

DEPARTMENT OF NATURAL RESOURCES

Record of Decision

In the Matter of the Determination of the Need for an Environmental Impact Statement for the Kingsbury Bay Watershed Sediment Reduction Project in the City of Duluth, in St. Louis County, Minnesota **FINDINGS OF FACT, CONCLUSIONS, AND ORDER**

FINDINGS OF FACT

1. The Minnesota Department of Natural Resources proposes the Kingsbury Bay Watershed Sediment Reduction Project (project), located within the Kingsbury Creek and 68th Avenue West Creek watershed areas in St. Louis County, Duluth, Minnesota. The project would address erosion and stream connectivity within these two watersheds and Kingsbury Bay by stabilizing 2,620 linear feet of stream. The project is located on two streams, 68th Avenue West Creek and an unnamed tributary to Kingsbury Creek, and includes seven sites. 68th Avenue West Creek is not a public water but has both natural environment and general development shoreland zones. The unnamed tributary to Kingsbury Creek is a public water, a protected tributary to a trout stream, and is designated as a cold water shoreland zone. The project would involve regrading and stabilizing of streambanks; installing grade control structures; resizing the stream channel; replacing or removing damaged or non-functioning culverts; installing a catch basin and tiling to address stormwater runoff and erosion. Project goals are to reduce sediment loads, stabilize stream channels, restore floodplain connectivity, improve aquatic habitat, and reduce the amount of sediment deposited in Kingsbury Bay.
2. The Project would increase the resiliency of the recently completed (2021) Kingsbury Bay – Grassy Point Habitat Restoration Project that removed large sediment deposits from Kingsbury Bay and restored open water and wetland habitat. Over many decades, Kingsbury Bay received high sediment loads from areas of excessive erosion and channel incision due to urban development within the Kingsbury Creek and 68th Avenue West watersheds. Flood events over the past decades further degraded the watersheds and exacerbated erosion issues. The watersheds could take decades or longer to stabilize on their own, so restoration is needed to keep sediment stored in the watershed rather than ending up in Kingsbury Bay.
3. Sediment reduction in the Kingsbury Creek and 68th Avenue West Creek watersheds meets the requirements to compensate the public for natural resource damages at the Interlake/Duluth Tar

Superfund site as identified in the Saint Louis River Interlake/Duluth Tar (SLRIDT) Restoration Plan and Environmental Assessment. The Kingsbury Creek Sediment Reduction Feasibility Study Report identified stream reaches and watershed areas contributing excessive sediment within these two watersheds; seven of the areas identified are addressed by the Kingsbury Bay Watershed Sediment Reduction Project.

4. The proposed project requires preparation of a State Environmental Assessment Worksheet (EAW) according to the rules of the Minnesota Environmental Quality Board (EQB), Minnesota Rules (Minn. R.) 4410.1000 subpart 4. This project was determined to be a phased action of the Kingsbury Bay – Grassy Point Habitat Restoration Project under Minn. R. 4410.0200 Subpart 60. An EAW was prepared for the Kingsbury Bay – Grassy Point Habitat Restoration Project in April 2018; the record of decision was issued in May 2018. An Environmental Impact Statement was not required. The Kingsbury Bay – Grassy Point Habitat Restoration Project was completed in 2021.
5. The Minnesota Department of Natural Resources (DNR) is the Responsible Governmental Unit (RGU) in the preparation and review of environmental documents related to the project. See Minn. R. 4410.0500, subp. 1.
6. The DNR prepared an EAW for the proposed project. See Minn. R. 4410.1400.
7. DNR filed the EAW with the Minnesota Environmental Quality Board (EQB) and a notice of its availability was published in the EQB *Monitor* on May 17, 2022. A copy of the EAW was sent to all persons on the EQB Distribution list, to those persons known by DNR to be interested in the proposed project, and to those persons requesting a copy. A statewide press release announcing the availability of the EAW was sent to newspapers, radio and television stations. Copies of the EAW were distributed to the following locations: the Duluth Public Library, the Arrowhead Regional Development, the DNR Library, and the Hennepin County Library. The EAW was also made available to the public via posting on the DNR’s website. See Minn. R. 4410.1500.

Public Comment Period and Response to Comments

8. The 30-day EAW public review and comment period began May 17, 2022 and ended June 16, 2022. Written comments on the EAW could be submitted to the DNR by U.S. mail or via email. See Minn. R. 4410.1600.
9. During the 30-day EAW public review and comment period, the DNR received one written comment on the EAW, from Karen Kromar of the Minnesota Pollution Control Agency (MPCA). The comment letter is included in Attachment A of this Record of Decision.
10. Comments are summarized below (See ¶ 11) with DNR’s response following. Copies of these comments will be provided to the project proposer and to permitting and/or approval entities and/or authorities for their consideration as part of the permitting, approval, and/or implementation processes.

11. The MPCA provided four comments within the comment letter.

- COMMENT 1: The table in EAW Item 9 lists the MPCA National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Construction Stormwater Permit (CSW Permit) as “possibly needed.” Based on the number of acres proposed to be disturbed above the ordinary high water level, a stormwater permit *will* be needed.
 - RESPONSE: The DNR appreciates the time MPCA staff spent reviewing the EAW. The project proposer is required to apply for and secure all required permits before start of construction. The name of the MPCA contact for the CSW permit will be provided to the proposer. The requirement for the NPDES/SDS Construction Stormwater Permit is acknowledged in ¶ 14 of this document.

- COMMENT 2: Goals of the project are to reduce erosion and stabilize the channel beds and banks. There will be short term temporary impacts, but the long-term results will be positive by improving functionality, improving water quality, restoring habitat, enhancing recreational access and reducing soil loss within the Kingsbury Watershed.
 - RESPONSE: Comment acknowledged.

- COMMENT 3: Kingsbury Creek and the unnamed tributary to Kingsbury Creek are both cold water trout streams. Additional care must be taken during construction in these waters and should include in-water best management practices (BMP’s) to reduce total suspended solids. Examples of BMP’s may include but are not limited to weighted floating silt curtain, low flow, no flow, or winter condition, coffer dams, etc.
 - RESPONSE: Comment acknowledged. The unnamed tributary to Kingsbury Creek is a public water and a protected tributary to a trout stream, which flows into Kingsbury Creek, a designated trout stream. BMPs such as vegetated buffers, silt fences, wattles, and rapid revegetation will be implemented to minimize negative impacts to these waters from construction related impacts, such as sedimentation. Additionally, in-water BMPs proposed include in channel work during low flow conditions, as much as possible, and diverting stream flow around the active construction site via a temporary channel or pumping through tubing. Work within the unnamed tributary to Kingsbury Creek will not occur between September 15 – June 30, in accordance with DNR Fisheries work exclusion dates to allow for fish spawning and migration. Specific BMP requirements will be finalized during permitting; the Project will follow the permit conditions that are written. Permits which will address mitigation requirements to minimize impacts will be required by the MPCA, the city of Duluth, the USACE and the DNR.

- COMMENT 4: Regarding Item 18, Greenhouse gas emissions, the MPCA appreciates the transparent reporting of the calculations used and the source of emissions factors from the proposed project.
 - RESPONSE: Comment acknowledged.

Record of Decision Preparation

12. On July 5, 2022, DNR requested a 15-day extension for making a decision on the need for an EIS for the proposed project. On July 5, 2022, EQB granted the extension. See Minn. R. 4410.1700, subp. 2b.

Environmental Effects

13. Based upon the information contained in the EAW and received as public comments, the DNR has identified the following potential environmental effects associated with the project:
 - a. Project construction
 - b. Groundwater impacts
 - c. Surface water and water quality
 - d. Water appropriation
 - e. Wetland impacts
 - f. Contamination/Hazardous materials
 - g. Wildlife resources and habitat
 - h. Visual
 - i. Dust
 - j. Greenhouse gas emissions
 - k. Noise
 - l. Transportation
 - m. Cumulative potential effects

Each of these environmental effects is discussed in more detail below.

- a. **Project Construction:** This topic was addressed in EAW Items 6, 11, 12, 13, 14, 17, 18, 19, 20, and 21.

Construction would be necessary to stabilize the 2,620 linear feet of stream channel within seven sites on 68th Avenue West Creek and an unnamed tributary to Kingsbury Creek. Construction components would include installing grade control structures, regrading, stabilizing stream banks, and enhancing vegetation in the riparian corridor. In addition, three culverts that are not functioning properly or are no longer needed will be fixed or removed and a catch basin and tiling will be installed to address stormwater runoff and erosion.

Project-related construction activities are considered temporary and would be limited to the project site. During construction, about 2.6 acres will be temporarily disturbed. This includes a 10 – 30 foot width along the streams, access paths, staging areas, and location for the catch basin. Construction is anticipated to take 10 – 12 weeks and would begin in mid to late summer of 2022. Many aspects of the project have been designed to minimize construction related impacts. Access trails have been located along existing roads or disturbed areas where possible. Silt fences, use of erosion control blankets, and rapid vegetation of disturbed areas would be used to limit erosion and sedimentation.

Since the unnamed tributary to Kingsbury Creek is a protected tributary to a trout stream work will be completed before the September 15 trout spawning restrictions. The proposed project is subject to the regulatory authority of permits discussed in ¶ 14 below.

b. Groundwater impacts: This topic was addressed in EAW Item 12.

Depth to groundwater varies across the project area, ranging from two feet to fifty feet below the ground surface. The project does not anticipate significant work in or impacts to groundwater. However, limited potential for groundwater impacts exists due to past leaks of petroleum products in the vicinity, as discussed in ¶ 13f below. Excavation of soils could expose unknown contamination within project areas. If evidence of contamination is found, the project proposer would consult with MPCA, and/or local authorities to evaluate and mitigate the risk to groundwater impacts as needed.

c. Surface water and water quality: This topic was addressed in EAW Item 12.

Goals of the project are to reduce erosion, stabilize stream channels and reduce sediment loads delivered to Kingsbury Bay. During construction, surface water and water quality may experience a short-term temporary adverse impact as a result of land alteration within staging areas, access areas, and in-stream work. The magnitude of these impacts would be minimized by using BMPs to mitigate sedimentation and stormwater runoff during the construction and revegetation phases. Proposed BMPs would include but are not limited to phasing of activities among sites; timing of activities to be carried out during low-flow, when possible; use of erosion control blankets. After project completion, it is expected that surface and water quality would be improved due to reduced sediment loads, stabilized stream channels, restored floodplain connectivity, improved aquatic habitat, and reduced amounts of sediment deposited in Kingsbury Bay.

Project-related impacts to water resources are considered temporary and limited to the Project site. Measures have been identified to minimize erosion potential and downstream sedimentation to the extent practicable. Potential water quality impacts would be subject to ongoing public regulatory authority discussed in ¶ 14 below.

d. Water appropriation: This topic was addressed in EAW Item 12.

Portions of streams may need to be temporarily dewatered and the stream flow diverted around the active construction area (either via a temporary channel or by pumping and discharging) before being returned to the stream. This would limit impacts to water quality at the project site and areas downstream during construction.

e. Wetland impacts: This topic was addressed in EAW Item 12.

A wetland delineation was conducted to determine wetland type and presence within the project area. Approximately 1 acre of wetland exists within the project area. The project will temporarily impact .78 acres of wetlands during construction from activities such as excavation, leveling, rutting from machinery, and installing erosion control measures. Although existing wetlands will be impacted by

construction-related activity, wetland features will likely be enhanced by increasing the frequency and duration of overbank flooding and reducing the amount of sedimentation affecting these areas. It is also possible that additional wetlands will be created in areas adjacent to the stream due to increasing the frequency and duration of overbank flooding. Wetland impacts and mitigation are subject to the authority of local, state, and federal permits as discussed in ¶ 14 below.

f. **Contamination/Hazardous Materials:** This topic was addressed in EAW Item 12.

There is no evidence of contamination within the project area. However, based on information in the MPCA's *What's In My Neighborhood* database there have been at least five confirmed petroleum product leaks over the past 50 years (most recently in 2021) at several sites within 500 feet of the project area near 68th Avenue West Creek. Excavation of soils could expose unknown contamination within project areas. If evidence of contamination is found, the project proposer would consult with MPCA and/or local authorities to evaluate and mitigate the risk to groundwater impacts as needed.

The construction of the proposed project has limited potential for releases of toxic or hazardous substances related to vehicles to leaking or spilling fuels, oils, lubricants, and other materials typical for use by construction equipment. However, the amounts of fuel and other lubricants and oils will be limited, and the equipment needed to quickly contain any contamination will be located on site.

The contractor will be required to prepare a Spill Prevention and Response Plan to address accidental spills or the release of any hazardous material or petroleum products. The plan will be required to include the following measures to avoid and/or minimize spills during construction activities:

- Fueling and equipment maintenance will not be allowed within 100 feet of the water's edge without deploying spill capture methods.
- The contractor shall maintain fuel spill containment kits and trained spill response personnel on site at all times.
- Any spill or release of a hazardous material or petroleum products will be reported to the construction site supervisor who will take immediate action to minimize the potential for groundwater or surface water pollution.
- In the event of a significant spill or release of a hazardous material or a petroleum product, the construction site supervisor will immediately deploy on-site equipment and supplies to contain the spill and contact the DNR, MPCA and the Minnesota Duty Officer, according to emergency procedures identified in Minnesota Rules, part 7045.0574.
- Temporary, above ground, on-site fuel storage will not be allowed within the 100-year floodplain.
- Below ground storage tanks will not be allowed.

To minimize any potential for spills, fuels for construction will be stored at staging areas away from the stream and pervious surfaces. Equipment refueling and maintenance will be done away from the stream and pervious surfaces, thus reducing the risk of potential contamination.

g. **Wildlife Resources and Habitat:** This topic was addressed in EAW Item 14 and 21.

The project would have minor temporary impacts to fish and wildlife communities in project areas. Impacts include temporary displacement due to increased activity and noise levels during construction, and earth-moving activities in the channel may cause harm to small fish, macroinvertebrates, and other small wildlife that cannot easily move to other areas. The unnamed tributary to Kingsbury Creek is a public water and a protected tributary to a trout stream (Kingsbury Creek). Impacts to fish and other aquatic organisms would be minimized by employing BMP's as discussed in ¶ 11 and 13a - e. Once the project is complete, the project is expected to provide improved aquatic habitat.

Impacts to plant communities are also anticipated to be minor and temporary in nature. Vegetation will be cleared to make access paths and for re-grading of the streambanks and floodplain. Vegetation clearing will be minimized to the extent possible. Areas cleared of vegetation will be stabilized to prevent future erosion and reseeded with native grasses, forbs, shrubs, and sedges. The project will follow the DNR Invasive Species Operational Order which requires use of best management practices to avoid spreading invasive species between project sites.

Adverse impacts to threatened and endangered species are not expected. A habitat assessment for Pale sedge, a state-listed endangered plant, was conducted by qualified DNR staff on May 27, 2022. Pale sedge habitat was not found to be present within the project area; additional botanical surveys are not required and impacts to this species are not expected. Northern long-eared bat, a federally listed threatened species and state-listed species of special concern can be found throughout Minnesota. There are no known occurrences of northern long-eared bat roosts or hibernacula within an approximate one-mile radius of the proposed project. To avoid potential impacts to roosting bats, tree clearing will be minimized on site and will be cleared only as needed for construction and construction access. Tree clearing will likely occur after August 1st to avoid potential impacts to bat pups. Minimizing tree clearing will also help minimize impacts to nesting birds.

The project would address stream erosion and stream connectivity and improve aquatic habitat within the two stream systems and is expected to have a positive impact on fish and wildlife communities over the long-term.

h. Visual: This topic was addressed in EAW Items 16 and 19.

During construction, equipment may be visible from roads and trails. Any negative visual impacts from equipment or the disturbed landscape will be short term in nature and aesthetics of the sites will be improved once construction is complete and the disturbed areas revegetated.

i. Dust: This topic was addressed in EAW Items 17 and 21.

The project may create some temporary dust during construction activities. Fugitive dust could arise during hauling and stockpiling of earthen materials and large tree branches and trunks. Construction will involve the movement and grading of soils and rock materials in dry or moist soil condition. Most materials handled are stone and wood and do not cause fugitive dust generation. Effects

associated with fugitive dust would be limited to the construction site and immediately adjacent areas.

The contractor will be required to follow best management practices to reduce dust such as covering loads during transport, watering access routes and exposed soils when powdery conditions are evident, placing mulch, temporary cover and erosion control mats on exposed areas and stockpiles and requiring fill and stone materials to be clean and free of dirt and debris.

j. Greenhouse Gas Emissions: This topic was addressed in EAW Item 18.

Greenhouse gas (GHG) emissions related to the proposed Project include those related to the construction of the project. No operational GHG emissions are anticipated, as no permanent infrastructure is proposed for the project. According to the plans, construction would begin in mid to late summer of 2022 and would be completed in 10 – 12 weeks. For this assessment, construction GHG emissions included on-road vehicle emissions (haul trucks, etc.) and off-road vehicle emissions (earthmoving equipment such as excavators, loaders, etc.). Carbon emissions related to the on-road vehicle emissions are estimated to be 8.2 short tons. Carbon emissions related to off-road vehicle vehicles emissions are estimated to be 111.835 short tons.

No mitigation to reduce the project’s GHG emissions is proposed. Construction-related emissions would be exempt as de minimis and they would meet the conformity requirements under Section 176 (c) of the Clean Air Act, and 40 CFR 93.153.

k. Noise: This topic was addressed in EAW Items 19 and 21.

Existing noise levels in the project area are influenced by rail lines and highways within a half mile. Construction of the project is expected to start in mid to late summer 2022 and would take 10 – 12 weeks to complete. However, it is expected that the project will be completed in sections and construction crews will only be present at each site for a few weeks, minimizing the length of time that noise impacts may occur within a specific location. During construction, noise levels may temporarily increase and exceed Noise Activity Levels due to construction equipment engine noise, sounds of metal on rock, and safety back-up alarms. Hours of operation will mitigate noise impacts to some extent.

The contractor will be required to minimize noise effects by restricting equipment operation between 6:00 am and 7:00 pm, Monday-Saturday; requiring all equipment to have properly operating muffler systems; restricting idling time for inactive equipment to 15 minutes and notifying landowners within 100 feet about the intent of the project, duration, expected noise levels and complaint procedures.

l. Transportation: This topic was discussed in EAW Items 20 and 21.

New traffic generated by the proposed project would be temporary for workers and construction equipment. This project would require trucks to haul 590 cubic yards of materials to the site and thus would create additional traffic, however it is believed that fewer than 15 trucks per day would

be added. It is not believed that the additional traffic will create traffic congestion in the community. Access routes from public roads will be evaluated for safety and operators of equipment turning onto and off public highways will use caution. Safe driving expectations will be covered with contractors during initial site visits and project briefings.

m. Cumulative Potential Effects: This topic was addressed in EAW Item 21.

Cumulative potential environmental effects are the combined effects of the proposed project and past, present, and reasonably foreseeable future projects for which a basis of expectation has been laid. See Minn. R. 4410.0200, subp. 11a. Environmental effects of the proposed project that have the potential to contribute to cumulative potential effects were identified as: wetlands and water quality, visual, dust, noise, and traffic. Any potential negative environmental effects would be expected to be temporary and minor and would be limited to the duration of active construction and until vegetation stabilizes. Reasonably foreseeable future projects that have been identified consists of one housing development near the unnamed tributary to Kingsbury Creek. It is not expected that the proposed project and the residential development will result in significant cumulative environmental effects within the area. The proposed project is expected to have a permanent cumulative positive impact on water quality, aquatic habitat, and connecting streams to their floodplain within the Kingsbury Creek and 68th Avenue West Creek watersheds. In addition, the proposed project is expected to have a cumulative positive impact on water quality and habitat within Kingsbury Bay.

14. The following permits and approvals are, or may be needed, for the project:

Unit of Government	Type of Application
US Army Corps of Engineers (USACE)	Section 10 Permit
USACE	Section 404 Permit
DNR	Public Waters Work Permit
DNR	Water Appropriation Permit
Minnesota Pollution Control Agency (MPCA)	National Pollution Discharge Elimination System (NPDES)/State Disposal System (SDS) Construction Stormwater (CSW) Permit
MPCA	401 Water Quality Certification
City of Duluth	Filling/Grading/Excavation Permit

Unit of Government	Type of Application
City of Duluth	Wetland Conservation Act permit
City of Duluth	Erosion and Sediment Control Permit
City of Duluth	Shoreland Permit
City of Duluth	Temporary Access Agreement/License
St. Louis County	Temporary Access Agreement/Permit
Minnesota Power	Temporary Access Agreement
BNSF	Temporary Access Agreement
Private Landowners	Temporary Access Agreement

CONCLUSIONS

1. The Minnesota Environmental Review Program Rules, *Minnesota Rules* part 4410.1700, subparts 6 and 7, set forth the following standards and criteria to compare the impacts that may be reasonably expected to occur from the project in order to determine whether it has the potential for significant environmental effects.

In deciding whether a project has the potential for significant environmental effects, the following factors 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 result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

2. *Type, extent, and reversibility of environmental effects.*

Based on Findings of Fact above in ¶ 13, the DNR concludes that the following types of potential environmental effects, as described in the Findings of Fact, will be limited in extent, temporary, or reversible:

- Project construction
- Groundwater impacts
- Surface water and water quality
- Water appropriation
- Wetland impacts
- Contamination/Hazardous materials
- Wildlife resources and habitat
- Visual
- Dust
- Greenhouse gas emissions
- Noise
- Transportation
- Cumulative potential effects

3. *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.*

Based on the Findings of Fact above, the DNR concludes that the cumulative potential environmental effects associated with surface waters (including wetlands) and water quality are not significant when viewed in connection with: other contributions to the cumulative potential effects; the degree to which the project complies with approved mitigation measures specifically designed to address cumulative potential effects; and the efforts the proposer has made to minimize contributions from the project. The project would contribute minimal environmental effects and would not materially contribute to the cumulative potential effect. The DNR concludes that the cumulative potential environmental effects associated with surface and water quality, as described above, are not significant because there are limited past, present and future projects identified within the geographic scale and timeframe of the proposed project that would have overlapping environmental effects.

Based on the Findings of Fact above, the DNR concludes that the cumulative potential environmental effects associated with visual, dust, noise, and traffic are not significant because there are limited impacts to visual, noise, and traffic within the geographic scale and timeframe of the proposed project. The project would contribute minimal environmental effects and would not materially contribute to the cumulative

potential effect. The project proposer has developed mitigation measures to address the environmental effects.

4. *Extent to which environmental effects are subject to mitigation by ongoing public regulatory authority.* Based on the Findings of Fact set forth in ¶13 above and the information contained in the EAW, DNR concludes that there is sufficient ongoing public regulatory authority and specific measures identified that can be expected to effectively address the following environmental impacts:

- Physical impacts on water resources below the ordinary high water level are subject to regulatory authority by the DNR Public Waters Work Permit, and the U.S. Army Corps of Engineers Section 404 and Section 10 permits. Effects related to dewatering are subject to regulatory authority by the DNR Water Appropriation Permit, if required.
- Erosion, sedimentation, and water quality from construction-related activity are subject to regulatory authority by the MPCA National Pollution Discharge Elimination System (NPDES)/State Disposal System (SDS) Construction Stormwater (CSW) Permit and Clean Water Act 401 Water Quality Certification. The City of Duluth also requires a Filling/Grading/Excavation Permit, Erosion and Sediment Control Permit, and Shoreland Permit.
- Wetland impacts, as regulated by the Wetland Conservation Act are subject to regulatory authority by the City of Duluth, acting as the Local Governmental Unit.
- Environmental effects due to construction, operation and maintenance-related noise are subject to mitigation by ongoing public regulatory authority under the MPCA-administered State Noise Standards. See Minn. R. 7030.

Permits and Approvals: Prior to initiation of this project, the permits and approvals identified in Finding 14 would be required. When applying the standards and criteria used in the determination of the need for an environmental impact statement, DNR finds that the project is subject to these regulatory authorities to an extent sufficient to mitigate potential environmental effects through measures identified in the EAW and Record of Decision.

5. *Extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or other EISs.*

Environmental Studies undertaken by the proposer include the following:

- Kingsbury Creek Sediment Reduction Feasibility Study Report, January 2020, prepared by Barr Engineering
- Kingsbury Creek Wetland Delineation Report, December 2021, prepared by Barr Engineering.

6. As set forth in ¶¶1 – 14, DNR has fulfilled all the procedural requirements of law and rule applicable to determining the need for an EIS on the proposed Kingsbury Bay Watershed Sediment Reduction Project in the city of Duluth, St. Louis County, Minnesota.
7. Based on consideration of the criteria and factors specified in the Minnesota Environmental Review Program Rules (*Minnesota Rules* part 4410.1700, subparts 6 and 7) to determine whether a project has the potential for significant environmental effects, and on the Findings and Record in this matter, the DNR determines that the proposed Kingsbury Bay Watershed Sediment Reduction Project does not have the potential for significant environmental effects.

ORDER

Based on the above Findings of Fact and Conclusions:

The Minnesota Department of Natural Resources determines that an Environmental Impact Statement **is not** required for the Kingsbury Bay Watershed Sediment Reduction Project in the city of Duluth, St. Louis County, Minnesota.

Any Findings that might be properly termed Conclusions and any Conclusions that might be properly be termed Findings are hereby adopted as such.

Dated this 26th day of **July 2022**

**STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES**



Jess Richards
Assistant Commissioner