

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

Record of Decision

In the Matter of the Determination of the Need for an Environmental Impact Statement for the Maple Creek Habitat Enhancement Project, in Fillmore County, Minnesota **FINDINGS OF FACT, CONCLUSIONS, AND ORDER**

FINDINGS OF FACT

1. Minnesota Trout Unlimited (MNTU) proposes to conduct a stream habitat enhancement project on Maple Creek, which is located in Preble Township, Fillmore County, Minnesota. The project area occurs within the Choice Wildlife Management Area (WMA) and the Choice Aquatic Management Area (AMA).

The project proposes to address floodplain abandonment, accelerated bank erosion, and degraded instream habitat and restore the ecological and hydrologic functions of the creek and adjacent floodplain. The project would include reconnecting the creek with the floodplain, installing grade control riffles to limit channel incision, installing woody material and boulders for instream habitat, and restoring native riparian vegetation. The project would be entirely funded by the Lessard-Sams Outdoor Heritage Fund (OHF) program that was secured by MNTU.

2. 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.) 4410.4300, Subp. 26, stream diversion.
3. The Minnesota Department of Natural Resources (DNR) is the Responsible Governmental Unit (RGU) in the preparation and review of environmental documents related to Maple Creek Habitat Enhancement Project. See Minn. R. 4410.0500, subp. 1.
4. The DNR prepared an EAW for the proposed project. See Minn. R. 4410.1400 and 4410.4300, subp. 26.
5. The DNR filed the EAW with the EQB and a notice of its availability was published in the *EQB Monitor* on January 30, 2024. 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. A copy of the EAW was distributed to the following locations: the Spring Grove Public Library, Rochester Public 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

6. The 30-day EAW public review and comment period began January 30, 2024, and ended February 29, 2024. Written comments on the EAW could be submitted to the DNR by U.S. mail, or via email. See Minn. R. 4410.1600.
7. During the 30-day EAW public review and comment period, the DNR received two written comment letters on the EAW. The agencies and individuals who submitted comments are listed below.
 - Rick Lent, citizen
 - Minnesota Pollution Control Agency, Chris Green
8. Comment letters are summarized below (See ¶¶ 9 and 10) 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.
9. Rick Lent provided support for the proposed project, stating that changes that benefit fish, benefit humans as well.

Response: Comment acknowledged.

10. The Minnesota Pollution Control Agency (MPCA) indicated that sediment control practices must be in place down gradient from work that is done along the riverbank, or at or below the normal waterline in accordance with the MPCA Construction Stormwater Permit items 9.2 and 9.5.

Response: Comment acknowledged. The MPCA Construction Stormwater Permit is listed in EAW Item 9 and in ¶12 below. Conditions of the MPCA Construction Stormwater Permit would be met and followed.

Environmental Effects

11. 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 and Design
 - b. Cover Type Conversion
 - c. Water Resources
 - d. Rare Wildlife Resources and Habitat
 - e. Visual
 - f. Air

- g. Greenhouse gas emissions
- h. Noise

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

- a. **Project Construction and Design:** This topic was addressed in EAW Item 6.

Construction activities for the proposed project includes installing erosion control, selective tree harvesting and temporary stockpiling of harvested wood, bank grading and installing grade control riffles and instream habitat within Maple Creek. The proposed project also includes installing hydromulch and native seed to establish permanent vegetation, and removing erosion control following establishment of native vegetation.

Tree clearing is expected to be completed by March 31, 2024 (see ¶11d, below). Construction impacts are expected to be temporary and expected to occur over a four-week period between May 1 and September 1, 2024. The proposed project is subject to the regulatory authority of permits discussed in ¶ 12 below.

- b. **Cover type conversion:** This topic was addressed in EAW Items 8 and 12.

The proposed project impact area is approximately 17 acres and includes Maple Creek, managed upland/grassland/prairie, and wooded forest. About eight acres of land would be converted to a new type. It is expected that the reconnection of the floodplain would result in creation of about four acres of wetlands and the project would create about .1 miles more stream, due to the reconnecting of oxbows. Wooded forest and upland/grassland/prairie would decrease by about four acres total.

The proposed project is subject to the regulatory authority of permits discussed in ¶ 12 below. In addition, vegetation within the Choice WMA is managed for multiple habitat types, including prairie and forest. Areas of disturbed soil from construction of the project would be reseeded with native grasses, sedges, and forbs, and all seed mixes proposed for the project will be reviewed and approved by DNR staff. Future habitat would be managed by the DNR Choice WMA staff.

- c. **Water resources:** This topic was addressed in EAW Item 12.

Surface water and water quality: Maple Creek is a mapped public watercourse and a designated trout stream. Goals of the project are to reduce bank erosion and instream sedimentation. The project would include reconnecting the creek with the floodplain, installing grade control riffles to limit channel incision, installing woody material and boulders for instream habitat, and restoring native riparian vegetation. During construction, surface water and water quality may experience a short-term temporary adverse impact as a result of in-stream work. The magnitude of these impacts would be minimized by using measures to mitigate sedimentation and stormwater runoff during

the construction and revegetation phases. The area surrounding the proposed project is vegetated, which should help filter and trap runoff. Proposed measures to prevent erosion and sediment runoff include use of erosion control materials and seeding of disturbed areas with a native seed mix, once earthwork is completed. Project-related impacts to surface water and water quality would be 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 ¶ 12 below.

Wetland impacts: The proposed project would change the type and extent of wetlands by reducing the tree canopy and increasing the inundation period in the immediate floodplain, but it would not convert wetlands to non-wetlands, and no loss of wetlands is anticipated from construction of the proposed project. It is expected that the proposed project would result in an increase of approximately four acres of wetlands within the project boundary as a result of reconnecting the creek with the floodplain. Impacts to wetlands would be subject to ongoing public regulatory authority discussed in ¶ 12 below.

- d. **Rare wildlife resources and rare habitat:** This topic was addressed in EAW Item 14.

Removing trees from the project area could impact the northern long-eared bat (state-listed as special concern and federally listed as endangered) if this species is roosting within the project boundary. To limit impacts to roosting bats, tree harvest is proposed to occur before March 31, before bats emerge from hibernation.

- e. **Visual:** This topic was addressed in EAW Item 15.

Visitors to the WMA and AMA where the project is proposed may observe disturbance to the stream corridor during project construction such as disturbed soil, temporary piles of harvested logs, and presence of construction equipment. These impacts would be temporary, with construction expected to be completed over a four-week period, including final soil stabilization, hydromulching, and native seeding.

- f. **Air:** This topic was addressed in EAW Item 16.

Heavy equipment such as dump trucks, excavators, bulldozers, and tractors would be used during construction. Release of emissions from construction vehicles would be minimized to periods of active construction (generally between 8 am to 5 pm) during the four-week construction period. Emissions are not anticipated to be noticeable to nearby landowners or visitors using the WMA and AMA, since few machines will be operating at a given time. Emissions from construction would be temporary and are not anticipated to cause or contribute to a violation of ambient air quality standards for any pollutants.

The project would generate dust during construction from grading activities and from importing materials over dirt access trails. The effects on air quality from fugitive dust generated during construction would be temporary and localized.

- g. **Greenhouse gas emissions:** This topic was addressed in EAW Item 17.

Greenhouse gas (GHG) emissions from the project would result from two sources: the operation of construction equipment, and tree and brush removal during the conversion of forest to prairie/wetland. The total potential project-related GHG emissions are estimated to be 34.34 short tons of CO₂^e. The project also proposes to plant native vegetation which is expected to increase sequestration of carbon through the growth of plants and subsequent storage of carbon in the soil through the root systems, which is expected to mitigate the release of greenhouse gases released from construction of the proposed project overtime.

- h. **Noise:** This topic was addressed in EAW Item 18.

The project is expected to generate noise during active construction resulting from operation of heavy equipment to complete the project. Noise would be generated by construction equipment during import of materials, earthwork, and tree removal activities. Noise impacts would occur only during periods of active construction during the day (generally between 8:00 am to 5:00 pm) and would occur over a four-week period of active construction. All construction equipment would contain mufflers to reduce engine noise; noise from the project would be temporary during construction period only.

12. The following permits and approval are, or may be needed, for the project:

Unit of Government	Type of Application	Status
Fillmore County	Floodplain Permit/No-Rise Certificate	To Be Applied For
U.S. Army Corps of Engineers	Joint Permit Application	To Be Applied For
Department of Natural Resources	Wetland Conservation Act (WCA) Permit	To Be Applied For
Department of Natural Resources	Water Appropriation Permit	To be applied for, if needed
Department of Natural Resources	Public Waters Work Permit	To Be Applied For
Minnesota Pollution Control Agency	National Pollution Discharge Elimination System/State Disposal System (NPDES/SDS) Construction Stormwater (CSW) Permit	To Be Applied For

Unit of Government	Type of Application	Status
Minnesota Pollution Control Agency	401 Water Quality Certification	To Be Applied For
State Historic Preservation Office	Archeological or Historic Features/ Properties	Submitted

Conclusions

1. The Minnesota Environmental Review Program Rules, Minn. R. 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 ¶ 11, the DNR concludes that the following types of potential environmental effects, as described in the Findings of Fact, would be limited in extent, temporary, or reversible:

- Project Construction and Design

- Cover Type Conversion
- Water Resources
- Rare Wildlife Resources and Habitat
- Visual
- Air
- Greenhouse gas emissions
- Noise

3. *Cumulative potential effects.*

Based on information contained in the EAW and comments submitted on the EAW, the DNR is unaware of any past, present, or reasonably foreseeable projects, for which a basis on expectation has been laid, that combined with environmental effects of the proposed project may result in significant potential for 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 ¶¶ 11 and 12 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 are subject to regulatory authority by the DNR Public Waters Work Permit, the U.S. Army Corps of Engineers Joint Permit Application, and the Wetland Conservation Act permit. Effects related to water use 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 Minnesota Pollution Control Agency NPDES/SDS CSW Permit and Clean Water Act 401 Water Quality Certification.
- Environmental effects due to construction on the floodplain are subject to the Fillmore County Floodplain/No Rise Certificate.

Permits and Approvals: Prior to initiation of this project, the permits and approvals identified in Finding ¶ 12 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:

- Maple Creek Stream Restoration Wetland and Water Delineation Report, August 2023, prepared by Emmons and Olivier Resources, Inc.
- Maple Creek Project: Rare Plant Survey Report, October 2023, prepared by Midwest Natural Resources

- Phase 1 Archeology and Cultural Resources Report, May 2023, prepared by Mississippi Valley Archaeology Center at the University of Wisconsin-La Crosse; response letter from the State Historic Preservation Office (July, 2023)
6. As set forth in ¶¶1 – 12, DNR has fulfilled all the procedural requirements of law and rule applicable to determining the need for an EIS on the proposed Maple Creek Habitat Enhancement Project, Fillmore 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 Maple Creek Habitat Enhancement 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 Maple Creek Habitat Enhancement Project, located in Fillmore County, Minnesota.

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

Dated this 19th day of **March 2024**

DEPARTMENT OF NATURAL RESOURCES



Jess Richards
Assistant Commissioner