

FINDINGS OF FACT and CONCLUSIONS

TH 23 Bridge Replacement and Deer Creek Restoration Project

State Project No. 0901-70

**Prepared by:
Minnesota Department of Transportation**



September 2018

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FINDINGS OF FACT and CONCLUSIONS

TH 23 Bridge Replacement and Deer Creek Restoration Project

**Located in:
Carlton County**

1.0 STATEMENT OF ISSUE

The State Trunk Highway (TH) 23 Bridge Replacement and Deer Creek Restoration Project is located in Wrenshall Township in Carlton County, MN. The proposed project will consist of the replacement of the Highway 23 box culvert structure that conveys Deer Creek under the roadway and the restoration of approximately 1,140 linear feet of Deer Creek. The project proposes to remove the existing structurally deficient box culvert structure and replace it with a single span bridge. The stream restoration will restore natural stream geomorphology, improve overall ecological function, and enhance fish passage and habitat. Deer Creek will be slightly realigned to include a restored meander of the watercourse with rock riffles and pools to provide a stream profile that will allow trout passage through the area.

Preparation of an Environmental Assessment Worksheet (EAW) is required for this project under Minnesota Rules 4410.4300, Subpart 26, for stream diversion. The Minnesota Department of Transportation (MnDOT) is the project proposer. MnDOT is also the Responsible Governmental Unit (RGU) for review of this project, as per Minnesota Rules 4410.4300, Subpart 22.A.

MnDOT's decision in this matter shall be either a negative or a positive declaration of the need for an Environmental Impact Statement (EIS). MnDOT must order an EIS for the project if it determines the project has the potential for significant environmental effects.

Based upon the information in the record, which comprises the EAW for the proposed project, related studies referenced in the EAW, and other supporting documents included in this Findings of Fact and Conclusions document, MnDOT makes the following Findings of Fact and Conclusions:

2.0 ADMINISTRATIVE BACKGROUND

2.1 Minnesota Department of Transportation (MnDOT)

The Minnesota Department of Transportation (MnDOT) is the project proposer and the Responsible Government Unit for the TH 23 Bridge Replacement and Deer Creek Restoration Project. A State Environmental Assessment Worksheet (EAW) has been prepared for this project as part of the state environmental review process to fulfill requirements of Minnesota Rules, part 4410.4300, subpart 26. At the state level, the EAW is used to provide sufficient environmental documentation to determine the need for a state EIS or that a Negative Declaration is appropriate.

2.2 EAW

The EAW was filed with the Minnesota Environmental Quality Board (EQB) and circulated for review and comments to the required EQB distribution list. A "Notice of Availability" was published in the

EQB Monitor on July 23, 2018. Appendix A contains a copy of the EQB Monitor listing for the project. The EAW was also posted on the project web site at:
<http://www.dot.state.mn.us/d1/projects/hwy23bridge/index.html>.

A press release was distributed by MnDOT to local media outlets. Appendix A contains a copy of this press release. The notice provided a brief description of the project, information on where copies of the EAW were available for public review, and how comments could be submitted.

The EAW was made available for public review at the MnDOT District 1 in Duluth and the Duluth Public Library. Comments were formally received through Wednesday, August 22, 2018.

Two comments were received during the EAW comment period. All comments received during the EAW comment period were considered in determining the potential for significant environmental impacts. Comments received during the comment period and responses to substantive comments are provided in Appendix B.

3.0 FINDINGS OF FACT

3.1 Project Description

3.1.1 Existing Conditions:

TH 23 is an important highway for northeast Minnesota and serves as an alternative route to Interstate 35 for area residents and businesses on the east side of Carlton County. The TH 23 corridor connects many rural communities across east-central and northeastern Minnesota. TH 23 terminates in the City of Duluth.

TH 23 is a rural two-lane minor arterial road with a 2016 traffic count of 600 AADT. The road also has bicycle accommodating shoulders that make it a bike route. The general setting of the project area is rural with scattered residential and recreational land uses, with most of the area undeveloped. The project is located adjacent to the Blackhoof River Wildlife Management Area (WMA), which can be described as aspen-spruce/fir and riparian forests types with many upland openings. The area is dissected with steep river valleys and ravines and is used for hunting, hiking, and other recreational activities.

The TH 23 Bridge (Bridge No. 8501) for Deer Creek is currently a 10 foot by 10 foot cast in place concrete box culvert built in 1939. In 2017, the bridge/culvert structure was given a sufficiency rating of 52.2 and classified as structurally deficient. Deer Creek is identified as a Public Water and designated trout stream. The existing stream profile and alignment in the area immediately upstream and downstream from TH 23 have contributed to adverse stream geomorphology, ecological function, and fish habitat due to erosion and bank failure along this segment of Deer Creek and particularly at the plunge pool on the east side of Bridge 8501.

3.1.2 Proposed Project:

The proposed project as identified in the EAW includes the bridge replacement of the structurally deficient hydraulic structure on TH 23 and the associated stream restoration of Deer Creek that crosses under the highway.

The limits of the transportation infrastructure improvements extend approximately 615 feet north and 400 south of the culvert on TH 23. Bridge 8501 over Deer Creek will be abandoned and replaced with a new single-span bridge (proposed Bridge No. 09020). Associated excavation, resurfacing and grading will occur. Approximately 1,140 feet of Deer Creek will undergo restoration including

approximately 440 feet upstream and 700 feet downstream from the culvert. The existing culvert will be abandoned and a new stream channel will be constructed under the TH 23 Bridge. Restoration work will also include bank stabilization and minor modifications of the stream alignment and profile to allow for fish passage and spawning upstream. Stream restoration will extend outside of the MnDOT right of way into the Blackhoof River Wildlife Management Area (WMA).

3.2 Additional Information Regarding Items Discussed in the EAW Since It Was Published

Since the EAW was published, a Section 4(f) Temporary Occupancy letter was signed by the MNDNR Duluth Area Fisheries Supervisor. The letter outlined the proposed temporary impacts to the Blackhoof River Wildlife Management Area (WMA) and the reasoning for the stream restoration work in the WMA to be considered a temporary occupancy of Section 4(f) lands. The signed Section 4(f) Temporary Occupancy letter is in Appendix C.

3.3 Findings Regarding Criteria for Determining the Potential for Significant Environmental Effects

Minnesota Rules 4410.1700 provides that an Environmental Impact Statement shall be ordered for projects that have the potential for significant environmental effects. In deciding whether a project has the potential for significant environmental effects, the following four factors described in Minnesota Rules 4410.1700, Subp.7 shall be considered:

- A. type, extent, and reversibility of environmental effects;
- B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
- C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
- D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

MnDOT's key findings for the TH 23 Bridge Replacement and Deer Creek Restoration Project with respect to each of these criteria are set forth below:

3.3.1 Type, Extent, and Reversibility of Impacts

MnDOT finds that the analysis completed during the EAW process is adequate to determine whether the project has the potential for significant environmental effects. The EAW describes the type and extent of impacts anticipated to result from the proposed project. In addition to the information in the EAW, the additional information described in Section 3.2 of this Findings of Fact and Conclusions document as well as the public/agency comments received during the public

comment period (see Appendix B) were taken into account in considering the type, extent and reversibility of project impacts. Following are the key findings regarding potential environmental impacts of the proposed project and the design features included to avoid, minimize, and mitigate these impacts:

3.3.1.1 Land Use:

Land Use and Development: Bridge replacement as a part of the project will take place within MnDOT right of way; stream restoration will take place within both MnDOT right of way and extend outward into the WMA. The project is not expected to cause change in land use or lead to any development within the vicinity of the construction area. No right of way acquisition will be required.

Parks and Trails: The project is adjacent to the Blackhoof River WMA, a 4,025-acre recreational area with active forest management and hunting grounds maintained by the MNDNR. As provided by Minnesota Statutes, Section 86A.05, WMAs are established "to protect those lands and waters which have a high potential for wildlife production and to develop and manage these lands and waters for the production of wildlife, for public hunting, fishing, and trapping, and for other compatible outdoor recreational uses." The Blackhoof River WMA contains aspen-spruce/fir and riparian forests types with many upland openings and is dissected with steep river valleys and ravines. Besides hunting, the WMA also offers remote areas, scenic views, and mature forest. The WMA also has an extensive trail system with more than 12 miles of trails and carry-in canoe access to the Blackhoof and Nemadji Rivers. These access points are located outside the project area.

The portion of the WMA within the project area is managed as the Blackhoof Aquatic Management Area (AMA). AMAs are riparian shoreline parcels maintained by the MNDNR. As provided by Minnesota Statutes, Section 86A.14, AMA properties are established to "protect, develop and manage lakes, rivers, streams, and adjacent wetlands and lands that are critical for fish and other aquatic life for water quality, and for their intrinsic biological value, public fishing, or other compatible outdoor recreational uses." The Blackhoof River AMA includes much of Deer Creek, the Blackhoof River, and the Nemadji River and their surrounding land. These watercourses are all designated trout streams by the MNDNR.

A local grant-in-aid snowmobile trail has been located within the project area. At this portion, the trail has historically run parallel to TH 23 before heading directly north and adjoining with other snowmobile trails. The designation and location of these trails are not permanent and can change from year to year based on landowner agreements.

The Willard Munger State Trail is a collection of multi-use trails that run between Hinckley and Duluth. While the trail mostly follows Interstate 35, the Alex Laveau Trail Segment connects to TH 23 approximately five miles north of the project area. The trail is owned and operated by the MNDNR.

The SOO Line Trail Southern Route is an all-terrain vehicle trail that is a converted rail-trail that runs between Central Minnesota (near the town of Royalton) and the Minnesota–Wisconsin state line east of Pleasant Valley. The trail intersects with TH 23 about a mile north of the project area.

3.3.1.2 Water Resources:

Surface Waters: Deer Creek is the only surface water that is located within the project area. Six other water features are located within a mile of the project area. Runoff from construction sites can impact downstream surface waters which is mitigated by the temporary and permanent BMPs

required under the NPDES/SDS Construction Stormwater Permit. Temporary erosion and sediment control measures will be implemented throughout the construction activities to protect downstream receiving surface waters. Deer Creek is a designated trout stream; its pollutant or stressor is fish bio-assessments. For this project, discharge to Deer Creek is considered to be construction related parameters and the project will require additional best management practices (BMPs) for compliance with the NPDES Construction Permit. The restoration process includes bank stabilization and modification of the stream profile to allow for fish passage. Stream restoration is intended to reduce erosion, bank failure, and to improve fish passage. No negative physical affects to any surface water features are anticipated.

Stormwater Management: The project will result in no net change in impervious area post construction. The runoff from the project area will not contribute additional pollutant loads. Drainage patterns will primarily remain unchanged as surface water runoff from the rural roadway section will be conveyed to grass ditches designed to provide some biofiltration that will ultimately discharge to Deer Creek. Runoff from construction sites is mitigated by the temporary and permanent BMPs required under the NPDES/SDS Construction Stormwater Permit. A Storm Water Pollution Prevention Plan (SWPPP) that includes erosion control and sediment management practices will be created as part of design and implementation of proposed improvements.

Groundwater: Using the Minnesota Department of Agriculture's (MDA) online source water protection area mapping tool and database, it was determined that there are no wellhead protection areas (WPA) located within five miles of the project area.

Water Appropriation: Temporary dewatering may be required during construction. Should dewatering become required and exceed the Minnesota permit threshold of withdrawing more than 10,000 gallons of water per day or 1 million gallons per year, a water appropriation permit application will be completed and submitted to the MnDNR for approval prior to any dewatering activities taking place. Dewatering will comply with the Minnesota Pollution Control Agency (MPCA) National Pollutant Discharge Elimination System (NPDES) Construction Storm Water Permit, and shall be discharged in a manner that does not create nuisance conditions or adversely affect the receiving water or downstream properties. No connections to existing municipal water supplies or new wells are anticipated.

Wetlands and Wet Ditches: A Level 2 Wetland Delineation of the project area was completed and the results concluded no wetlands were found. The project will not impact any wetlands.

Waterbody Modification: The project involves restoration of approximately 1,140 feet of Deer Creek. The restoration activities include realigning and meandering a portion of the channel under the new TH 23 Bridge. Other components include reducing the stream profile and construction of rock riffles and pools to create fish passage through the area. Woody debris from trees removed by construction may be salvaged to create in-stream cover, define channel boundaries and may even constrict the channel where needed. Vegetation plantings adjacent to the restored channel will consist of native riparian flora appropriate to the habitat and region. Hard armor surfaces (stone rip rap) along the channel will be used to protect the bridge abutments from potential erosion and scouring.

Floodplain: According to the Flood Insurance Rate Map (FIRM 2700390006), there is no designated floodplain for Deer Creek.

3.3.1.3 MPCA and MDA Databases

A review of the MPCA and Minnesota Department of Agriculture (MDA) databases was conducted to determine if known contaminated sites exist in the project area. Based on this review, it was determined that the project has a low risk of impacting potentially contaminated sites. The rural and minimally developed area of the project decreases the chances of encountering hazardous materials (contaminated soil and/or groundwater). Based on the database review, there are no known contaminated sites within 500 feet of the project area. The project will not have a high risk of causing direct or indirect impacts to human health of sensitive environmental resources due to encountering contaminated materials.

All solid wastes generated by construction of the proposed project will be disposed of properly in a permitted, licensed solid waste facility. Project demolition of concrete, asphalt, and other potentially recyclable construction materials will be directed to the appropriate storage, crushing, or renovation facility for recycling. Any contaminated spills or leaks that occur during construction are the responsibility of the contractor and would be responded to according to the MPCA containment and remedial action procedures.

3.3.1.4 Fish, Wildlife, Plant Communities and Sensitive Ecological Resources

The project is not anticipated to have any substantial adverse impacts to fish, wildlife, and ecologically sensitive resources. Typical roadway construction activities (grading, paving, drainage, etc.) that encompass the nature of this project can affect wildlife habitats. Potential erosion and sediment impacts to Deer Creek could occur from the construction activities related to the bridge replacement, potentially impacting fish species in the project area. However, no new right of way will be acquired and all construction will occur adjacent to the existing roadway. Therefore, wildlife corridors will not experience further fragmentation. The portion of Deer Creek in the project area will include a channel meander and bed/bank restoration in order to reduce the stream profile. The proposed Deer Creek restoration is anticipated to result in beneficial effects on fish and wildlife including enhanced wildlife passage with the construction of the new single span bridge and wildlife benches incorporated into the stream restoration plans.

Where reasonable and feasible, design modifications have been incorporated into the design of the proposed roadway improvements to avoid and minimize impacts to fish and wildlife habitat. Wildlife-friendly erosion control materials will be used where applicable. Work Exclusion Dates (September 15 through June 30) established by the MNDNR within the General Public Waters Work Permit (GP 2004-0001) will be followed. Further, the MPCA NPDES General Storm Water Permit for Construction Activity (MNR10001) recognizes the Work Exclusion Dates. During these exclusion dates, the permit mandates all exposed soil areas within 200 feet of the water's edge and drains to these waters must have erosion prevention stabilization activities initiated immediately after construction activity has ceased and be in place within 24 hours. Ongoing coordination with the MNDNR will occur during more detailed design and permitting to ensure BMPs applicable to the site are incorporated into the final design.

No significant adverse impacts to natural/native plant communities, landscape and ornamental plantings, vegetation providing an engineering function, or vegetation of exceptional visual quality is anticipated with the proposed improvements. Grading and earthwork adjacent to the stream channel will re-establish native riparian vegetation. The project will require the removal of approximately 1.18 acres of trees. Following stream restoration work, it is assumed that trees will naturally regenerate along the disturbed slopes and stream banks.

Minimizing the construction footprint to the extent practicable including construction staging areas and heavy equipment access routes will diminish potential impacts to plant communities in the project area. Selection of construction staging areas that are already disturbed will also help to minimize impacts to plant communities. Vegetation protection measures will be based on MnDOT Standard Specification 2572, including temporary fence (2572.3A.1) and clean root cutting (2572.3A.2). The Standard Plan sheet 5-297.302 related specifically to vegetation protection and restoration will be followed. Additional coordination will occur with the MnDOT Office of Environmental Stewardship to ensure best practices are followed to minimize impacts to the areas of sensitivity (AES). Rigorous weed control in construction areas will help to minimize the potential for infestations of noxious plant species (see above discussion on invasive species). Post-construction re-grading and rapid establishment of appropriate native vegetation will minimize potential impacts. As necessary, appropriate revegetation may also include woody vegetation, like trees and shrubs, native riparian vegetation, in addition to other grasses and/or forbs.

Section 7 consultation with the U.S. Fish & Wildlife Service (USFWS) has occurred. Given the location of the proposed project, the project is not anticipated to adversely affect any known occurrences of rare features. Per the U.S. Fish and Wildlife Service, MNDNR correspondence, and other available data, there are no documented roost trees or hibernacula in the project area. The wood turtle is a state-listed threatened species that has been reported in the Nemadji River Watershed, including near the project area. As a result, wood turtles may be encountered on site. State laws and rules will be followed to ensure no adverse impact to the species. Appropriate measures will be taken in accordance with MNDNR guidance.

State laws and rules prohibiting the destruction of the threatened or endangered species will be followed if encountered on site. Records of state-listed species are limited to wood turtle and northern long-eared bat that have suitable habitat nearby, but no known occurrences are within the project area. If however, any motile fauna species are in imminent danger during construction, they will be allowed to move out of harm's way; otherwise, all fauna species will be left undisturbed. The stream restoration design includes wildlife benches on both sides of Deer Creek that will allow for wildlife passage under the bridge. This is an improvement from the existing conditions, which requires wildlife to cross TH 23 through a 10'x10' box culvert or directly across the roadway surface. The design also includes a modification to the stream profile to allow for fish passage and spawning upstream. There are no records of state-listed flora in the project area; therefore, no mitigation is anticipated.

3.3.1.5 Historic:

The MnDOT Cultural Resources Unit (MnDOT CRU) has reviewed the project for potential for impacts to historic properties. MnDOT CRU has determined that Bridge 8501 is not eligible for the National Register of Historic Places. Because the vast majority of construction work will occur within previously disturbed right-of-way, it is unlikely that the area of potential effects (the proposed construction area) contains intact, significant archeological resources. No historic structures were found in the project area and no historic properties will be affected by the project.

3.3.1.6 Visual:

The proposed project follows the existing TH 23 alignment and will have no adverse impacts to the visual quality of the area. No vapor plumes, glare, or major grade changes are proposed with the preferred alternative. The project will replace the existing culvert structure with a single span bridge structure. No impact to the visual resources of the natural, cultural, and project environments are

anticipated. No substantial impact to the ability of the affected population to view visual resources is anticipated. Visual quality will, therefore, not be altered by the project.

3.3.1.7 Construction Noise and Dust:

Construction related activities will result in temporary noise level increases associated with construction equipment. The duration of the project is anticipated to last up to two construction seasons with work occurring during daylight hours. High-impact noise construction activities will be limited in duration to the greatest extent possible.

Dust generated during construction will be minimized through standard dust control measures such as applying water to exposed soils and limiting the extent and duration of exposed soil conditions. Construction contractors will be required to control dust and other airborne particulates in accordance with MnDOT specifications. After construction is complete, dust levels are anticipated to be minimal because all soil surfaces exposed during construction would be in permanent cover (i.e., paved or re-vegetated areas).

3.3.1.8 Right-of-way and Relocations:

The project will require no right of way acquisition or relocations.

3.3.1.9 Considerations Relating to Pedestrians and Bicyclists:

The MnDOT Bicycle and Pedestrian Division was contacted to provide comments on the project. The Carlton County Bicycle Map was also reviewed. The 2015 map designates TH 23 as a roadway with shoulders greater than four feet with daily traffic counts in the range of 751 - 2500 vehicles (i.e., 3 cars/min). MnDOT commented that TH 23 has bikeable shoulders (adequate paved width) and the corridor is a popular bike route. The project will maintain adequate shoulder widths, but bicycle movements may be temporarily impacted during construction.

3.3.1.10 Summary finding with respect to these criteria:

MnDOT finds that the project, as it is proposed, does not have the potential for significant environmental effects based on the type, extent, and reversibility of impacts to the resources evaluated in the EAW and in the Findings summary above. Project impacts will be mitigated as described in the EAW and in the Findings above.

3.3.2 Cumulative Potential Effects of Related or Reasonably Foreseeable Future Projects

Carlton County has no immediate future public works projects that would interact with the environmental effects of the proposed project area.

MnDOT has an independent project (SP 0901-62) along TH 23 that involves the removal of an old Soo Line Railroad Bridge (Bridge 5468) over Highway 23. The removal of the Soo Line Bridge and the Deer Creek improvements are mutually exclusive of one another. MnDOT is coordinating the construction schedules merely to take advantage of the proposed detour described in EAW Item 18.c., which will provide travel benefits to the motoring public.

3.3.3 Extent to Which the Environmental Effects are Subject to Mitigation by Ongoing Public Regulatory Authority

The mitigation of environmental impacts will be designed and implemented in coordination with regulatory agencies and will be subject to the plan approval and permitting processes. Permits and

approvals that have been obtained or may be required prior to project construction include those listed in Table 1.

Table 1 – Agency Approvals and Permits

Permit/Approval Type	Unit of Government	Action Required
Federal		
Categorical Exclusion	Federal Highway Administration (MnDOT Delegated Authority)	Approval
Section 4(f) Temporary Occupancy	Federal Highway Administration	Approval
Section 106 (Historical/Archaeological)	Federal Highway Administration (MnDOT Delegated Authority)	No Effect Determination
Section 7 Review	Federal Highway Administration (MnDOT Delegated Authority)	Consultation
Section 404 Permit	U.S. Army Corps of Engineers	Approval
State		
EAW Document	MnDOT	Approval
EIS Need Decision	MnDOT	Findings of Fact and Conclusions
Construction Plans – Roadway/Geometric Layout	MnDOT	Approval
Public Waters Work Permit (General Permit 2004-0001)	MNDNR	Approval
Cultural Resources Review (Historic/Archaeological)	MnDOT	No Adverse Effect Determination
Section 401 Water Quality Certification	MPCA	Certification
WMA Impacts – Section 4(f) Temporary Occupancy	MNDNR	Approval
NPDES Construction Stormwater Permit	MPCA	Approval

The permits listed in Table 1 include general and specific requirements for mitigation of environmental effects of the project. Therefore, MnDOT finds that the environmental effects of the project are subject to mitigation by ongoing regulatory authority.

3.3.4 Extent to Which Environmental Effects can be Anticipated and Controlled as a Result of Other Environmental Studies

MnDOT has extensive experience in roadway construction. Many similar projects have been designed and constructed throughout the area encompassed by this governmental agency. Design and construction staff are familiar with the project area.

No problems are anticipated which MnDOT staff have not encountered and successfully solved many times on similar projects in or near the project area. MnDOT finds that the environmental effects of the project can be anticipated and controlled as a result of the assessment of potential issues during the environmental review process and MnDOT’s experience in addressing similar issues on previous projects.

4.0 CONCLUSIONS

1. The Minnesota Department of Transportation has jurisdiction in determining the need for an environmental impact statement on this project.
2. All requirements for environmental review of the proposed project have been met.
3. The EAW and the permit development processes to date related to the project have generated information which is adequate to determine whether the project has the potential for significant environmental effects.
4. Areas where potential environmental effects have been identified will be addressed during final design of the project. Mitigation will be provided where impacts are expected to result from project construction, operation, or maintenance. Mitigative measures will be incorporated into project design, and have been or will be coordinated with local, state and federal agencies during the permit processes.
5. Based on the criteria in Minnesota Rules part 4410.1700, subp. 7, the project does not have the potential for significant environmental effects.
6. An Environmental Impact Statement is not required for the TH 23 Bridge Replacement and Deer Creek Restoration Project.
7. Any findings that might properly be termed conclusions and any conclusions that might properly be called findings are hereby adopted as such.

Based on the Findings of Fact and Conclusions contained herein and on the entire record:

The Minnesota Department of Transportation hereby determines that the TH 23 Bridge and Deer Creek Restoration, located in Wrenshall Township, Carlton County, will not result in significant environmental impacts, and that the project does not require the preparation of an environmental impact statement.

For Minnesota Department of Transportation

Appendix A - Title

A-1 – EQB Notice of Availability

A-2 – EAW Distribution Memo

A-3 – Media Release

A-1 – EQB Notice of Availability

July 23, 2018

Environmental Assessment Worksheets

Project Title: Anoka County State Aid Highway 78 (Hanson Blvd) Expansion Project

Comment Deadline: August 22, 2018

Project Description: The proposed project involves the reconstruction and expansion of an approximately 1.6-mile segment of Anoka County Highway 78 (Hanson Blvd.) from an existing rural two-lane roadway to an urban four-lane divided roadway from 139th Lane/Jay Street to approximately 0.1 miles north of Crosstown Boulevard in the City of Andover. Other improvements include rehabilitation of the bridge over Coon Creek, pedestrian/bicycle enhancements, and new/expanded stormwater management features.

Responsible Governmental Unit (RGU): Anoka County

RGU Contact Person:

Jack Forslund
Transportation Planner
1440 Bunker Lake Boulevard
Andover, MN 55304
763-324-3179
jack.forslund@co.anoka.mn.us

Project Title: Highway 23 Bridge Replacement and Deer Creek Restoration Project

Comment Deadline: August 22, 2018

Project Description: The proposed project will consist of the replacement of the Highway 23 box culvert structure that conveys Deer Creek under the roadway and the restoration of approximately 1,140 linear feet of Deer Creek. The project proposes to remove an existing structurally deficient box culvert structure and replace it with a single span bridge. The stream restoration will restore natural stream geomorphology, improve overall ecological function, and enhance fish passage and habitat. Deer Creek will be slightly realigned to include a restored meander of the watercourse with rock riffles and pools to provide a stream profile that will allow trout passage through the area. An electronic copy of the EAW is available on-line at: <http://www.dot.state.mn.us/d1/projects/hwy23bridge/index.htm> The comment period deadline is Wednesday, August 22, 2018.

Responsible Governmental Unit (RGU): Minnesota Department of Transportation (MnDOT)

RGU Contact Person:

Randy Costley
MnDOT Project Manager
1123 Mesaba Avenue
Duluth, MN 55811
218-725-2747
randy.costley@state.mn.us

Environmental Impact Statement Need Decisions

The noted responsible governmental unit has determined the following project does not require preparation of an Environmental Impact Statement. The dates given are, respectively, the date of the determination and the date the Environmental Assessment Worksheet notice was published in the EQB Monitor.

- City of St. Michael, Fieldstone Passage EAW, 7-10-18 (5-21-18)



A-2 – EAW Distribution Memo

July 20, 2018



District 1
1123 Mesaba Avenue
Duluth, MN 55811

July 20, 2018

RE: Trunk Highway 23 Bridge Replacement and Deer Creek Restoration Project Environmental Assessment Worksheet (EAW) Notice of Availability

To Whom It May Concern:

Trunk Highway 23 Bridge Replacement and Deer Creek Restoration Project involves the replacement of the bridge on Highway 23 over Deer Creek and the restoration of approximately 1,140 linear feet of Deer Creek. The bridge replacement will remove an existing structurally deficient box culvert that conveys Deer Creek under Highway 23. The stream restoration will restore natural stream geomorphology, improve overall ecological function, and enhance fish passage and habitat.

The EAW, which assesses the potential environmental impacts of the project, will be available to view electronically at <http://www.dot.state.mn.us/d1/projects/hwy23bridge/index.html> and during business hours at the following locations:

MnDOT District 1 - Duluth
1123 Mesaba Avenue
Duluth, MN 55811

Duluth Public Library
520 West Superior Street
Duluth, MN 55802

NOTICE IS FURTHER GIVEN that a 30-day public comment period for the EAW shall begin on Monday, July 23, 2018 and will extend through Wednesday, August 22, 2018. The purpose of this notice is to provide agencies, citizens, and other project stakeholders the opportunity to comment on the EAW.

Copies of the EAW are being distributed to agencies on the current Minnesota EQB list and to other interested parties. Please submit written comments by August 22, 2018, to the contact person listed below.

Randy Costley
MnDOT Project Manager
1123 Mesaba Avenue
Duluth, MN 55811
218-725-2747
Randy.Costley@state.mn.us

Environmental Assessment Worksheet Available for Review for the Highway 23 Bridge Replacement and Deer Creek Restoration Project

CARLTON COUNTY, Minn. – State Trunk Highway 23 is an important highway for northeast Minnesota and serves as an alternative route to Interstate 35 for area residents and businesses on the east side of Carlton County. The project involves the replacement of the bridge on Highway 23 over Deer Creek and the restoration of approximately 1,140 linear feet of Deer Creek. The bridge replacement will remove an existing structurally deficient box culvert that conveys Deer Creek under Highway 23. The stream restoration will restore natural stream geomorphology, improve overall ecological function, and enhance fish passage and habitat.

An Environmental Assessment Worksheet (EAW) has been prepared for the project. The EAW documents the potential environmental impacts of the project, examines the purpose and need for the proposed improvements to Highway 23 and Deer Creek, and discloses the anticipated social, economic and environmental effects if the project is constructed.

The EAW can be view on-line at <http://www.dot.state.mn.us/d1/projects/hwy23bridge/index.html> or hardcopies of the document can be viewed during business hours at the following locations:

MnDOT District 1
1123 Mesaba Avenue
Duluth, MN 55811

Duluth Public Library
520 West Superior Street
Duluth, MN 55802

The 30-day public comment period for the EAW begins on July 23, 2018. Individuals are encouraged to submit written comments prior to 4:30 p.m. on August 22, 2018. Please submit comments to:

Randy Costley
MnDOT Project Manager
1123 Mesaba Avenue
Duluth, MN 55811
218-725-2747
randy.costley@state.mn.us

To request an ASL or foreign language interpreter, or other reasonable accommodation, call Janet Miller at 651-366-4720 or 1-800-657-3774 (Greater Minnesota), 711 or 1-800-627-3529 (Minnesota Relay). You also may send an email to ADArequest.dot@state.mn.us. Please request at least one week in advance, if possible.

For more information on this, and all, projects please visit <http://www.dot.state.mn.us/d1/>. To learn more about funding Minnesota's transportation system, visit Get Connected at <http://www.dot.state.mn.us/getconnected/>.

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Appendix B - EAW Comments and Responses

The EAW for the TH 23 Bridge Replacement and Deer Creek Restoration was distributed on July 20, 2018 to agencies and organizations on the official distribution list, as well as additional agencies/organizations that had either requested a copy of the document, and/or that could be affected by the proposed project. The comment period for the EAW officially started on July 23, 2018 and closed at the end of the business day on August 22, 2018.

During the agency and public review and comment period, MnDOT received comments on the EAW from two state agencies.

Consistent with state environmental review rules, substantive comments received are responded to in this appendix, as part of the Findings of Fact and Conclusions for the project record. Specifically, responses have been prepared for substantive statements pertaining to analysis conducted for and documented in the EAW, including: incorrect, incomplete or unclear information; permit requirements; content requirements. These comments and responses are included on the following pages. Written comments agreeing with the EAW project information, general opinions, statements of fact, or statements of preference were not formally responded to, are also included.

B-1 – Comments and Responses to Those Comments

This section contains the comments and written responses to all comments received from the following individuals/agencies during the public comment period:

- Minnesota Pollution Control Agency
- Minnesota Department of Natural Resources

Comments	Response
<p>Minnesota Pollution Control Agency (page 1)</p>  <p>520 Lafayette Road North St. Paul, Minnesota 55155-4194 651-296-6300 800-657-3864 Use your preferred relay service info@state.mn.us Equal Opportunity Employer</p> <p>August 21, 2018</p> <p>Randy Costley MnDOT Project Manager 1123 Mesaba Avenue Duluth, MN 55811</p> <p>Re: Trunk Highway 23 Bridge Replacement and Deer Creek Restoration Project Environmental Assessment Worksheet</p> <p>Dear Randy Costley:</p> <p>Thank you for the opportunity to review and comment on the Environmental Assessment Worksheet (EAW) for the Trunk Highway 23 Bridge Replacement and Deer Creek Restoration project (Project) in Wrenshall Township, Carlton County, Minnesota. The Project consists of replacement of the bridge over Deer Creek and stream restoration. Regarding matters for which the Minnesota Pollution Control Agency (MPCA) has regulatory responsibility or other interests, the MPCA staff has the following comments for your consideration.</p> <p>Permits and Approvals (Item 8)</p> <p>1 Please note that Deer Creek is a designated trout stream and as such, may require an Individual 401 Certification as part of the U.S. Army Corps of Engineers Section 404 Permit. For further information about the 401 Water Quality Certification process, please contact Jim Brist at 651-757-2245 or Jim.Brist@state.mn.us.</p> <p>Water Resources (Item 11)</p> <p>Stormwater</p> <p>2 • Due to the presence of the trout stream, the Stormwater Pollution Prevention Plan (SWPPP) will need to include the stormwater requirement to stabilize any inactively worked soils on the Project within 7 days of temporarily or permanently ceasing soil disturbance on that portion of the site. This applies to all other areas not required to be stabilized within 24 hours due to Minnesota Department of Natural Resources fish spawning timeframes.</p> <p>3 • Redundant (double) down gradient perimeter controls will be required where 100 feet of the existing stream buffer is disturbed.</p> <p>4 • There should be an effort to minimize the amount of soil exposed at one time during the construction.</p> <p>5 • It is advisable to divert the stream around the work areas and conduct the construction during low flows.</p> <p>6 • Construction equipment should be prevented from tracking sediment into the stream via temporary bridges or other means to avoid the need to cross the stream.</p> <p>7 • The Project proposer will need to ensure the SWPPP for the Project identifies the locations, timing for installation, specific type and quantities of all erosion and sediment control best management practices (BMPs) to be used on the Project.</p> <p>8 • Also, the EAW should identify how the demolition debris from bridge removal will be prevented from entering the stream. Questions regarding Construction Stormwater Permit requirements should be directed to Roberta Getman at 507-206-2629 or Roberta.Getman@state.mn.us.</p>	<ol style="list-style-type: none"> 1. If required, the project will obtain an Individual 401 Certification as part of the U.S. Army Corps of Engineers Section 404 Permit. 2. The Stormwater Pollution Prevention Plan (SWPPP) will include the stormwater requirement to stabilize any inactively worked soils on the project within 7 days of temporarily or permanently ceasing soil disturbance. 3. The project will be in compliance with this requirement. 4. The project will minimize the amount of soil exposed at one time during construction with the use of best management practices (BMPs). Implementation of BMPs will be in accordance with an erosion control plan, MnDOT standard specifications, and the MPCA NPDES General Storm Water Permit for Construction Activity. 5. This recommendation will be followed when possible. 6. This recommendation will be followed when possible. 7. In developing the SWPPP for the project, MnDOT will identify the locations, timing for installation, and specific type and quantities of all erosion and sediment control BMPs to be used on the project. 8. The existing bridge (Bridge No. 8501) is a concrete culvert that will remain functional during the construction of the new single span bridge and stream restoration work. Once the improvements are complete the existing culvert will be abandoned in place.

Comments	Response
<p>Minnesota Pollution Control Agency (page 2)</p> <p>Randy Costley Page 2 August 21, 2018</p> <p>Surface water</p> <p>9</p> <p>10</p> <ul style="list-style-type: none"> Regarding Table 4 on page 10, surface waters in the Project area should also list the Nemadji River as impaired (AUID 04030301-758). In Section 11: Water Resources, page 10, there is a description of the 303d list and impaired waters. There is some inaccuracy or lack of clarity in the interpretation of our listing process. The MPCA disagrees with the comment the draft list is not "in effect." The Environmental Protection Agency (EPA) rarely changes the MPCA list and most typically, the proposed impairments are converted to final. As noted in the EAW, Deer Creek has an EPA approved final Total Maximum Daily Load (TMDL) completed in 2013 and there is also an approved implementation plan dated 2014. The fish/bio impairment was also satisfied by completion and approval of the 2013 TMDL. The goals or targets listed in the approved TMDL should be considered final and in effect. For questions about impaired waters, please contact Karen Evers at 218-302-6644 or Karen.Evers@state.mn.us. <p>We appreciate the opportunity to review this Project. Please provide your specific responses to our comments and notice of decision on the need for an Environmental Impact Statement. Please be aware that this letter does not constitute approval by the MPCA of any or all elements of the Project for the purpose of pending or future permit action(s) by the MPCA. Ultimately, it is the responsibility of the Project proposer to secure any required permits and to comply with any requisite permit conditions. If you have any questions concerning our review of this EAW, please contact me at Karen.kroman@state.mn.us or 651-757-2508.</p> <p>Sincerely,</p>  <p>Karen Kroman Project Manager Environmental Review Unit Resource Management and Assistance Division</p> <p>KK:bt</p> <p>cc: Dan Card, MPCA, St. Paul Jim Brist, MPCA, St. Paul Roberta Getman, MPCA, Rochester Karen Evers, MPCA, Duluth Suzanne Hanson, MPCA, Duluth</p>	<p>9. Correction noted.</p> <p>10. Correction noted.</p>

Comments	Response
<p>Minnesota Department of Natural Resources (page 1)</p>  <p>DEPARTMENT OF NATURAL RESOURCES</p> <p>NE Region 2 – NE Regional Environmental Assessment Ecologist 1201 East Highway 2, Grand Rapids, MN 55744</p> <p>August 22, 2018</p> <p>Correspondence # ERDB 20190013</p> <p>Attention: TH 23 Bridge Replacement and Deer Creek Restoration Project EAW</p> <p>Proposer: Minnesota Department of Transportation District 1 Contact Person: Randy Costley Title: Project Manager Address: 1123 Mesaba Ave City, State, ZIP: Duluth, MN 55811 Phone: 218-725-2747 Fax: 218-725-2800 Email: randy.costley@state.mn.us</p> <p>RE: TH 23 Bridge Replacement and Deer Creek Restoration Project EAW Agency Comments and Recommendations</p> <p>Dear Mr. Costley:</p> <p>The Minnesota Department of Natural Resources (MNDNR) has reviewed the TH 23 Bridge Replacement and Deer Creek Restoration Project EAW. MNDNR staff, greatly appreciate early collaboration and the projects willingness to work to minimize these concerns.</p> <p>Specific Comments</p> <p>1 We would ask the project follow the NHIS review information and would like to provide additional guidance and contact information regarding the <u>Wood Turtle</u> and other NHIS concerns. Please contact <u>Gaea Cozler</u> (gaea.e.crozier@state.mn.us) our Non-game biologist and our <u>NHIS staff</u> to ensure the work does not affect this protected species. Please see attached guidance documents.</p> <p>Thank you</p> <p>Thank you for the opportunity to review the document and encourage continued communication with our staff throughout the process. We look forward to receiving responses to our comments. Please contact <u>Margi Coyle</u> with any questions; she is the agency's Regional Environmental Assessment Ecologist and can be reached at (218) 328-8826 or margi.coyle@state.mn.us.</p> <p>Minnesota Department of Natural Resources • NE Region 2 • 1201 East Highway 2, Grand Rapids, MN 55744</p>	<p>1. Comment received. The project will follow the NHIS review information. MnDOT has been extensively coordinating with MNDNR staff on the bridge replacement and stream restoration activities to ensure the construction and implementation of the proposed improvements will not adversely impact fish and wildlife, including the Wood Turtle.</p>

Comments	Response
<p>Minnesota Department of Natural Resources (page 2)</p> <p>Randy Costley August 22, 2018 2 Page</p> <p> DEPARTMENT OF NATURAL RESOURCES</p> <p>Sincerely,  Margi Coyle NE Regional Environmental Assessment Ecologist</p> <p>CC: Patty Thielen Randall Doneen Kate Fairman Lisa Joyal Mike Petoquin Darrell Schindler</p> <p>Equal Opportunity Employer</p> <p>Minnesota Department of Natural Resources • NE Region 2 • 1201 East Highway 2, Grand Rapids, MN 55744</p>	<p>N/A</p>

Appendix C – Section 4(f) Temporary Occupancy Letter

July 11, 2018

Deserae Hendrickson
MNDNR Duluth Area Fisheries Supervisor
5351 North Shore Drive
Duluth, MN, 55804



Subject: S.P. 0901-70
TH 23 Bridge Replacement and Deer Creek Restoration Project
Wrenshall Township, Carlton County, MN
Section 4(f) Temporary Occupancy of the Blackhoof River Wildlife Management Area

Dear Ms. Hendrickson:

The Minnesota Department of Transportation (MnDOT) in coordination with the Minnesota Department of Natural Resources (MNDNR) is preparing stream restoration plans as part of the TH 23 Bridge Replacement and Deer Creek Restoration Project, located in Carlton County, Minnesota. The proposed project will result in the temporary occupancy of the Blackhoof River Wildlife Management Area (WMA), a Section 4(f) resource. See **Figure 1** for the project location within the WMA. The proposed improvements include the replacement of the structurally deficient Bridge 8501 with a new single-span bridge on State Trunk Highway 23 (TH 23) and the associated stream restoration of approximately 1,140 feet of Deer Creek that flows underneath the bridge. **Figure 2** illustrates the preliminary layout for the proposed improvements.

A State Environmental Assessment Worksheet (EAW) and Federal Categorical Exclusion (CATEX) are being prepared by MnDOT to identify potential social, economic, and environmental effects of the project. As part of the EAW/CATEX and preliminary design process, it has been revealed that while the bridge replacement will take place within existing MnDOT right of way, a portion of the stream restoration work will extend outside of MnDOT's right of way and into Blackhoof River WMA.

As per the Federal Register Rules and Regulations 23 CFR 774.13(d), the stream restoration work within the Blackhoof River WMA may be considered a temporary occupancy of Section 4(f) lands. A temporary occupancy may not constitute a Section 4(f) use when all of the conditions listed below are satisfied:

- *The duration of the occupancy will be temporary in nature (i.e., less than the time needed for the construction of the project).*

This project includes bridge replacement and stream restoration. Construction of the project will primarily take place within MnDOT right of way with approximately 0.77 acres of the WMA property being temporarily impacted. Construction of the project is anticipated to occur over an approximate one year period. The project letting is scheduled for October 2018 with early site work being completed over the winter months (e.g. tree clearing). Construction of the bridge and approach roadway segments will occur throughout the 2019 construction season. Stream restoration will take place within MnDOT right of way and within a small portion of the Blackhoof River WMA (east of TH 23). See **Figure 3** for the temporary occupancy within the WMA. Construction activities associated with the stream restoration are anticipated to occur over a 4-5 month period, which will be less than the bridge replacement.

- *There will be no change in ownership of the land.*

MnDOT will not be acquiring any right of way within the Blackhoof River WMA. A temporary construction easement will be obtained from the MNDNR to construct the stream restoration improvements that fall outside the limits of MnDOT's right of way.

- *The scope of work to be performed will be minor (i.e., both the nature and magnitude of the changes to the Section 4(f) property are minimal).*

The only part of the project that is within the Blackhoof River WMA is the far eastern portion of the proposed stream restoration. The improvements to Deer Creek are being coordinated with the MNDNR, which is the agency with jurisdiction over the WMA property. Based on the preliminary design of the stream restorations and coordination discussions with the MNDNR, the stream restoration activities will involve minor alignment, slope, and profile modifications (restoration of the channel, construction of rock riffles and pools, etc.), which will have a minimal impact to the WMA property.

- *There are no anticipated permanent adverse physical impacts nor will there be any interference with the activities or purposes of the resource, on either a permanent or temporary basis.*

According to the MNDNR website, the Blackhoof River WMA is approximately 4,025.9 acres and was established primarily to protect a significant deer wintering area and a large portion of the Blackhoof and Nemadji River (north fork) corridors. Deer Creek is a headwater for the Blackhoof River, the longest anadromous trout stream in Minnesota. Downstream from the existing TH 23 crossing, the creek supports healthy populations of resident brook trout, as well as steelhead and brown trout which migrate from Lake Superior. The existing box culvert structure and steep profile of the creek under TH 23 limits fish passage in the area.

The WMA contains highly variable topography, including broad flat to gently rolling uplands giving way to deep river valleys. Steepness of slopes and high potential for erosion limit management options in the river valleys. The proposed Deer Creek restoration work will occur on approximately 0.77 acres of the WMA property (see *Figure 3*). There are no existing or planned public use amenities (e.g. trails) located within this part of the WMA property. Therefore, the proposed project will not interfere with the purpose of the WMA or the activities/function that take place within the WMA.

The construction of the bridge replacement and stream restoration improvements will be a temporary condition and any equipment or materials used, other than natural materials used to restore the stream channel and banks, within the Blackhoof River WMA property will be removed prior to the end of construction. It is anticipated that construction equipment will access the WMA property from the TH 23 right of way. In accordance with the MNDNR stream restoration design, the area will be re-graded and stabilized with vegetation and/or hard armor (stone/rock channel lining). Upon completion of the improvements, areas outside of the stream restoration that may have been affected will be restored to pre-construction condition, or better as in the case of the stream restoration area.

- *The land being used will be fully restored to a condition that is at least as good as the condition that existed prior to the project.*

The primary objectives of the improvements is to restore the natural stream geomorphology, improve overall ecological function, enhance trout habitat/passage, and create an aesthetically natural channel

for this segment of Deer Creek. Upon completion of the stream restoration, the areas within the WMA that surround Deer Creek will be restored to a condition at least as good as before the project. The planned improvements include localized stream bank stabilization, restoring the channel and flattening the profile of Deer Creek, from approximately 3.1 percent to an average of approximately 1.9 percent, in the study area which will enhance fish migration through this portion of the Deer Creek. Disturbed areas will be stabilized and/or vegetated to minimize erosion and slope failures that have previously had an adverse impact on Deer Creek.

Please review the attached figures and indicate your concurrence with the work proposed and that the above conditions are met by signing below. Please forward the signed original back to me for our records.

If you have any questions regarding this matter, please contact me at your earliest convenience at 218-718-2747 or at randy.costley@state.mn.us.

Sincerely,



Randy Costley
MnDOT District 1 Project Manager

I concur with the assessment of proposed impacts to the Blackhoof River Wildlife Management Area as described above.



Deserae Hendrickson, MNDNR Duluth Area Fisheries Supervisor

7/25/18

Date

Attachments:

- Figure 1 – Blackhoof River WMA Map
- Figure 2 – Preliminary Layout
- Figure 3 – Section 4(f) Temporary Occupancy Map

CC: Deb Moynihan, MnDOT OES
Jason Alcott, MnDOT District 1



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