DEPARTMENT OF NATURAL RESOURCES

Record of Decision

In the Matter of the Determination of the Need for an Environmental Impact Statement for the Perch Lake Habitat Restoration Project in the City of Duluth, St. Louis County, Minnesota

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

FINDINGS OF FACT

1. The proposed Perch Lake Habitat Restoration Project (project) is located in the City of Duluth in St. Louis County. The project involves restoration of aquatic and wetland habitat in the St. Louis River estuary. The estuary is a waterbody designated by the Department of Natural Resources (DNR) as a resource of Outstanding Biological Significance located within the St. Louis River Area of Concern. The Perch Lake Habitat Restoration Project would address existing habitat impairments by excavating accumulated sediment and organic deposits in Perch Lake to restore deep water habitat, increase dissolved oxygen concentrations and improve overall water quality. The installation of a 16- by 12-foot culvert between Perch Lake and the St. Louis River would improve hydrologic connectivity and aquatic organism passage, revitalizing the connection between the waterbodies with increased flow volumes, improved access to overwintering habitat for fish and reduced water residence time in Perch Lake. The project was developed by the DNR.
2. The proposed project requires preparation of a State Environmental Assessment Worksheet (EAW), for projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland, except for those to be drained without a permit according to Minnesota Statutes, chapter 103G. The DNR or local governmental unit is the Responsible Governmental Unit (RGU). *See* Minn. R. 4410.4300, subp. 27A.
3. The Environmental Review Unit, located within the Ecological and Water Resources Division of the DNR acted as the RGU for the preparation and review of environmental documents related to the project, *See* Minn. R. 4410.4300, subp. 27A.
4. The DNR prepared an EAW for the project in accordance with the requirements of Minn. R. 4410.1400.
5. The EAW was filed with the Environmental Quality Board (EQB) and a notice of its availability was published in the *EQB Monitor* on April 5, 2022. A copy of the EAW was sent to all persons on the EQB Distribution List, to those persons known by DNR to be interested in the proposed project, and to those persons requesting a copy of the EAW. A press release announcing the availability of the EAW was sent to newspapers, and radio and television stations, statewide. Digital copies of the EAW were distributed to the DNR Library, the DNR Northeast Region Headquarters, Minneapolis Central Library, Duluth Public Library, and Carlton Public Library for public review and inspection. The EAW was also made available to the public by posting on the DNR's website. *See* Minn. R. 4410.1500.

Public Comment Period

6. The 30-day EAW public review and comment period began on April 5, 2022 and ended on May 5, 2022. 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 public review and comment period, the DNR received nine (9) comments within comment letters from five (5) individuals and agencies.

Record of Decision Preparation

8. Minnesota Rule 4410.1700, subp. 2b requires that a decision on the need for an EIS shall be made no later than 15 days after the close of the 30-day review period. This 15-day period shall be extended by the EQB chair by no more than 15 additional days upon request of the RGU. *See* Minn. R. 4410.1700, subp. 2b.

9. On May 10, 2022, DNR requested a 15-day extension for making a decision on the need for an EIS for the proposed project. On May 11, 2022, DNR was granted the extension by EQB. *See* Minn. R. 4410.1700, subp. 2b.

Responses to Comments

10. Minnesota Rules 4410.1700, subp. 4 requires that the Record of Decision (ROD) must include specific responses to all substantive and timely comments on the EAW. All comments and issues raised in comment submittals were reviewed to determine if they addressed the accuracy or completeness of the material contained in the EAW or environmental impacts that may warrant further investigation prior to the final ROD.

11. Responses to all comments are summarized below in ¶¶12 to 19. *See* Attachment A for copies of comments received. *See* Minn. R. 4410.1700, subp. 4.

12. One comment expressed a desire for an Americans with Disabilities Act-accessible fishing pier on Perch Lake.

    Response:
    This comment was noted and determined to be outside of the scope of the project's environmental review. It does not address the accuracy or completeness of the material contained in the EAW or environmental impacts associated with the project that may warrant further investigation. This suggestion will be shared with the project proposer for their consideration.

13. One comment addressed the alteration of wetlands and asked the DNR to protect the basin from unlawful alterations according to Minnesota Rules 6106.0160.

    Response:
    This comment was determined to be outside of the scope of the project's environmental review. It does not address the accuracy or completeness of the material contained in the EAW or environmental impacts associated with the project that may warrant further investigation. Minnesota Rules Chapter 6106 includes rules that are applicable to the Mississippi River Critical Corridor Area. Since the project does not occur within the Mississippi River Critical Corridor Area boundary, this Chapter does not apply. Within the scope of the Project, the DNR is ensuring that all required permits would be identified and applied for, and wetland delineation has been completed.

14. One comment asked the DNR if they are able to regulate the cutting of trees on steep slopes surrounding Perch Lake.

    Response:

    This comment was determined to be outside of the scope of the project's environmental review. It does not address the accuracy or completeness of the material contained in the EAW or environmental impacts associated with the project that may warrant further investigation. Tree removal on private property is not within the regulatory authority of the DNR, and DNR is not the regulatory authority for local ordinances.

15. Comments that were considered substantive and did address the accuracy and completeness of the EAW and/or potential project-related environmental impacts that may warrant further investigation prior to issuance of the final ROD were determined to be substantive, are detailed in ¶¶16 to 19.

16. One commenter expressed the desire for the Department of Natural Resources to ensure review of a historic roadbed, the remains of the 1870 Lake Superior and Mississippi Railroad, that runs through the project area.

    Response:

    The roadbed referenced in this comment was addressed in the May 3, 2022 letter from the State Historic Preservation Office (see Attachment B). It is stated that, "…the project, as it is currently proposed, will have **no adverse effect** on the Lake Superior and Mississippi Railroad due to the fact that the width and alignment of the existing corridor will not be altered as a result of the federal undertaking." As a result of this correspondence, as well as previous coordination with the SHPO on this and other potential resources within the project area, the review of possible historic features within the project area is considered to be complete.

17. Two comments were concerned about the source of the sediment being properly identified and mitigated and the timeframe over which the lake may fill again, suggesting that maintenance dredging will be needed much sooner, such as three to five years into the future, rather than the 25-50 years anticipated in the EAW. One of the commenters asks the DNR to enforce Minnesota Rules 6106.0160 to protect the lake from sedimentation.

    Response:

    Minnesota Rules Chapter 6106 includes rules that are applicable to the Mississippi River Critical Corridor Area. Since the project does not occur within the Mississippi River Critical Corridor Area boundary, this Chapter does not apply. However, protections that would apply to the Perch Lake area do exist in Minnesota Rule. For example, stormwater management, including erosion control, is regulated by Minnesota Rules Chapter 7090, which is administered by the Minnesota Pollution Control Agency. As listed in EAW Item 12.b.ii, the project is subject to permitting under the National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) program.

    Regarding the historical lake bathymetry, several sources of data led the proposer to the basis that maintenance dredging would not be necessary for another 25-50 years, as is described in EAW Item 11.

    - In developing the proposed project, 24 sediment borings were taken from the bed of Perch Lake. The cores showed that the top of the lakebed is mostly represented by silt, and many cores were capped by organics on top. Clay was not represented in the cores. The organics were described as "partially and highly decomposed organic matter," suggesting that the material had been present for multiple years, not recently washed off of the landscape. This was interpreted to mean that the lake bottom elevations have been

steady over time and had not been buried by recent sedimentation. Data from the sediment borings is available upon request.

- A review of images on Google Earth since 1992 suggests no signs of a delta forming in Perch Lake, as would be expected if streams running into the lake from the bluff were carrying high sediment loads.
- The National Oceanic and Atmospheric Administration hosts historical lake water levels at the Great Lakes Dashboard webpage[1]. The Lake Superior record shows that water levels are currently down, after a years-long stretch of being above the *Lakewide period of record average (1918 – present)*. This recent drop below average results in lower (shallower) water depths within Perch Lake, as it is controlled by the level of Lake Superior. Lower depths within the lake present a similar appearance as would the basin filling with sediment.

18. The MPCA provided two comments regarding construction stormwater permitting requirements that would apply to the Perch Lake Habitat Restoration Project.

    Response:

    Comments acknowledged. The project proposer would acquire all required permits and approvals and would comply with any permit conditions for construction activities. EAW Item 9 identifies known permits and approvals required, including pending submittal of a National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Permit. In EAW Table 6, the permit is referenced. EAW Item 12.b.ii. acknowledges the required MPCA Construction Stormwater General Permit, the associated requirement of a Stormwater Pollution Prevention Plan (SWPPP), and plans for redundant down-gradient sediment controls and best management practices located above the OHWL. The project proposer defers to the MPCA as the regulatory authority regarding required submittals.

    The project proposer is planning to submit the SWPPP to the MPCA for review and approval prior to obtaining the NPDES/SDS permit. In the EAW Table 6 it was stated that, "submittal to MPCA is not anticipated." Reference to this submittal has been corrected in this document.

19. One comment focused on protecting Perch Lake's visiting gulls and pelicans and asked the proposer to consider closing off lake access, via a gate on the new culvert, during spring bird migration to protect the birds who use the lake as a stopover.

    Response:

    Comment acknowledged. The suggestion will be provided to the project proposer for their consideration. Since it is a habitat improvement project, the proposer has been encouraged to work with wildlife experts to finalize a research-supported design.

    Additionally, it has been noted that pelicans typically utilize the entirety of the estuary for seasonal resting, so public presence has not proven to be detrimental to migrating birds. Populations have not been shown to be negatively affected by recreational users.

[1] NOAA. Great Lakes Dashboard. https://www.glerl.noaa.gov/data/dashboard/GLD_HTML5.html Accessed 5/31/2022

Environmental Effects

20. Based on the analysis set forth in EAW Item 10, the DNR concludes that the project would not affect land use at the site or in adjacent areas.
21. Based on the analysis set forth in EAW Item 11.a, the DNR concludes that the project would not affect geology, nor does geology affect the project proposal.
22. Based on the analysis set forth in EAW Item 12.a.ii, the DNR concludes that the project would not affect groundwater within or near the project area.
23. Based on the analysis set forth in EAW Item 12.b.i, the DNR concludes that the project would not generate wastewater either during construction or operation.
24. Based on the analysis set forth in EAW Item 13d, the DNR concludes that the project would not generate hazardous wastes.
25. Based on the analysis set forth in EAW Item 15, as well as the record included here as Attachment B, the DNR concludes that the project would not affect known or suspected archaeological properties or historic structures.

26. 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. Soils
    b. Surface Waters – Wetlands and Lakes
    c. Stormwater
    d. Use of Hazardous Materials
    e. Impacts to Wildlife, Habitat, and Rare Resources
    f. Visual Impacts
    g. Vehicle Emissions, Dust, and Odors
    h. Greenhouse Gas Emissions
    i. Noise
    j. Traffic and Transportation systems

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

a. Soils: This topic was addressed in EAW Item 11b.

The project would involve excavation of approximately 95,000 cubic yards of uncontaminated material from Perch Lake. The mobilization of equipment and the excavation of fine sediments and organic matter from the lake could have a short-term impact on water quality, including increasing turbidity in the water column due to sediment disturbance at the location where the material is excavated.

Many logistical efforts are in place to minimize the potential for erosion of soils. During construction, the contractor would use typical erosion and redundant down-gradient sediment control BMPs to prevent mobilization of upland material into nearby water resources. All erosion controls would be compliant with MPCA's administered NPDES/SDS stormwater permit and the project's Stormwater Pollution Prevention Plan (SWPPP). The contractor would minimize impacts of in-water work by employing BMPs such as a weighted turbidity curtain (detail to be included in SWPPP) at the dredge location.

The construction sequence plans for excavation prior to placement of the new culvert would minimize the potential for sediment to mobilize outside of Perch Lake.

Because of these efforts, the effects of soils released into the river during construction of the project are expected to be minor and temporary.

b. Surface Waters - Wetlands and Lakes: This topic was addressed in EAW Item 12.b.iv.

Restoring habitat at Perch Lake would require soil/sediment excavation within the lake as well as alteration of wetlands surrounding the lake. Some wetland would be transitioned into non-wetland deep water, and the acreage of various types of wetlands would be shifted.

Table 8. Summary of pre- and post-construction wetland area.

Habitat Type	Before (Acres)	After (Acres)
Shallow Marsh (Type 3)	8.9	9.9
Shallow Open Water (Type 5)	21.0	16.5
Shrub-Carr (Type 6)	3.5	2.5
Hardwood Swamp (Type 7)	0.7	0.7
Non-wetland Deep Water	0.0	4.5
Total	**34.1**	**34.1**

Permanent direct impacts from the project include changes to wetland sizes and loss of wetland, transition from shallow open water to deep open water environments, and improved hydrologic connectivity between the lake and the estuary.

An improvement in the quality of wetlands would partially mitigate the losses. The wetland acreage would be moving from alder (maple-loosestrife) swamp (FPn73a) and sedge meadow (WMn82b), conservation status ranks of S5 and S4/S5 respectively, to NPC type Estuary Marsh (Lake Superior) (MRu94a), conservation status rank of S1 (critically imperiled). This transition would be aided by the improved hydrologic connectivity with the addition of the large culvert. In addition, the conversion from shallow to deep water is expected to increase dissolved oxygen, thereby further improving habitats for fish. In summary, effects are expected to be permanent and largely positive.

Wetland mitigation would be based on federal and state permit requirements and adherence to the findings of the Technical Evaluation Panel (TEP). Local, state, and federal permits would be required for all wetlands impacted as a result of the proposed project. These include permitting under the Clean Water Act (CWA), Minnesota Wetland Conservation Act (WCA), DNR Public Water Works permitting, and MPCA Construction Stormwater Permitting. Temporary and permanent impacts would be mitigated in coordination with the DNR and would meet all state and federal regulations and guidelines.

c. Stormwater: This topic was addressed in EAW Item 11.b.i. and responses to comments ¶17 and 18.

During construction there is the potential for stormwater runoff effects near construction access points or the culvert installation. The Minnesota Land Trust (MLT) and DNR would obtain an NPDES/SDS Construction Stormwater General permit. The MLT and DNR, together with the

construction contractor, would prepare a Stormwater Pollution Prevention Plan (SWPPP) to address the Best Management Practices (BMPs) necessary to manage, control, and/or treat stormwater runoff before it enters the St. Louis River. BMPs placed during construction would need to include redundant down gradient sediment controls if the project must encroach the existing 50 ft. of the natural buffer to any of the surface waters or wetlands at the site. Effects would be minor and temporary.

d. Use of Hazardous Materials. This topic was addressed in EAW Item 13.c.

Inherent in the operation of diesel and gasoline-powered machinery are risks of fuel and oil spills associated with equipment failure, such as hydraulic line breakage or leaks from faulty connections or refueling operations. DNR and other project permits would require contractors to have a spill response and prevention plan. No hazardous materials would be permanently stored on-site. Hazardous materials may be stored on-site during specific construction activities. If on-site, hazardous materials would be stored in a designated area at least 100 feet from water or drainage ways. Hazardous material storage on-site would require secondary containment, signage, and preventive maintenance inspections. Spill kits would be stored near any hazardous materials. Vehicle maintenance would only be allowed in designated areas. Hazardous materials may be stored on barges during in-water construction work.

If a spill were to occur during construction, the project engineer and Minnesota Duty Officer would be contacted, and appropriate action would be taken immediately to remediate the spill in accordance with MPCA guidelines and regulations in place at the time of project construction. Potential effects from a hazardous material spill or release could include impacts to water quality or wildlife habitats.

e. Impacts to Wildlife, Habitat, and Rare Resources: This topic was addressed in EAW Item 14.

Excavation activities would cause turbidity and other disturbance that would temporarily displace fish populations to alternative habitat within the St. Louis River Estuary. The construction sequence is optimized to minimize potential for passing sediment downstream by conducting the dredging work before the new culvert is installed. Long term goals of the project would be to optimize bathymetry and improve connectivity, ultimately improving the fish habitat.

Existing aquatic vegetation would be disrupted during dredging, temporarily in areas that maintain a depth of less than 8 feet, and permanently in areas that become deep water habitat, deeper than 8 feet.

Implementation of this restoration project is anticipated to improve long term site biodiversity and increase the potential for rare species occurrences. Temporary impacts to rare features and ecosystems could include adverse impacts to Lake Sturgeon from dredging; disturbance to mussel species, including black sandshell, creek heel splitter and other mussel species; and adverse impacts to two leaf waterweed. Though the project may cause temporary disturbance or adverse impacts to these rare species, if present, note that no occurrences of state-listed, threatened, or endangered mussels or two leaf waterweed are known.

The rusty-patched bumble bee has potential to occur in the area, though the suitability of habitat for bee nesting is poor because of the abundance of open water and saturated soil.

Federally listed mammals potentially present in the area include the Canada lynx (Lynx canadensis, threatened), gray wolf (Canis lupus, threatened in Minnesota), and the northern long-eared bat (Myotis septentrionalis, threatened). The gray wolf and Canada lynx require a relatively large extent of northern forest and are unlikely to be present in the project area. Northern long-

eared bats typically roost during summer months underneath bark or in cavities of live trees and snags (standing, dead, or dying trees); in the winter they typically hibernate in caves or mines. The Natural Heritage Information System does not contain any known occurrences of northern long-eared bat roosts or hibernacula within an approximate one-mile radius of the proposed project. The project would clear approximately 23 trees greater than 3 inches diameter at breast height.

St. Louis County's Aquatic Invasive Species (AIS) Program has not identified any non-native species occurrences within Perch Lake; however curly-leaf pondweed was identified during the 2018 fish and habitat assessments. Impacts from accidental introduction or harboring of invasive species related to the removal, transport, and placement of dredge material are expected to be minimal. An invasive species management plan would be developed describing ways to minimize risks associated with invasive species during all project phases. The contractor shall prevent invasive species from entering or spreading within the project site by cleaning equipment and clothing prior to arriving at the project site. The contractor shall inspect all equipment and clothing at the staging area determined at the pre-construction meeting.

f. Visual Impacts: This topic was addressed in EAW Item 16.

Eight (8) residential parcels border the Perch Lake Project area to the north, east and west. Five (5) homes are within 400 feet of the construction area. The DNR has notified adjacent residents about the intent of the project, duration, expected visual impacts, and complaint procedures. DNR would continue the relationship with these landowners throughout the duration of the Project.

Construction activities during the 12-hour day may require the use of nighttime lighting. Nighttime lighting would be positioned so it does not impact residents, and the potential for nighttime work would be communicated to residents prior to construction. Visual impacts affecting the closest residential neighbors should be short-term.

g. Vehicle Emissions, Dust, and Odors: This topic was addressed in EAW Items 17.

Heavy equipment, including construction vehicles, would be used during construction of the proposed project. Construction-related emissions would be exempt as de minimis and they would meet the conformity requirements under Section 176 (c) of the Clean Air Act, and 40 CFR 93.153. Emissions would be minor and temporary in nature, arising from the use of powered equipment during construction. Equipment used would include excavators, loaders, trucks, boats, tugs, and/or pumps. Fuel exhaust emissions contain pollutants including carbon monoxide, nitrogen oxides, reactive organic gases, sulfur dioxide, and suspended particulate matter, all of which carry some associated health risks.

The proposed project may create some temporary dust during open-water season construction activities. Fugitive dust could arise from light vehicle traffic at the project site in association with maintenance operations of equipment and stockpile locations. Activities with the potential to create dust include material removal, stockpiling, placement, grading, and compacting. Dust generation is expected to be minimal because the material being used consists of saturated sediment, sand, gravel, and rip rap.

The contractor would be required to follow best management practices to reduce dust during construction such as covering loads during transport during the open-water season, watering exposed soils if fugitive dust becomes an issue, using BMPs on exposed areas and stockpiles, and requiring any materials transported onto the Project site to be clean and free of dirt and debris.

Unpleasant odors may be associated with the excavation of muck. Hydrogen sulfide is a byproduct of anaerobic respiration and is responsible for the "rotten egg" smell associated decomposed organic matter, often associated with wetlands and aquatic environments. During the excavation and transport of the muck, this odor and other organic odors may be present in the vicinity of the proposed Project. If windy conditions are present, the odor is anticipated to disperse readily. The odors are anticipated to be temporary in nature; no long-term odor impacts are anticipated.

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

Greenhouse gas (GHG) emissions related to the proposed Project include those related to the construction of the project. No operational GHG emissions are anticipated, as no permanent infrastructure is proposed for the project. According to the plans, construction would begin on or after May 1, 2022, and would be completed by the end of construction season in 2024. For this assessment, construction GHG emissions included on-road vehicle emissions (haul trucks, etc.) and off-road vehicle emissions (earthmoving equipment such as excavators, loaders, etc.). Carbon emissions related to the on-road vehicle emissions is estimated to be 305.6 metric tons. Carbon emissions related to the land-based construction vehicles emissions is estimated to be 2,689.3 metric tons; carbon emissions related to the water-based construction vehicle emissions is estimated to be 3,172.7 metric tons. No mitigation to reduce the project's GHG emissions is proposed.

i. Noise: This topic was addressed in EAW Item 19.

Construction activities would generate noise during implementation of the project. Noise would be generated from machinery operation, back-up beepers, and off-site hauling. Other activities on the site would include mechanical excavation, material handling and hauling, and ancillary work needed to restore the project site. Construction would take place for two (2) years, but seasonal downtime is expected. Mufflers and manifolds would be required on all vehicles and machinery to reduce noise. Based on the most current information, contractors would complete most work during 12-hour shifts, six days a week, including legal holidays. Contracts and conditions are finalized after the environmental review process is complete. Work outside of typical hours would be coordinated with the City of Duluth and communicated to surrounding landowners.

To date, no residents have expressed concern for the potential for noise and they have been in support of the project for the aesthetic and recreational benefits it may bring to them. Upon completion of the project, no new on-going or new permanent noise is expected.

The contractor would be required to minimize noise effects by requiring all equipment to have properly operating muffler systems, restricting idling time for inactive equipment to 15 minutes, informing construction operators of the nearby residential area and schedule loud operations for mid-day, and notifying adjacent landowners and businesses about the intent of the project, duration, expected noise levels and complaint procedures.

j. Traffic and Transportation Systems

The process of installing the new box culvert through Trunk Highway (TH) 23 would result in temporary traffic impacts. There are no options to re-route traffic; therefore, the project would either require temporarily shifting both lanes, or closing one (1) lane of TH 23 at a time for the installation. Traffic alterations would require speed reductions and would take place over the course of approximately four (4) weeks.

Construction traffic to haul material from Perch Lake to the likely disposal location at the former U. S. Steel/Atlas Cement Plant industrial site would consist of approximately 20 trucks per hour for three (3) months. During this time, increases in traffic congestion may occur along the assumed haul route from Perch Lake to the U.S. Steel/Atlas Cement Plant. The selected contractor would need to have haul routes reviewed and approved by the City of Duluth. Due to the project schedule constraints including planned completion before a future MnDOT resurfacing project on TH 23, trucks may operate outside of daylight (7:00 am to 10:00 pm) hours. Any nighttime operations would be communicated to surrounding landowners.

Due to the scale and duration of this project, traffic congestion increases and impacts to the regional transportation system are expected to be temporary and negligible.

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

Unit of Government	**Type of Application**	**Status**
City of Duluth	Special Use Permit for Construction	To be submitted
City of Duluth	Fill and Grading, Erosion & Sediment Control	To be submitted
City of Duluth	Temporary Access Agreement	To be submitted
City of Duluth	Shoreland Use	To be submitted
City of Duluth	MS4 Compliance Statement	To be submitted
City of Duluth, DNR, FEMA	No Rise Certification and / or Letter of Map Revision	To be submitted, if needed
DNR	Aquatic Plant Management Permit	To be submitted, if needed
DNR	Public Waters Work Permit	To be submitted
DNR	Prohibited Invasive Species Permit	To be submitted
DNR	Lake Superior Coastal Zone federal consistency review letter	To be submitted
City of Duluth (LGU)	MN Wetland Conservation Act	To be submitted
Minnesota SHPO	Section 106 Consultation - National Historic Preservation Act	Completed
MPCA	401 Water Quality Certification	To be submitted, if needed; or included with NWP 27 approval
MPCA	National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Permit	To be submitted
MPCA	NPDES General Construction Stormwater Permit with a Stormwater Pollution Prevention Plan (SWPPP)	To be prepared. Submittal to MPCA would be made prior to obtaining the NPDES/SDS permit.
USACE	CWA Section 10/404 Permit – anticipated Nationwide Permit 27 (NWP 27)	To be submitted

CONCLUSIONS

1. Minnesota Rule 4410.1700, subps. 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. The rule provides:

   > 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 ¶¶20 through 25 and 26a-26j, 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:

   - Soils
   - Surface Waters – Wetlands and Lakes
   - Stormwater
   - Use of Hazardous Materials
   - Impacts to Wildlife, Habitat, and Rare Resources
   - Visual Impacts
   - Vehicle Emissions, Dust, and Odors
   - Greenhouse Gas Emissions
   - Noise
   - Traffic and Transportation Systems

3. *Cumulative potential effects.* In determining whether a project has the potential for cumulative potential effect 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. Minn. R. 4410.0200, subp. 11a.

DNR concludes that the cumulative potential environmental effects, as described above and in EAW Item 21, **are not** significant because there are limited past, present, and future projects identified within the geographic scale of the proposed project that would have overlapping environmental effects. The project would contribute minimal environmental effects and would not materially contribute to the cumulative potential effect.

4. *Extent to which environmental effects are subject to mitigation by ongoing public regulatory authority*. Based on the Findings of Fact set forth in ¶¶26a-26j 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:

    - Surface Waters – Wetlands and Lakes
    - Stormwater
    - Use of Hazardous Materials
    - Impacts to Wildlife, Habitat, and Rare Resources

    Permits and Approvals: Prior to initiation of this project, the permits and approvals identified in Finding 27 would be required. When applying the standards and criteria used in the determination of the need for an EIS, 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 ROD.

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*. No environmental effects are needed to be controlled by other environmental studies or forthcoming EISs.

6. As set forth in ¶¶1 - 27 DNR has fulfilled all the procedural requirements of law and rule applicable to determining the need for an EIS on the proposed Perch Lake Habitat Restoration Project in the City of Duluth, St. Louis County, Minnesota.

7. Based on consideration of the criteria and factors specified in Minn. R. 4410.1700, subps. 6 and 7 to determine whether a project has the potential for significant environmental effects, and on the Findings of Fact and Record in this matter, the DNR determines the proposed Perch Lake Habitat Restoration 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 Perch Lake Habitat Restoration Project in the City of Duluth, St. Louis County, Minnesota.

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

Dated this 15th day of June, 2022.

DEPARTMENT OF NATURAL RESOURCES

Jess Richards
Assistant Commissioner