DEPARTMENT OF NATURAL RESOURCES

RECORD OF DECISION

In the Matter of the Determination of the Need for an Environmental Impact Statement for the Minnesota Valley State Trail, Bloomington Segment Project in the City of Bloomington, Hennepin County, Minnesota

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

FINDINGS OF FACT

1. The Minnesota Department of Natural Resources (DNR) proposes construction of 13.5 miles of the Minnesota Valley State Trail, from the Bloomington Ferry Bridge to the Minnesota Valley National Wildlife Refuge Visitor Center in Bloomington, Minnesota. The multiple-use, non-motorized recreational state trail would consist of a 10-foot wide paved surface with 2-foot vegetated shoulders. Proposed trail uses include walking/hiking, bicycling, and in-line skating.

2. The proposed project requires preparation of a State Environmental Assessment Worksheet (EAW) for paving ten or more miles of an existing unpaved trail. *See* Minn. R. 4410.4300, subp. 37C.

3. The DNR is the Responsible Governmental Unit (RGU) in the preparation and review of environmental documents related to the Minnesota Valley State Trail, Bloomington Segment Project (project). *See* Minn. R. 4410.0500, subp. 1.

4. The DNR prepared an EAW for the project. *See* Minn. R. 4410.1400.

5. The EAW was filed with the Minnesota Environmental Quality Board (EQB) and a notice of its availability was published in the EQB *Monitor* on October 15, 2018. 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 also available for public review and inspection at the DNR Central Region Office, the DNR Central Office library, the Minneapolis Public Library, and the Penn Lake Hennepin County Library. The EAW was also made available to the public via posting on the DNR's website. *See* Minn. R. 4410.1500.

6. The 30-day EAW public review and comment period began October 15, 2018 and ended November 14, 2018. Written comments on the EAW could be submitted to the DNR by U.S. mail, by facsimile, or electronically via email. *See* Minn. R. 4410.1600.

7. During the 30-day EAW public review and comment period, the DNR received written comments on the EAW from the agencies and individuals listed below. DNR's responses to substantive public comments on the EAW are provided in Attachment A. *See* Minn. R. 4410.1700, subp. 4. The comment letters are included in Attachment B of this Record of Decision.

    A. Glander, Bethani (November 14, 2018)
    B. Grady, Jeff (October 29, 2018)
    C. Johnson, Reid (October 17, 2018)
    D. Lower Minnesota River Watershed District, Linda Loomis (November 13, 2018)
    E. Metropolitan Council, LisaBeth Barajas (November 13, 2018)
    F. Million, Porter (October 18, 2018)
    G. Minnesota Department of Transportation, Cameron Muhic (November 13, 2018)
    H. Minnesota Pollution Control Agency, Karen Kromar (November 14, 2018)
    I. O'Reilly, William (October 18, 2018)
    J. Perry, Jeffrey (November 07, 2018)
    K. Schafer, Kevin (October 27, 2018)
    L. Severson, Keith (November 05, 2018)
    M. U.S. Fish and Wildlife Service, Peter Fasbender (November 14, 2018)
    N. VanHorn, Daniel (October 17, 2018)
    O. Walsh, Debra (October 19, 2018)

8. An additional letter was received after close of the public comment period from the U.S. Army Corps of Engineers (USACE) on November 20, 2018; (see Attachment C). Minnesota Rules part 4410.1700, subp. 4, identifies DNR's responsibility as the RGU is to provide a response to timely and substantive written comments. The cover letter and public notices for the EAW included information about the deadline for comments. A response is not required and no response is being provided for these comments received after the conclusion of the EAW public comment period. The USACE letter indicated it was not providing a specific response to the EAW but instead was providing general information about the USCAE regulatory program. The letter identified that a Department of the Army (DA) permit would be required, as acknowledged in EAW Item 8. Two additional letters were received from members of the public after the close of the comment period, one on December 4, 2018 and the other on December 10, 2018. No response is being provided to those comments received after the close of the public comment period. The DNR will provide copies of these and any other letters received after the close of the comment period to all permitting agencies and to the Proposer for consideration in project decision-making.

9. Within Attachment A, comments from the submissions listed in Findings of Fact paragraph 7 are provided sequentially and verbatim as practical, with DNR's response following each comment.

10. 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. Land Use
    d. Soils and Topography

e. Stormwater, Erosion, and Sedimentation
f. Wetlands
g. Groundwater – Springs/Seeps
h. Surface Waters
i. Contamination and Hazardous Materials
j. Wildlife Resources and Habitat
k. Rare Wildlife Species
l. Rare Plant Species and Ecologically Significant Areas
m. Invasive Plant Species
n. Noise
o. Traffic
p. Cumulative Potential Effects

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

a. Project Construction and Design

This topic was addressed in EAW Items 6, 10, 11, 12, 13, 16, and 17, and comments from Commenters A through D, F through K, and M through O.

Construction would be necessary to install the 13.5 miles of the Minnesota Valley State Trail from the Bloomington Ferry Bridge to the Minnesota Valley National Wildlife Refuge Visitor Center in Bloomington, Minnesota. The multiple-use, non-motorized recreational state trail would consist of a 10-foot wide paved surface with 2-foot vegetated shoulders.

Construction activities would include tree clearing, grading, excavation, installation of drainage structures and a bridge, installation of aggregate base, and paving. Construction of the trail would displace existing natural surface trails in some locations. Where appropriate and as requested by City of Bloomington and U.S. Fish and Wildlife Service (USFWS), the DNR project proposer (project proposer) would reestablish appropriate trail surface conditions and vegetation for affected segments of natural surface trails adjacent to the project's paved trail corridor.

The first segment of the trail would be constructed between Interstate 35W (I-35W) and State Highway (Highway) 77/Cedar Avenue, a distance of approximately 3.5 miles. The first part of this (1.7 miles) would be on City of Bloomington property, followed shortly thereafter by a portion (1.8 miles) on adjoining USFWS property, upon issuance of the federal Right of Way permit. Construction timing for remaining portions of the trail project is dependent on funding and is yet to be determined.

Construction of each portion of the trail is expected generally to occur during August 1 through October 31 and take place over multiple years. In practice, duration and timing of construction phases would depend on factors such as: 1) accessibility to the project area due to periodic flooding; 2) avoidance of threatened and endangered species during time periods when they may be vulnerable; and 3) logistical considerations such as availability of construction equipment and materials.

Construction plans have been refined since completion of the EAW in order to avoid impacts to listed species (see Findings paragraph 10k). The following is a summary of the time periods in which certain construction activities are generally anticipated to take place:

- Tree clearing would take place within the time period of August 15 to March 31 in order to prevent impacts to the northern long eared bat and bird nesting. For the first segment of the trail, tree cutting would be completed February 15 – March 31, with the trees left in place until removal and stump grubbing planned August 1-Oct 31.
- Installation of perimeter and erosion control measures would take place in early August.
- Grading of the trail corridor and subgrade excavation would take place between August 1 and October 31.
- The remaining construction activities, including installation of drainage structures, installation of aggregate base, shoulder and side slope grading and paving would take place from August to October, if possible. However, some of this construction activity may take place outside of this date range after the trail corridor has been cleared and graded, consistent with threatened and endangered species avoidance plans, and in coordination with DNR nongame wildlife staff and USFWS.

Equipment staging would likely be at existing parking lots near the intersection of the trail and Lyndale Avenue, Old Cedar Avenue, and at the Bloomington Ferry Bridge. Using river level forecasts during construction, work would be adjusted in order to minimize environmental impacts to the construction area. In the event of river flooding during construction, all equipment and materials would be removed from the site. Disturbed soils and extra construction materials, such as uninstalled culverts and aggregate material, would be secured.

The trail would require a bridge across Nine Mile Creek. Clearing of a span up to 100-feet wide would be required in the area directly adjacent to Nine Mile Creek to facilitate bridge installation. The trail would also require installation of culverts where it crosses a number of small tributaries of the Minnesota River.

In order to maintain grades compatible with the Americans with Disabilities Act (ADA), larger cut and fill sections and associated vegetation clearing would be required as the trail drops into the river valley at Highway 169/Bloomington Ferry Bridge, and exits the river valley at the Minnesota Valley National Wildlife Refuge Visitor Center.

Maintenance of the trail would be ongoing subject to the conditions of applicable permits and approvals listed in Findings of Fact paragraph 11.

b. Cover Type Conversion

This topic was addressed in EAW Items 7 and 11, and responses to Commenters A through O.

Cover type reflects vegetation and land uses within the 471-acre project area, which includes approximately 341 acres of wooded/forest land, 57 acres of wetland, 47 acres of brush/grassland, 6 acres of streams, and 20 acres of parking lots and aggregate service/access roads.

Development of the proposed trail would include a net increase of approximately 19 acres of impervious surface (pavement) in the project area, converting approximately 2.3 acres of wetland, 11.7 acres of forest/wooded area, and five acres of grassland to trail.

The 19 acres of project-related cover type conversion to impervious surface area is considered permanent. Limiting the trail corridors to a maximum width of 10 feet with 2-foot vegetated shoulders, and keeping tree removal and canopy opening to a minimum, are the principal means to minimize project-related cover type conversion effects.

c. Land Use

This topic was addressed in EAW Items 9 and 11, and comments from Commenters A through O.

Land uses adjacent to the project area include single family residential homes, the Mall of America and other commercial land use, the Xcel Energy Black Dog Power Plant and other industrial uses, and public recreation and habitat conservation lands.

The project is proposed to be constructed on public recreation and habitat conservation lands owned and managed almost entirely by the USFWS and the City of Bloomington. Existing recreational uses include hiking/walking, bicycling, mountain biking, snowshoeing, cross-country skiing, environmental education, hunting, fishing, and wildlife viewing.

Hyland-Bush-Anderson Lakes Regional Park Reserve (City of Bloomington, Three Rivers Park District), Central Park (City of Bloomington), Mounds Spring Park (City of Bloomington), Fort Snelling State Park (State of Minnesota), Cliff Fen Park (City of Burnsville) and Savage Fen Scientific and Natural Area (SNA) (State of Minnesota), are all within a two-mile radius of the project area. The proposed Minnesota Valley State Trail, Bloomington Segment, would connect with the existing Nine Mile Creek Trail, which is a pedestrian-only trail.

A number of Regional Trail Search Corridors are in or near the project area. The Intercity Extension and South Hennepin West (CP Rail) Regional Trail Search Corridors, as identified in the 2040 Regional Parks Policy Plan, potentially intersect the future Minnesota Valley State Trail. The Minnesota River Extension Regional Trail Search Corridor in Scott County is within 0.5 mile of the future Minnesota Valley State Trail. Coordination would be needed between DNR and the City of Bloomington, Three Rivers Park District, and Scott County (as the respective park implementing agencies) for potential future connections as the agencies evaluate the alignments.

The proposed trail includes a change from natural surface to a paved trail to be constructed in an area subject to frequent and prolonged flooding. To address these site limitations, the trail was designed to minimize fill and excavation in part to reduce impacts to floodplain hydrology. Floodplain modeling by DNR indicates that, although fill in the floodplain would be required to complete the project, it would not cause a rise in the 100-year flood elevation. If that condition changes for any reason, DNR (project proposer) would work with Lower Minnesota River Watershed District (LMRWD) on a compensatory mitigation plan.

The trail is proposed to be constructed in the Minnesota River floodplain, thereby minimizing impacts to bluffs protected by City of Bloomington ordinance. The project would cross the City's Bluff Protection Overlay District, which lies between the 722-foot elevation and the 800-foot elevation. The proposed trail extends approximately from the Highway 169/Bloomington Ferry Bridge to the USFWS Minnesota Valley National Wildlife Refuge Visitor Center, where at the latter location the trail is proposed to follow the I-494 road grade rather than being built over the bluff itself.

As discussed in EAW Item 9, the proposed project is subject to a number of plans, ordinances, and/or standards from the following entities: City of Bloomington; LMRWD; Hennepin County; Metropolitan Council; State of Minnesota; and USFWS.

The proposed project is compatible and consistent with the land uses, zoning, and management plans applicable to the defined project area as described in EAW Item 9.

d. Soils and Topography

This topic was addressed in EAW Item 10, and responses to Commenters D and N.

EAW Item 10 identified the soils within the project area as well as soil limitations related to development of paths and trails. Several soil types were identified as "very limited" or "somewhat limited" due flooding or slope concerns. Some types were identified as hydric soils.

Steeply sloped areas are present at both ends of the trail. In order to maintain ADA-compatible grades, larger cut and fill sections as well as vegetation clearing would be required as the trail drops into the river valley at Highway 169/Bloomington Ferry Bridge and exits the river valley at the Minnesota Valley National Wildlife Refuge Visitor Center.

Aggregate and other appropriate materials would be used to construct a suitable base for the trail. Unsuitable soils would be excavated and replaced with these materials.

In particular, unsuitable soils such as those identified as "very limited" or "somewhat limited" would be excavated to a minimum of one foot below the existing grade and removed. A layer of geogrid or geotextile fabric would be placed in the excavation to bridge over the unsuitable soils, and imported granular material would be used to reconstruct the subgrade. The granular material would extend the full depth of the excavation to just below the bottom of the base material. Suitable excavated material would be reused as topsoil or as fill on the slope along the length of the trail.

Any unsuitable material would become the property of the contractor and hauled off-site for disposal in accordance with applicable regulations.

e. Stormwater, Erosion, and Sedimentation

This topic was addressed in EAW Items 10, 11, and 13, and responses to Commenters B, C, D, G, H, and J.

The project has the potential for increased stormwater runoff, erosion, and sedimentation during construction and operations.

Stormwater

Development of the proposed trail would include a net increase of approximately 19 acres of impervious paved surface in the project area, which would increase stormwater runoff compared to current conditions. The impervious surfaces would be designed and contoured to shed water away from nearby waterbodies. Though the addition of impervious surface would reduce the floodplain's capacity to absorb precipitation, the overall effect would be minimal because the impervious surface area would be dispersed over a long distance.

A near-continuous border of vegetation adjacent to the trail would slow runoff and improve infiltration. Trail side slopes and minor ditching in some areas would help to drain runoff away from the trail towards natural or designed infiltration areas as appropriate, in accordance with Minnesota Pollution Control Agency (MPCA) stormwater permitting requirements.

Infiltration areas would be constructed to treat storm water runoff in areas that do not require the removal of existing mature trees or disturb well-established vegetated wildlife areas. Best management practices (BMPs) for post-construction would be used as feasible to maximize the amount of water that can be treated prior to discharge to surface waters. BMPs include vegetation management, maintenance of infiltration areas, and addressing erosion.

Potential Erosion during Construction

During construction, silt fences would be in place and maintained to limit erosion and runoff from the newly graded surfaces that drain directly to the Minnesota River and its tributaries. Silt fences, along with other wildlife-friendly perimeter control practices, would remain in place until vegetation has been established along the shoulders and all disturbed areas. Wildlife-friendly bio-logs would be used for additional perimeter control, and would be removed after the site is stabilized as required by permitting agencies.

Mild side slopes and relatively flat areas would be mulched and disk-anchored. Side slopes steeper than a 1:3 ratio (one foot vertical to three feet horizontal) would be covered with a natural, netted-type erosion control blanket. Wildlife-friendly erosion control and sediment control BMPs would be installed as necessary to minimize erosion from disturbed surfaces and capture sediment on site, and would meet MPCA's National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) General Construction Storm Water Permit requirements.

Additional BMPs would be needed during construction due to the proximity of the project to the Minnesota River and Nine Mile Creek, both of which are state-listed impaired waters. Stabilization of all exposed soils areas would be initiated immediately to limit soil erosion. All necessary erosion control measures to stabilize and revegetate the site would be fully installed within seven (7) days after the construction activity in that portion of the site has temporarily or permanently ceased. A minimum of 30 feet, and an average of 50 feet, of undisturbed buffer zone between the top of the Minnesota River bank and the edge of the trail's impermeable surface would be maintained during construction; this undisturbed buffer zone would not be necessary where the proposed trail would utilize the existing gravel service roads under the I-35W Bridge, Cedar Avenue Bridge, and along Long Meadow Lake. Silt fences would be installed to delineate and maintain the buffer zone. Except if needed during abutment construction for bridges and culverts, temporary sediment basins would not be utilized to treat construction runoff because disturbance will not exceed five acres in any one drainage area.

Potential Erosion during Dewatering

Temporary, short-term dewatering may be required for the construction of the bridge abutments for Nine Mile Creek, and for the installation of drainage structures located within defined drainage channels. Pumped or trenched turbid or sediment-laden waters related to dewatering would be treated with the appropriate BMPs such that the discharge does not adversely affect the receiving water, including wetlands. BMP options include pumping water through a filter sock in order to remove sediment. Discharge water resulting from dewatering activities may also be pumped into temporary sediment basins to allow sediment to settle out. The discharge points would be adequately protected from erosion and scour, and would be dispersed over riprap or other accepted energy dissipation measures.

Potential Erosion during Operations
Ongoing visitor use could result in erosion, particularly if visitors go off-trail. Trail inspections would work to identify problem areas. Repairs would be conducted as needed.

f. Wetlands

This topic was addressed in EAW Item 11.

Wetland delineation within the 471-acre project area was completed in 2017 and 2018. The delineation determined the project area includes approximately 57 acres of wetlands. These wetlands are distributed across the project area. Some are part of larger wetland complexes that lie between the proposed trail corridor and the Minnesota River bluff.

Wetland Effects
Fill-related wetland effects within delineated wetland boundaries include loss of wildlife habitat and wetland function. Broader effects include floodplain storage loss, increased surface water runoff, some loss of recharge area, and changes to local drainage patterns. Wetland effects have the potential to impact threatened and endangered species such as Blanding's Turtle and Blanchard's Cricket Frog. Some wetlands may require a Rare Natural Community determination pursuant to the Wetland Conservation Act (WCA).

The trail project would require filling of wetlands at various locations in order to provide a stable base for the trail, and to ensure the trail grade does not exceed 5% and is ADA-compliant. Total wetland fill is estimated to be 2.3 acres for the 13.5-mile trail corridor.

In addition to fill, there may be impacts to wetland hydrology due to wetlands being bisected by the placement of fill and the elevated paved trail surface. The proposer intends to limit the fill sections to the narrowest corridor needed for construction of the trail. In instances where wetland hydrology would be bisected by the placement of fill, culverts would be placed to accommodate flow and maintain hydrologic connectivity.

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Wetland Avoidance, Minimization, and Mitigation
Through a pre-project consultation process with City of Bloomington and USFWS staff, DNR (project proposer) drafted conceptual plans for the trail. The trail alignment shown on these plans was designed to avoid known high value natural resources as well as to keep the trail on high ground. Upon completion of the wetland delineation, the proposed trail alignment was adjusted to avoid and minimize wetland impacts. Unavoidable wetland losses would be mitigated as required by WCA. On-site mitigation is not planned, but options would be explored. Wetland credits are planned to be purchased from a wetland bank approved by the Board of Water and Soil Resources (BWSR) and USACE. Any impacts identified for Rare Natural Communities could require enhanced mitigation beyond standard wetland bank credits; this would be assessed in permitting. DNR (project proposer) would continue coordination with wetland regulatory agencies. A Technical Evaluation Panel would meet to coordinate WCA requirements.

WCA Special Considerations

WCA contains special considerations for species that are listed as endangered or threatened, and for plant communities that are identified as rare natural communities:

> **MN Rules 8420.0515 SPECIAL CONSIDERATIONS.**
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> Subp. 2. **Endangered and threatened species.** A replacement plan for activities that involve taking species listed as endangered or threatened in parts 6134.0200 to 6134.0400 must be denied unless the commissioner issues a permit under part 6212.1800 or Minnesota Statutes, section 84.0895, subdivision 7. Applicants may identify if there are known locations of listed species at a particular site by contacting the Department of Natural Resources' natural heritage and nongame research program.
>
> Subp. 3. **Rare natural communities.** A replacement plan for activities that involve the modification of a rare natural community as determined by the Department of Natural Resources' natural heritage program must be denied if the local government unit determines that the proposed activities will permanently adversely affect the natural community.

Rare Natural Communities

Within the project area, Bulrush Marsh (Northern), Silver Maple – (Virginia creeper) Floodplain Forest, and Southern Terrace Forest native plant communities, along with other wetlands within the Minnesota Biological Survey (MBS) Sites of High Biodiversity Significance, may qualify as "Rare Natural Communities" under WCA. This project proposes to affect wetlands that may meet the criteria to be considered Rare Natural Communities.

Each wetland that is proposed to be impacted by the project that may qualify as a Rare Natural Community would be evaluated by staff from the DNR's Ecological and Water Resources Division. This would include a field review in coordination with the WCA Technical Evaluation Panel and project proposer. The final determination regarding the presence or absence of a Rare Natural Community would be made by the Director of the DNR Division of Ecological and Water Resources. If the wetland is determined to qualify as a Rare Natural Community, DNR (project proposer) would consult and coordinate with the City of Bloomington, as the Local Governmental Unit (LGU) for WCA, to determine whether trail construction would have a permanent adverse effect on those rare natural communities and any additional mitigation measures that would be required.

g. Groundwater – Springs/Seeps

This topic was addressed in EAW Item 11, and comments from Commenter N.

DNR's Spring Inventory shows various springs and seeps near the project area. They emerge from the base of the bluff or the Minnesota River bank, and drain into the Minnesota River outside of the area that would be disturbed by trail construction. There are three verified inventoried springs/seeps within the 471-acre project area; all are near the Highway 169/Bloomington Ferry Bridge. Culverts would be placed and sized appropriately to prevent impacts to groundwater flowing from base of the bluff to the Minnesota River; see Findings of Fact paragraph 10h below.

As part of ongoing coordination regarding rare species, updated engineering plans with proposed culvert locations and specifications would be provided to the DNR nongame specialist, USFWS staff, and other resource experts as appropriate to ensure that impacts to state- and federally-listed species are avoided. More broadly, culvert placement and specifications have been determined in coordination with DNR Division of Parks and Trails Regional Resource Specialists and DNR Division of Ecological and Water Resources hydrologists. As construction plans are refined, these staff would be consulted on the final design specifications along with USFWS staff.

h. Surface Waters

This topic was addressed in EAW Item 11, and responses to Commenters B, D, F, G, H, I, J, K, and N.

The project would affect surface water resources during construction. The trail would extend along the Minnesota River, and is proposed to cross Nine Mile Creek, other streams and tributaries to the river, intermittent channels, and potential springs/seeps.

Potential effects include physical changes to surface waters due to temporary re-routing during culvert installation, increased turbidity, erosion and sedimentation, and changes to hydrology.

Installation of culverts would require temporary re-routing of intermittent channels. If channels are flowing, DNR (project proposer) contractors would temporarily bypass the location where the culvert would be installed in order to install infrastructure. Other activities would include excavation of the crossing area, filling the bed on which the culvert would rest with granular material, installation of the culvert, and subsequent backfilling with excavated material. Erosion control measures would be taken to minimize sedimentation throughout the installation process. Culverts would be sized appropriately, and open bottom culverts would be utilized where possible in order to minimize impacts to channel hydrology, as well as to minimize impediments to amphibian and other wildlife movements.

Current engineering designs propose larger water crossings be accomplished with an open bottom culvert unless the physical characteristics of a specific crossing require a closed bottom culvert or bridge.

DNR (project proposer) estimates that 15-20 culverts, with a diameter of 36 inches or more, would be required across the entire project. Additional smaller drainage structures that are not located in a defined drainage channel would be used to equalize flow and to provide hydrologic connectivity between the two sides of the trail. Smaller culverts, typically rust-resistant corrugated metal pipes with diameters of less than 36 inches, would be sited and specified to provide hydrologic connectivity between wetlands. The goal would be to ensure that the effects on the pre-construction hydrology, including water levels and hydroperiod, are minimized to the extent possible.

The project has the potential to affect the drainage flows in the Minnesota Department of Transportation (MnDOT) right-of-way (ROW) along I-35W and the MnDOT I-494 trail, both of which may require a drainage permit. The proposer commits to coordinate with MnDOT regarding review of relevant computations to ensure the project maintains or reduces stormwater drainage rates in the ROW.

i. Contamination and Hazardous Materials

This topic was addressed in EAW Item 12.

The Minnesota Valley State Trail is proposed to be constructed in the Minnesota River floodplain. Though there are no active dredge material disposal sites in the project area, LIDAR and aerial photography suggest that at some point there was disposal of dredge material from the commercial navigation channel, or commercial harbors, taking place in the vicinity of the proposed trail corridor. Therefore, it is possible that trail construction would disturb dredge material of unknown origin.

All soil and other material that is disturbed by the trail construction process is expected to remain in the project area and not be hauled outside the Minnesota River Floodplain. If any material is removed from the floodplain, and particularly if said material is removed from an area that is suspected to be a former dredge material site, then DNR would work with MPCA on the proper testing and disposal protocol.

The construction, monitoring, and maintenance of the proposed project have limited potential for releases of toxic or hazardous substances. Refueling spills, equipment breakdowns, fluid releases from typical construction and operational machinery, and concrete form oil are potential sources of toxic or hazardous materials that could introduce contaminants into the soil during construction and maintenance of the trail. Refueling would be conducted away from surface waters. Equipment would be regularly inspected by the contractor, with appropriate oversight from the lead engineer, and repaired to prevent inadvertent loss of fuels, oils, or other hazardous fluids. Spills would be promptly reported to MPCA by the contractor or lead engineer.

j. Wildlife Resources and Habitat

This topic was addressed in EAW Item 13, and responses to Commenters A, B, F and J.

Resident wildlife species in the project area include raccoon, mink, muskrat, wood duck, deer, wild turkey, rabbit, squirrel, fox, beaver, bald eagle and other raptors, and a variety of amphibians and reptiles. Tens of thousands of song birds and waterfowl are attracted to the extensive wetlands in the valley as they make their annual migrations through the valley flyway and take advantage of extensive available habitat for breeding and year-round use.

Wildlife and associated habitat would be affected by project-related construction, and trail maintenance and usage when complete. Potential environmental effects include: changes in ground habitat due to limited removal of trees and understory vegetation along the trail; accidental introduction of invasive species; and human-related disturbance during construction, operation, and maintenance of the trail. Construction-related effects would be temporary, while disturbance effects associated with trail use would be ongoing and vary as a function of the level of site use.

Measures incorporated into the project to minimize effects to wildlife and habitat include: leaving most of the tree canopy intact; aligning the trail to minimize loss of mature trees; minimizing impacts to ecologically significant areas to the extent practicable; and controlling the potential introduction and spread of invasive plant species.

Oak wilt can be introduced to the site when trees are wounded by construction activities. Sap from wounds can attract infected beetles to the tree. To avoid the spread of oak wilt, clearing and other activities presenting the potential to injure oak trees would take place during the August to March period, which is the lower risk time of year. Transport of all ash tree plant material would follow county ash tree quarantine area restrictions.

Emerald ash borer can be introduced or spread by improper handling and management of infected tree materials. Transport of all ash tree plant material would follow Hennepin County ash tree quarantine area restrictions.

Project-related impacts to wildlife habitat are subject to ongoing public regulatory authority under provisions in the MPCA-required Stormwater Pollution Prevention Plan (SWPPP) to minimize soil erosion and sedimentation, therefore lessening the potential adverse effects to wildlife. Minimizing cover type conversion would also address potentially adverse habitat effects.

k. Rare Wildlife Species

This topic was addressed in EAW Item 13, and responses to Commenters B, G, and M.

The Minnesota Natural Heritage Information System (NHIS) database was queried in 2017 and 2018 to determine what rare, threatened, or endangered plant or animal species or other significant natural features are known to occur within or near the project area. This query identified multiple rare features near the project area, including federal- and state-listed species as identified below. Because information in the NHIS database is continuously updated, the NHIS database would be queried again prior to each construction phase.

Species in Greatest Conservation Need (SGCN)
SGCN are animals identified as rare, declining, or vulnerable in Minnesota, and their available habitats are declining in quality or extent. The Big Woods subsection portion of the project area contains at least 121 known or predicted SGCN. The St. Paul-Baldwin Plains and Moraines subsection portion of the project area contains 149 SGCN, including 74 species that are federal or state endangered, threatened, or of special concern. Important areas for SGCN include the Minnesota River, Minnesota Valley National Wildlife Refuge, Three Rivers Park District regional parks, and numerous wildlife management areas. SGCN species in the Minnesota River Valley include a wide variety of birds, fish, mussels, and mammals, as well as the listed species discussed below

Federally-protected species
Bald eagle (*Haliaeetus leucocephalus*) - federal status: protected under the Migratory Bird Act and the Bald and Golden Eagle Protection Act. The project site includes habitat suitable for bald eagles with known active and alternate bald eagle nest trees in the project area. No removal of active or alternate bald eagle nest trees would occur as part of this project.

Construction activity could result in physical, visual, and noise disturbance effects to this species, especially from February 15 to August 15 when eagles are most sensitive to disturbance. These impacts would be temporary and limited to times when construction occurs.

Due to the presence of active and alternate nests near the proposed trail corridor, there would be specific consultation with the USFWS regarding this protected species. Measures to avoid

disturbance at specific nest sites would be identified and implemented. Measures may include altering the timing of construction or maintaining landscape buffers.

Northern long-eared bat (*Myotis septentrionalis)* - federal status: threatened. The project area contains roosting and foraging habitat suitable for the northern long-eared bat (NLEB). The USFWS indicates that acoustic sampling has positively identified the species to be present in the project area. Females with pups have been observed roosting on the Highway 77/Cedar Avenue Bridge, and indications of bat use have also been detected beneath the I-35W Bridge.

There is a known NLEB hibernacula located within the same township as a portion of the project (Hennepin Co, T28N R23W), but there are no known hibernacula within 0.25 miles of the proposed trail project.

Any project-related removal of large trees with suitable bark, cavities, or degree of decay could diminish available roosting and rearing habitat, especially if these trees are removed during the summer months. Direct bat mortality can result if individuals are present during tree felling. Disturbance near the Highway 77/Cedar Avenue Bridge, and potentially the two other bridges, during the pupping season may also negatively impact this species. Measures available to avoid impacts to the NLEB:

- Conducting surveys to assess NLEB use of the area and determine if the proposed actions would impact maternity roost trees.
- Constructing trail beneath the bridge locations at Highway 169, I-35, and Highway 77/Cedar Avenue outside of the NLEB pupping season (June 1 through August 15).
- Avoiding construction within MnDOT ROWs adjacent to the bridges during the bat pupping season, including all activities that increase noises above the background level and activities that use percussives or cause vibrations.
- Avoiding direct impacts by conducting all tree removal in the winter when the species is not present (October 1 through March 31).
- Minimizing impacts by routing trails to avoid large trees, especially greater than 15 inches in diameter.
- Limiting tree clearing within MnDOT ROWs to the winter months (November 1 to March 31).

Construction plans for the initial two segments of the project have been refined since the EAW was completed and are described at the end of this section. The proposer intends that tree felling would be conducted under winter frozen soil conditions, with felled-tree removal conducted between August and October 15, consistent with DNR policy of not removing trees greater than 3” in diameter during pupping season.

The proposer intends to continue coordination and consultation with USFWS regarding this species. If surveys are recommended by USFWS during coordination for each portion of the trail, the proposer agrees that surveys will be conducted.

As a standard practice, DNR strives to reduce overall tree removal with trail development projects. For each segment of trail proposed, DNR commits in consultation with USFWS to examination of the trail corridor during both the design and construction phases of the project to identify mature trees and high value tree species that can be avoided by adjusting the trail alignment.

Rusty patched bumble bee (*Bombus affinis)* - federal status: endangered. Suitable habitat and occurrences for the rusty patched bumble bee (RPBB) are known to exist in the project area. RPBB habitat is classified in terms of "high potential zones" and "low potential zones" for potential use. A portion (~15-20%) of the project area between the Highway 169/Bloomington Ferry Bridge and I-35W is within a high potential zone for the RPBB as of August 15, 2018. The remainder of the project area is within a low potential zone as of that date. The status of high and low potential zones with respect to the proposed trail would be re-examined prior to final design and prior to each construction phase to ensure that any changes in zone designations are properly addressed in planning prior to construction.

Because a portion of the project area is within a high potential zone for RPBB, specific consultation with the USFWS would be ongoing regarding this protected species. The USFWS reports that the RPBB was detected within one mile of the project area in 2017 and within 0.4 miles of the project area in 2018. USFWS stated the high potential zone generated from these observations intersects approximately 2.15 miles of the trail corridor. The USFWS indicates conducting additional surveys would not add certainty about the presence of, and potential impacts to, the RPBB.

The RPBB may be negatively impacted by the project through habitat loss, such as conversion of grassland habitat, and by soil disturbance within overwintering forest habitat used by the queens. USFWS project-specific guidance includes the following:

- In order to fully avoid direct impacts to overwintering queens, soil disturbance associated with tree removal and construction along the 2.15 mile portion of the trail would need to occur between March 16 and October 15. A follow-up discussion with USFWS on this and other rare species included the recommendation that cutting trees during the overwintering period, but removing them at a later date, would not be considered an activity that would impact the RPBB. In addition, USFWS indicated that floodplains are poor overwintering habitat for RPBB foundress queens because of the propensity to flood.

- If avoidance of impacts through construction timing is not possible, potential take would be subject to USFWS rules, with that agency providing additional guidance as warranted.

State-protected species

Blanchard's cricket frog *(Acris crepitans blanchardi)* - state status: endangered. Suitable habitat and occurrences of Blanchard's cricket frog are known to exist in the project area. This species inhabits permanent water bodies including ponds and backwaters of streams and rivers. During dry spells, the frogs travel overland to find new habitat. During winter, animals may burrow up to a foot deep in soils near water bodies, while some specimens are thought to hibernate in crayfish burrows and cracks in pond banks. This species is extremely rare and only known to occur in a few isolated locations in the state. Their limited geographic distribution, along with their short lifespan (about four months), makes populations of this species very vulnerable to disturbance. The DNR Nongame Wildlife Program has been monitoring the Bloomington area Blanchard's cricket frog population for decades, and in the past five years the species has expanded its range in the area.

There is the potential for limited direct mortality of Blanchard's cricket frogs during project construction, which is possible because some of the project would be taking place near wetlands and suitable aquatic habitat, as well as overwintering habitat, used by the species. There may

potentially be some changes to wetland hydrology, and minor increases in surface water runoff from storm events, which could also impact the cricket frog.

Prior to development of each trail segment, a habitat assessment and survey would be conducted by a qualified surveyor. To reduce the potential for direct mortality of Blanchard's cricket frog as a result of the project, an avoidance plan would be prepared in coordination with the DNR regional nongame wildlife specialist.

Measures to avoid impacts to cricket frogs include:

- Felling trees during winter months.
- Removing felled trees over the August through October period.
- Avoiding use of heavy equipment on frozen ground.
- Use of wildlife-friendly erosion control methods.
- Avoidance of wetland fill placement during the winter months when frogs are hibernating.
- Avoidance of dewatering during the winter months when frogs are hibernating.
- Implementation of stringent sediment and erosion control methods.
- Monitoring for frogs during construction and report any sightings to the DNR nongame wildlife staff.
- Avoidance of hydrologic modification that may result in the taking of cricket frogs post-construction.

For the first phase of construction, the proposer has coordinated with DNR nongame wildlife staff to establish a timeframe for soil disturbance that extends August 1 - October 31 in order to avoid impacts to Blanchard's cricket frogs when they may be developing and when they may be hibernating. This may not be necessary for all phases of the project, such as for a 3-mile portion of the trail between Highway 77/Cedar Avenue and the USFWS Visitor Center, where the trail is proposed to be constructed on top of an existing gravel road. Since this surface is already disturbed and impermeable, construction activities on this portion of the trail would not be expected to impact suitable cricket frog habitat.

Blanding's turtle *(Emydoidea blandinii)* - state status: threatened. Blanding's turtles need both wetland and upland habitats to complete their life cycle. Suitable Blanding's turtle habitat is known to exist in the project area. Blanding's turtles overwinter in the muddy bottoms of deeper marshes and ponds, or in other water bodies where they are protected from freezing.

There is the potential for limited direct mortality of Blanding's turtles during project construction for activity within upland habitat adjacent to wetlands where Blanding's turtles are known to occur. There may also be some Blanding's turtle habitat impacts due to wetland fill areas and development within adjacent upland areas.

Prior to development of each trail segment, a habitat assessment and survey would be conducted by a qualified surveyor. To reduce the potential for direct mortality of Blanding's turtles as a result of the project, an avoidance plan would be prepared in coordination with the DNR regional nongame wildlife specialist. Plans for construction discussed above and below that would help avoid impacts to Blanchard's cricket frog would also function to help avoid impacts to the Blanding's turtle.

Measures to avoid impacts to Blanding's turtle include:

- Using wildlife-friendly erosion control methods.
- Avoiding wetland fill placement during the winter months when turtles are hibernating.
- Avoiding dewatering during the winter months when turtles are hibernating.
- Implementing stringent sediment and erosion control methods.
- Monitoring for turtles during construction and report any sightings to the DNR nongame wildlife staff.
- Providing the Blanding's turtle information flyer to all contractors working in the area.
- Relocating turtles by hand out of harm's way if they are in imminent danger, otherwise leaving them undisturbed.
- Avoiding hydrologic modifications that may result in the taking of Blanding's turtles post-construction.

Construction plans to avoid impacts to listed species

In order to avoid impacts to listed species, the proposer has refined the proposed construction plan since the EAW. The first phase of trail construction is planned from I-35W to Highway 77/Cedar Avenue and is outside of the RPBB High Potential Zone. For construction of this first phase, the proposer intends to:

- Cut the trees that need to be removed February 15 – March 31. This timeframe is outside the USFWS-recommended general NLEB restriction period of April 1 – September 30. The trees would be felled and cut into pieces of a size that can be arranged, without using heavy equipment, for removal at a later date. Heavy equipment would not be used during the period of frozen ground conditions so as to prevent soil disturbance and thereby avoid impacts to hibernating Blanchard's cricket frogs.

- Grub stumps, remove felled trees and other woody material using heavy equipment August 1 – October 31. This period of time is identified by DNR nongame wildlife biologists as the period when Blanchard's cricket frogs are less vulnerable to impact as they are mature and mobile, and not hibernating within the soil. Work near the I-35W Bridge and the Highway 77/Cedar Avenue Bridge will be avoided from August 1 – August 15 or coordinated with USFWS so as to avoid impacts to known or potential NLEB maternity roosts. The USFWS-recommended avoidance period for the NLEB pupping season is June 1 – August 15.

- Grade the corridor and install culverts needed August 1 – October 31.

Other construction activities such as installing aggregate base and paving the trail would be completed within appropriate timeframes consistent with permits, approvals, and applicable avoidance plans in coordination with DNR nongame wildlife and USFWS.

DNR notes that these construction plans are subject to change based on consultation and continued coordination with the USFWS. In particular, trees may be cut and removed on a different schedule approved by USFWS.

The proposer plans to coordinate closely with USFWS on construction plans for the 2.15-mile portion of the trail proposed within the RPBB High Potential Zone so as to avoid impacts to the bee.

l. Rare Plant Species and Ecologically Significant Areas

This topic was addressed in EAW Item 13, and responses to Commenters A, B, G, and J.

NHIS database queries conducted in 2017 and 2018 identified other significant natural features that are known to occur within or near the project area, as identified below. Because information in the NHIS database is continuously updated, the NHIS database would be queried again prior to each construction phase.

Ecologically Significant Areas

The proposed project area is located within a Central Region Regionally Significant Ecological Area (RSEA) that is ranked Outstanding. The proposed project area is also located within areas identified by the MBS as Sites of High Biodiversity Significance and Sites of Moderate Biodiversity Significance.

Rare species are often found in Ecologically Significant Areas. A Forster's tern (*Sterna forsteri*) colonial nesting site is noted at the western end of the project area in Rice Lake; this is a state-listed special concern species. Potential project-related effects to this area include physical disturbance during construction, habitat fragmentation, and potential colonization by invasive species.

Trail development would emphasize the avoidance of habitat of threatened and special concern species and other high quality habitat. Where possible, the trail would be developed in areas that have been previously affected by human activity. The trail would be constructed along existing disturbed corridors as much as possible in order to minimize habitat fragmentation. However, vegetation clearing and the constructed trail itself would cause some limited habitat fragmentation, particularly in areas where continuous blocks of habitat exist.

Efforts to reduce impacts to important forested habitat include developing individual segments in locations cleared in the past for row crop agriculture, thereby reducing impacts to more mature stands of floodplain forest. The proposer intends to limit the tree clearing footprint to the narrowest corridor needed for construction of the trail and creek crossings. The use of retaining walls near larger fill sections at either end of the project area (near the Bloomington Ferry trail head and near the I-494 Bridge) would be explored as a means of minimizing the clearing footprint.

Some of these Ecologically Significant Areas are wetland communities. As addressed above in Findings of Fact paragraph 10f, efforts to reduce impacts to wetlands include avoiding as many delineated wetlands as possible, and limiting the fill sections to the narrowest corridor needed for construction of the trail. In instances where wetland hydrology would be bisected by the placement of fill, culverts would be placed to accommodate flow and maintain hydrologic connectivity across the wetland.

The following guidelines would be adhered to where possible in order to minimize disturbance to ecologically sensitive areas:

- Bridging all stream crossings.
- Minimizing vehicular disturbance by, to the extent possible, limiting vehicular activity to the disturbed trail corridor.
- Utilizing wildlife-friendly erosion prevention and sediment control measures.

- Following DNR guidelines to prevent the spread of invasive species.
- Revegetating disturbed soil with appropriate native species as soon as possible after construction.
- Revegetating trail shoulders with an appropriate erosion-control seed mix, such as a low-mow fescue mix.

Rare Plant Species

Kitten-tails *(Besseya bullii)* - state status: threatened. The Kitten-tail is a plant species found primarily in oak savanna communities that can also occur in dry prairies and oak woodlands. The Minnesota populations are largely restricted to the bluffs and terraces of the St. Croix, Mississippi, and Minnesota River valleys. Many populations occur in the greater Twin Cities area. The proposed trail alignment is intended to avoid known Kitten-tail habitat.

A survey for Kitten-tails and habitat would be completed by the DNR regional plant ecologist or other qualified surveyor prior to final design and each construction phase of the trail. For a given trail segment, if suitable habitat is present and a botanical survey finds kitten-tails, then an avoidance plan would be prepared in coordination with the DNR regional plant ecologist. In the event that the trail alignment would adversely affect individual Kitten-tails, the construction footprint of the trail would be adjusted to avoid the individuals. If the alignment cannot be adjusted to avoid the individuals, the project proposer would apply for a takings permit. A decision on whether to issue a takings permit, if needed, would be based on the DNR's assessment of all relevant information.

m. Invasive Plant Species

This topic was addressed in EAW Item 13.

Project-related construction, maintenance, and ongoing visitor use (once operational) could provide opportunities for the introduction and/or spread of invasive plant species. Invasive plant species can adversely affect wildlife habitat and lessen site-level biodiversity, the latter due to invasive species outcompeting native plants. Although the project site has not been surveyed for the presence of invasive species, invasive plant species known to be present in the area include leafy spurge, garlic mustard, and European buckthorn.

During the construction phase, the risk is primarily introduction of these plants due to equipment brought to the project area, fill materials used, movement of seeds and plant fragments within the site, and disturbance of soil that can provide an opportunity for invasive plant establishment.

The risk of introduction and spread of invasive species during the operations and maintenance phase is primarily tied to use of mechanical equipment on the site, which can serve as a transport vector of invasive plant seeds and infested plant material to the site. Introduction can occur from trail users and maintenance equipment, and from the movement of seeds and plant fragments from one portion of the site to another by way of boots, bike tires, and maintenance equipment.

DNR Operational Order No. 113 provides guidance and directives applicable to agency staff and contractors for implementing site-level management to prevent or limit the introduction, establishment, and spread of invasive species. The guidance provides procedures applicable to the proposed project that would be implemented. The DNR Division of Parks and Trails staff have guidelines prepared specifically for administering their lands and programs.

To reduce potential invasive species spread during each construction phase, contract language requires oversight to ensure that all equipment is cleaned prior to arriving at the project area. Soil disturbance would be minimized and disturbed areas would be revegetated as quickly as possible to avoid the establishment of invasive species. The proposer commits that all fill materials brought to the site would be clear of invasive species. Other construction BMPs available to limit the introduction of invasive plant species include locating and using staging areas that are free of invasive plant species, and monitoring revegetation once construction is complete.

BMPs and trail user education would be used to prevent invasive species spread during operation and maintenance. Primary trail access points would have boot brush kiosks with "Play, Clean, Go" informational signs as a way to educate trail users and provide them with the equipment necessary to remove invasive species from their footwear; the City of Bloomington and USFWS would be consulted regarding installation of boot brush kiosks at additional locations. Trail maintenance BMPs include cleaning equipment prior to arriving and leaving the site, and also cleaning the equipment periodically along the trail to prevent spread within the trail corridor.

After construction, the trail ROW would be monitored for invasive species. Suitable control measures would be employed when invasive plants are encountered. Intrusive species that grow through bituminous trail surface would be controlled to prevent pavement breakup and maintain safe trail conditions.

DNR guidance documents indicate a low-to-moderate risk level for the spread of invasive species along a paved trail. To minimize the potential of spreading invasive species, the newly constructed trail segments would be monitored during the first year after construction, and periodically thereafter, consistent with the management of other trail segments. Where appropriate a prescribed fescue mix, also known as a "low mow mix," would be used on the trail shoulders to reduce the opportunity for establishment of invasive species. Limiting mowing also reduces the risk of spreading seeds and viable plant fragments.

n. Noise

This topic was addressed in EAW Item 17, and responses to Commenter G.

Operation of the new trail is not expected to change the existing noise levels.

During construction and periodic maintenance activities, the project would create noise above existing conditions. Recreational users in the area may experience these temporary effects.

Noise from construction activities would occur during grade/treadway preparations, removal of felled trees, fill placement, bridge construction, culvert installation, subgrade preparation along the new corridor, paving operations, and associated trucking of materials and equipment. Operation of diesel tractors and medium-sized trucks would be the main source of construction noise. Operation of other hand tools or small equipment, such as chainsaws and brush cutters, may also generate noise during construction and periodic maintenance. Construction activities would occur during normal daylight hours.

Noise would be controlled by ensuring standard noise arrestors such as mufflers are properly installed on construction vehicles. Operation of construction equipment would be limited to several weeks at any given location and would occur only during daylight hours.

o. Traffic

This topic was addressed in EAW Item 18.

There are existing parking lots nearby and no additional parking facilities are planned to be developed as part of this project. DNR (project proposer) does not expect an increase in traffic to result from the project large enough to require additional parking lots.

Traffic within and near the project area is not expected to change substantially as a result of the proposed project. Increased congestion is not anticipated due to the project, nor are traffic improvements expected to be needed.

p. Cumulative Potential Effects

This topic was addressed in EAW Item 19, and response to Commenter G.

Cumulative potential environmental effects are the combined effects of the proposed Project and past, present, and reasonably foreseeable future projects. See Minn. R. 4410.0200, subp. 11a.

The Old Cedar Avenue project restoration, components of the CenterPoint Energy Beltline Project, Xcel Energy maintenance of transmission line ROW, the I-35W Bridge reconstruction project, and MnDOT trail project were identified as reasonably foreseeable actions within the environmentally relevant area for the project.

Project-related construction activities could interact with the projects listed above within the next few years. Cumulative effects include changes to ecosystems and plant communities, impacts to rare species and features, increased potential for erosion and sedimentation, and possible introduction of invasive species. Any cumulative effects are expected to be limited to the Project's construction phase for each trail segment. These potential cumulative effects are not expected to be significant.

No other potential cumulative effects are anticipated with the Project.

11. The following permits and approvals are, or may be, needed for the Project:

Unit of government	Type of application
US Fish and Wildlife Service (USFWS)	Right of Way Permit (Easement) Special Use Permits Takings permit if taking of federally listed species cannot be avoided Section 7 consultation on federally listed species
US Army Corps of Engineers (USACE)	Clean Water Act Section 404 Permit which includes: Section 7 Consultation as the lead federal agency
MN Department of Natural Resources (DNR)	Work in Public Waters Permit Avoidance plan for Blanchard's cricket frog

Unit of government	Type of application
	Avoidance plan for Blanding's turtle Avoidance plan for Kitten-tails if identified during survey Takings permits if taking of state-listed species cannot be avoided
MN Pollution Control Agency (MPCA)	NPDES/SDS General Construction Stormwater (CSW) Permit which includes: Stormwater Pollution Prevention Plan Section 401 Water Quality Certification
MN Department of Transportation (MnDOT)	Limited Use Permit Drainage permit, potentially (if determined to be required during MnDOT review of project grading and drainage plans and hydraulic calculations)
Lower Minnesota River Watershed District (LMRWD)	Flood Plain Fill/No Rise Certificate Compliance with District Standards: Erosion and Sediment Control, Stormwater Management, Floodplain and Drainage Alteration, Steep Slope, Shoreline and Streambank, and Water Crossing
City of Bloomington	Wetland Conservation Act Approval Joint Powers Agreement
USFWS USACE State Historic Preservation Officer (SHPO) MN Indian Affairs Council	Cultural Resources Review/Section 106

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 paragraphs 10a to 10o, 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 and Design
Cover Type Conversion
Land Use
Soils and Topography
Stormwater, Erosion, and Sedimentation
Wetlands
Groundwater – Springs/Seeps
Surface Waters
Contamination and Hazardous Materials
Wildlife Resources and Habitat
Rare Wildlife Species
Rare Plant Species and Ecologically Significant Areas
Invasive Plant Species
Noise
Traffic

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.*

The effects of all past projects comprise the existing condition of the project area. Cumulative environmental effects result from the addition of the effects of the proposed project and reasonably foreseeable future projects to the existing condition.

Cumulative potential impacts are expected to be limited to the construction phase of each trail segment.

As described in Findings of Fact paragraph 10p, environmental effects during the construction phase of the Project would interact with the Old Cedar Avenue project restoration, components of the CenterPoint Energy Beltline Project, Xcel Energy maintenance of transmission line rights-of-way, the I-35W Bridge reconstruction project, and MnDOT I-494 trail improvements project.

Based on the Findings of Fact above, the DNR concludes that the cumulative potential environmental effects to ecosystems and plant communities, rare species and features, terrestrial erosion and sedimentation and potential introduction of invasive species are not significant when viewed in connection with: other contributions; the degree to which the project complies with mitigation measures to minimize project impacts; and/or the efforts the proposer has made to minimize contributions from the project.

4. *Extent to which environmental effects are subject to mitigation by ongoing public regulatory authority*.

Based on the information in the EAW and Findings of Fact above, the DNR concludes that the following potential environmental effects, as described in Findings of Fact paragraphs 10a through 10o, are subject to mitigation by ongoing public regulatory authority:

Permits and Approvals: Prior to initiation of this project, the permits and approvals identified in Finding 11 would be required. When applying the standards and criteria used in the determination of the need for an environmental impact statement, the 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.

Project construction: Multiple permits will control environmental effects associated with project construction, including the USFWS Right of Way Permit, Special Use Permits, and potential takings permits; USACE Clean Water Act Section 404 Permit; DNR Work in Public Waters Permit, Avoidance Plan for Blanchard's cricket frog, Avoidance Plan for Blanding's turtle, Avoidance Plan for Kitten-tails (potentially), and potential takings permits if these species cannot be avoided; MPCA NPDES/SDS General Construction Stormwater (CSW) Permit and its associated Stormwater Pollution Prevention Plan, Section 401 Water Quality Certification; MnDOT Limited Use Permit, Drainage Permit (if determined necessary); LMRWD Flood Plain Fill/No Rise Certificate, Compliance with District Standards including Erosion and Sediment Control, Stormwater Management, Floodplain and Drainage Alteration, Steep Slope, Shoreline and Streambank, and Water Crossing; City of Bloomington Wetland Conservation Act Approval, Joint Powers Agreement; USFWS/USACE/SHPO/MN Indian Affairs Council Cultural Resources Review/Section 106.

Cover Types: USFWS Right of Way Permit and Special Use Permits; LMRWD Flood Plain Fill/No Rise Certificate and Compliance with District Standards regarding Floodplain and Drainage Alteration; City of Bloomington Wetland Conservation Act Approval, Joint Powers Agreement; USFWS/USACE/SHPO/MN Indian Affairs Council Cultural Resources Review/Section 106. Proposer commitments to minimize tree removal, canopy loss, and wetland fill, and to follow trail development guidelines would also reduce cover type conversion.

Land Use: Environmental effects from land use changes are subject to mitigation by ongoing regulatory authority from the City of Bloomington Joint Powers Agreement and USFWS Special Use Permits. The City of Bloomington's Bluff Protection Overlay District, the LMRWD Steep Slope Standard and LMRWD Flood Plain Fill/No Rise Certification provide mitigations to changes in land use.

Compliance with City of Bloomington and LMRWD requirements for development within steep slope areas and floodplain will ensure that impacts are minimized.

Soils and Topography: Environmental effects related to soils and topography are subject to mitigation by ongoing regulatory authority through the City of Bloomington's Bluff Protection Overlay District, the LMRWD Steep Slope Standard and LMRWD Flood Plain Fill/No Rise Certification. Compliance with City of Bloomington and LMRWD requirements for development within steep slope areas and floodplain will ensure that impacts are minimized.

Stormwater, Erosion, and Sedimentation: Environmental effects from stormwater, erosion and sedimentation are subject to mitigation by ongoing regulatory authority under the LMRWD requirements, and the MPCA NPDES/SDS Construction Stormwater General Permit and the required SWPPP. These approvals address potential stormwater runoff impacts where temporary erosion and sediment control BMPs would be installed prior to construction. Redundant erosion control measures for any soil disturbing activities that encroach within 50 feet of natural surface waters or wetlands at the site will be required in the MPCA permit. The Proposer commits to employ appropriate trail construction BMPs for water quality and erosion control for the trail. The Proposer commits to coordinate with MnDOT on potential need for a drainage permit.

Wetlands: Impacts to wetlands are subject to permitting under the Minnesota Wetland Conservation Act administered by the City of Bloomington; USACE Clean Water Act Section 404 Permit. Mitigation would be conducted pursuant to any permit conditions. Environmental effects to wetlands are subject to mitigation by ongoing public regulatory authority under the Minnesota WCA, which is administered by the City of Bloomington and includes a special consideration for rare natural communities, and the USACE Clean Water Act Section 404 Permit.

Groundwater: Project impacts to seeps and springs are subject to mitigation by ongoing public regulatory authority under the LMRWD requirements and the MPCA NPDES/SDS Construction Stormwater General Permit, with its associated SWPPP.

Surface Waters: All construction work proposed beneath the Ordinary High Water (OHW) level in public waterways will be subject to regulation under Work in Public Waters Permit, which would be required from the DNR. Other water-related permits applicable to the project include the USACE Clean Water Act Section 404 permit, and the MPCA NPDES permit and CWA Section 401 Water Quality Certification. Environmental effects to surface waters are subject to mitigation by ongoing public regulatory authority by the DNR Work in Public Waters Permit, LMRWD Flood Plain Fill/No Rise Certificate, Compliance with District Standards: Erosion and Sediment Control, Stormwater Management, Floodplain and Drainage Alteration, Shoreline and Streambank, and Water Crossing; MPCA Construction Stormwater General Permit.

Contamination and Hazardous Materials: It is the proposer's responsibility to properly handle and report any releases of hazardous materials to the State Duty Officer. The proposer commits to work with MPCA if any dredge spoil materials are encountered that need to be moved off site.

Wildlife Resources and Habitat: Proposer commitments, consistent with DNR internal policy, to limit the trail width to a maximum of 10-feet wide with 2-foot vegetated shoulders, minimize wetland impacts, limit tree removal during certain periods to avoid impacts to wildlife, and minimize canopy loss provide mitigation for impacts to wildlife resources and habitat from the project. Avoidance Plans

for state-listed species and means to control invasive species colonization of existing habitat will also provide mitigation for impacts.

Rare Wildlife Species: The USFWS Right of Way Permit, Special Use Permits, takings permit for RPBB if required and Section 7 Consultation for federally listed species; USACE Clean Water Act Section 404 Permit that includes Section 7 Consultation as the lead federal agency; DNR Avoidance Plan for Blanchard's cricket frog and Avoidance Plan for Blanding's turtle; and MnDOT Limited Use Permit. If a take of threatened or endangered wildlife species cannot be successfully avoided, a takings permit would be required to ensure takings are minimized and provide compensation for the take.

Rare Plant Species and Ecologically Significant Areas: Potential environmental effects are addressed by the DNR Avoidance Plan for Kitten-tails (if determined necessary) and potential takings permits if threatened or endangered species cannot be avoided. The proposer commits to avoid impacts to native plants meriting special consideration.

Invasive plant species: DNR Operational Order No. 113 is required to be followed for DNR projects. The proposer is committed to following the order and related guidance and guidelines, and will require its contractors to do so also. The proposer is committed to using only clean fill and to control any invasive plants discovered during monitoring of the trail.

Noise: Operation of construction equipment and machinery would adhere to the City of Bloomington's noise ordinance at City Code Sections 10.29 and 10.30. State Noise Standards are not expected to be exceeded. Environmental effects due to facility construction-, operation-, and maintenance-related noise are subject to mitigation by ongoing public regulatory authority under the City of Bloomington noise ordinance and MPCA-administered State Noise Standards.

Traffic: Environmental effects due to traffic are subject to ongoing regulatory authority under the City of Bloomington and MnDOT. Impacts to traffic are expected to be negligible.

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:

Project Survey Report, Minnesota Valley State Trail Bloomington Ferry to USFWS. Miranda Van Vleet, Jennifer Tworzyanski, and Matthew Finneman, Minnesota Historical Society, St Paul, MN. Prepared for Minnesota Department of Natural Resources, St Paul, MN. 2018.

Guidance documents are based on the best available scientific studies that have been tested and approved by regulatory authorities. [NOTE: Guidance documents and standards are updated often, and DNR will use latest versions of guidance and standards available and as applicable to each construction phase/development.]

The Project is being designed in accordance with:

MnDOT State Aid Geometric Design Standards.
Minnesota Manual of Uniform Traffic Control Devices, 2018 Edition.
MnDOT Bikeway Facility Design Manual. MnDOT, March 2007.

American Association of State Highway and Transportation Officials (AASHTO) Guide for Planning, Design and Operation of Pedestrian Facilities, 1st Edition, American Association of State Highway and Transportation Officials, 2004.

Trail Planning, Design and Development Guidelines. DNR, 2007.

Americans with Disabilities Act (ADA) Guidelines.

Guidance on the 2010 ADA Standards for Accessible Design. US Department of Justice, Sept 15, 2010.

2010 Standards for state and local government facilities: Title II. U.S. Department of Justice, Sept 15, 2010. ["State and *local* government facilities must follow the requirements of the 2010 Standards, including both the Title II regulations at 28 CFR 35.151; and the 2004 ADAAG at 36 CFR part 1191, appendices B and D."]

The project will be constructed in accordance with the current edition of:

Standard Specifications for Construction, 2018 Edition. MnDOT, 2018.

6. The DNR has fulfilled all the procedural requirements of law and rule applicable to determining the need for an environmental impact statement on the proposed Minnesota Valley State Trail, Bloomington Segment Project in the city of Bloomington, Hennepin 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 the proposed Minnesota Valley State Trail, Bloomington Segment 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 Minnesota Valley State Trail, Bloomington Segment Project in the city of Bloomington, Hennepin 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 17th day of December, 2018

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

Barb Naramore
Assistant Commissioner