Council is composed of 16 Council members and a Chair who are appointed by and serve at the pleasure of the governor and are confirmed by the state Senate. The 16 members represent districts of equal population size within the seven-county metropolitan area (Hennepin, Ramsey, Anoka, Washington, Carver, Scott, and Dakota counties) and cannot hold a locally elected office. The Council's bylaws establish methods of setting the time and place of meetings, officers, voting procedures, and committees.

Under federal law the MPO planning boundary must include the entire metropolitan area. After the 2010 Census the boundaries of the urbanized area were extended beyond the seven-county area to include portions of Wright and Sherburne counties in Minnesota and the community of Houlton in Wisconsin. A Memorandum of Understanding to Conduct Federally-Required Metropolitan Planning Activities was adopted between the Council and impacted jurisdictions in Wright and Sherburne counties in 2014. The Wisconsin portion of the urbanized area is approximately 0.25 developable square miles with a 2010 population of 276 individuals. After the closure of the Stillwater lift bridge, and opening of the new St. Croix River bridge in August 2017, this area is no longer a contiguous part of the Twin Cities urbanized area. The MPO Planning area boundary will be reviewed after the 2020 Census.

The mission of the Council is to develop, in cooperation with local communities, a comprehensive regional development framework that guides the efficient growth of the

metropolitan area through long-term plans for transportation, aviation, wastewater, and regional recreation and open space systems. The Council operates transit and wastewater services and administers housing and other grant programs.

- 1.3. TRANSPORTATION ADVISORY BOARD.** The Transportation Advisory Board (TAB) was established in 1974 by the Council in accordance with Minnesota Statute 473.146 Subd. 4b to assist the Council in providing a forum for transportation planning. The TAB provides a forum for deliberation among state, regional and local officials, transportation providers and private citizens to articulate their positions on issues that affect transportation planning and funding in the Twin Cities region. The TAB acts as an advisory board to the Metropolitan Council.

The 34-member TAB is composed of elected county and municipal officials, private citizens, representatives of state and regional agencies, modal representatives and MnDOT. The Council appoints eight citizen members, two transit representatives, one non-motorized representative and one of its own Council members to TAB. MnDOT appoints a freight representative, and the Association of Metropolitan Municipalities (also known as “Metro Cities”) appoints ten locally-elected officials to the TAB. Each of the seven counties appoints a commissioner, and MnDOT, the Minnesota Pollution Control Agency (MPCA) and the Metropolitan Airports Commission (MAC) each appoint a representative to the TAB. One elected official from a city participating in the replacement transit service program is appointed by the Suburban Transit Association. This membership is specified in Minnesota Statute 473.146 Subd. 4 and repeated in TAB bylaws. The bylaws of the TAB also establish the time and place of meetings, officers, voting procedures, committees and staffing.

The TAB established a Technical Advisory Committee (TAC) composed of 32 professional staff from MnDOT and the principal governmental units and agencies involved in transportation in the metropolitan area. The role of the TAC is to provide technical assistance and coordination to the TAB. The bylaws of the TAC establish its members, time and place of meeting, officers, voting procedures, committees, and staffing. TAC bylaws are approved by TAB.

- 1.4. PUBLIC TRANSPORTATION OPERATOR.** The Council is the public transportation operator and designated recipient of Federal Transit Administration (FTA) funds (Figure 2, Metro Transit 5307 Recipient Designation). The Council’s transportation operations are carried out through Metro Transit, an operating division of the Council. Metro Transit offers an integrated network of buses, light rail, and commuter rail transit as well as resources for those who carpool, vanpool, walk or bike. The Council also contracts with private operators to provide additional transit service in the Metropolitan Area. The Council also coordinates its services with suburban transit providers.
- 1.5. STATEWIDE TRANSPORTATION PLAN.** The Minnesota Statewide Multimodal Transportation Plan (Plan) is prepared by MnDOT to comply with federal planning regulation (23 CFR 450.216, Development and Content of the Long-range Statewide Transportation Plan) that requires the State to develop a long-range statewide transportation plan, with a minimum 20-year forecast period at the time of adoption. MnDOT’s commissioner is also required by state law (Minn. Stat. 174.03) to develop, adopt, revise and monitor a Plan. The Plan provides a framework with policies, measures, and implementation guidance which assist MnDOT and its partners in focusing investments and services to achieve desired performance levels and outcomes. The Plan is developed in cooperation with the Council and TAB.

- 1.6. TRANSPORTATION POLICY PLAN (MPO LONG-RANGE PLAN).** A metropolitan development guide, including a Transportation Policy Plan, is required by Minnesota Statute 473.146 Subd. 1-3. The purpose of the Transportation Policy Plan (TPP) is to develop an integrated transportation system that advances regional economic, land use and growth management goals as defined by the metropolitan development guide. The TPP is a multi-purpose document that describes the Council's approach to metropolitan transportation investments over a 20-year planning horizon for highways, transit, aviation, freight, pedestrians and bicyclists. The TPP also fulfills Federal law and regulations for a metropolitan long-range transportation plan, and addresses the requirements of the Clean Air Act Amendments (CAAA) and its associated regulations. It reflects major transportation studies that have been conducted since the last update, and identifies the funds available to maintain or replace the highway and transit infrastructure.

Revenue forecasts for regional transportation investment are developed cooperatively, using highway funding information provided by MnDOT and transit revenue assumptions developed by the Council. The adopted long-range transportation plan must balance planned investments with funds that are reasonably expected to be available, as further discussed in section 1.10.

The Council, the Federal Highway Administration (FHWA) and FTA must make a joint determination that the TPP is in conformity with the Clean Air Act and Environmental Protection Agency (EPA) regulations.

The TPP is prepared by the Council and reflects active participation of all agencies responsible for transportation planning within the Metropolitan Planning Area, including MnDOT, the TAB and its Technical Advisory Committee. It is updated in accordance with state and federal regulations.

- 1.7. UNIFIED PLANNING WORK PROGRAM.** The Unified Planning Work Program (UPWP) is an annual description and documentation of proposed transportation and transportation-related planning activities in the metropolitan planning area. It also serves as the Council's application for USDOT transportation planning funds. The Council prepares and approves the UPWP and submits the document to MnDOT for forwarding to USDOT for its review and approval. The metropolitan transportation planning components of the work programs of MnDOT, MPCA and MAC are referenced in the UPWP. The TAB reviews and recommends the UPWP to the Council.

- 1.8. TRANSPORTATION IMPROVEMENT PROGRAM (TIP) AND STATE TRANSPORTATION IMPROVEMENT PROGRAM (STIP).** The Transportation Improvement Program is required by federal regulation 23 CFR 450.326. The TIP is a 4-year multi-modal program including highway, transit, bike, walk, and transportation enhancements projects and programs proposed for federal funding in the Metropolitan Planning Area, including MnDOT highway projects. The projects in the TIP are consistent with and implement the region's transportation plans and priorities.

Each year the Council staff, with the assistance of the MnDOT Metro division staff, prepares a draft TIP. MnDOT ensures projects are entered in the document annually, working in cooperation with the Council to prepare a financial analysis of the document, formatting the document and preparing the appropriate funding tables, managing and maintaining a fiscal

balance throughout the year, and ensuring the projects actually built are consistent with adopted policy.

Project selection for the TIP is conducted in the following manner in coordination with MnDOT. Projects consistent with the Statewide Transportation Plan and the TPP are selected by MnDOT for National Highway Performance Program (NHPP) funds, in consultation with the Council and TAB. FTA capital transit grant program projects (5307, 5337, 5339 and 5309) are selected using the Council's Six-Year Capital Improvement Program. Section 5310 and 5311 projects are selected by MnDOT through a competitive statewide process.

It is a key responsibility of the Council's TAB to solicit and evaluate project applications for funding from two federal programs: Surface Transportation Block Grant Program (STBGP) and Congestion Mitigation Air Quality (CMAQ). The criteria and process for this regional solicitation are updated biennially through the 3C process and adopted by the TAB. Projects are solicited, reviewed, scored and ranked using the adopted process and criteria. The TAB directs staff to include the projects selected through this process in the next draft Transportation Improvement Program (TIP). The TAB also selects projects to be funded through the Highway Safety Improvement Program (HSIP). MnDOT solicits for projects in this program, evaluates them and presents the ranked list to the TAB for selection.

The Council and TAB ensure the TIP is consistent with priorities in the Air Quality State Implementation Plan and the Minnesota Statewide Multimodal Plan.

Following a public comment period in accordance with the Council's adopted Public Participation Plan for Transportation Planning, the TAB approves the TIP and recommends it to the Council for adoption.

The adopted TIP is included without change in the Minnesota State Transportation Improvement Program as required by federal regulations under 23 CFR 450.218.

The STIP is a statewide prioritized listing/program of transportation projects covering a period of four years. The project lists are analyzed with respect to state and department goals, funding targets, and various federal categories. MnDOT coordinates and manages the document. As the Governor's designee, MnDOT approves the STIP and forwards it to FHWA and FTA for their joint agency review and approval action. This final approval action includes a finding that the Twin Cities Metropolitan Planning Process meets or substantially meets the requirements of 23 USC 134 and 135 and 49 USC 5303 as amended. A positive planning finding and STIP approval action allows MnDOT to request authorization of Federal funds for projects programmed in the STIP and TIP.

Changes to the TIP and STIP follow the requirements for TIP revisions as specified in 23 CFR 450.328 and the procedures developed by MnDOT and FHWA entitled "STIP Amendments and Administrative Modifications." More detail can be found in the Council's "Planning and Programming Guide."

- 1.9. FISCALLY CONSTRAINED FINANCIAL PLANS FOR REGIONAL TRANSPORTATION PLAN AND TIP.** Financial plans are required to be included with the regional, long-range transportation plan and the TIP. These fiscal plans must demonstrate that the costs of projects and

effort to achieve the goals described above including working together to comply with federal and state laws.

3. **GOVERNMENT DATA.** The parties acknowledge that this MOU, as well as any data created, collected, stored, or received under the terms of this MOU, are “Government Data” within the meaning of the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13), and that they must comply with the provisions of the Act as it relates to such data.
4. **EFFECTIVE DATE.** This MOU shall be effective when all appropriate signatures have been obtained by MnDOT, the MPO, and the Public Transportation Operator.
5. **REVIEW AND MODIFICATION.** The Council and MnDOT will review the MOU after each USDOT planning certification review, changes in federal or state legislation that affect the Council, or at any time when roles or responsibilities change. Any amendments to this MOU must be mutually agreed to in writing.
6. **TERMINATION.** The terms of this MOU may be terminated by any one of the parties by giving 90 days written notice to each of the other parties. This MOU will remain in effect until terminated as provided in this clause, or until replaced by a new MOU.

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I concur with this Memorandum of Understanding

Minnesota Department of Transportation:

Metropolitan Council

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

MnDOT Contract Management
(as to form)

By: _____

Date: _____

FIGURE 1: MPO DESIGNATION AFFIRMATION



U.S. Department
of Transportation

**Federal Transit
Administration**

**Federal Highway
Administration**

Headquarters

1200 New Jersey Avenue, SE
Washington, DC 20590

FEB 01 2016

Ms. Ann R. Goering
Ratwik, Roszak & Maloney, P.A.
730 Second Avenue South, Suite 300
Minneapolis, MN 55402

Re: **Metropolitan Council Certification Review**

Dear Ms. Goering:

On behalf of Secretary Foxx, this letter responds to your correspondence dated October 1, 2015, on behalf of a coalition of suburban counties of the Twin Cities metropolitan area (“Suburban Counties”), as well as your January 11, 2016, letter inquiring as to the status of our response. In your October 1 letter, you requested that the Federal Highway Administration (“FHWA”) and Federal Transit Administration (“FTA”) review an earlier determination, reached jointly by the FHWA Minnesota Division office and FTA Region V, that the Minnesota Metropolitan Council (“Metropolitan Council”) complies with the structure requirements of 23 U.S.C. § 134(d)(2)¹ in its role as a metropolitan planning organization (“MPO”). For the reasons set forth below, FHWA and FTA confirm their earlier determination.

I. Background

A. Federal Requirements

Since the 1991 passage of the Intermodal Surface Transportation Efficiency Act (“ISTEA”), Pub. L. 102-240, Federal law has required MPOs serving transportation management areas (TMAs) to include certain structuring of their boards. The current version of the law requires:

Not later than 2 years after the date of enactment of [the Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, (“MAP-21”)], each metropolitan planning organization that serves an area designated as a transportation management area shall consist of—

¹ Substantively similar provisions are codified in 23 U.S.C. § 134 and in 49 U.S.C. § 5303. For clarity, this letter refers only to Title 23.

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

(C) appropriate State officials.

23 U.S.C. § 134(d)(2). The law also includes a “grandfathering” provision, which excludes planning entities established prior to ISTEA from the structuring requirements:

Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities-

(A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and

(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

23 U.S.C. § 134(d)(4).² This grandfathering clause applies to an MPO when: (1) the MPO operates pursuant to a State law that was in effect on or before December 18, 1991; (2) such State law has not been amended after December 18, 1991, with regard to the structure or organization of the MPO; and (3) the MPO has not been designated or re-designated after December 18, 1991. Policy Guidance on Metropolitan Planning Organization (MPO) Representation, 79 Fed. Reg. 31,214, 31,216 (June 2, 2014).

B. The Suburban Counties’ May 8, 2015, letter to FHWA and FTA

The Metropolitan Council is the designated MPO for the Twin Cities metropolitan area, which is a transportation management area. Minn. Stat. § 473.146, subd. 4(a). It is composed of 17 members, all of whom are appointed by the Governor. *Id.* § 473.123, subds. 3 and 4. For purposes of transportation planning, the Metropolitan Council includes a transportation advisory board (“TAB”) of, *inter alia*, local elected officials, representatives of State agencies, and representatives of public transit, freight transportation, non-motorized transportation, and the Metropolitan Airports Commission. *Id.* § 473.146, subd. 4(b).

Between June 25 and 28, 2012, FHWA and FTA conducted a review of the Metropolitan Council’s compliance with the planning requirements of 23 C.F.R. Part 450. Transporta-

² In previous correspondence on this matter, this section was designated as 23 U.S.C. § 134(d)(3). With the enactment of the Fixing America’s Surface Transportation Act (“FAST Act”), Pub. L. 114-94, § 1201(3), on December 4, 2015, this section became 23 U.S.C. § 134(d)(4).

tion Planning Certification Review Report for the Minneapolis-St. Paul Metropolitan Area (“2012 Report”). The 2012 Report concluded that the Metropolitan Council was the properly constituted MPO for the region and made no recommendations for corrective actions. *Id.* at 9, 10. In reaching this conclusion, the 2012 Report emphasized the role of the TAB in the Metropolitan Council’s planning process. For example, the 2012 Report stated that the “Metropolitan Council in conjunction with the [TAB] is the designated MPO” and that “[t]ogether, the Council and the TAB are responsible for the governance and transportation policy making for the Twin Cities region.” *Id.*

In a May 8, 2015, letter addressed to FHWA’s and FTA’s regional offices, the Suburban Counties asked FHWA and FTA to partially reject the 2012 Report’s findings and hold that the Metropolitan Council does not comply with the membership requirements for MPOs serving TMAs. The Suburban Counties argued that, because Federal law defines an MPO as “the policy board of an organization”, 23 U.S.C. § 134(b)(2), the TAB, which by Minnesota law is merely advisory, should not be considered part of the MPO, and therefore the Metropolitan Council does not have the membership required by 23 U.S.C. § 134(d)(2). The Suburban Counties further argued that the Metropolitan Council is not grandfathered because post-ISTEA amendments to Minnesota law, adopted in 1994, have affected the structure or organization of the Metropolitan Council.

FHWA’s Division and FTA’s Regional office replied on August 3, 2015. The regional offices agreed with the Suburban Counties that the TAB is not part of the MPO, and therefore the Metropolitan Council’s membership does not comply with 23 U.S.C. § 134(d)(2). However, the regional offices disagreed with respect to the application of the grandfathering clause. Considering the changes in Minnesota law identified by the Suburban Counties, the regional offices concluded that “the changes were not ‘substantial’ so as to require a redesignation” under 23 C.F.R. § 450.310(k). The regional offices’ reply went on to discuss situations when an MPO would or would not be required to redesignate.

II. The Suburban Counties’ October 1, 2015, letter to FHWA and FTA

The Suburban Counties sent another letter on October 1, 2015, this time addressed to Secretary Foxx and the Administrators of FHWA and FTA, requesting reconsideration of the conclusions set forth in the August 3, 2015, response. The Suburban Counties urged that we “find the Metropolitan Council is not a properly constituted MPO, and take all other necessary actions consistent with that finding.” This October letter reiterated many of the same arguments put before FHWA and FTA previously, including the suggestion that the grandfathering clause of 23 U.S.C. § 134(d)(4) does not apply to MPOs generally, does not apply to the Metropolitan Council specifically, and does not apply to the membership requirements imposed on MPOs by the same subsection.

With respect to the first argument, as explained in our joint policy guidance, FHWA and FTA have determined that the grandfathering provision does still apply to any MPO that (1) operates pursuant to a State law that was in effect on or before December 18, 1991; (2) such State law has not been amended after December 18, 1991, with regard to the structure or organization of the MPO; and (3) the MPO has not been designated or re-designated after December 18, 1991. 79 Fed. Reg. 31,216. The agencies reiterated that interpretation in a joint Notice of Proposed Rulemaking to implement MAP-21 revisions to Federal metropolitan transportation planning requirements. 79 Fed. Reg. 31,784 (June 2, 2014). Subsequently, Congress enacted the FAST Act, P.L. 114-94, which included amendments to 23 U.S.C. § 134 (FAST Act § 1201) and 49 U.S.C. § 5303 (FAST Act § 3003). The FAST Act clarified requirements relating to an MPO's designation or selection of officials or representatives to an MPO in light of the FHWA/FTA Policy Guidance and NPRM and public comments that the agencies received on these two documents, but *did not* amend the grandfathering provision. Congress' enactment of these statutory changes while leaving the grandfathering provision intact is a strong indication that Congress concurs with the agencies' interpretation of that provision. *See, e.g., Davis v. United States*, 495 U.S. 472, 482 (1990) ("Congress' reenactment of [a statute], using the same language, indicates its apparent satisfaction with the prevailing interpretation of the statute."); *Pierce v. Underwood*, 487 U.S. 552, 566-68 (1988).

Second, the Suburban Counties disagreed with the FHWA and FTA regional offices' conclusion that the State law changes were not substantial enough to "require a redesignation" and so did not require the Metropolitan Council to come into compliance with 23 U.S.C. § 134(d)(2). As addressed in the FHWA/FTA Policy Guidance, an MPO is no longer grandfathered from current Federal board structuring requirements if *either* the MPO redesignates *or* changes in State law affect the structure or organization of the MPO. Bearing in mind this distinction between the standards for the grandfathering provision and redesignation, we conclude that neither of these standards is implicated here.

We reviewed the amendments to the laws governing the Metropolitan Council cited in your October 1, 2015, letter. In summary, the amendments: (1) changed the MPO from a State administrative agency to a public corporation and political subdivision of the State³; (2) changed the term length of MPO members⁴; (3) allowed the Metropolitan Council to "hold, use, and dispose of" grant funds without depositing the money into the State Treasury⁵; and (4) changed provisions regarding the Metropolitan Council districts which have changed to represent the population changes from the Federal decennial census, although the number of districts remains the same.⁶

³ Minn. Stat. §473.123, subd. 1 (1994); Minn. Laws 1994 c. 628-S.F. No. 2015, Sec. 4.

⁴ Minn. Stat. § 473.123, subd. 2a. (1994).

⁵ Minn. Stat. § 473.129, subd. 4 (1994); Minn. Laws 1994 c. 628-S.F. No. 2015, Sec. 39.

⁶ Minn. Stat. § 473.129, subd. 3 (1994).

Suburban counties of the Twin Cities area

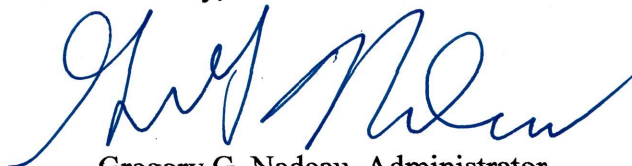
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In our opinion, these amendments would not require the Metropolitan Council to redesignate. Our regulations require redesignation of an MPO whenever the existing MPO proposes to make (1) a substantial change in the representative proportion of voting members, or (2) a substantial change in the decisionmaking authority or responsibility of the MPO, or in decisionmaking procedures established under MPO by-laws. 23 C.F.R. 450.310(k). FHWA and FTA's regulations also identify the changes to an MPO that do not require a redesignation as long as they do not trigger a substantial change as described in 450.310(k). 23 C.F.R. 450.310(l). We find that the regional offices correctly analyzed the amendments under these regulations in determining that the amendments do not substantially change the Metropolitan Council's representation proportions or decisionmaking procedures such that redesignation is necessary.

Even if a change in State law would not require redesignation, the MPO no longer would be grandfathered if that change affected the structure or organization of the MPO. We conclude that none of the amendments you cite affect the structure or organization of the Metropolitan Council such that it would no longer be grandfathered from the structure requirements of 23 U.S.C. 134(d)(2). None of these changes, including, (1) changing the terms of the Council's members, (2) characterizing the Council as a public corporation instead of an administrative agency, (3) allowing the Council to "hold, use, and dispose of" grant funds without depositing the money into the State Treasury, and (4) other miscellaneous and minor statutory changes, directly affect in any material way the structure or organization of the Council itself, and they clearly cannot be deemed substantial changes. The core of the Metropolitan Council's structure and organization remains the same as it was in 1991, notwithstanding these minor legislative amendments.

In sum, we concur with the findings in the August 3, 2015, regional offices' response and decline to reverse their decision. If you have further questions, please do not hesitate to contact us.

Sincerely,



Gregory G. Nadeau, Administrator
Federal Highway Administration



Therese McMillan, Acting Administrator
Federal Transit Administration

FIGURE 2: METRO TRANSIT 5307 RECIPIENT DESIGNATION



September 18, 2013

Ms. Marisol Simón
Regional Administrator
Federal Transit Administration, Region V
200 West Adams Street, Suite #320
Chicago, IL 60606

RE: Governor's Designation of Section 5307 Recipients

Dear Ms. Simón:

Enclosed are the documents required for designation of Metropolitan Council/Metro Transit as the Minneapolis-St. Paul, Minnesota – Wisconsin UZA designated Section 5307 recipient.

These enclosures include:

- Governor of MN Designation Letter
- MPO Certified Resolution of Concurrence
- Area Transit Agencies Concurrences

The required legal opinion has been filed in TEAM and verified by Cecelia Comito, FTA Regional Counsel, as sufficient for the 5307 designation process.

I have sent a scan of all of these documents and this letter to Bill Wheeler via e-mail. He will let me know what I should post in TEAM.

If you have any questions or comments, please don't hesitate to contact me.

Best regards,

A handwritten signature in blue ink that reads 'Mary A. Gustafson' with a long horizontal flourish extending to the right.

Mary A. Gustafson
Grants Manager
Metropolitan Council/Metro Transit

cc: William Wheeler, FTA Region V – e-copy

Enclosures

A service of the Metropolitan Council



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

August 28, 2013

Ms. Marisol Simon
Regional Administrator
Federal Transit Administration Region V
200 West Adams Street, Suite #320
Chicago, Illinois 60606

Re: Governor's Designation of Section 5307 Recipients

Dear Ms. Simon:

The purpose of this letter is to fulfill the requirement in Federal Transit Administration (FTA) Circular 9030.1D "Urbanized Area Formula Program: Program Guidance and Application Instructions" to document the designation of recipients of Section 5307 funding in the state of Minnesota.

I designate the Metropolitan Council as recipient of FTA Section 5307 funding for the following Urbanized Area (UZA) over 1,000,000 in population: Minneapolis – St. Paul, Minnesota – Wisconsin.

This UZA is in a Transportation Management Area. Therefore, additional documents are attached containing concurrence from the public transportation providers as well as the Metropolitan Planning Organization (MPO). An opinion certifying the legal capacity of the Metropolitan Council to perform the functions of designated recipients of Section 5307 funds has been filed with FTA under separate cover.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Mark Dayton".

Mark Dayton
Governor

Attachments

Metropolitan Council
390 North Robert Street, St. Paul, MN 55101-1634
Phone (651)602-1000 TDD (651)291-0904 FAX (651)602-1550 Metro Info (651)602-1888

RESOLUTION 2013-11

Resolution of Metropolitan Council Agreement to serve as the Designated Recipient for Federal Transit Administration Section 5307 (Urbanized Area Formula Program) Funding

Whereas, FTA Circular 9030.1D states that for UZAs with 200,000 or more in population, FTA apportions funds to a UZA and the funds flow to the recipient designated by the Governor to apply for and receive Federal Transit Administration (FTA) funds, and

Whereas, FTA Circular 9030.1D further states that for UZAs with 200,000 or more in population, documentation of concurrence in the selection of the designated recipient by the providers of publicly owned public transportation service in the UZA, and an appropriately certified resolution of the Metropolitan Planning Organization (MPO) concurring in the designation, must be attached to Governor's written notice to the FTA of the designated recipient, and

Whereas, the Minneapolis/St Paul UZA has a population of over 200,000 population, and the Metropolitan Council, or its predecessor transit operating agency, the Metropolitan Transit Commission, has served as the recipient designated by the Governor of Minnesota to apply for and receive FTA funds for over 40 years, and

Whereas, the Metropolitan Council has developed the complex systems necessary to satisfy FTA requirements, has been through all of the necessary FTA reviews and audits, and is willing to continue serving as the designated recipient, and

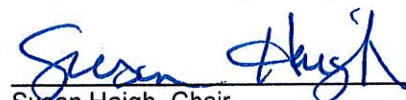
Whereas, maintaining this designation will ensure that federal funding continues to be made available to all transit providers in the region in a timely manner, and

Whereas, the Metropolitan Council was designated as the Metropolitan Planning Organization for the Minneapolis/St Paul region in 1973 by Governor Wendell Anderson.

Now, therefore, be it resolved, that the Metropolitan Council, as the major provider of publicly owned public transportation service in the Minneapolis/St Paul UZA, concurs with the Governor's selection of the Metropolitan Council as the designated recipient of Section 5307 Urbanized Area Formula Program grants to provide public transportation service in the Twin Cities Metropolitan Area, and

Be it further resolved, that the Metropolitan Council, as the Metropolitan Planning Organization for the Minneapolis/St Paul region, concurs with this designation.

Adopted this 14th day of August, 2013.



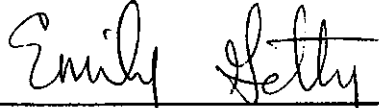
Susan Haigh, Chair



Emily Getty, Council Recording Secretary

CERTIFICATION

I hereby certify that the foregoing resolution is a true and correct copy of the resolution presented to and adopted by the Metropolitan Council at a duly authorized meeting held on the 14th day of August, 2013, as shown by the minutes of the meeting in my possession.



Emily Getty

Emily Getty, Council Recording Secretary



August 13, 2013

Ms. Marisol Simon
Regional Administrator
Federal Transit Administration, Region 5
200 West Adams St., Suite 320
Chicago, IL 60606

RE: Concurrence with Designation of Section 5307 Direct Recipient

Dear Ms. Simon:

The Minnesota Valley Transit Authority (MVTA) is proud to be a partner with the Metropolitan Council in addressing the transit needs of our region. The purpose of this letter is to fulfill the requirement in Federal Transit Administration (FTA) Circular 9030.1D *Urbanized Area Formula Program: Program Guidance and Application Instructions* to document the designation of a direct recipient of Section 5307 funding in the State of Minnesota, Minneapolis-St. Paul Urbanized Area.

MVTA concurs with the designation of the Metropolitan Council as the direct recipient of Section 5307 funding for the Minneapolis-St. Paul Urbanized Area. However, we would also like to offer a couple of comments.

- It would be helpful if the FTA provided enhanced guidance to subrecipients regarding changes, new issues, etc. We want to be proficient regarding the regulations; perhaps there could be more training of the direct recipient (Metropolitan Council) or of subrecipients, to help in this area. This may also help us better understand the calculations used in generating the 5307 funding amounts.
- The MVTA would also prefer to have a more productive system of providing staff comments about projects. In the past, we have attempted to document comments on the designated FTA web-site; all of the MVTA comments have been stripped out. Only those by the Metropolitan Council have been actually submitted. Further, we have been told we cannot talk to FTA personnel, and would much prefer a more collaborative approach.

Thank you for your consideration. If you have any questions or concerns, please do not hesitate to contact our Executive Director Beverley Miller at bmiller@mvta.com or 952-882-7501.

Sincerely,

A handwritten signature in black ink that reads "Gary Hansen". The signature is written in a cursive, slightly slanted style.

Gary Hansen
Chair, MVTA Board of Directors

c: MVTA Board
Susan Haigh, Chair, Metropolitan Council
Beverley Miller, Executive Director

SOUTHWEST TRANSIT

13500 Technology Drive, Eden Prairie, MN 55344
952-949-2BUS • www.swtransit.org



August 21, 2013

Ms. Marisol Simon
Regional Administrator\Federal Transit Administration, Region 5
200 West Adams St., Suite 320
Chicago, IL 60606

Metropolitan Council

AUG 30 2013

Received Chair's Office

RE: Concurrence with Designation of Section 5307 Direct Recipient

Dear Ms. Simon:

The purpose of this letter is to fulfill the requirement in Federal Transit Administration (FTA) Circular 9030.ID Urbanized Area Formula Program: *Program Guidance and Application Instructions to document the designation of a direct recipient of Section 5307 funding in the State of Minnesota, Minneapolis-St. Paul Urbanized Area.*

The SouthWest Transit Commission concurs with the designation of the Metropolitan Council as the direct recipient of Section 5307 funding for the Minneapolis-St. Paul Urbanized Area. However, we would like to comment on the current situation in our region.

As you are aware, The Metropolitan Council not only operates/controls our region's largest transit operations (Metro Transit; Metro Mobility; and Metro Transit Services), they also control/act as our region's Metropolitan Planning Organization. We believe this relationship makes it extremely difficult for the Metropolitan Council to act in an unbiased manner when it comes to developing, implementing, and enforcing regional policies; and distributing state and federal funding.

This is not only the opinion of SouthWest Transit, but in a January 2011 report presented to the Minnesota Legislature by its Legislative Auditor stated "the governance of transit in the Twin Cities region is complex and fraught with distrust, and coordination among the many transit organization in the region has been difficult. Because of the Metropolitan Council's structure, the Council lacks adequate credibility and accountability among stakeholders".

The Metropolitan Council continues to formulate policies and controls to meet their needs, and is not truly representative of the needs or desires of the entire region. This inconsistency has been played out in recent years in the determination of funding eligibility, prioritization of operating corridors, and with competitive contracting.

Finally, the Metropolitan Council continues to view and treat its suburban partners as an administrative nuisance rather than a regional partner. We are not recognized in its publications, web site, or even in the annual 'State of the Region' address, yet our organization, SouthWest Transit, has and continues to receive national recognition for its innovative, safe, and cost effective operations. It appears if the Metropolitan Council would rather view suburban providers and their oversight boards as "for-hire contractors" rather than true governmental partners.

Because of this, SouthWest Transit is requesting that the FTA take a more proactive approach in dealing and communicating with our region's sub-recipients. We have tried this approach in the past, only to be reprimanded by the Metropolitan Council staff and told by the FTA they do not deal directly with sub-recipients. The FTA directs us back to the Metropolitan Council, which the majority of the time is the organization we have the issue with, or question their interpretation of the federal rules and/or policies.

We would very much appreciate a more collaborative approach with the FTA, and it would also be helpful if the FTA provided direct/enhanced guidance to sub-recipients regarding changes and/or directives.

Thank you for your consideration. If you have any questions or concerns, please do not hesitate to contact our Chief Executive Officer Len Simich at 952-974-3101 or at lsimich@swtransit.org.

Sincerely,



Jerry McDonald
Chair
SouthWest Transit Commission

cc: Susan Haigh, Chair, Metropolitan Council
Pat Born, Regional Administrator, Metropolitan Council
Representative Erik Paulsen, Member of Congress
Board Members, SouthWest Transit Commission
Len Simich, CEO, SouthWest Transit



4646 Dakota Street SE
Prior Lake, MN 55372

August 14, 2013

Ms. Marisol Simon
Regional Administrator
Federal Transit Administration, Region 5
200 West Adams Street, Suite #320
Chicago, IL 60606

RE: Concurrence with Designation of Section 5307 Direct Recipient

Dear Ms. Simon:

The purpose of this letter is to fulfill the requirement in Federal Transit Administration (FTA) Circular 9030.1D Urbanized Area Formula Program: Program Guidance and Application Instructions to document the designation of a direct recipient of Section 5307 funding in the State of Minnesota, Minneapolis-St. Paul Urbanized Area.

The City of Prior Lake concurs with the designation of the Metropolitan Council as the direct recipient of Prior Lake's Section 5307 funding for the Minneapolis-St. Paul Urbanized Area.

The City of Prior Lake further requests the FTA copy any communication regarding the transmittal of funds to the Metropolitan Council to:

Jane Kansier, Assistant City Manager
City of Prior Lake
4646 Dakota Street SE
Prior Lake, MN 55372

This will assist Prior Lake in tracking transit funds for our system.

If you need additional information, please contact Assistant City Manager Jane Kansier at jkansier@cityofpriorlake.com or at 952-447-9812. Thank you for supporting public transit.

Sincerely,



Frank Boyles
City Manager

cc: Susan Haigh, Chair, Metropolitan Council
Pat Born, Regional Administrator, Metropolitan Council



City of
Maple Grove

12800 Arbor Lakes Parkway, P.O. Box 1180, Maple Grove, MN 55311-6180 763-494-6000

August 6, 2013

Ms. Marisol Simón
Regional Administrator
Federal Transit Administration, Region 5
200 West Adams Street, Suite #320
Chicago, IL 60606

RE: Concurrence with Designation of Section 5307 Direct Recipient

Dear Ms. Simón:

The purpose of this letter is to fulfill the requirement in Federal Transit Administration (FTA) Circular 9030.1D *Urbanized Area Formula Program: Program Guidance and Application Instructions* to document the designation of a direct recipient of Section 5307 funding in the State of Minnesota, Minneapolis-St. Paul Urbanized Area.

The City of Maple Grove and Maple Grove Transit concurs with the designation of the Metropolitan Council as the direct recipient of Section 5307 funding for the Minneapolis-St. Paul Urbanized Area.

Sincerely,

Alan A. Madsen
City Administrator

cc: Mark Steffenson, Mayor, City of Maple Grove
Mike Opatz, Transit Administrator, City of Maple Grove
Susan Haig, Chair, Metropolitan Council
Pat Born, Regional Administrator, Metropolitan Council



September 4, 2013

Ms. Marisol Simon
Regional Administrator, Federal Transit Administration, Region 5
200 West Adams Street, Suite #320
Chicago, IL 60606

RE: Concurrence with Designation of Section 5307 Direct Recipient

Dear Ms. Simon:

The purpose of this letter is to fulfill the requirement in Federal Transit Administration (FTA) Circular 9030.1D Urbanized Area Formula Program: Program Guidance and Application Instructions to document the designation of a direct recipient of Section 5307 funding in the State of Minnesota, Minneapolis-St. Paul Urbanized Area. The City of Shakopee concurs with the designation of the Metropolitan Council as the direct recipient of Plymouth's Section 5307 funding for the Minneapolis-St. Paul Urbanized Area.

The City of Shakopee requests that the FTA copy the Shakopee Community Development Director on any communications regarding the transmittal of funds to the Metropolitan Council. This will assist the City of Shakopee to track transit funds for our system. Any communications should be copied to the following contact and address;

R. Michael Leek, Esq. /Community Development Director
City of Shakopee
129 Holmes Street
Shakopee, MN 55379
E-mail: mleek@ci.shakopee.mn.us
Phone: (952) 233-9346

In the mid-1980s the City of Shakopee elected to exercise its right to provide public transit. It was empowered by the Minnesota Legislature in 1981 to create a suburban transit authority separate from the Metropolitan Transit Commission, now Metropolitan Council. The City of Plymouth transit system provides over 100,000 rides annually on express commuter and local bus services.

If you need additional information, please contact Community Development Director Michael Leek. Thank you for supporting public transit.

Sincerely,

Brad Tabke, Mayor
City of Shakopee, MN

Cc: ✓ Susan Haigh, Chair, Metropolitan Council
Pat Born, Regional Administrator, Metropolitan Council

COMMUNITY PRIDE SINCE 1857

129 Holmes Street South • Shakopee, Minnesota • 55379-1351 • 952-233-2400 • FAX 952-233-3801 • www.ci.shakopee.mn.us

UNIVERSITY OF MINNESOTA

Twin Cities Campus

*University Services
Office of the Vice President*

*317 Morrill Hall
100 Church Street S.E.
Minneapolis, MN 55455
Office: 612-624-3557
Fax: 612-626-2278*

August 22, 2013

Metropolitan Council

AUG 26 2013

Received Chair's Office

Marisol Simon
Regional Administrator
Federal Transit Administration, Region 5
Suite 320
200 West Adams Street
Chicago IL 60606

RE: Concurrence with Designation of Section 5307 Direct Recipient

Dear Ms. Simon:

The purpose of this letter is to fulfill the requirement in Federal Transit Administration (FTA) Circular 9030.ID *Urbanized Area Formula Program: Program Guidance and Application Instructions* to document the designation of a direct recipient of Section 5307 funding in the State of Minnesota, Minneapolis-St. Paul Urbanized Area.

The University of Minnesota concurs with the designation of the Metropolitan Council as the direct recipient of Section 5307 funding for the Minneapolis-St. Paul Urbanized Area.

Sincerely,



Pamela Wheelock
Vice President, University Services

cc: Susan Haigh, Chair, Metropolitan Council



JUL 25 2013

Received Chair's Office

July 22, 2013

Ms. Marisol Simón
Regional Administrator
Federal Transit Administration, Region 5
200 West Adams Street, Suite 320
Chicago, IL 60606

Re: Concurrence with Designation of Section 5307 Direct Recipient

Dear Ms. Simón:

The purpose of this letter is to fulfill the requirement in the Federal Transit Administration (FTA) Circular 9030.1D, *Urbanized Area Formula Program: Program Guidance and Application Instructions*, to document the designation of a direct recipient of Section 5307 funding in the State of Minnesota, Minneapolis-St. Paul Urbanized Area.

The City of Minnetonka concurs with the designation of the Metropolitan Council as the direct recipient of Section 5307 funding for the Minneapolis-St. Paul Urbanized Area.

Sincerely,

Terry Schneider
Mayor



Adding Quality to Life

August 5, 2013

Ms. Marisol Simon
Regional Administrator
Federal Transit Administration, Region 5
200 West Adams Street, Suite #320
Chicago, IL 60606

RE: Concurrence with Designation of Section 5307 Direct Recipient

Dear Ms. Simon:

The purpose of this letter is to fulfill the requirement in Federal Transit Administration (FTA) Circular 9030.1D Urbanized Area Formula Program: Program Guidance and Application Instructions to document the designation of a direct recipient of Section 5307 funding in the State of Minnesota, Minneapolis-St. Paul Urbanized Area.

The City of Plymouth concurs with the designation of the Metropolitan Council as the direct recipient of Plymouth's Section 5307 funding for the Minneapolis-St. Paul Urbanized Area.

The City of Plymouth requests that the FTA copy the Plymouth Transit Manager concerning any communication regarding the transmittal of funds to the Metropolitan Council. This will assist Plymouth to track transit funds for our system.

Sarah Hellekson, Plymouth Transit Manager, 3400 Plymouth Boulevard, Plymouth, MN 55447

In 1984, the City of Plymouth elected to exercise its right to provide public transit. It was empowered by the Minnesota Legislature in 1981 to create a suburban transit authority separate from the Metropolitan Transit Commission, now Metropolitan Council. The City of Plymouth transit system provides 500,000 rides annually on express commuter bus, local bus, and dial-a-ride services.

If you need additional information, please contact Plymouth Transit Manager, Sarah Hellekson at [shellekson@plymouthmn.gov](mailto:sellekson@plymouthmn.gov) or 763-509-5052. Thank you for supporting public transit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelli Slavik', is written over a light blue horizontal line.

Kelli Slavik, Mayor
City of Plymouth

Cc: Susan Haigh, Chair, Metropolitan Council
Pat Born, Regional Administrator, Metropolitan Council





Community Development Department

7/19/2013

Ms. Marisol Simon
Regional Administrator
Federal Transit Administration, Region 5
200 West Adams Street, Suite #320
Chicago, IL 60606

Metropolitan Council

JUL 22 2013

Received Chair's Office

Re: Concurrence with Designation of Section 5307 Direct Recipient

Dear Ms. Simon:

In 2012 the US Census Bureau released the urbanized area boundaries resulting from the 2010 Census. For the first time, a small portion of St. Croix County, Wisconsin, about 1/2 square mile in the Town of St. Joseph, with a 2010 population of 276 people, was included in the Twin Cities urbanized area (map attached).

Federal Transit Administration (FTA) Circular 9030.1D detailing rules for Section 5307 funding states that when a UZA extends into more than one state and the public transportation providers are also located in more than one state, more than one governor will participate in the process to designate a recipient. There is no public transit, nor any public transportation providers within the Town of St. Joseph, Wisconsin. Therefore, the requirement that the Governor of Wisconsin must participate in the designation would not apply.

The purpose of this letter is to document that St. Croix County, Wisconsin concurs with the designation of the Metropolitan Council by the Governor of Minnesota as the direct recipient of Section 5307 funding for the Minneapolis-St. Paul, MN/WI Urbanized Areas.

Sincerely,

Ellen Denzer,
Community Development Director
www.sccwi.us/cdd
715.386-4673
Ellen.denzer@co.saint-croix.wi.us

cc: Patrick Thompson, County Administrator

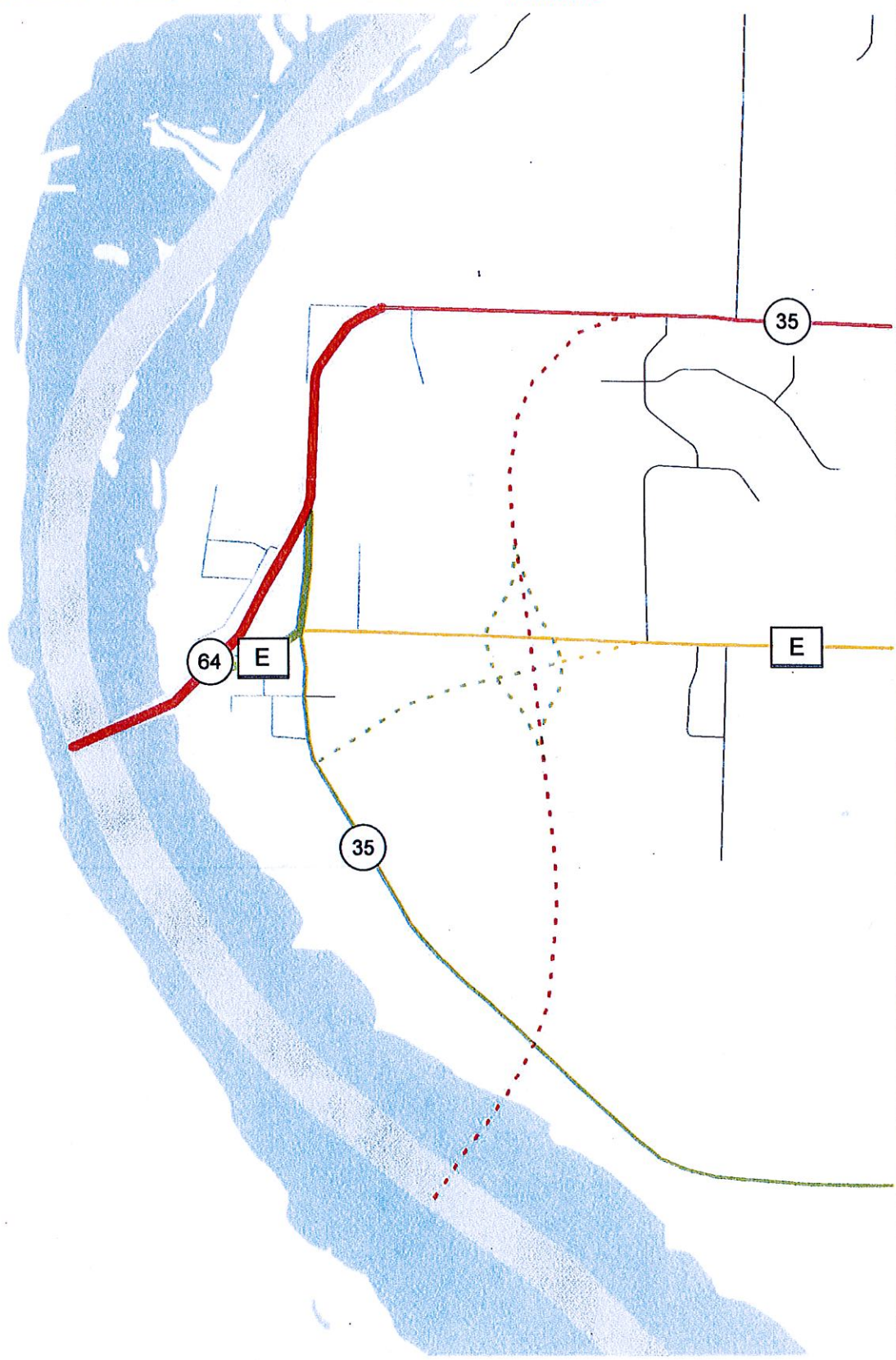
Enclosure

HOULTON

BOUNDARY ONLY - function is for illustration **PENDING**

MnDOT Agreement #: 1029332

HOULTON



Legend	
Existing Planned*	Other
— Principal Arterial	Railroads
— Minor Arterial	Lakes, Rivers, Streams
— Collector	City and Village Boundary
— Local	Urbanized Area
Other surrounding urbanized areas	Rural Area
*NOTE: All planned route locations are approximations only.	
	County Boundary

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