

PROGRAMMATIC AGREEMENT  
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION IOWA DIVISION  
THE IOWA DEPARTMENT OF TRANSPORTATION AND THE IOWA DEPARTMENT OF  
NATURAL RESOURCES  
REGARDING THE PROCESSING OF  
RECREATIONAL PADDLING ROUTES AS SECTION 4(f) RESOURCES

WITNESSETH:

**Whereas**, the Iowa Department of Transportation (Iowa DOT) proposes highway projects and desires to apply Federal-aid funding for those projects and in doing so, the Federal Highway Administration Iowa Division (FHWA) must comply with National Environmental Policy Act (NEPA) and; 23 U.S.C. 138 and 49 U.S.C. 303, which was originally enacted as Section 4(f) of the Department of Transportation Act of 1966 and is still commonly referred to as “Section 4(f)”;

**Whereas**, Section 4(f) indicates that the Secretary shall not approve any program or project which requires the use of any publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless there is no feasible and prudent alternative to the use of such land, and such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use; or the use, including any measures to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) will have a de minimis impact on the property.

**Whereas**, the FHWA has identified various exceptions to the requirement for Section 4(f) approval. These exceptions include, temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f);

**Whereas**, the Iowa Department of Natural Resources (Iowa DNR) has identified paddling routes and water trails throughout the state and the locations are available on the Iowa DNR website;

**Whereas**, the Iowa DOT wishes to process temporary construction impacts to paddling routes and water trails as a Section 4(f) temporary occupancy exception;

**Now, therefore**, the FHWA, the Iowa DOT and the Iowa DNR enter into this Programmatic Agreement (Agreement) for the processing of temporary occupancies of the paddling routes and water trails that are so minimal as to not constitute a use within the meaning of Section 4(f):

## **SECTION I. PARTIES**

The Parties to this Agreement are the Federal Highway Administration (FHWA), the Iowa Department of Transportation (Iowa DOT), and the Iowa Department of Natural Resources (Iowa DNR).

## **SECTION II. PURPOSE**

The purpose of this Agreement is to document the Section 4(f) decision process, project notification process, and mitigation process for Iowa DNR paddling routes and water trails.

## **SECTION III. AUTHORITIES**

This agreement is entered into pursuant to the following authorities:

- A. 23 U.S.C. 103(c), 109(h), 138, 325, 326, 327 and 204(h)(2);
- B. 49 U.S.C. 303;
- C. Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, Aug. 10, 2005, 119 Stat. 1144);
- D. 49 CFR 1.81 and 1.91; and,
- E. Pub. L. 114-94, 129 Stat. 1312, Sections 1303 and 11502

## **SECTION IV. SECTION 4(F) DECISION PROCESS**

### **Step 1: Is it 4(f)?**

All parties agree that paddling routes and water trails as designated by Iowa DNR are protected under Section 4(f) based on the following criteria:

- A. The Iowa DNR has jurisdiction over designated paddling routes and water trails.
- B. Recreation is the official designation or classification for the paddling routes and water trails.
- C. Navigation is the primary function of the paddling route and water trail.
- D. Recreation is the secondary function of the paddling route and water trail.
- E. The paddling routes and water trails are open to the public.
- F. The paddling routes and water trails are significant or important for its use.

### **Step 2: Is there a use of the 4(f) property?**

All Parties agree that some projects will temporarily block all or parts of the stream or have a safety issue with potential falling debris that will have a temporary use of the paddling route or water trail and will be subject to this agreement.

All Parties agree that there are project types that do not affect the use of a paddling route or water trail. These projects are exempt from this process:

Projects for bank stabilization, deck repairs, resurfacing, or guardrail work do not constitute a use of the Section 4(f) and will not require a notification to Iowa DNR. These project types will be documented in the Iowa DOT project record and will not require a notification to Iowa DNR (no use).

### **Step 3: Can the 4(f) property be avoided?**

All parties agree that there is a need for the construction project and the project will have a temporary effect on the paddling route or water trail. The temporary closure of the trail meets the following criteria:

- A. Duration (of the occupancy) is to be temporary, i.e. less than the time needed for construction of the project, and there will be no change in ownership of the land.
- B. Scope of the work is minor, i.e., both the nature and magnitude of the changes to the paddling route or water trail are minimal.
- C. There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis.
- D. The land being used will be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project.

### **Step 4: Can the impacts to the 4(f) property be minimized?**

All parties agree with the following mitigation steps. The construction of the project will meet the temporary occupancy criteria and the impacts to the paddling route and water trails are so minimal as to not constitute a use within the meaning of Section 4(f):

- A. The Iowa DOT (or project sponsor) will use the Iowa DNR Permit and Environmental Review Management Tool (PERMT) to submit a Request Environmental Review (RER) for all projects that fall under this agreement. The RER will provide the initial notification to the Iowa DNR.
- B. The Iowa DOT (or project sponsor) will ensure that a temporary path or portage around the project area while the channel is obstructed. The final plans will include a note for the contractor to carry out this task;
- C. A safe place to land a small boat or innertube is recommended to be maintained on the upstream side, and a safe place to launch downstream is recommended to be maintained on the downstream side. The active walk-through access on the river right or river left bank may be changed from one side to the other throughout the course of the project construction, but signage from upstream should reflect the active side. The final plans will include a note for the contractor to carry out this task;
- D. Use Iowa DNR's warning signage recommendations to help the public avoid injury (see chapter six on signage in "Developing Water Trails in Iowa" found at this link:

<https://www.iowadnr.gov/things-to-do/canoeing-kayaking/water-trail-development>). The final plans will include a note for the contractor to carry out this task;

- E. Prior to the channel obstruction being placed, a notification will be sent to the Iowa DNR Water Trails Coordinator via e-mail so that a temporary hazard symbol may be added to the DNR's interactive river mapping system. The final plans will include a note for the contractor to carry out this task;
- F. When the channel obstruction is removed, a notification will be sent to the Iowa DNR Water Trails Coordinator via e-mail so that the temporary hazard symbol can be removed from the DNR's interactive river mapping system. The final plans will include a note for the contractor to carry out this task;
- G. All construction debris will be removed from the river channel when the construction is completed.

## **SECTION V. TRACKING**

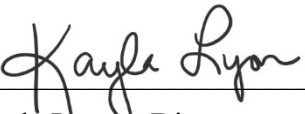
The Iowa DOT will maintain a record for all projects that fall under this agreement and make available to all parties. The record will include the project number, location, navigable stream, letting date, and completion status.

## **SECTION VI. AMENDMENTS AND ADMINISTRATIVE MODIFICATIONS**

- A. Any party to this Agreement may request that it be amended or administratively modified to reflect non-substantive changes, whereupon the parties shall consult to consider such an amendment.
- B. If the parties agree to amend this Agreement, then the FHWA, the Iowa DOT or the Iowa DNR may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.


Execution of this Agreement and implementation of its terms by all parties provides evidence that all parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.

Iowa Department of Natural Resources

  
\_\_\_\_\_  
Kayla Lyon – Director  
Iowa Department of Natural Resources

12/17/2020  
Date

Iowa Department of Transportation

  
\_\_\_\_\_  
Tamara Nicholson – Director  
Location and Environment Bureau  
Iowa Department of Transportation

12/17/2020  
Date

Federal Highway Administration

\_\_\_\_\_  
Timothy C. Marshall, PE  
Division Administrator  
FHWA Iowa Division

01/14/2021  
Date

Attachment - Plan Note

## Final Plan Note:

1. Ensure a temporary path or portage around project area at all times while the channel is obstructed.
2. A safe place to land a small boat or innertube is recommended to be maintained on the upstream side, and a safe place to launch downstream is recommended to be maintained on the downstream side. The active walk-through access on the river right or river left bank may be changed from one side to the other throughout the course of the project construction, but signage from upstream should reflect the active side.
3. Use Iowa DNR's warning signage recommendations to help the public avoid injury—see chapter six on signage in “Developing Water Trails in Iowa” found at this link: <https://www.iowadnr.gov/things-to-do/canoeing-kayaking/water-trail-development>.
4. When the channel obstruction is placed, a notification will be sent to John Wenck via e-mail at [John.Wenck@dnr.iowa.gov](mailto:John.Wenck@dnr.iowa.gov) so that a temporary hazard symbol can be added to the DNR's interactive river mapping system.
5. When the channel obstruction is removed, a notification will be sent to John Wenck via e-mail at [John.Wenck@dnr.iowa.gov](mailto:John.Wenck@dnr.iowa.gov) so that the temporary hazard symbol can be removed from the DNR's interactive river mapping system.
6. All construction debris will be removed from the river channel when the temporary construction platform is removed.