

AGENDA # 7.6
SCOTT COUNTY, MINNESOTA
REQUEST FOR BOARD ACTION
MEETING DATE: June 18, 2019

ORIGINATING DIVISION:	Planning & Res. Mgmt.	CONSENT AGENDA:	☑ Yes ☐ No
ORIGINATING DEPARTMENT:	Environmental Services		
PRESENTER:	Jesse Krzenski - 8361	ATTACHMENTS:	☑ Yes ☐ No
PROJECT:	Bass Ponds EAW	TIME REQUESTED:	N/A
ACTION REQUESTED:	Adopt Resolution No. 2019-097; Approving the Findings of Fact And Conclusions for the Bass Ponds Environmental Assessment Worksheet and Negative Declaration on the Need for an Environment Impact Statement		
CONTRACT/POLICY/GRANT:	<input type="checkbox"/> County Attorney Review <input type="checkbox"/> Risk Management Review	FISCAL:	<input type="checkbox"/> Finance Review <input type="checkbox"/> Budget Change

ORGANIZATIONAL VALUES:

- Stewardship: Ensuring the responsible and stable investment of taxpayer dollars and communicating its value to the public
- Partnership: Aligning existing resources, volunteers and programs to achieve shared goals
- Leadership: Anticipating changes and managing challenges based on reliable information and citizen input
- Commitment: Developing a high quality workforce that is dedicated to advancing a safe, healthy and livable community
- Customer Service: Creating a customer experience that is respectful, responsive and solution-oriented
- Innovation: Exploring and adopting new technologies and processes with the goal of improving service and reducing the long term cost of service delivery

DEPARTMENT/DIVISION HEAD SIGNATURE:	COUNTY ADMINISTRATOR SIGNATURE:
	
Approved:	DISTRIBUTION/FILING INSTRUCTIONS:
Denied:	
Tabled:	
Other:	
Deputy Clerk :	
Date:	

Approved: *JUL/TW 4 ayes*
MB absent
 Deputy Clerk: *Rubay Baid*
 Date: *6-18-19*

Background/Justification:

The purpose of this agenda item is to adopt Resolution No. 2019-097; Approving the Findings of Fact and Conclusions for the Bass Ponds Environmental Assessment Worksheet (EAW) and Negative Declaration on the Need for an Environment Impact Statement (EIS).

The Corps of Engineers is proposing to improve habitat within the Wilkie Unit of the Minnesota Valley National Wildlife Refuge. The area experiences a lack of seasonal variability in water levels which has resulted in reduced wetland habitat quality, aquatic plant diversity, and poor habitat for migratory water birds. Water level management features (stoplog structures, earthen plugs) are proposed to improve habitat.

US Army Corps of Engineers wetland rehabilitation project met the threshold for a mandatory EAW, which includes 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 pursuant to Minnesota Statutes, Chapter 103G. The local government unit shall be the responsible governmental unit (RGU). It was determined that Scott County was best suited to be the RGU for the EAW.

An EAW was completed and published for public review April 29, 2019. The 30 day public review period ended May 29, 2019. A copy of the comments received, responses to comments, and the Finding of Fact and Conclusion are attached in the Record of Decision document. We did not receive substantive comments that identified unknown environmental impacts. Minnesota Environmental Quality Board (EQB) Rules require that the County Board make a positive or negative finding on the need for an EIS.

Because this is a federal wetland project meeting a mandatory EAW threshold with no substantive environmental impacts, this item is on the consent agenda.

Staff recommends adoption of Resolution No. 2019-097.

Fiscal Impact:

None

**BOARD OF COUNTY COMMISSIONERS
SCOTT COUNTY, MINNESOTA**

Date:	June 18, 2019
Resolution No.:	2019-097
Motion by Commissioner:	Ulrich
Seconded by Commissioner:	Wolf

**RESOLUTION NO.2019-097; APPROVING THE FINDINGS OF FACT AND CONCLUSIONS
FOR BASS PONDS ENVIRONMENTAL ASSESSEMENT WORKSHEET AND
NEGATIVE DECLARATION ON THE NEED FOR AN ENVIRONMENT IMPACT STATEMENT**

WHEREAS, Scott County was required to complete an Environmental Assessment Worksheet (EAW) according to Minnesota Rule Section 4410.4300 Subp. 27, for the Bass Ponds Wetland Rehabilitation Project; and

WHEREAS, Scott County submitted an EAW to the Environmental Quality Board (EQB) Monitor on April 29, 2019 and received comments until May 29, 2019; and

WHEREAS, Scott County received comment letters from the Metropolitan Council, Minnesota Pollution Control Agency, Minnesota Department of Transportation, and the Minnesota Department of Natural Resources; and

WHEREAS, staff has completed a Response to Comments and Findings of Fact and Conclusions addressing the comments; and

WHEREAS, Scott County declares a negative declaration on the need for an Environmental Impact Statement.

NOW THEREFORE BE IT RESOLVED that the County Board approves the Findings of Fact and Conclusions for the Bass Ponds EAW and negative declaration on the need for an Environmental Impact Statement.

COMMISSIONERS	VOTE			
Weckman Brekke	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Wolf	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Beard	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Beer	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Ulrich	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

State of Minnesota)
County of Scott)

I, Lezlie A. Vermillion, duly appointed qualified County Administrator for the County of Scott, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Scott County, Minnesota, at their session held on the 18th day of June, 2019 now on file in my office, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal at Shakopee, Minnesota, this 18th day of June, 2019.



County Administrator
Administrator's Designee

**SCOTT COUNTY ENVIRONMENTAL SERVICES
RECORD OF DECISION
In the Matter of the Determination of the
Need for an Environmental Impact Statement
FINDINGS OF FACT AND CONCLUSIONS
for the Bass Ponds Project in Scott County, Minnesota**

FINDINGS OF FACT

1. The U.S. Army Corps of Engineers, in partnership with U.S. Fish and Wildlife Service, proposes to improve habitat within the Wilkie Unit of the Minnesota Valley National Wildlife Refuge. The area experiences a lack of seasonal variability in water levels which has resulted in reduced wetland habitat quality, aquatic plant diversity, and quality habitat for migratory waterbirds. Waterlevel management features (stoplog structures, earthen plugs) are proposed to improve habitat.
2. Scott County Environmental Services prepared an environmental assessment worksheet (EAW) for the proposed project according to Minnesota Administrative Rules (Minn. R.) 4410.1400 and 4410.1500. The document was prepared as a mandatory EAW pursuant to Minnesota Rules, part 4410.4300, subpart 27A, Wetlands and Public Waters.
3. The EAW was filed with the Minnesota Environmental Quality Board (EQB) and a notice of its availability was published in the EQB monitor on April 29, 2019. A copy of the EAW was sent to all persons on the EQB Distribution List and to those persons known by the Corps or Scott County to be interested in the proposed project. The EAW was made available to the public via posting on the Corps' website.
4. Pursuant to Minn. R. 4410.1600, the 30-day EAW public review and comment period began April 29, 2019 and ended at 4:30 p.m. on May 29, 2019. The public was provided the opportunity to submit written comments by the U.S. Postal Service or email, as well as by telephone.
5. The EAW is incorporated by reference into this Record of Decision on the determination of need for an environmental impact statement (EIS).
6. During the 30-day public review and comment period, correspondence was received from the individuals and agencies listed below. Discussion on comments received and responses are provided in Finding of Fact Number 7.
 1. Minnesota Pollution Control Agency; 22 May 2019
 2. Minnesota Department of Transportation; 23 May 2019
 3. Minnesota Department of Natural Resources; 29 May 2019
 4. Metropolitan Council; 29 May 2019
7. Each comment is summarized below with Scott County Environmental Service's Response following each comment.

Comment 1: Commenter requested information on acres of upland that would be disturbed by the project. (MPCA)

Response: Approximately 7.6 acres of upland will be temporarily disturbed for construction staging and access. All temporary impacts will be restored following construction.

Comment 2: Commenter noted that a Discharge Elimination System/State Disposal System Construction Stormwater (CSW) permit was not included in the list of permits and approvals needed. (MPCA)

Response: We acknowledge that a CSW Permit is required. The contractor is responsible for obtaining this permit.

Comment 3: Commenter stated additional requirements found in part 23.1 of the CSW Permit must be included in the Stormwater Pollution Prevention Plan (SWPPP) for the project due to the presence of impaired and special waters. (MPCA)

Response: Comment acknowledged.

Comment 4: Commenter stated if the disturbed areas of the Project will total 50 or more acres, the SWPPP will need to be submitted to the MPCA for review and approval before the CSW Permit is issued. (MPCA)

Response: The project will not disturb 50 or more acres.

Comment 5: Commenter requested quantification of new impervious surfaces created by the project. If more than one acre, then a permanent stormwater treatment system meeting CSW Permit design requirements will be required. (MPCA)

Response: New impervious surfaces include water control structures with associated excavator pads totaling 0.37 acres. Access roads will consist of gravel.

Comment 6: The Minnesota Department of Transportation has reviewed the project and provides no comments. (MnDoT)

Response: Noted.

Comment 7: Commenter concerned the proposed project could impact Metropolitan Council facilities and requests preliminary plans be sent to the Interceptor Engineering Assistant Manager. (Metropolitan Council)

Response: Preliminary plans have been sent to Mr. Tim Wedin and are currently under review.

Comment 8: Commenter stated the proposed project should have no adverse impact on a future regional trail corridor. (Metropolitan Council)

Response: Noted.

Comment 9: Commenter stated the proposed project is within an area identified as a Site of High Biodiversity Significance and provided actions that could be implemented to minimize disturbance to this ecologically significant site. (MnDNR)

Response: Provided recommended actions to minimize disturbance will be implemented.

Comment 10: Commenter stated if the Wetland Conservation Act (WCA) is applicable to this project, please note that wetlands within high MBS Sites of Biodiversity Significance may qualify as "rare natural communities" under this Act. (MnDNR)

Response: All fill is in a public water and covered by the Public Waters permit.

Comment 11: Savage calcareous fen (ID# 241) has been documented in the vicinity of the proposed project area. (MnDNR)

Response: The proposed project will not affect groundwater flows, including groundwater pumping or discharge; therefore, the project will have no effect on Savage fen or the state-listed species found within this fen.

Comment 12: Commenter expressed concern that the project has the potential to impact the Blanding's turtle through direct fatalities or habitat disturbance/destruction due to dewatering, excavation, fill or other construction activities associated with the project. To avoid impacts to the species, it was stated the drawdown must be started after July 15th and completed by September 15th. Recommended actions to avoid impacts to the species were also provided. (MnDNR)

Response: Recommendation actions provided will be implemented to avoid impacts to the Blanding's turtle. Drawdowns during construction will begin after July 15. We are working with DNR to determine the exact language of any permit conditions regarding drawdown timing.

Comment 13: Commenter expressed concern that the project could impact state-listed species present in the Minnesota River. It was stated no sedimentation to the Minnesota River or work within the riverbed shall occur until potential impacts to mussels have been resolved to the satisfaction of the DNR's Endangered Species Coordinator. (MnDNR)

Response: Appropriate erosion prevention and sediment control practices will be implemented and maintained near the river. No sedimentation to the Minnesota River is anticipated and no work within the river bed is proposed. We have initiated coordination with Mr. Rich Baker on this topic.

Comment 14: Commenter expressed concern that the project could impact the Blanchard's cricket frog. To avoid impacts to this species, it was stated that the drawdown must be started after July 15th and completed by September 15th. (MnDNR)

Response: Drawdowns during construction will begin after July 15. We are working with DNR to determine the exact language of any permit conditions regarding drawdown timing.

Comment 15: Commenter stated there are known colonial waterbird nesting areas in Rice, Fisher and Blue Lakes and that State and federal laws protect these birds, their nests and eggs by prohibitions against disturbance. (MnDNR)

Response: We are working with FWS to identify the location of active nesting areas. Due to flooding in the area this spring, nesting areas have not recently been checked for activity. These areas will be protected (avoided or buffer areas implemented) via special conditions of the USFWS Special Use Permit.

Comment 16: Commenter recommended the use of erosion control mesh, if any, be limited to wildlife-friendly materials to avoid impacts to the gopher snake. (MnDNR)

Response: Natural degradable rolled erosion control blanket, Category 0, Category 3N, or Category 4N depending on the permissible shear stress and/or tensile strength required, would be used.

Comment 17: Commenter requested, if feasible, to avoid tree/shrub removal from May 15th through August 15th to avoid disturbance of nesting birds. (MnDNR)

Response: Currently, tree clearing restrictions are in place from late May until late July to avoid impacts to the northern long-eared bat. The USFWS refuge staff will be providing specific tree clearing dates which will be included in the USFWS Special Use Permit.

Comment 18: The commenter stated the rusty patched bumble bee (RPBB), a federally-listed endangered species, was documented in the vicinity of the proposed project. (MnDNR)

Response: The study area consists of saturated soils that RPBB would not use for nesting or overwintering. Vegetation in the study area does consist of flowering wetland plants that RPBB could use as a food source; however, the study area is in the "low potential" area for RPBB. The project will have no effect to RPBB. The RPBB likely uses the study area for foraging only and no removal of floral resources is anticipated. Construction will likely occur in the winter when RPBB is hibernating and flowering plants have senesced. This determination has been reviewed by USFWS.

Comment 19: Commenter noted the potential effects and mitigation measures employed to avoid impacts of the project on native plant communities was not addressed in the EAW. (MnDNR)

Response: Below are the potential impacts of the proposed project on the native plant communities identified by MnDNR.

Bulrush marsh (northern): Bulrush is a dominant species within the project area, a monoculture in most areas. Disturbance of bulrush would be limited to the areas where water control structures are being replaced, which are small in size (0.37 acre total). Work will likely be conducted in winter when bulrush is dormant. Overall, the impact to bulrush would be minimal and the species is likely to recover quickly following construction.

Dry barrens oak savanna (southern), oak subtype: No work is proposed in areas designated as this vegetation type.

Sedge meadow: No work is proposed in areas designated as this vegetation type.

Silver maple – floodplain forest: The southern portion of the Blue Lake access road crosses an area designated as this vegetation type. The access road improvements are along an existing road through this area. Work will stay within the existing disturbed area. Tree clearing will be minimal, mainly removal of fallen trees.

8. Based upon the information contained in the EAW, Scott County Environmental Services has identified the following topics of potential environmental effects associated with the proposed project:
 - a. Wetlands
 - b. Fish and Wildlife
 - c. Recreation
 - d. Water quality
 - e. Noise

The environmental effects identified are briefly summarized below.

- a. Wetlands: Short-term negative impacts to wetlands, primarily associated with increased water turbidity and sedimentation would occur due to construction activities. BMPs would be used to minimize effects on wetlands. Long-term beneficial impacts to aquatic vegetation would occur in the study area. The proposed project would allow the Refuge to remove flood waters from the area each spring and conduct drawdowns to increase the density and distribution of aquatic plant species, ultimately improving habitat for migrating waterbirds and waterfowl.

- b. Fish and wildlife: Fish and wildlife species are likely to avoid areas under construction; however, this effect would be minor and temporary. Following construction, the project will have a positive long-term effect on wildlife such as

waterfowl, shorebirds, turtles, beavers, fish, muskrats and other wildlife species that would utilize the study area by improving habitat.

c. Recreation: Short-term impacts to recreation during construction which would limit public access to the area. In the long-term, recreation would improve as a result of a more diverse aquatic plant community (emergent and submergent) and increased populations of waterfowl and waterbirds utilizing the area during fall migration.

d. Water quality: The proposed project would have temporary, short-term adverse impacts to water quality by increasing turbidity in the immediate area where construction and excavation occur. There could also be the potential for oil spills from construction equipment; however, Best Management Practices (BMPs) would be used to minimize impacts to water quality during construction. Overall, the proposed project would have a long-term, beneficial effect on water quality by increasing the overall percent coverage of aquatic vegetation. Aquatic vegetation can slow the velocity of flood waters entering the study area, allowing suspended materials to settle to the sediment surface. Excess nutrient or toxic chemicals entering the system, can be taken up by aquatic vegetation, trapped with settled soil particles or converted to less harmful chemical forms by biological processes.

e. Noise: The construction of the project would generate a temporary increase in noise levels associated with heavy equipment. This may lead to temporary displacement of some wildlife species and decreased recreational use; however, no long-term impacts would be expected. There are no sensitive receptors in the immediate vicinity; therefore, noise is not anticipated to impact quality of life.

9. The following permits and approvals are needed for the project:

Unit of Government	Type of Application
MnDNR	Public Waters Work Permit
MPCA	CWA 401 Water Quality Certification
MPCA	NPDES/CSW
USFWS	Special Use Permit

CONCLUSIONS

10. The following standards and criteria are applied by the RGU to determine whether the proposed project has the potential for significant environmental effects and requires the preparation of an EIS:

a. Type, extent, and reversibility of environmental effects

Based on the Findings of Fact above, Scott County Environmental Services concludes that the following potential environmental effects, as described in Finding of Fact No. 8, will be limited in extent, temporary, or reversible:

- Wetlands
- Fish and Wildlife

- Recreation
- Water Quality
- Noise

b. Cumulative potential effects

Based on the Finding of Fact above, Scott County Environmental Services concludes that the following potential effects do not have the potential to be significant environmental effects:

- Wetlands
 - Fish and Wildlife
 - Recreation
 - Water Quality
 - Noise
- The proposed project's contribution to cumulative potential effects to wetlands, fish and wildlife, recreation, water quality and noise are limited when viewed in connection with other contributions.

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

The following environmental studies and documents assist in the anticipation and controlling of potential environmental effects:

U.S. Army Corps of Engineers. 2004. Long Meadow Lake Habitat Rehabilitation and Enhancement Project. Definite Project Report and Integrated Environmental Assessment (SP-26).

U.S. Army Corps of Engineers. 2012a. Rice Lake Habitat Rehabilitation and Enhancement Project, Project Evaluation Report. Environmental Management Program for the Upper Mississippi River System.

U.S. Fish and Wildlife Service. 2018a. Minnesota Valley National Wildlife Refuge Habitat Management Plan. Bloomington, MN.

11. Scott County Environmental Services has fulfilled all the procedural requirements of law and rule applicable to determining the need for an environmental impact statement on the proposed Bass Ponds project.
12. Based on considerations of the criteria and factors specified in Minn R. 4410.170, subp. 6 and 7 to determine whether a project has the potential for significant environmental effects, and on the Findings and Record in this matter, Scott County Environmental Services determines that the proposed Bass Ponds project does not have the potential for significant environmental effects.