

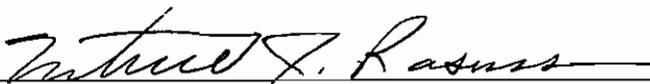
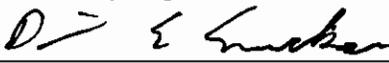
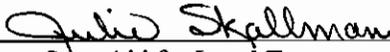
County State Aid Highway 21  
From  
County State Aid Highway 18 to County State Aid Highway 42  
And Transit Station  
Scott County, Minnesota

Minnesota Project: *[Not Yet Assigned]*  
State Project Number: SP 70-621-24

**FINAL  
ENVIRONMENTAL IMPACT STATEMENT  
ABBREVIATED FORMAT**

Submitted Pursuant to 42 U.S.C. 4332(2)(c), 23 U.S.C. 138,  
And Minn. Stat., Chapt. 116D

By  
U.S. Department of Transportation,  
Federal Highway Administration  
And  
Minnesota Department of Transportation  
And  
Scott County  
Cooperating Agency  
U.S. Army Corps of Engineers

	11/15/07
Scott County Engineer	Date
	11/20/07
Metro Division State Aid Engineer	Date
	11/27/07
Director, State Aid for Local Transportation	Date
	12/19/07
FHWA—Division Administrator	Date

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Scott County proposes to extend CSAH 21 as a four-lane expressway between CSAH 42 in Prior Lake, Minnesota and CSAH 18 at Southbridge Parkway in Shakopee, Minnesota, a distance of approximately three miles. The proposed CSAH 21 project is intended to provide a needed link in the countywide roadway system to properly manage traffic resulting from current and planned development in Scott County. The proposed project also includes a 500-space surface transit station (sometimes referred to as a park-and-ride) in the southwest quadrant of the CSAH 21/CSAH 16 intersection.

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## **1.0 INTRODUCTION**

### **1.1 BACKGROUND**

#### **1.1.1 Summary of Project**

Scott County proposes to extend County State Aid Highway (CSAH) 21 as a four-lane expressway between CSAH 42 in Prior Lake, Minnesota and CSAH 18 at Southbridge Parkway in Shakopee, Minnesota, a distance of approximately three miles. In addition, Scott County proposes a 500-space surface transit station (sometimes referred to as a park-and-ride) in the southwest quadrant of the CSAH 21/ CSAH 16 intersection.

The proposed project is needed to respond to existing and forecast increases in travel demand on the existing roadway system. Specifically, the project is needed to help complete an appropriately functioning roadway system in northern Scott County that efficiently moves traffic by providing adequate capacity for projected travel and transit demand.

#### **1.1.2 Draft Environmental Impact Statement and Public Involvement**

A Draft Environmental Impact Statement (DEIS) was prepared to meet the requirements of one federal act and one state legislative act that call for the objective analysis of impacts on the human and natural environment resulting from proposed federally-funded activities. Federal legislation includes the National Environmental Policy Act (NEPA) of 1969 and Council on Environmental Quality (CEQ) regulations for NEPA documentation that require this examination from an environmental perspective. The Minnesota Environmental Policy Act (MEPA) requires environmental review procedures for all governmental actions and decisions.

The DEIS was distributed to agencies and organizations on the official distribution list. Notice of the DEIS availability was published in the Minnesota EQB Monitor on August 28, 2006 and in the Federal Register on September 1, 2006. The DEIS was also available for viewing on the Scott County project website. A public hearing was held September 21, 2006. The comment period for the DEIS officially closed on November 20, 2006.

## **1.2 FINAL ENVIRONMENTAL IMPACT STATEMENT**

The DEIS is incorporated by reference herein and made part of the Final Environmental Impact Statement (FEIS).

The FEIS has been prepared in accordance with CEQ regulation (40 CFR 1503.4(c)) which provides a methodology for preparing an “Abbreviated” FEIS. This approach was selected because the only changes needed in the document are minor and consist of factual corrections. The Abbreviated FEIS consists of two parts:

- Technical Attachment
- DEIS, as published in September 2006

The Technical Attachment, which is contained in Chapters 2-6 and Appendix A, contains the following elements:

- DEIS Updates and Errata (Chapter 2)
- Preferred Alternative (Chapter 3)
- Wetland Finding (Chapter 4)
- List of Commitments for Mitigation Measures for the Preferred Alternative (Chapter 5)
- Comments on DEIS and Response (Chapter 6)
- Recurring Responses (Chapter 6)
- Public Agency Comments and Responses (Appendix A)
- Public Comments and Responses (Appendix A)

Note that neither a Section 4(f) Finding nor a Floodplain Finding are applicable to the proposed project.

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## 2.0 DEIS UPDATES AND ERRATA

As noted in Chapter 1, the DEIS is incorporated by reference herein and made part of the FEIS.

The purpose of this chapter is to detail corrections and updates to the analysis documented in the DEIS.

### 2.1 UPDATES BY DEIS CHAPTER

#### 2.1.1 Updates to DEIS Chapter 1– Executive Summary

- Page 1-5. Table 1-1. Replace table with the following:

**TABLE 1-1  
COST ESTIMATES FOR CSAH 21 EXTENSION**

	With 4-Lane at-grade at CSAH 21/ CSAH 18	With 6-Lane at-grade at CSAH 21/ CSAH 18	With 4-Lane interchange at CSAH 21/ CSAH 18
Construction Cost Western/Eastern	\$12,715,709/\$12,223,557	\$14,813,603	\$18,197,557
Right of Way Cost* Western/Eastern	\$3,960,000/\$3,825,000	\$4,050,000/\$3,915,000	\$4,575,000/\$4,440,000
<b>Total Cost</b> Western/Eastern	<b>\$16,575,709/\$16,048,557</b>	<b>\$18,863,603/\$18,728,603</b>	<b>\$22,772,557/\$22,637,557</b>

\*Right of way estimate reflects a blended value of \$150,000/acre based on recent sales.

- Page 1-8. Social and Economic Impacts. First bullet (“Social”). Add as a new first paragraph:

Much of the corridor is bounded by existing development in the form of Southbridge Crossings East, Southbridge Crossings, Southbridge, and Riverside Fields. Additional residential plats under development in this corridor include Riverside Bluffs and Ridgeview Estates. Southbridge Fields is a neighborhood commercial plat under development in the corridor. A new elementary school is under construction south of CSAH 16.

- Page 1-9. Fourth paragraph. Replace with:

Note that the Bureau of Indian Affairs (BIA) has approved the SMSC application to convert the affected land currently owned in fee to land held in trust. This approval was published in the September 27, 2007 Federal Register and, at the time of FEIS preparation, is within the required 30-day comment period. If the approval is finalized, the County could not acquire the property through its power of eminent domain.

- Page 1-15 and 1-16. Last paragraph, beginning on Page 1-15. Wetlands bullet. Replace with:

- Wetlands

The Build Alternative would impact approximately 7.07 acres of wetlands. There is no difference in wetland impacts between the two alignment options south of CSAH 16 or

the three intersection design options north of CSAH 16. A sequencing process was completed to avoid and then minimize the potential wetland impacts. At the conclusion of the sequencing process, it was determined the impacts could not be further avoided or minimized and as such will be mitigated for, consistent with state and federal regulations.

- Page 1-16. Third paragraph. Replace with:

At a 2:1 mitigation ratio, the area of impact for the project will necessitate approximately 14.14 acres of wetland mitigation (at least three-fourths of which must be created or new replacement wetlands in accordance with Army Corps of Engineers policy under WCA which requires a minimum 1.5:1 new wetland replacement area). If wetland regulations change during the course of project implementation, the required mitigation may change.

- Page 1-19. Table 1-5. Replace with:

**TABLE 1-5  
PERMITS AND APPROVALS**

<b>Agency</b>	<b>Type of Permit/Approval/Concurrence</b>
<b>Federal</b>	
Federal Highway Administration (FHWA)	DEIS Review/Approval FEIS Approval/Record of Decision
U.S. Army Corps of Engineers (COE)	Section 404 Permit
<b>State</b>	
State Historic Preservation Office (SHPO)	Section 106 Concurrence
Minnesota Department of Transportation –Cultural Resources Unit (Mn/DOT-CRU)	Section 106 Review/Determination
Minnesota Department of Transportation (Mn/DOT)	DEIS Review/Approval FEIS Review/Approval
Minnesota Pollution Control Agency (MPCA)	Section 401 Water Quality Certification, if Section 404 Permit and National Pollutant Discharge Elimination-State Disposal System (NPDES-SDS) permit
Metropolitan Council	Transportation Improvement Plan Environmental Services Review
Minnesota Department of Natural Resources (DNR)	Public Waters Permit, if necessary, and Water Appropriation Permit, if necessary
<b>Local</b>	
Scott County	Adequacy Determination Plan Approval
City of Prior Lake	Municipal Review of Construction Plans WCA and Storm Water Permitting
City of Shakopee	Municipal Review of Construction Plans WCA and Storm Water Permitting
Shakopee Mdewakanton Sioux Community (SMSC)	Land Acquisition
<b>Watershed District</b>	
Spring Lake/Prior Lake Watershed District	Surface Water Plan Review
Lower Minnesota River Watershed District	Surface Water Plan Review

- Page 1-20. Last paragraph. Replace with:

The proposed project affects land owned by the Shakopee Mdewakantan Sioux Community (SMSC) land that would need to be acquired for the project is 8.3 acres under the western alignment design option and 3.3 acres under the eastern alignment design option. At the time that the DEIS was approved for publication, the affected land was included in an application by SMSC to the Bureau of Indian Affairs (BIA) to take 753 acres of land then owned in fee into trust. Note that the Bureau of Indian Affairs (BIA) has approved the SMSC application to convert the affected land currently owned in fee to land held in trust. This approval was published in the September 27, 2007 Federal Register and, at the time of FEIS preparation, is within the required 30-day comment period. If the approval is finalized, the County could not acquire the property through its power of eminent domain.

### 2.1.2 Updates to DEIS Chapter 2 – Purpose of and Need for Action

- Page 2-5. Section 2.4.5. Transit Need. First paragraph. Replace with:

Scott County provides dial a ride service and express connection to the MVTA transit hub at Burnsville. Scott County Transit does not currently serve the Southwest transit hub in Eden Prairie. Regular Route (circulator) service in Shakopee is provided by Shakopee Transit, which contracts with Scott County Transit to operate the service. Shakopee Transit will, beginning in 2007, be providing up to four express buses to and from downtown Minneapolis. Prior Lake’s Laker Lines currently operates three buses to and from downtown Minneapolis.

### 2.1.3 Updates to DEIS Chapter 3 – Alternatives

No updates or revisions.

### 2.1.4 Updates to DEIS Chapter 4 – Transportation Impacts

No updates or revisions.

### 2.1.5 Updates to DEIS Chapter 5 – Social and Economic Impacts

- Page 5-1. Table 5-1. Replace with the following:

**TABLE 5-1  
POPULATION AND HOUSEHOLD FORECASTS**

	1990	2000	2010	2020	2030
<b>City of Shakopee</b>					
-population	11,739	20,568	39,500	48,500	52,000
-household	4,163	7,540	15,000	19,500	21,500
<b>City of Prior Lake*</b>					
-population	11,482	15,917	26,500	33,300	40,000
-household	3,901	5,645	10,000	13,000	16,000
<b>Scott County</b>					
-population	57,846	89,498	145,770	185,350	220,940
-household	19,367	30,692	53,820	71,920	87,250

\*Source: Metropolitan Council, except that Prior Lake Population and Households data are from the 2030 Prior Lake Comprehensive Plan and include future annexation areas.

- Page 5-2 to 5-4. Community Facilities. Add to the facilities in the City of Prior Lake:
  - Shepherd’s Path Park
  - Jeffers Pond elementary school, fire station, nursing home

- Page 5-5. Second and third paragraph. Replace with:

The Build Alternative–western alignment option would segment land currently owned by the SMSC located in the upper forested bluff of the project area, removing 8.3 acres of land from the total holdings of the tribe. It is assumed that severed portions of land would be acquired (or appropriate damages paid) in addition to the necessary right of way. The Build Alternative–eastern alignment option would not segment the SMSC, but would acquire 3.3 acres of land. No individuals would be displaced for either of the two alignment options. Impacts to the physical resources associated with this land are addressed in Chapter 6.0.

The Build Alternative south of Southbridge Parkway West will affect three agricultural properties, residential property, and, as noted above, land owned by SMSC. The eastern alignment option would affect the land noted above as well as land owned by the YMCA and an additional residential property. North of Southbridge Parkway West the four-lane at-grade intersection option would be within the existing County right of way and would not impact additional properties, while the six-lane at-grade intersection option and the four-lane interchange option will acquire an additional 0.6 and 4.1 acres, respectively.

- Page 5-8. Second paragraph following Table 5-3. Replace with:

As noted in Section 5.1.1.2, SMSC owns land in the project corridor and is platting land immediately west of the proposed corridor for single-family residential development with approximately 58 lots planned. Native Americans are among the minority populations defined in Executive Order 12898.

- Page 5-9. Impacts of the Build Alternative on Low-Income Populations or Minority Populations. Third paragraph. Replace with:

As noted, the Build Alternative–western alignment option would acquire 8.3 acres of land owned by the SMSC that is located in the upper forested bluff portion of the project area, removing land from the total holdings of the tribe. The Build Alternative–eastern alignment option would acquire 3.3 acres of SMSC land. With either alignment option, the acquisition of land is not a disproportionate impact because the proposed project will also acquire land (approximately 20 to 28 acres) from five to seven additional private landowners who are not minority persons, (for both alignment options), and, for the eastern alignment option from a non-profit organization which serves a broad clientele. In addition, because the affected SMSC land is not developed, the project results in no displacement or direct health or environmental impacts on members of the tribe. The project will not impact any proposed residential lots. As noted in Section 5.1.2, the proposed project results in no impacts on tribal

community cohesion, facilities, and services, with a limited impact related to the reported past SMSC use of the affected land for student educational opportunities. Impacts on the physical resources associated with the affected land are discussed in Chapter 6.

- Page 5-10. Third paragraph. Replace with:

Mitigation for the acquisition of land owned by the SMSC is described in Section 5.2.3.2.

- Page 5-14. First paragraph. Replace with:

The Build Alternative involves no total acquisitions; therefore there will be no employment loss or relocation costs. There will likely be some effect on property taxes payable due to the removal of between 25.5 and 30.5 acres of land from private ownership; however, it is premature to quantify the effect. It should be noted that the 2.1 acres that would be acquired from the YMCA with the eastern alignment option is currently tax-exempt. At the time that the DEIS was approved for publication, the 3.3 to 8.3 acres of SMSC property that would be acquired, depending upon the chosen alignment option south of CSAH 16, was owned in fee and was taxable. Note that the Bureau of Indian Affairs (BIA) has approved the SMSC application to convert the affected land currently owned in fee to land held in trust. This approval was published in the September 27, 2007 Federal Register and, at the time of FEIS preparation, is within the required 30-day comment period. If the approval is finalized, the land will be tax-exempt.

It is also premature to account for the change in property value that can be attributed to increased access or roadway proximity. The countervailing beneficial (improved access) and adverse (noise and visual) effects of a roadway on the values of affected properties are generally not quantifiable with any level of reliability. However, regardless of the effect of the project on the value of any individual property, in comparison to the total taxes payable for the two affected communities and Scott County, the effect will be minimal.

### **2.1.6 Updates to DEIS Chapter 6 – Physical and Natural Environmental Impacts**

- Page 6-13 and 6-14. Tables 6-6 and 6-7. Replace rows for R11 with:

**TABLE 6-6  
NOISE MONITORING AND MODELING RESULTS DAYTIME**

Receptor*	Monitored (2003)		Existing (2004)		2030 No Build		Difference Between Existing (2004) and 2030 No Build		2030 Build Four-Lane At-Grade		Difference Between Existing (2004) and 2030 Build Four-Lane At-Grade		2030 Build Six-Lane At-Grade		Difference Between Existing (2004) and 2030 Build Six-Lane At-Grade		2030 Build Four-Lane Interchange		Difference Between Existing (2004) and 2030 Build Four-Lane Interchange	
	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50
R11 (10) <sup>(1)</sup>			39	38	43	42	4	4	54	52	15	14	54	52	15	14	54	52	15	14
R11 (10) <sup>(2)</sup>			39	38	43	42	4	4	53	51	14	13	53	51	14	13	54	52	15	14
State Standards	65	60	65	60	65	60			65	60			65	60			65	60		
Federal Criteria	70	-	70	-	70	-			70	-			70	-			70	-		

**Bold** numbers are above state standards.

\* Number in ( ) in this column is the number of residences represented by receptor; number in [ ] in this column is the distance from proposed CSAH 21 right of way in feet.

<sup>(1)</sup> West alignment option.

<sup>(2)</sup> East alignment option.

**TABLE 6-7  
NOISE MONITORING AND MODELING RESULTS, NIGHTTIME**

Receptor*	Monitored (2003)		Existing (2004)		2030 No Build		Difference Between Existing (2004) and 2030 No Build		2030 Build Four-Lane At-Grade		Difference Between Existing (2004) and 2030 Build Four-Lane At-Grade		2030 Build Six-Lane At-Grade		Difference Between Existing (2004) and 2030 Build Six-Lane At-Grade		2030 Build Four-Lane Interchange		Difference Between Existing (2004) and 2030 Build Four-Lane Interchange	
	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50	L10	L50
R11 (10) <sup>(1)</sup>			38	35	41	40	3	5	53	50	15	15	53	50	15	15	53	50	15	15
R11 (10) <sup>(2)</sup>			38	35	41	40	3	5	53	51	15	16	51	49	13	14	53	50	15	15
State Standards	55	50	55	50	55	50			55	50			55	50			55	50		

**Bold** numbers are above state standards.

\* Number in ( ) in this column is the number of residences represented by receptor; number in [ ] in this column is the distance from proposed CSAH 21 right of way in feet.

<sup>(1)</sup> West alignment option.

<sup>(2)</sup> East alignment option.

- Page 6-15. Third set of bullets (Build (2030)). Replace with the following to correct for changes to R11:

- Build (2030)

- Receptors exceeding state daytime standards: eight
- Receptors exceeding state nighttime standards: thirteen
- Receptors exceeding federal standards: two
- Receptors approaching federal standards: one

- Page 6-16. First paragraph. Replace with the following to reflect changes to R11:

The Build Alternative for the proposed project includes two alignment options for a distance of one-half mile in the vicinity of property boundary between land owned by the SMSC and land owned by the YMCA and used as a camp. Receptor R11 is located west of the project corridor *in the SMSC East Village Development*; R11A is located along the east side of the project corridor. At Receptor R11, traffic noise levels were between one dBA to two dBA greater under the west alignment option compared to the east alignment option (daytime L<sub>10</sub>). At Receptor R11A, traffic noise levels were between one dBA to three dBA lower under the west alignment option compared to the east alignment option (daytime L<sub>10</sub>). The proposed park-and-ride will generate minimal amounts of traffic noise due to the low traffic speeds within the facility and the lack of heavy trucks traveling within the facility. The closest residence to the proposed park-and-ride is approximately 1,200 feet away. Traffic noise from CSAH 21 and CSAH 16 would be a more dominant and constant noise source.

- Page 6-18. Fourth and fifth paragraph. Replace with the following to reflect changes to R11:

Receptor R11

Receptor R11 is located in an area that is currently undeveloped, but planned for residential land uses. This receptor represents ten planned residences west of the proposed CSAH 21 roadway. For the west alignment option, Receptor R11 is predicted to experience a five-decibel decrease in noise with a 20-foot-high and 3500-foot-long barrier placed between the residences and CSAH 21. The cost-effectiveness of the barrier is \$105,000 per decibel per residence; this is well above Mn/DOT's criterion of \$3,250. Therefore a barrier in this area would not be reasonable and is not proposed.

- Page 6-19. Tables 6-8 and 6-9. Replace with the following to reflect changes to R11:

**TABLE 6-8  
NOISE BARRIER STUDY RESULTS (DAYTIME L<sub>10</sub>)**

Receptor*	Build 2030 (No Barrier)	Build 2030 (with 20 ft. Barrier)	Reduction (in dBA)**
R2 (3)	68	66	2
R4 (5)	70	66	4
R5 (3)	69	66	4
R6 (8)	63	57	<b>6</b>
R7 (22)	60	56	4
R8 (10)	67	60	<b>7</b>
R9 (6)	64	58	<b>6</b>
R10 (6)	71	61	<b>10</b>
R11 (10)	53	48	<b>5</b>
R11A (1)	58	55	3
R13 (10)	68	62	<b>6</b>

\*Number in () in this column is the number of residences represented by receptor.

**TABLE 6-9  
NOISE BARRIER COST-EFFECTIVENESS STUDY RESULTS (DAYTIME L<sub>10</sub>)**

Receptor*	Build 2030 (No Barrier)	Build 2030 (with 20 ft. Barrier)	Reduction (in dBA)**	Length of noise barrier (ft)	Total cost of noise barrier	Cost per dBA per residence**
R6 (8)	63	57	<b>6</b>	550	\$ 165,000	\$ 3,750
R8 (10)	67	60	<b>7</b>	650	\$ 195,000	<b>\$ 2,671</b>
R9 (6)	64	58	<b>6</b>	1000	\$ 300,000	\$ 8,929
R10 (6)	71	61	<b>10</b>	400	\$ 120,000	<b>\$ 1,942</b>
R11 (10)	53	48	<b>5</b>	3500	\$ 1,050,000	\$ 105,000
R13 (10)	68	62	<b>6</b>	500	\$ 150,000	<b>\$ 2,727</b>

\*Number in () in this column is the number of residences represented by receptor.

\*\*Numbers in **bold** meet acoustic or cost effectiveness criteria.

- Page 6-20. Section 6.2.4. Third paragraph. Replace with:

Using Mn/DOT's cost effectiveness analysis methodology, noise barriers have been found to be cost effective at three receptors (R8, R10, and R13). Based on these results, the County proposes noise mitigation in those areas where it has been found to be reasonable. In addition to cost effectiveness (economic reasonableness) other factors may influence the noise mitigation plan. These other factors include feasibility of constructing barriers. Feasibility relates to physical and engineering constraints such as access to right of way, the presence of utilities, and soil conditions. Additionally, the effectiveness of reducing noise impacts and reducing the view of traffic will be evaluated against the potentially negative visual impacts of these barriers on the neighborhood. Consultation with residents and municipalities will occur before any decisions are made regarding noise barriers and will occur during final design. The County will install noise barriers as determined through consultation but the cost will be borne by the developer according to the development agreements detailed in plat approvals. The County is coordinating with the City regarding mechanism for addressing this cost. Mitigation for impacts on SMSC property is addressed in the Intergovernmental Agreement among SMSC, Scott County, Mn/DOT and FHWA (Appendix B).

- Page 6-24. Section 6.5.1.1. Following first paragraph. Add as a new paragraph:

According to the Natural Resources Inventory of Northern Scott County (2002), the proposed CSAH 21 extension passes through maple-basswood forest, cropland, oak forest, saturated non-native dominated graminoid vegetation, and short grasses with sparse tree cover on upland soils. According to the corridor priority rankings (good, better, best) in the Natural Resource Corridor Map (2005) the proposed CSAH 21 extension passes through a “better” corridor north of CSAH 16 and east of Dean Lake.

- Page 6-27. Section 6.5.3. Third paragraph. Replace with:

Where impacts to vegetation and wildlife are unavoidable, the effect of the impacts will be minimized through design features. Trees removed as part of the project will be replaced in accordance with applicable Prior Lake and Shakopee City ordinances. Disturbed areas would be re-vegetated with native plants and land in the right of way would be managed to have diverse grassy vegetation with trees and shrubs outside the required roadway clear zone.

Two grade-separated crossings would be incorporated into this project: a large one along the northern edge of the maple-basswood forest, and a smaller one along the base of the northern oak forest that borders the wetland corridor southeast of Dean Lake. These locations were chosen as crossing points because they are in corridors of likely wildlife movement, i.e., at the base of bluffs along the forest edge where wildlife can easily travel and be near cover.

The grade-separated crossing adjacent to the maple-basswood forest is appropriately defined as a “wildlife crossing,” designed according to the standards described in the United States Department of Agriculture (USDA) Forest Service’s Wildlife Crossing Toolkit, in particular the recommended ratio of length to width of opening. In addition, during final design, the County will consult with Minnesota DNR staff regarding the effectiveness and feasibility of constructing a fence along the right of way in the upper bluff area in order to further minimize wildlife/vehicular conflicts. The grade-separated crossing located southeast of Dean Lake is not expressly characterized as a “wildlife crossing” as it would be impractical in this location to conform exactly to the recommended ratio of length to width of opening. While the length of underpass (with less than recommended width) may discourage larger wildlife such as deer from crossing, it would still be an important safe crossing for smaller wildlife.

- Page 6-33: Section 6.9.1. Following the first paragraph. Add as a new paragraph (Note the addition of Figure 6-4 since the DEIS):

According to the Natural Resources Conservation Service, highly erodible land (HEL) and potential highly erodible land (PHEL) are areas of land that have a high potential for erosion when disturbed through activities such as development. The PHEL map units need to be field verified to confirm whether characteristics meet the HEL designation requirements. Particular attention should be paid to HEL areas as they can present unstable soil conditions that can result in erosion if not properly managed during construction activities. As proposed, CSAH 21 crosses two main areas of PHEL/HEL (Figure 6-4). The first section is

comprised of HEL and is a narrow band that extends east to west and is located just north of CSAH 16. The second area of concern is a stretch approximately 0.85 miles long starting at CSAH 42 and heading north and is comprised of HEL and PHEL areas. Potential for soil erosion during construction is high in this area.

- Page 6-34. Section 6.9.2. Following the first paragraph. Add as a new paragraph:

The proposed road profiles have been designed to minimize disturbances to steep bluffs. As the design of a Preferred Alternative is carried forward, it will be further refined to avoid and minimize impacts to areas of HEL.

- Page 6-35. Section 6.9.3. Second paragraph. Replace with:

During construction, BMPs will be used to minimize the impacts of erosion and sedimentation resulting from grading of the project area. BMPS such as erosion control blankets, fast growing cover crops, and silt fencing (similar to those outlined in the MPCA’s manual “protecting water quality in urban areas”) would be implemented in accordance with the national pollutant discharge elimination system (NPDES) permit which is required for this project. After construction is complete, disturbed areas would be re-vegetated to control erosion on a permanent basis.

- Chapter 6 Figures. Figure 6-1. Replace with revised Figure 6-1 (attached to this chapter).
- Chapter 6 Figures. After Figure 6-3. Add Figure 6-4 (attached to this chapter).

## 2.1.7 Updates to DEIS Chapter 7 – Water Resources

- Page 7-3. Table 7-1. Replace with:

**TABLE 7-1  
WATER RESOURCES REGULATORY FRAMEWORK FOR CSAH 21**

CRITERIA	SOURCE
<p><b>Water Quality</b></p> <p><u>Wet detention basins:</u></p> <ol style="list-style-type: none"> <li>1. Sediment basins must be used on all drainage areas over 5 acres.</li> <li>2. Dead storage &gt; runoff from the 2.5-inch storm event</li> <li>3. 60-percent total phosphorus removal</li> </ol> <p><u>Outlet Structures:</u></p> <ol style="list-style-type: none"> <li>1. Skim up to the 5-year storm event. Skimming velocities &lt; 0.5 fps.</li> <li>2. Outlet velocities &lt; 4 fps.</li> </ol>	<ol style="list-style-type: none"> <li>1. Shakopee</li> <li>2. Prior Lake and PLSLWD</li> <li>3. Prior Lake and PLSLWD</li> </ol> <ol style="list-style-type: none"> <li>1. Shakopee, LMRWD and PLSLWD</li> <li>2. LMRWD</li> </ol>

**TABLE 7-1 continued**  
**WATER RESOURCES REGULATORY FRAMEWORK FOR CSAH 21**

CRITERIA	SOURCE
<p><b>Water Quantity</b></p> <p><u>Runoff rates:</u></p> <ol style="list-style-type: none"> <li>Match existing rates for the 2-year, 10-year, and 100-year storm events.</li> <li>Storage facilities should accommodate the 100-year storm event.</li> <li>New developments within <b>the Blue Lake Drainage System</b> have a maximum allowable peak discharge of 0.10 CFS per acre in the 100-year storm and should attempt to limit the 10-year peak discharge to 0.05 CFS per acre.</li> </ol> <p>Performance standard requirement for volume control, in addition to requiring BMPs, required that the first ½ inch of runoff from newly created impervious areas be controlled either through volume reduction credits or through constructed practices such as infiltration basins. Volume reduction is a goal and will be used to the extent practical and feasible.</p> <p>Analyze the impact to the downstream systems due to the proposed runoff rates and volumes.</p>	<ol style="list-style-type: none"> <li>SWMO, Prior Lake and PLSLWD</li> <li>Shakopee and LMRWD</li> <li>Shakopee</li> </ol> <p>PLSLWD</p> <p>SWMO</p> <p>SWMO</p>
<p><b>Storm sewer</b></p> <p>Full-flow capacity = 10-year peak discharge</p>	<p>SWMO and Shakopee</p>
<p><b>Erosion and sediment control</b></p> <p>Erosion control plans shall comply with the MPCA’s NPDES-SDS Phase II general permit.</p> <p>Proposed land disturbing or development activity shall not cause:</p> <ul style="list-style-type: none"> <li>Accelerated channel erosion.</li> <li>Erosion, sedimentation or damage to water and soil resources on and off site</li> </ul> <p>Erosion and sediment control plans must be signed by a registered professional engineer.</p> <p>NPDES-SDS Phase II Permit and a Stormwater Pollution Prevention Plan (SWPPP) are required for any construction activity disturbing one acre or more of land. Construction activity includes clearing, grading and excavation.</p> <p>Additional BMPs and enhanced runoff controls are required for discharges to special waters. The BMPs identified for each special water are required for those areas of the project draining to a discharge point on the project that is within 2000 feet of a special water and flows to that special water. There are <b>NO</b> special waters within 2000 feet of this project.</p> <p>Erosion and sedimentation control measures shall be consistent with BMPs and shall be sufficient to retain sediment on-site.</p>	<p>LMRWD</p> <p>SWMO</p> <p>SWMO</p> <p>NPDES-SDS</p> <p>NPDES-SDS</p> <p>PLSLWD</p>

- Page 7-6. Section 7.3.1. Following the first paragraph. Add the following as a new paragraph:

Pike Lake and Dean Lake are listed on the state’s list of impaired waters due to excess nutrients. The completion of Total Maximum Daily Load (TMDL) studies and an approved implementation plan for these lakes could affect treatment requirements for stormwater

runoff to the lakes. The estimated start date for the creation of the Pike Lake TMDL plan is 2007, with an estimated completion date of 2010. The dates, respectively, for the Dean Lake TMDL plan are 2017 and 2020. The County will work with the local agencies to meet allocations mandated by an approved implementation plan for receiving waters affected by the project.

- Page 7-14. Table 7-3. Replace with:

**TABLE 7-3  
WETLAND SIZE AND TYPE**

Wetland ID	Area (acres)	Type (Circ. 39)	Type (Cowardin)	Functional Level	Proposed Impact (acres)
WA	0.38	Type 3	PEMC	Low to High	0.0
WB	0.23	Type 2	PEMB	Low to High	.23
<b>WC (DNR #248W)</b>	<b>2.59</b>	<b>Type 3</b>	<b>PEMF</b>	<b>Low to High</b>	<b>0.0</b>
WD	1.12	Type 3	PEMC	Low to High	0.0
WE	0.30	Type 6	PSSA	Low to Moderate	0.0
W-4* (WJ)	.69	Type 2	PEMB	Not completed	0.48
W-5* (part of WF)	.8	Type 2	PEMB	Not completed	0.0
W-6* (WF)	>50	Type 3	PEMCd	Low to High	6.21
WG	0.52	Type 3	PEMCd	Low to High	0.0
WH	0.41	Type 3	PEMC	Low to High	.06
WI	3.06	Type 6	PESSA	Low to High	0.0
WK	0.09	Type 1	PEMA	Low to High	0.0
WL	1.91	Type 1	PEMA	Low to High	0.9
WM	0.09	Type 1	PEMA	Low to High	0.0
				<b>Total Wetland Impacts:</b>	<b>7.07 acres</b>

\*Delineation of wetlands on former Shutrop property accepted by TEP. W-6 and WF are the same wetland area, delineated under both reports.

- Page 7-14. First paragraph (below table). Replace with:

As shown in Table 7-3, the Build Alternative would impact approximately 7.07 acres of wetlands. Wetlands WB, W-4, W-6 (WF), WH, and WL would all be impacted with the Build Alternative.

- Page 7-17. First paragraph. Replace with:

At a 2:1 mitigation ratio, the area of impact for the project will necessitate approximately 14.14 acres of wetland mitigation (at least three-fourths of which must be created or new replacement wetlands in accordance with COE requirements, as discussed below). If wetland regulations change during the course of project implementation, the required mitigation may change.

## **2.1.8 Updates to DEIS Chapter 8 – Cultural Resources**

No updates or revisions.

## **2.1.9 Updates to DEIS Chapter 9 – Construction Impacts**

No updates or revisions.

## **2.1.10 Updates to DEIS Chapter 10 – Cumulative Impacts**

- Page 10-8. After Section 10.2.5. Add as a new section:

### **10.2.6 Water Resources**

#### Existing Conditions

As discussed in Chapter 7 the stormwater runoff from the southern three-fourths of the proposed project will drain towards Dean Lake while the northern fourth of the project will drain toward Eagle Creek. All of the project runoff ultimately enters the Minnesota River. A Minnesota Department of Natural Resources (DNR) wetland (#70-248W) and Dean Lake (#70-74) are located along the project corridor. In addition, there are two bluff areas that will be impacted by the construction of the proposed project.

The southernmost third of the proposed CSAH 21 corridor falls within an area of low susceptibility of groundwater resources to contamination. However, immediately adjacent to that, Pike Lake sits in a region of moderate susceptibility and the northern two-thirds of the corridor is within an area of high groundwater susceptibility. Existing threats to groundwater quality along the project corridor consist primarily of agriculture-related contaminants and development north and south of CSAH 16.

The water quality of Dean Lake has been monitored regularly since 2002 by volunteers participating in a program operated by the Metropolitan Council. According to the Metropolitan Council long term trends in water quality of the lake cannot be identified until additional years of data are available.

Residential development is occurring on what was once agricultural land near the proposed CSAH 21 alignment. According to City of Shakopee staff, impacts to water quality that would be expected to occur with this change in land use are occurring in the area. Local, state, and federal standards relating to stormwater ponding requirements are enforced for new development to mitigate for these impacts.

#### Impacts from the Proposed Action

The project, including the transit station, will create new impervious surfaces south of CSAH 18 thereby decreasing infiltration and increasing the quantity of stormwater runoff. The proposed project will exhibit an urban design utilizing curb, gutter and storm sewer to convey

runoff from the roadway. The proposed project has the potential to impact water quality because it will produce the pollutants commonly found in roadway runoff. The majority of these pollutants can be removed, to a certain extent, by the use of a passive treatment involving a settling process. Therefore, the extent to which these pollutants would affect water quality within the proposed alternative is dependent upon the level of treatment provided for surface water runoff from roadways prior to discharge to a receiving water body. Traffic volumes on CSAH 21 and at the proposed transit station would continue to generate increasing pollutant levels in the future.

In regards to the bluff impacts, the urban design will reduce erosion potential due to elimination of the steep slope roadside ditches. The ditch outlet for the CSAH 21/CSAH 16 regional pond would require energy dissipation measures such as check dams and cascading ditches.

Grading for construction may intersect the water table during excavation at the northerly bluff and minor dewatering may be necessary near the wetlands north of CSAH 16 and the DNR wetland at the southern project limits. Potential project-related sources of groundwater contaminants include spills during construction and traffic-related spills and runoff from post-construction sources. The proposed construction would not likely have any regional effect on groundwater recharge due to the relatively narrow area of impact in the overall watershed.

### Potential Cumulative Impacts

The majority of stormwater runoff from the proposed project will drain towards Dean Lake. Future development upstream of the lake and on adjacent SMSC lands will also increase flow rates into Dean Lake. The primary inflow to Dean Lake originates from the Prior Lake outlet channel. Under the proposed urban section design, stormwater runoff will flow into a storm sewer network prior to discharge, rather than into ditches as with a rural design. Infiltration areas are being proposed in strategic locations to enhance stormwater treatment along the corridor. In addition, the site plan for the proposed transit station may allow for the opportunity to integrate stormwater treatment via rain gardens or a stormwater pond. Finally, Scott County is interested in considering opportunities for building a regional pond as part of the project.

Along the entire project corridor, the primary goal of the water quality treatment system is to ensure that stormwater treatment in the proposed condition maintains or improves the existing condition. Various BMPs will be implemented to maintain the existing stormwater runoff quality along the project corridor. During final design, infiltration measures will be developed in consideration of the concerns about high groundwater sensitivity and carefully sited and designed to protect groundwater resources.

There are federal, state, regional, and local surface and groundwater management regulations in place that require mitigation in conjunction with proposed development. Given the design standards and management controls available for protecting the quality of surface waters, it is likely that potential impacts of the project, along with other foreseeable actions, will be minimized or mitigated to a substantial degree, and adverse cumulative impacts on water quality and quantity are not anticipated.

### **2.1.11 Updates to DEIS Chapter 11 – Relationship of Short-Term Use of the Environment Versus Long-Term Productivity and Irreversible and Irrecoverable Impacts**

No updates or revisions.

### **2.1.12 Updates to DEIS Chapter 12 – Comments and Coordination**

No updates or revisions.

### **2.1.13 Updates to DEIS Chapter 13 – List of Preparers**

No updates or revisions.

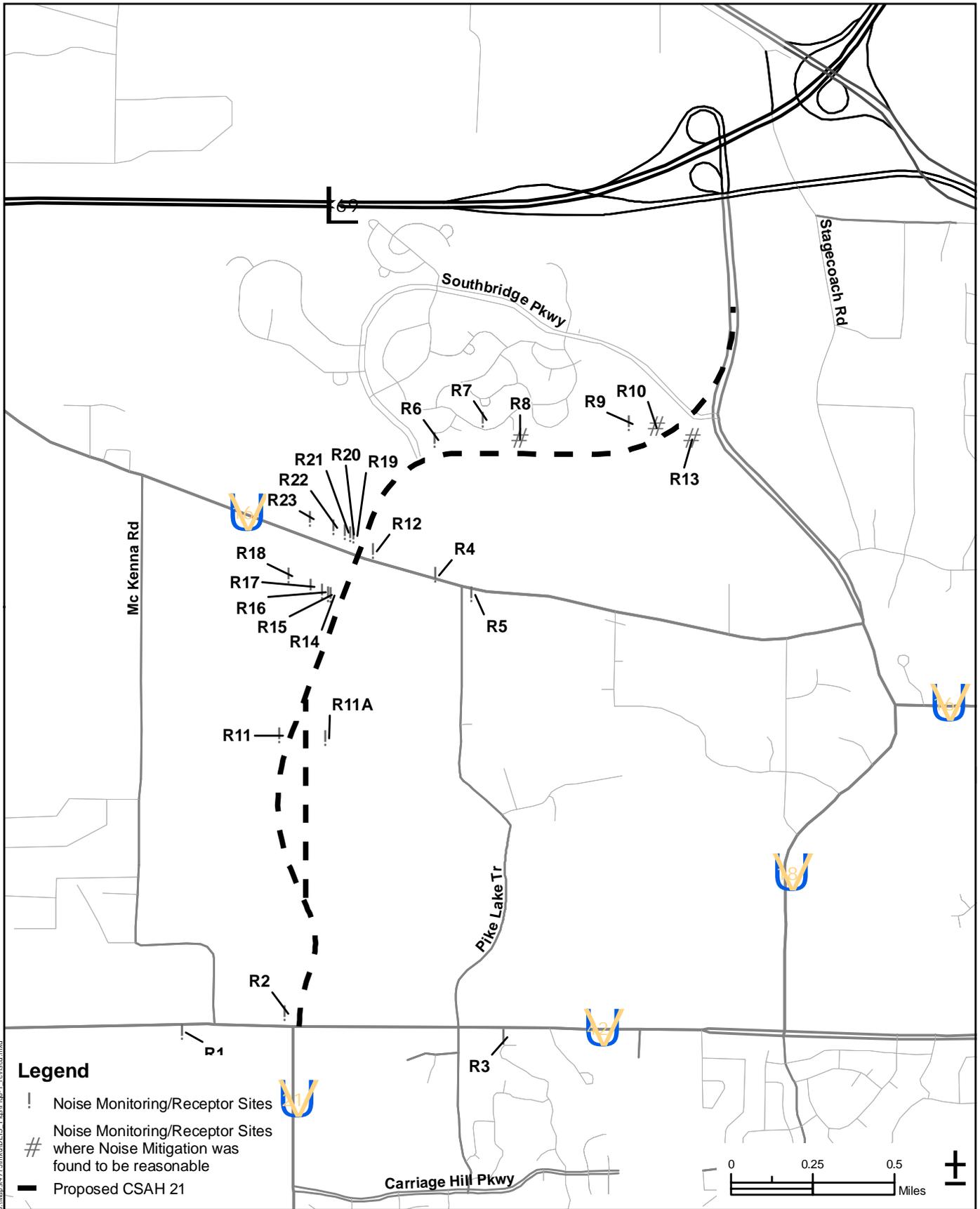
### **2.1.14 Updates to DEIS Chapter 14 – List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent**

No updates or revisions.

### **2.1.15 Updates to DEIS Appendices**

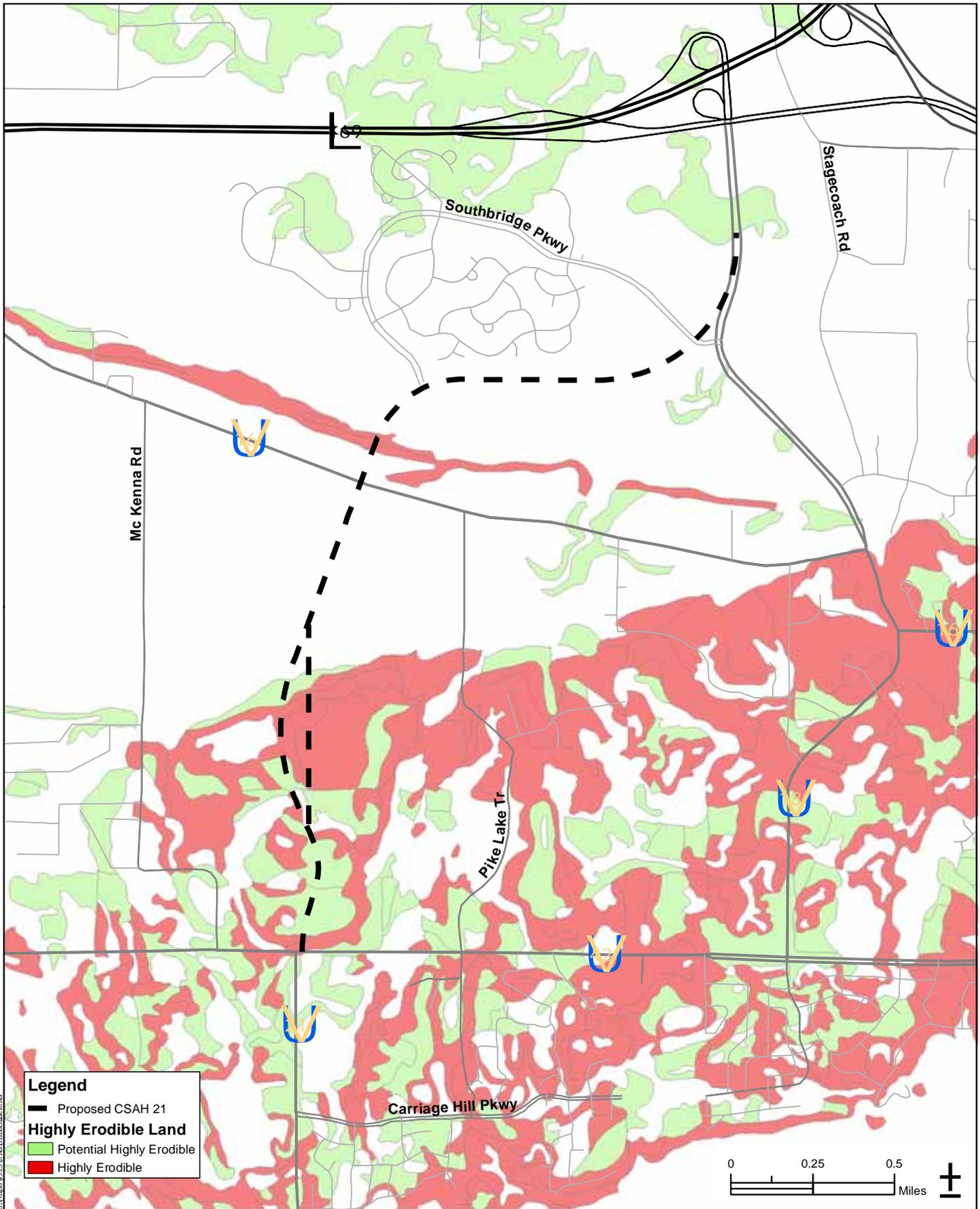
- The DEIS Appendix A (Agency Coordination) has been updated to include the attached supplemental information on the maple-basswood forest provided by the Minnesota DNR (letter attached to this chapter).
- No updates or revisions to Appendix B (List of Acronyms), Appendix C (Project-Related Special Studies), or Appendix D (Data Sources and References).

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**NOISE MONITORING / RECEPTOR SITES**

*Figure 6-1*



HIGHLY ERODIBLE LAND (HEL)

Figure 6-4

## Report of field visit to maple-basswood forest in Prior Lake

T115N, R22W, portions of Section 22, 23

by Hannah Dunevitz Texler, Regional Plant Ecologist, Natural Heritage and Nongame Research Program, Minnesota DNR

I visited the site on October 20, 2005 with Shawn Kelley and Victoria Ranua, who work for the Land Office of the Shakopee Mdewakanton Sioux Community. The forest is about 100 acres in size, and includes three ownerships: the Mdewakanton Community, the YMCA, and one small private parcel north of the YMCA property. The site was not identified as a Minnesota County Biological Survey (MCBS) site, possibly because of its rather small total size, the presence of buildings within the forest on the YMCA property, and the fact that much of the canopy is relatively young compared to some older maple-basswood forests in the area. I evaluated the site's ecological significance in part because there is a proposed county road with an alignment being considered through the forest.

While most of the site is a maple-basswood forest community, it does grade to an oak woodland on the highest ridge near the north edge of the forest, and becomes maple-basswood forest again on the north-facing slope below the ridge. The forest grades to a disturbed past-logged former pasture on its northwest edge, on the Mdewakanton land. This pasture is dominated by non-native grasses and dense shrubs.

The late fall date precluded a full evaluation of the forest's quality, because I wasn't able to assess the spring flora or to fully see the summer herbaceous ground layer. I assigned a preliminary quality rank of BC to the maple-basswood forest on a scale of A to D, where A is the highest possible quality ranking and D is assigned to places where the plant community is recognizable but highly degraded. Sites meeting the minimal size criteria and with a rank of C or higher are mapped as significant by MCBS, so this forest would qualify for mapping. The BC rank was assigned because the site has received some past logging; there are scattered occurrences of the invasive shrub glossy buckthorn; the ground layer is relatively low in diversity, but dominated by native species; and the forest has an overall good canopy cover with scattered very large trees within a matrix of younger forest. This BC rank makes the forest comparable to nearby maple-basswood forests mapped by MCBS in Prior Lake, which were ranked BC to C rank.

One notable observation for this forest was the abundance of the orchid puttyroot (*Aplectrum hyemale*), a species generally considered to occur in rich mesic forests and relatively uncommon in the state. It occurs in maple-basswood forests in the Big Woods subsection and on north-facing slopes in the Paleozoic Plateau.

A tree inventory completed in the forest by the Land Office of the Shakopee Mdewakanton Sioux Community found an average diameter at breast height (dbh) of all trees greater than or equal to 15 inches (38 cm) dbh of 22 inches (56 cm). The largest basswoods, red oaks, and sugar maples were over 100 cm dbh.

Species noted during the October 20th field visit are listed in the table below. A spring visit is recommended to assess spring ephemerals in the ground layer and to determine the forest's importance to migratory songbirds.

#### Species List of Maple Basswood Forest

Scientific Name	Common Name
<b>Canopy Trees</b>	
<i>Acer saccharum</i>	sugar maple
<i>Celtis occidentalis</i>	hackberry
<i>Quercus rubra</i>	red oak
<i>Tilia americana</i>	basswood
<b>Subcanopy Trees</b>	
<i>Acer saccharum</i>	sugar maple
<i>Carya cordiformis</i>	bitternut hickory
<i>Ostrya virginiana</i>	ironwood
<i>Prunus serotina</i>	black cherry
<b>Shrubs</b>	
<i>Rhamnus cathartica</i>	glossy buckthorn
<i>Ribes cf missouriensis</i>	gooseberry
<i>Sambucus sp.</i>	elderberry
<b>Ground Layer</b>	
<i>Aplectrum hyemale</i>	puttyroot
<i>Athyrium felix-foemina</i>	lady fern
<i>Carex pensylvanica</i>	Penn's sedge
<i>Cryptotaenia canadensis</i>	honewort
<i>Galium triflorum</i>	sweet-scented bedstraw
<i>Laportea canadensis</i>	wood nettle
<i>Menispermum canadense</i>	Canada moonseed
<i>Osmorhiza claytonii</i>	Clayton's sweet cicely
<i>Phryma leptostachya</i>	lopseed
<i>Sanicula sp.</i>	black snakeroot
<i>Smilax sp.</i>	carrion flower
<i>Solidago flexicaulis</i>	zig-zag goldenrod
<i>Thalictrum dioicum</i>	early meadow rue
<i>Viola pubescens</i>	yellow violet

### 3.0 PREFERRED ALTERNATIVE/ALTERNATIVES EVALUATION PROCESS

The Preferred Alternative for the extension of CSAH 21 is a four-lane expressway between CSAH 42 in Prior Lake and CSAH 18 in Shakopee, Minnesota, a distance of three miles; incorporating the eastern alignment option and four-lane intersection design option discussed in the Draft Environmental Impact Statement (DEIS). See Figures 3-1 through 3-3. The Preferred Alternative for the construction of a 500-space transit station is the Build Alternative in the southwest quadrant of CSAH 21/CSAH 16 as described in the DEIS. The process used to develop and evaluate alternatives and findings regarding the Preferred Alternative for each of these project components are discussed below.

#### 3.1 CSAH 21 EXTENSION

##### 3.1.1 Process

The process used to develop and evaluate alternatives for the CSAH 21 extension included:

- Scoping of alternatives, through three studies:
  - *Scott County Transportation Study: County Road 18 Corridor Alternatives* (1990 Study) that evaluated three general Build Alternatives to meet the need for an additional north-south facility in the study area, and recommended one alternative as a long-range planning goal (with initial construction to include a TH 169/CR 18 interchange), and another alternative as a short-term solution (this short-term solution was constructed in 1992 and subsequently became the No-Build Alternative).
  - *Scott County CSAH 18 and CSAH 21 Feasibility Study* (1992 Study) that evaluated two Build alternatives and recommended Alternative B as the Preferred Alternative for the following reasons:
    - Alternative B, although more circuitous, avoided most of the access and right of way impacts associated with Alternative A,
    - the future transportation network would be more efficient to develop and would better meet standards with Alternative B because the intersection would be more at right angles than with the diagonal route of Alternative A,
    - the two alignments had wetland impacts of a similar order of magnitude, and
    - neither alternative would adversely affect air or water quality.

Alternative B was located to take advantage of a natural ravine in the bluff line north of the YMCA property, to minimize wetland impacts in the southern portion of the project area, and to maximize the distance between the proposed roadway and two homes located near the bluff.

- *Scoping Document/Draft Scoping Decision Document (SD/DSDD)*, initiated in 2002, that documented the previous studies, updated relevant traffic and environmental issues, and identified alternatives and social, economic, and environmental (SEE) impacts to be addressed in the DEIS. Following comment on the SD/DSDD, the Scoping Decision was

adopted by the Scott County Board of Commissioners (July 2003). This decision was published in the Scoping Decision Document (SDD), which identified the 2003 Build Alternative to be studied in the DEIS.

Each of these three scoping studies included public participation and public meetings. The preparation of the Scoping Document was done under the guidance of a technical advisory committee (TAC). There was a public scoping meeting and input through comments received on the Scoping Document during the public/agency comment period.

- Refinement of the 2003 Build Alternative identified in the SDD, which involved generating and evaluating several Build alignment/design iterations, resulting in the following Build Alternative with options, to be evaluated in the DEIS:
  - South of CSAH 16: An urban section with a reduced design speed and alignment to avoid impacts to a Minnesota Department of Natural Resources (DNR) wetland, avoid property impacts south of CSAH 42, avoid the need to reconstruct the entire CSAH 21/CSAH 42 intersection, and further protect wetlands and vegetation while minimizing property and grading impacts. South of CSAH 16 alignment options included a western alignment and an eastern alignment, which diverged from one another approximately 1,000 feet north of CSAH 42 and approximately 1,600 feet south of CSAH 16, a distance of approximately one-half mile. The maximum distance (centerline to centerline) between the two alignment options was 325 feet.
  - North of CSAH 16: An urban section with the alignment shifted to the south within the existing County right of way in order to avoid tree impacts and to maximize the buffer between the Southbridge residential development and the proposed roadway. CSAH 21/CSAH 18 intersection design options included (1) a four-lane at-grade intersection; (2) six-lane at-grade intersection; and (3) four-lane interchange. Both of the at-grade intersection design options would be signalized.
- Detailed analysis of the Build Alternative, including the two alignment options (western and eastern) and the three design options (two at-grade intersections and one grade-separated interchange) for the CSAH 21/CSAH 18 intersection in the DEIS conducted 2005-2006. The DEIS document was released for public/agency comment in August 2006. The DEIS studies included data collection, environmental and transportation analyses, design development, input from local governments and agencies in TAC meetings, and public input at open houses and the DEIS public hearing.

In addition to the TAC, input from other project stakeholders and the public was received during preparation of the DEIS, during the DEIS comment period and/or during post-DEIS meetings with key stakeholders to review the Preferred Alternative evaluation/selection process. This included input from the SMSC, wetland regulatory agencies, and local governments.

### **3.1.2 Findings**

- The No Build Alternative does not meet the purpose and need for the project and therefore is not selected as the preferred alternative.
- The Build Alternative meets the stated purpose and need for the project.

- The selection/definition of the preferred alternative is based on an evaluation of the factors that distinguish (a) the two alignment options south of CSAH 16 and (b) the three design options at the CSAH 21/CSAH 18 intersection, as described below:
  - Alignment options south of CSAH 16: The differences between the two alignment options south of CSAH 16 relate to impacts to the social environment (Shakopee Mdewakanton Sioux Community [SMSC] land, YMCA land), right of way, maple-basswood forest, and farmland, as shown in Table 3-1.

**TABLE 3-1  
IMPACTS OF WESTERN AND EASTERN ALIGNMENT OPTIONS**

	Western Alignment	Eastern Alignment
<b>Social</b>	8.3 acres SMSC (severs) 0 acres YMCA	3.3 acres SMSC 2.1 acres YMCA
<b>Right of way</b>	26.4 acres 6 properties	25.5 acres 8 properties
<b>Maple-basswood forest</b>	23.6 acres forest 0.8 acres forest core	22.8 acres forest 2.3 acres forest core
<b>Farmland</b>	8.6 acres	8.4 acres

- Design options at CSAH 21/CSAH 18 intersection: The differences between the three design options at the CSAH 21/CSAH 18 intersection relate to impacts to traffic operations, safety, cost, pavement, right of way, noise and visual impacts, as shown below:

**TABLE 3-2  
IMPACTS OF THREE INTERSECTION DESIGN OPTIONS**

	4-lane at-grade intersection		6-lane at-grade intersection		4-lane interchange	
	a.m.	p.m.	a.m.	p.m.	a.m.	p.m.
<b>2030 Traffic Operations</b>						
CSAH 21/CSAH 18 delay <sup>(1)</sup>	D/E	D	D	D	B/B	C/C
CSAH 21 vehicle stops	2020	2475	1925	2475	0	0
CSAH 18 vehicle stops	1550	1925	1550	1825	2175	3700
VHT	180	215	175	205	160	215
<b>Safety</b>	11 crashes per year		11 crashes per year		5 crashes per year	
<b>Cost</b>						
Construction cost <sup>(2)</sup>	\$12.2M		\$14.8M		\$18.1M	
Right of way cost	\$3.8M		\$3.9M		\$4.4M	
Total Cost	\$16.0M		\$18.7M		\$22.6M	
<b>Pavement</b>	13.6 lane miles		14.9 lane miles		17.4 lane miles	
<b>Right of way</b>	25.5 acres		26.1 acres		29.6 acres	
<b>Noise and visual</b>					Noise and visual impacts extend further than at-grade options	

<sup>1</sup> Measured in Level of Service (LOS). LOS D or better is considered an acceptable delay; LOS E and F are unacceptable.

<sup>2</sup> With eastern alignment option

- Based on the evaluation of the distinguishing characteristics of the alignment and design options noted above, FHWA and Scott County have concluded the following:
  - South of CSAH 16, the eastern alignment option provides a more equitable distribution of property impacts to property owners, balances impacts to the YMCA (a community facility), with impacts to the land holdings of the SMSC. Differences between the two alignment options with regard to other impacts are minor.
  - The four-lane at-grade intersection design option at the CSAH 21/CSAH 18 intersection provides adequate capacity during the design period, minimizes pavement and right of way requirements, and has lower costs than the other two design options. While the interchange design option provides better system benefits, it increases vehicle stops on CSAH 18/Southbridge Parkway approaches, extends noise and visual impacts further into the neighborhood, and has more pavement to maintain, greater right of way impacts, and a higher construction cost. The six-lane at-grade intersection design option also has more pavement, greater right of way impacts and a higher cost, and provides limited additional transportation benefit.
- The comments submitted during the DEIS public comment period did not demonstrate a clear broad consensus in public support for any one alignment option or intersection design option over the others.
- The City of Prior Lake provided a comment in favor of the eastern alignment option, while the Metropolitan Council favored the western alignment option. The City of Shakopee provided a comment in favor of the four-lane at-grade intersection. Other regulatory agency comments focused more on general technical issues, impacts, and mitigation strategies to be discussed in the FEIS, and did not focus on stating positions opposing or supporting specific alternatives.
- Since the conclusion of the DEIS comment period, the SMSC, Scott County, Mn/DOT, and FHWA have entered into an Intergovernmental Agreement to address SMSC issues with the project (Appendix B).
- On January 30, 2007, based on the above findings, the Scott County Board of Commissioners approved the Build Alternative that incorporates the eastern alignment option and the four-lane at-grade intersection design option as the Preferred Alternative for the CSAH 21 extension.

## 3.2 PARK AND RIDE TRANSIT STATION

### 3.2.1 Process

The process used to develop and evaluate alternatives for the park and ride transit station included:

- Development of the *Scott County Unified Transit Management Plan (UTMP)* completed July 2005, which integrates and combines the findings of several transportation studies

completed in the region. The principal goal of the study is to provide a blueprint for Scott County and its communities to follow in bringing about public transit improvements over the next 20 years. The study envisions the establishment of transit facilities in the vicinity of proposed CSAH 21 due to its accessibility to TH 169.

- A number of sites for an additional location were under consideration during the DEIS preparation. Analysis was conducted to assess the effect of transit facilities (at five locations) on intersection operations in the study area, as well as the effect of location on peak hour bus travel time and peak hour vehicle hours of travel. The five transit station locations evaluated included the following:
  - Location No. 1: Southwest quadrant CSAH 18/TH 169
  - Location No. 2: Southeast quadrant CSAH 18/TH 169
  - Location No. 3: Pike Lake Road south of CSAH 21
  - Location No. 4: Southwest quadrant CSAH 21/CSAH 16
  - Location No. 5: Southeast quadrant CSAH 21/CSAH 16

### **3.2.2 Findings**

- The No Build Alternative does not meet the purpose and need for the project and therefore is not selected as the preferred alternative.
- Evaluation of the five potential transit station locations indicated that the intersection LOS, transit operations travel time and transit user travel times vary depending on the station location, CSAH 21/CSAH 18 intersection design option and bus direction/time of day. No one proposed transit stop location or CSAH 21 alternative appeared preferable based on the traffic operations analysis, except that Station Location 1 would cause unacceptable LOS at an intersection. Station Location No. 2 is being implemented under a separate project. Of the remaining locations studied, Location No. 4 was determined to be the best choice as a site and is the Build Alternative identified in the DEIS.
- The Build Alternative meets the stated purpose and need for the project.
- There were no agency or public comments recommending that any of the four other location options be selected for the proposed station.
- The SMSC has made no comment on the proposed transit station.
- Based on the above findings, the proposed transit station at Location No. 4, the southwest quadrant of CSAH 12/CSAH 16, is selected as the Preferred Alternative for this FEIS.

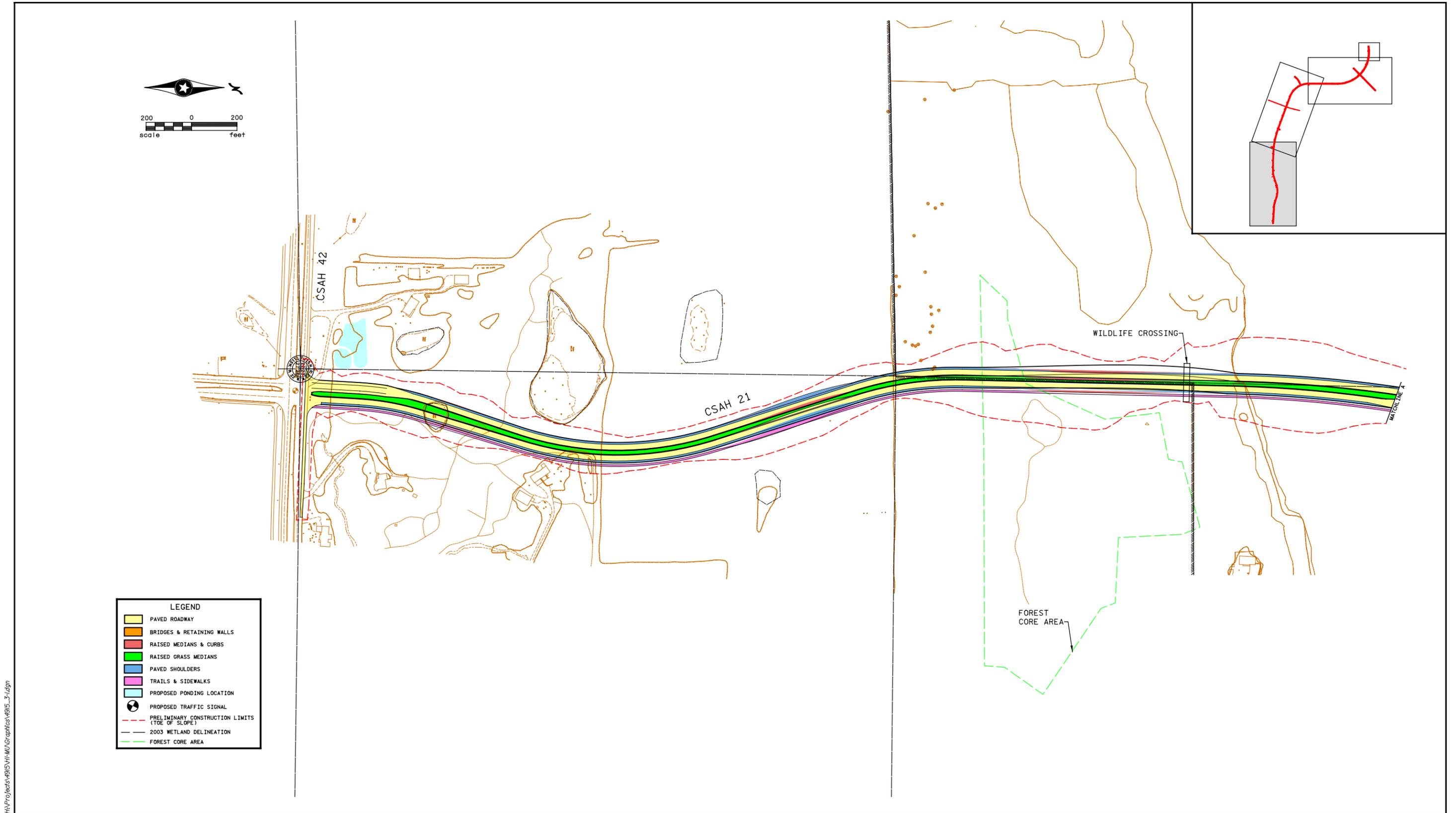
### 3.3 COMMENTS AND AGENCY REVIEW

All comments that have been received related to the proposed project are available on file at the Scott County Public Works offices and are included in Appendix A of this FEIS.

A TAC meeting was held following the close of the DEIS comment period to review the document and the comment period findings about the relative impacts and benefits of each alternative, as well as the Scott County Board's decision that the Build Alternative incorporate the eastern alignment option and the four-lane at-grade intersection option as the Preferred Alternative. The Preferred Alternative decision was favorably received by TAC members in attendance.

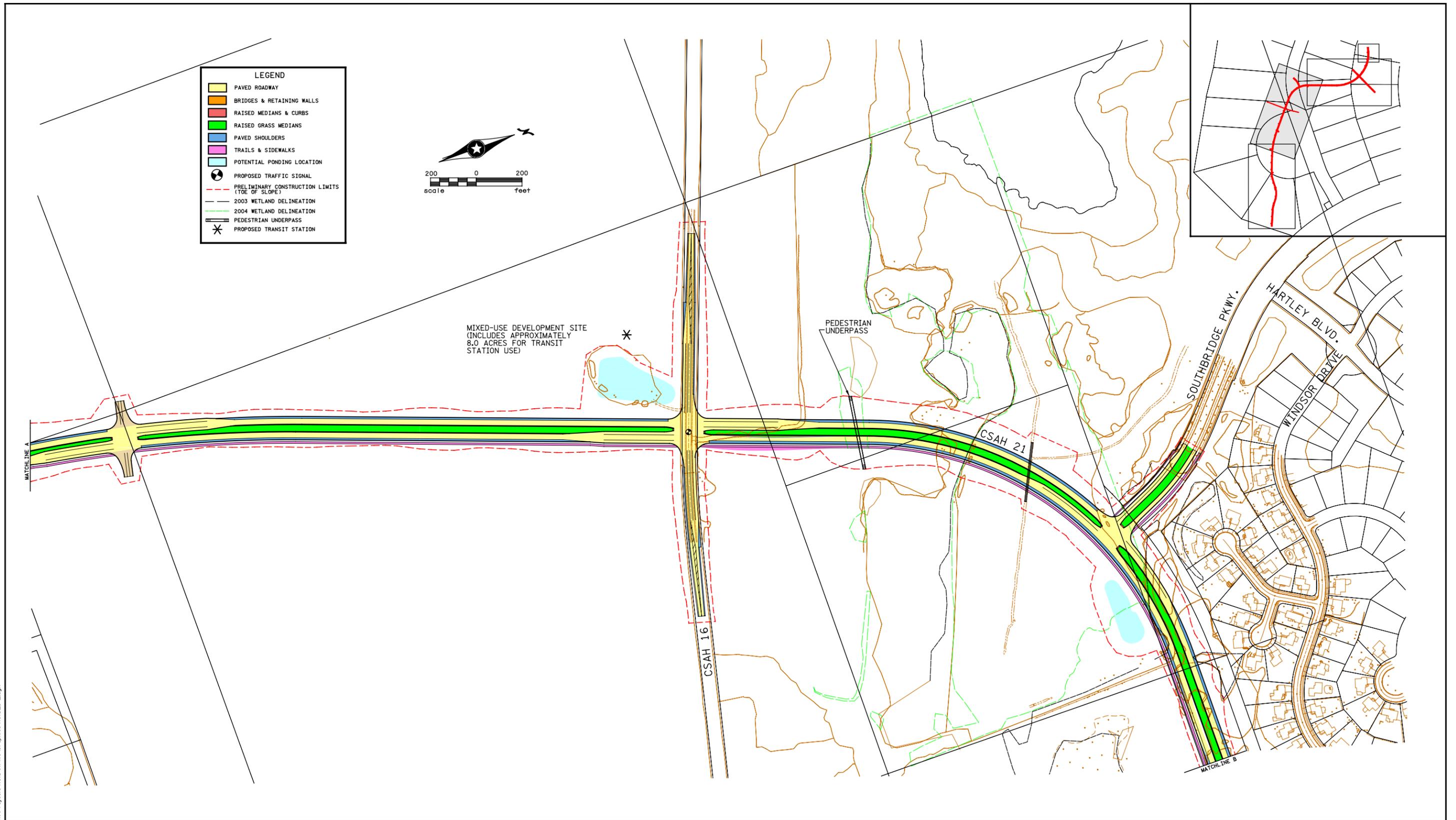
In addition, representatives from wetland regulatory agencies (e.g., the Army Corps of Engineers, Minnesota Board of Soil and Water Resources, among others) met with County project staff following the DEIS comment period on April 18, 2007, and agreed that the process used to identify the Preferred Alternative, with identified options, was valid with respect to wetland regulations.

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**PREFERRED ALTERNATIVE (SOUTH SEGMENT)**  
 CSAH 21 FINAL ENVIRONMENTAL IMPACT STATEMENT  
 Scott County, Minnesota

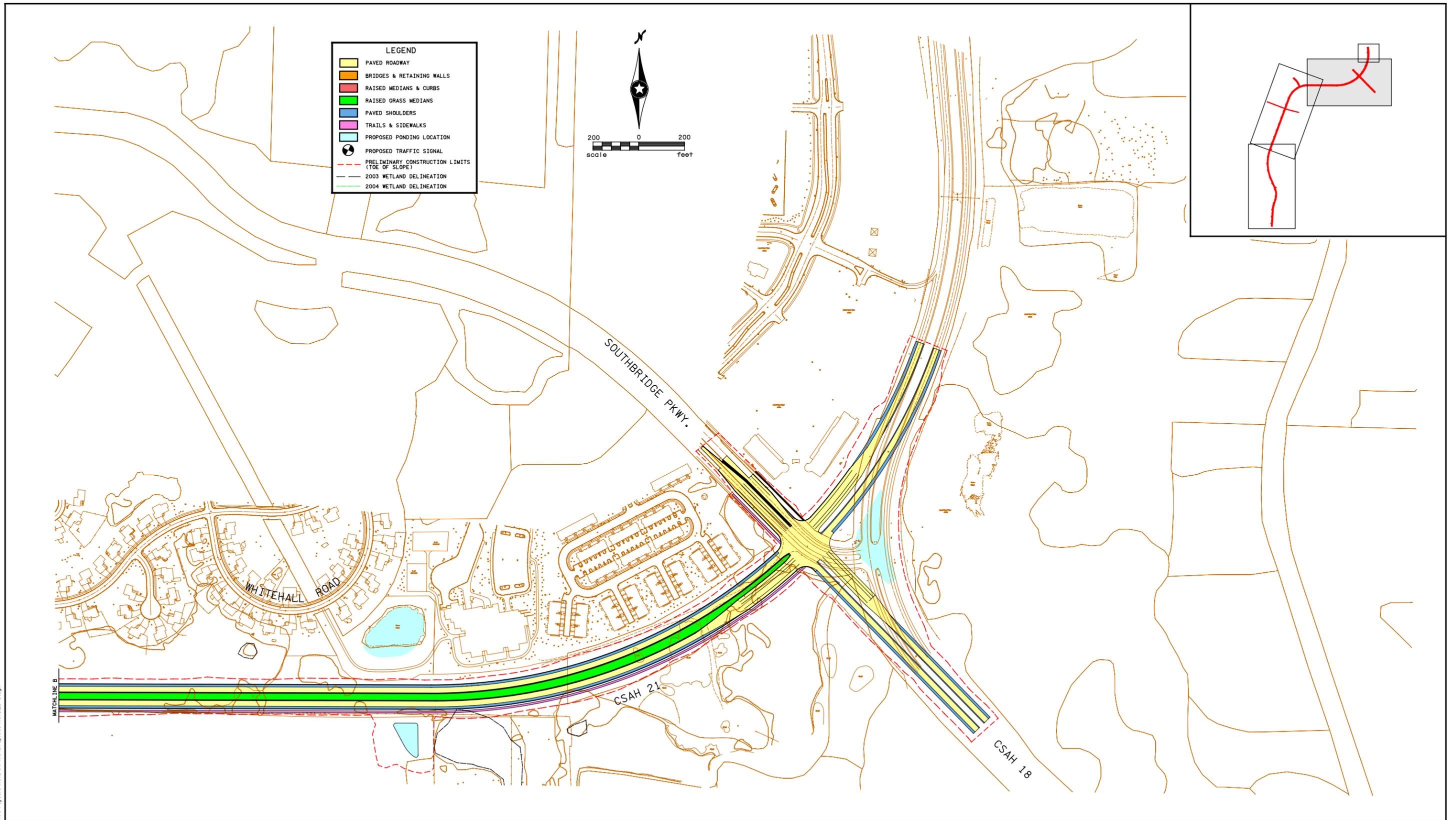
**Figure 3-1**



**PREFERRED ALTERNATIVE (MIDDLE SEGMENT)**  
 CSAH 21 FINAL ENVIRONMENTAL IMPACT STATEMENT  
 Scott County, Minnesota

**Figure 3-2**

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**PREFERRED ALTERNATIVE (NORTH SEGMENT)**  
 CSAH 21 FINAL ENVIRONMENTAL IMPACT STATEMENT  
 Scott County, Minnesota

**Figure 3-3**

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## 4.0 WETLAND FINDING

### 4.1 INTRODUCTION

As described in Chapter 1, CEQ regulations provide for the option of an Abbreviated Version of a Final EIS, which includes among other requirements, provision of a Wetland Finding. This chapter provides all relevant information contained in the DEIS, as well as updates since the publication of the DEIS. The most pertinent updates provided herein involve the mitigation efforts for the proposed impacts related to the Preferred Alternative.

Wetlands are protected at the federal level by Section 404 of the Clean Water Act and at the state level by the Minnesota Wetland Conservation Act (WCA) and Executive Orders that mandate the “no net loss” of wetland functions and values. These laws further require that projects seek to avoid, then minimize, and finally mitigate any unavoidable impacts (referred to as sequencing). In order to comply with federal and state laws, all potentially affected wetlands in the project corridor have been identified and classified, and the project design has been developed in an attempt to avoid and minimize impacts to the greatest extent practicable. Unavoidable impacts are proposed to be mitigated.

In September 2002, the U.S. Army Corps of Engineers (COE) was invited by the FHWA to be a “cooperating agency” for the project. The COE is included as a cooperating agency because it issues permits for wetland impacts under Section 404 of the Clean Water Act. Under the WCA, a Technical Evaluation Panel (TEP) is made up of a knowledgeable representative each from the Local Governmental Unit (LGU), the County Soil and Water Conservation District (SWCD) and the Minnesota Board of Water and Soil Resources (BWSR). In December 2003, following completion of the SD/DSDD in August 2003, members of the TEP began meeting with staff of Scott County, the Prior Lake-Spring Lake Watershed District (PLSLWD), the Lower Minnesota River Watershed District (LMRWD), the Minnesota Department of Natural Resources (DNR), the COE and the County’s consultant, in an expanded TEP to review alternatives development and other issues relating to wetland review and agency concerns. Members of the expanded TEP met three additional times during the development of the DEIS.

Through 2005 and 2006, the expanded TEP remained involved with coordinated mitigation efforts involving the Swamp Lake Wetland Mitigation Site. This site was developed cooperatively between the City of Shakopee and Scott County to mitigate the City’s Pike Lake Road project and the County’s CSAH 21 project. Construction of this site was completed in fall 2006. The 2007 growing season experienced below normal precipitation, resulting in lower than expected water levels within the mitigation area. Therefore, the TEP is expected to provide final sign-off on the success of the site during the 2008 growing season. Refer to Section 4.5 for details about this site.

### 4.2 WETLAND IDENTIFICATION

The process of identifying wetlands in the project area involved reviewing USGS quadrangle maps, USFWS National Wetland Inventory maps, DNR Protected Waters and Wetlands maps, aerial photos and finally, an on-site visit to delineate wetland boundaries using methodologies set forth in the US Army Corps of Engineers *Wetland Delineation Manual 1987*. Field conditions

and results were documented in a wetland delineation report (December 2003 – alphabetical labels). Following submission of this delineation, it was determined that a separate delineation of the Hanson property (located in the northern portion of the project area) had been submitted to and approved by the TEP. Avoidance alternatives were based upon a combination of these delineations and discussed with TEP agencies in the winter and spring of 2004.

An additional delineation was also completed by the developer of the former Shutrop property in 2004 (numerical labels). The TEP approved the County's Fall 2003 delineation for all the wetlands except for the wetlands on the former Shutrop property, and approved the developer's delineation for the wetlands on the former Shutrop property (W-4, W-5, W-6). Impact analysis has been based on the TEP-approved delineations.

Fourteen wetlands (Wetlands A – M, W-4 and W-5) were identified in the project corridor. A summary of wetland types and areas is presented on Table 4-1. Identified wetlands are classified according to methodologies set forth in *Wetland Plants and Plant Communities of Minnesota & Wisconsin - Second Edition* (USCOE Publication; Eggers and Reed, 1997), *Wetlands and Deepwater Habitats of the United States* (USFWS/OBS Publication 79/31; Cowardin et al. 1979) and *Wetlands of the United States* (USFWS Circular 39, Shaw and Fredine, 1971). Figures 4-1 through 4-3 show wetland boundaries accepted by the TEP and used for project design.

Wetland functions were analyzed using the Minnesota Routine Assessment Method Version 3.0 (MnRAM 3.0). This method requires the user to provide up to 72 data points for each wetland. The MnRAM 3.0 computer program then calculates functional levels as high, medium or low for 14 wetland functions. A detailed analysis of wetland functions is presented in the December 2003 wetland delineation report completed for this project. A range of functional levels calculated by MnRAM 3.0 is presented in Table 4-1 for each wetland.

In accordance with Section 404 of the Clean Water Act and agency guidance, the COE has completed the jurisdictional determination regarding the affected wetlands in the project area. Results are indicated in Table 4-1.

### 4.3 IMPACTS OF PREFERRED ALTERNATIVE

Chapter 2 of this FEIS describes the Preferred Alternative, including the alternative identification and evaluation process. Impacts of the Preferred Alternative are shown on Table 4-1. During the evaluation for the DEIS, impacts to Wetland WL were shown as a range from 0.05 to 0.09 acres, depending upon the alternative. However, this information was incorrect, as all alternatives equally impacted Wetland WL with 0.09 acres of impact. The smaller amount of impact (0.05 ac) was calculated only to the extent of the right of way; however, it was determined that the impact would extend slightly beyond the right of way, resulting in 0.09 acres of impact to Wetland WL regardless of alternative chosen. Therefore, the total proposed impact to wetlands for all alternatives evaluated in the DEIS would be 7.07 acres.

**TABLE 4-1  
WETLAND SUMMARY AND PROPOSED IMPACT**

<b>Wetland ID</b>	<b>Area (acres)</b>	<b>Type Eggers and Reed (Circ. 39/Cowardin)</b>	<b>Functional Level</b>	<b>Proposed Impact (acres)</b>
WA	0.38	Shallow Marsh (Type 3/PEMC)	Low to High	0.0
WB	0.23	Wet Meadow (Type 2/PEMB)	Low to High	.23
WC (DNR #248W)	2.59	Shallow Marsh (Type 3/PEMF)	Low to High	0.0
WD	1.12	Shallow Marsh (Type 3/PEMC)	Low to High	0.0
WE	0.30	Shrub Swamp (Type 6/PSSA)	Low to Moderate	0.0
W-4	.69	Wet Meadow (Type 2/PEMB)	Not completed	0.48
W-5* (part of WF)	.8	Wet Meadow (Type 2/PEMB)	Not completed	0.0
W-6* (WF)	>50	Shallow Marsh (Type 3/PEMCd)	Low to High	6.21
WG	0.52	Shallow Marsh (Type 3/PEMCd)	Low to High	0.0
WH	0.41	Shallow Marsh (Type 3/PEMC)	Low to High	0.06
WI	3.06	Shrub Swamp (Type 6/PSSA)	Low to High	0.0
WK	0.09	Seasonally flooded basin (Type 1/PEMA)	Low to High	0.0
WL	1.91	Seasonally flooded basin (Type 1/PEMA)	Low to High	0.09
WM	0.09	Seasonally flooded basin (Type 1/PEMA)	Low to High	0.0
			<b>Total Wetland Impacts:</b>	<b>7.07 acres</b>

Shaded rows indicate affected wetlands for which the Corps of Engineers (COE) has determined to have jurisdiction.

\*Two delineations were conducted; the number labels are the TEP-approved delineations.

As shown in Table 4-1, the Preferred Alternative would impact approximately 7.07 acres of wetlands. Wetlands WB, W-4, W-6 (WF), WH, and WL would all be impacted with the Preferred Alternative.

Wetland WB is a wet meadow that functions at a high level for maintenance of the hydrologic regime and water quality in the area. While this wetland, like most of the wetlands in this area, is dominated by reed canary grass (*Phalaris arundinacea*), other wetland plant species are present, providing a moderate level of vegetative diversity. This wetland also functions at a moderate level in maintaining the wildlife habitat integrity of the area, although it is considered to provide a low level for the aesthetic, recreational, educational and cultural function.

Wetland W-4 is a wet meadow located in a horse pasture that functions at a high level for maintenance of the hydrologic regime and water quality in the area. It is dominated by reed canary grass with other wetland plant species present, providing a moderate level of vegetative diversity. This wetland functions at a moderate level in maintaining the wildlife habitat structure of the area and in offering aesthetic, recreational, educational and cultural uses. Storm water is not discharged into this wetland, so it is rated high for sustainability because it does not receive inputs of sediment and nutrients.

Wetland W-6 (WF) is also referred to as the wetland on the former Shutrop property, and is part of a greater wetland complex including Dean Lake and the fringe area. This shallow marsh functions at a high level in providing shoreland and water quality protection for Dean Lake, as well as maintenance of the hydrologic regime. This wetland has moderate vegetative diversity, although it is considered to be dominated by the invasive reed canary grass. A moderate level of flood and storm water attenuation and maintenance of wetland water quality is provided by this wetland. However, the wetland itself is also moderately sensitive to storm water input and urban development and storm water should be provided additional treatment prior to discharge to this wetland. Overall, this wetland provides moderate levels of functions for wildlife and aesthetics.

Wetlands WH and WL function on a similar level in most cases, providing a high level of maintenance of the hydrologic regime and downstream water quality. While WH is a shallow marsh with moderate vegetative diversity, WL is a wet meadow with a low level of vegetative diversity, as it is covered with a monotype of reed canary grass. These wetlands both provide a moderate level of flood and storm water attenuation, wildlife habitat and aesthetics. Both wetlands are moderately sensitive to urban development storm water input, and storm water should be provided additional treatment prior to discharge to any remaining wetland area, as well as mitigation areas.

#### 4.4 SEQUENCING CONSIDERATIONS

Sequencing is the process followed during project development to first avoid then minimize wetland impacts to the extent practicable, then finally mitigating for any unavoidable impacts that remain. As described in the DEIS, early studies evaluated impacts on wetlands of various corridor alternatives. Also as described in the DEIS, wetland protection was among the key objectives guiding the alignment refinement process.

While developing plans and layouts for the Preferred Alternative, potential alignments and design details that avoided filling wetlands were evaluated. An urban design was selected for the entire corridor to minimize impacts to area wetlands. At the south terminus of the proposed project, just north of CSAH 42, the alignment of the Preferred Alternative was modified by adjusting the alignment to the east to avoid impacting Wetland C, a DNR Protected Water (DNR #248W).

Generally north of CSAH 16, an alternate build alignment east of the Preferred Alternative was developed in an effort to avoid and further minimize the wetland impacts of the Preferred Alternative. In order to move the CSAH 21 alignment to the east (to minimize impacts to wetland W-6 on the former Shutrop property), CSAH 16 would need to be realigned from its current location (to avoid creating a skewed intersection). This would also create a spacing issue regarding the distance between the Pike Lake Road (a City of Shakopee road) and CSAH 21 intersections with CSAH 16 [the Preferred Alignment spacing is approximately 1,600 feet; the alternative alignment spacing is approximately 1,000 feet; the County standard for intersection spacing is ¼ mile (1,320 feet)].

While this alternate alignment would somewhat reduce the area of wetland impact for CSAH 21 itself, it would require a longer extension of Southbridge Parkway to CSAH 21 that poses its own wetland impacts. The combined impacts for CSAH 21 and the extension of Southbridge Parkway for this alternate alignment would be 7.8 acres compared to the 7.07 acres of wetland impact from the Preferred Alternative.

Also reviewed was the potential for moving the CSAH 21 alignment even further east to completely avoid wetland W-6 on the former Shutrop property. Doing so would again involve wetland impacts to this wetland for the Southbridge Parkway extension to CSAH 21, and additional impacts to wetlands further east. In addition to a severe skew crossing of CSAH 16 at or very close to Pike Lake Road, substantial bisecting of private property and additional grading, vegetation and habitat impacts south of CSAH 16 (YMCA camp bluff area) would be required.

Building a bridge over wetlands W-4, W-6 and the Prior Lake Outlet channel has been considered for further minimization of wetland impacts. A comparison was completed between construction of a bridge over these wetlands and construction of the roadway on fill through the wetlands. Construction on fill would require excavation of the muck and poor soils, installation of a 10 foot x 10 foot box culvert for the Prior Lake Outlet channel, placement of solid structural fill material, as well as mitigation for the wetland impacts. Wetland impacts from construction on roadway fill is estimated at about 6.01 acres, whereas the impacts from a bridge would be approximately 500 square feet for the bridge piers. However, the bridge would have a low profile, and it would not be elevated to any degree over the wetland. This would be regulated as impact by the COE because of the near-total shading of the plant community, and would not result in an advantage in mitigation requirements over a road-fill scenario. Therefore, approximately 11.22 acres of mitigation would be required for both the roadway fill impact as well as the bridge impacts.

A bridge would have other impacts to adjacent development sites and the park area with the additional footprint needed at either end, and additional impacts if storm water ponding is required on the south side of the outlet. Construction on roadway fill would necessitate realignment of the Prior Lake Outlet channel. Cost comparisons have shown that bridging would cost nearly three times as much as construction on roadway fill and is therefore not financially feasible for a public entity (\$3 million for bridge compared to \$1 million for roadway fill).

## 4.5 MITIGATION

Current state and federal regulations require mitigation of all wetland impacts that remain after following the sequencing protocol. State (WCA) regulations require a wetland mitigation ratio of 2:1, including New Wetland Credit (NWC) for the first 1:1, and Public Value Credit (PVC) areas, such as permanent upland buffer and water quality treatment ponds, that may be used for replacement credit in excess of the initial 1:1 ratio. Federal (COE) regulations require that created or new wetlands must be used for the first 1.5:1 ratio.

At a 2:1 mitigation ratio, the 7.07 acres of impact resulting from the project necessitates approximately 14.14 acres of wetland mitigation (at least 10.06 acres of which must be created or new replacement wetlands in accordance with COE requirements). If wetland regulations change during the course of project implementation, the required mitigation may change.

Wetland mitigation under WCA should occur – consistent with availability of mitigation sites - following this priority order:

- 1) On-site or in the same minor watershed as the affected wetland
- 2) In the same watershed as the affected wetland
- 3) In the same county as the affected wetland
- 4) In an adjacent watershed or county
- 5) Statewide.

In May 2005, the COE updated the compensatory mitigation policy requiring a minimum 1.5:1 new wetland replacement area. The COE uses this 1.5:1 mitigation ratio as a starting point only, increasing the minimum requirements in certain circumstances. This decision is made on a project-by-project basis. Depending upon the quality of the impacted resource, the distance of the mitigation site from the impact site, or the extent to which the impact is being replaced type-for-type, the mitigation ratio could be increased. With a watershed based approach, impacted wetlands replaced outside of the Minnesota River (Shakopee) watershed would require a higher mitigation ratio. In coordination with WCA mitigation options, replacement credit may be approved for enhancement of existing wetland or permanent protection of upland buffer area, above the minimum 1.5:1.

The compensatory mitigation policy developed by the COE, in coordination with WCA administration, identifies mitigation provided in-advance of impacts as a high priority. In-advance mitigation is defined as either an established and agency-approved mitigation bank, or compensation sites that have established hydrology and vegetation, but the vegetation is not mature. The minimum requirement is that the compensation site has wetland hydrology and hydrophytic vegetation established for a full growing season (May-October) prior to use as mitigation for any authorized impact to wetlands. Mitigation that is not provided in-advance would result in an incremental increase in the mitigation ratio, to offset the temporal loss of wetland functions between the impact and eventual establishment of the mitigation site. Other factors may also result in an incremental increase in the mitigation required by the COE, such as replacement completed off site, out of the watershed and of a different type of wetland from that impacted.

On-site mitigation is preferable to off-site, however, the amount of wetlands located on site creates a difficult challenge for on-site mitigation. Discussions between the City of Shakopee and the County resulted in coordination on an off-site mitigation site within the same watershed, creating one large mitigation site to cover wetland impacts from CSAH 21 and Pike Lake Road. This project is referred to as the Swamp Lake Wetland Mitigation Site (SE ¼ Section 14 and SW ¼ Section 13, T114N, R23W) in Sand Creek Township, Scott County, as shown on Figure 4-4. Through construction of a ditch block, over 14 acres of wetland were restored at this location, outletting directly to Swamp Lake (DNR #111P). Construction was completed in fall 2006, with final seeding and establishment expected during spring 2007. A wetland delineation will be completed during the 2008 growing season to accurately determine the resulting wetland credits. Following normal precipitation, the majority of the wetland area is expected to establish as a shallow marsh (Type 3), with a deep marsh (Type 4) in the center and a seasonally flooded (Type 1) fringe. A native upland buffer was also established, and the area will be determined following the delineation.

As noted, the Swamp Lake Wetland Mitigation Site was a cooperative venture to address impacts from two projects, and the City's project, which impacted 3.18 acres of wetland, required the use of 6.36 acres of new wetland credit from this site. There are approximately 8.27 acres of new wetland credit remaining and available to the County for the CSAH 21 Extension project. Up to 4.08 acres of the Swamp Lake site native upland buffer PVC credits will be used for replacement credit above the initial 1.5:1. At their meeting on April 18, 2007, TEP members approved the use of the credits remaining in the Swamp Lake Wetland Mitigation Site, following final delineation in the 2008 growing season, as compensatory mitigation for the CSAH 21 Extension impacts.

In order to address the approximate mitigation balance of 1.79 acres of NWC needed, Scott County Highway will purchase wetland banking credits from the "German Settlement" site located in Sections 34 and 35 of Blakeley Township (T 113N, R25W), Scott County, as shown on Figure 4-5. BWSR and the COE have approved this site for deposit and use in the Minnesota Wetland Bank. As of April 2007, this bank site has over 50 acres of NWC of Types 2, 3 and 4 wetlands. Use of this site addresses the in-advance requirements of the COE mitigation policy.

In addition, while not serving as replacement of wetland area, the storm water management plan detailed in the DEIS will replace and improve water quality and floodwater storage functions in the project corridor.

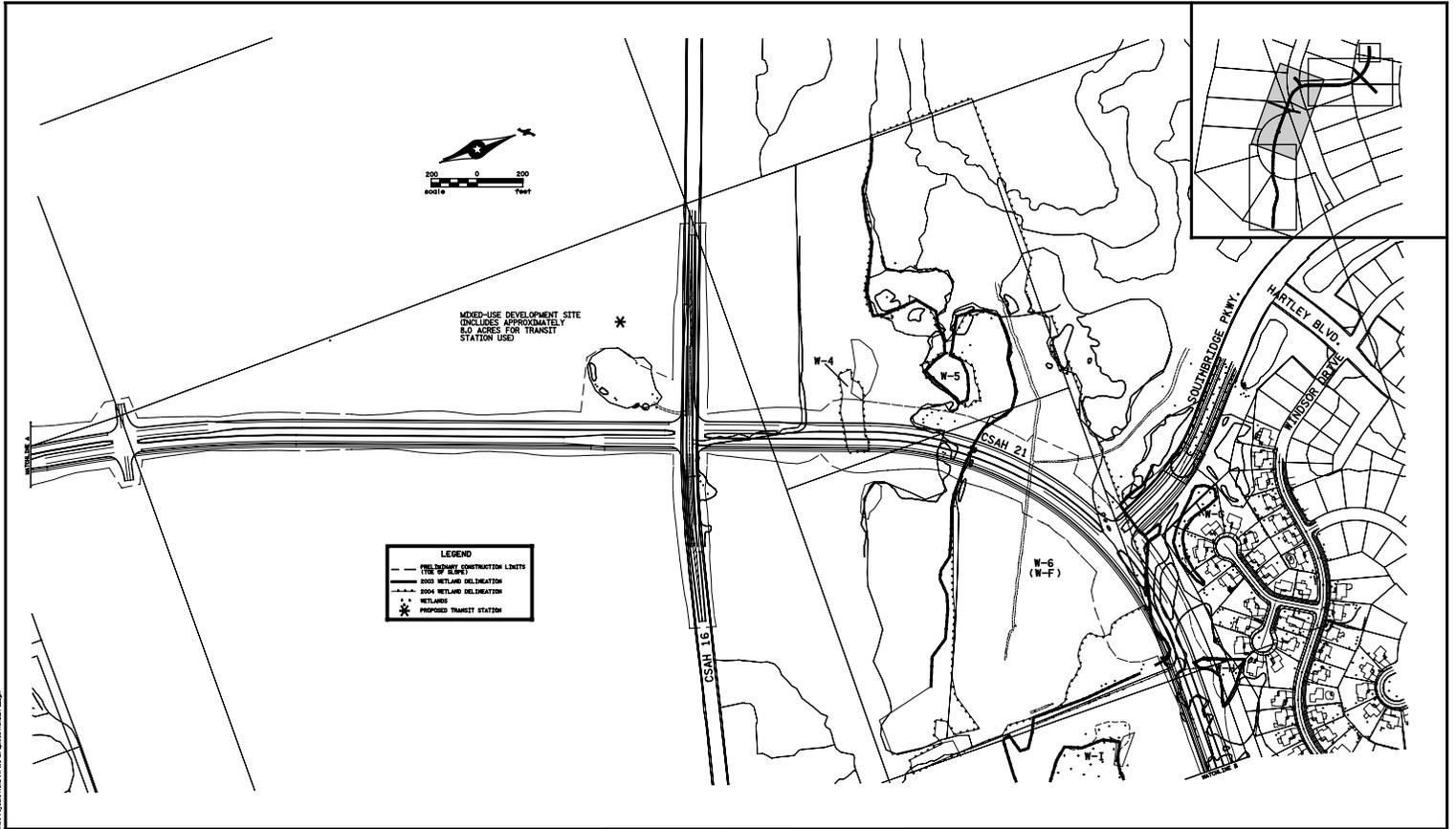
#### 4.6 FINDING

Based upon the above considerations, it is determined that there is no practicable alternative to the proposed construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.



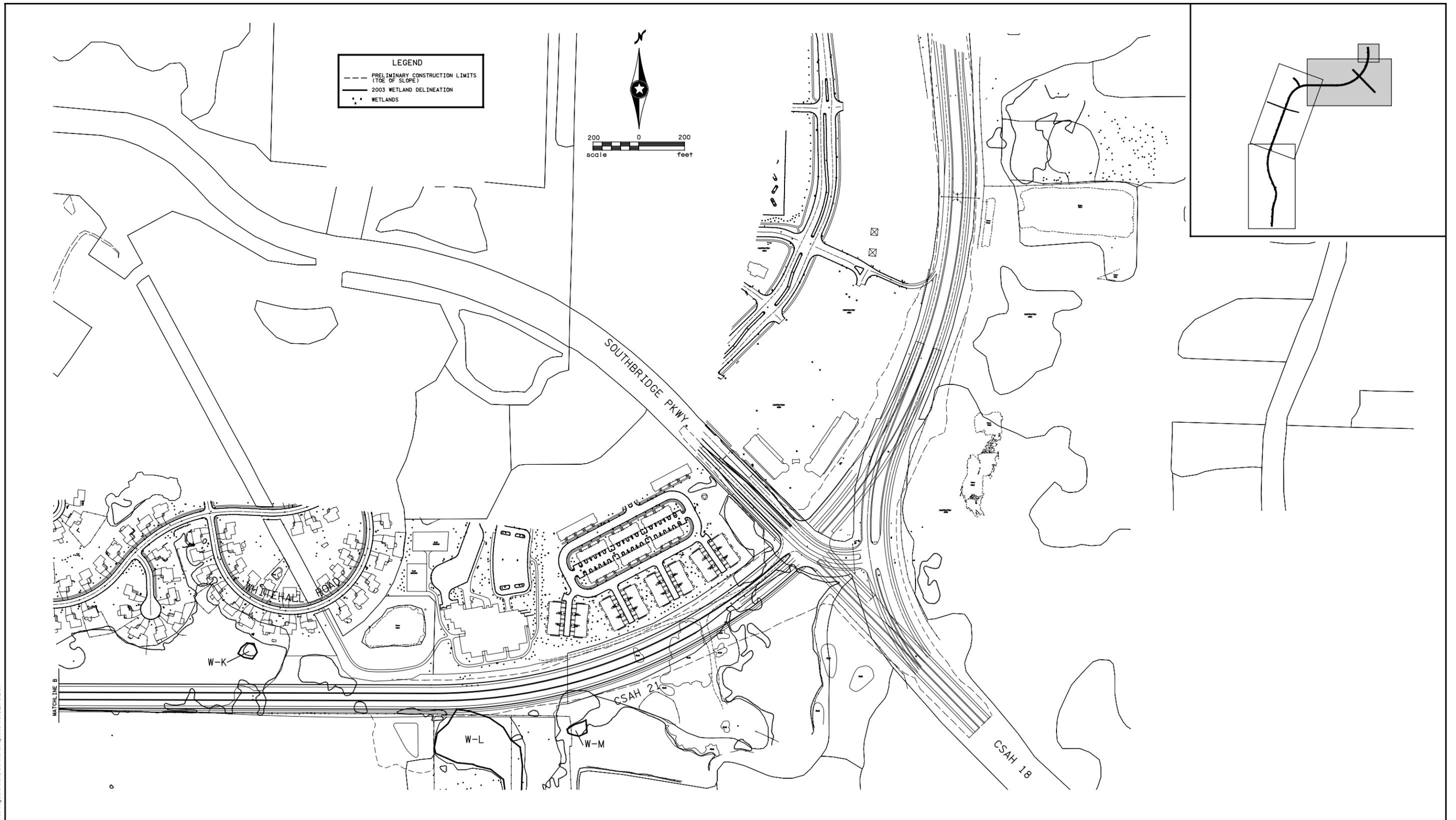
**AREA WETLANDS (SOUTH SEGMENT)**  
 CSAH 21 FINAL ENVIRONMENTAL IMPACT STATEMENT  
 Scott County, Minnesota

**Figure 4-1**



**AREA WETLANDS (MIDDLE SEGMENT)**  
 CSAH 21 FINAL ENVIRONMENTAL IMPACT STATEMENT  
 Scott County, Minnesota

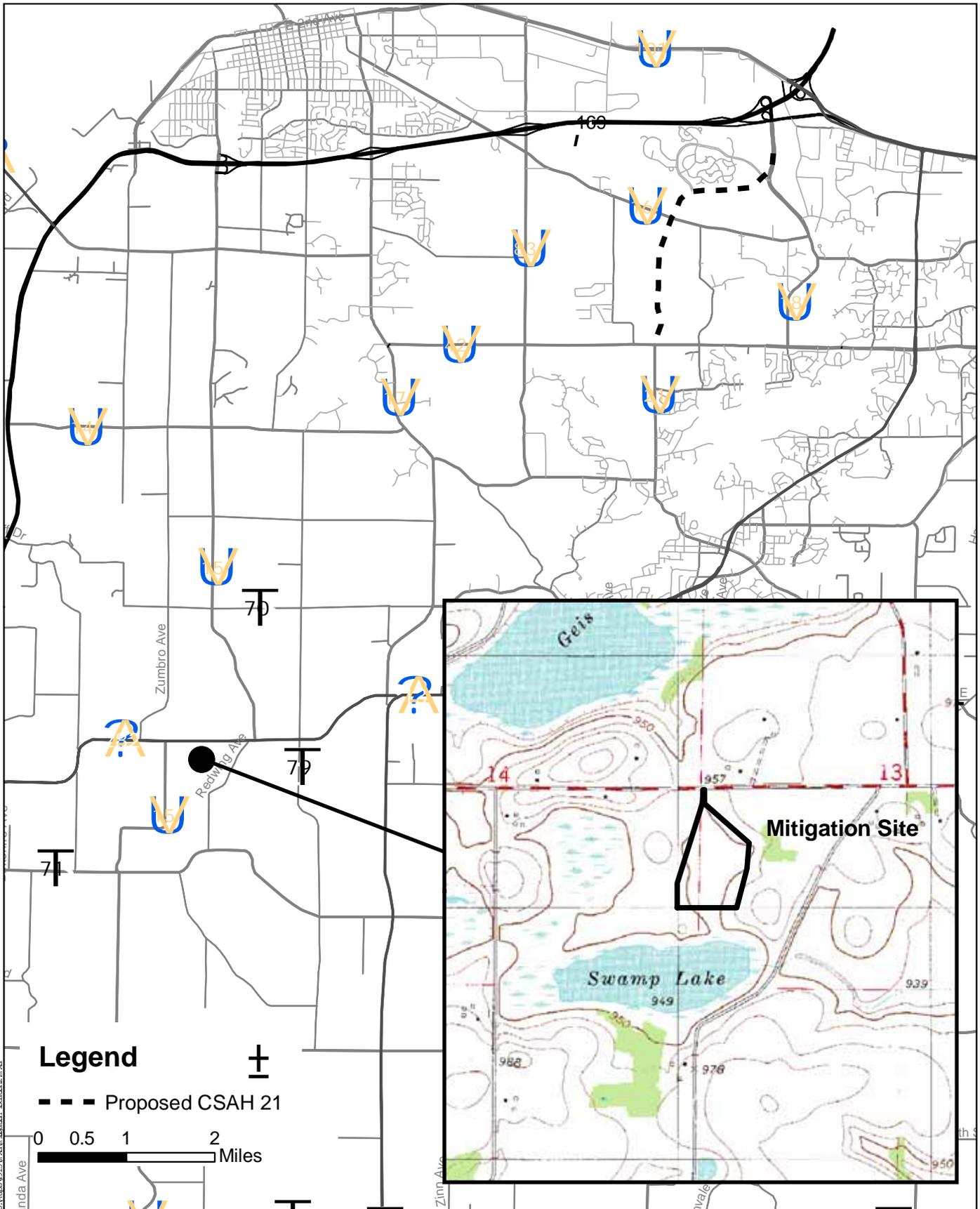
Figure 4-2



**AREA WETLANDS (NORTH SEGMENT)**  
 CSAH 21 FINAL ENVIRONMENTAL IMPACT STATEMENT  
 Scott County, Minnesota

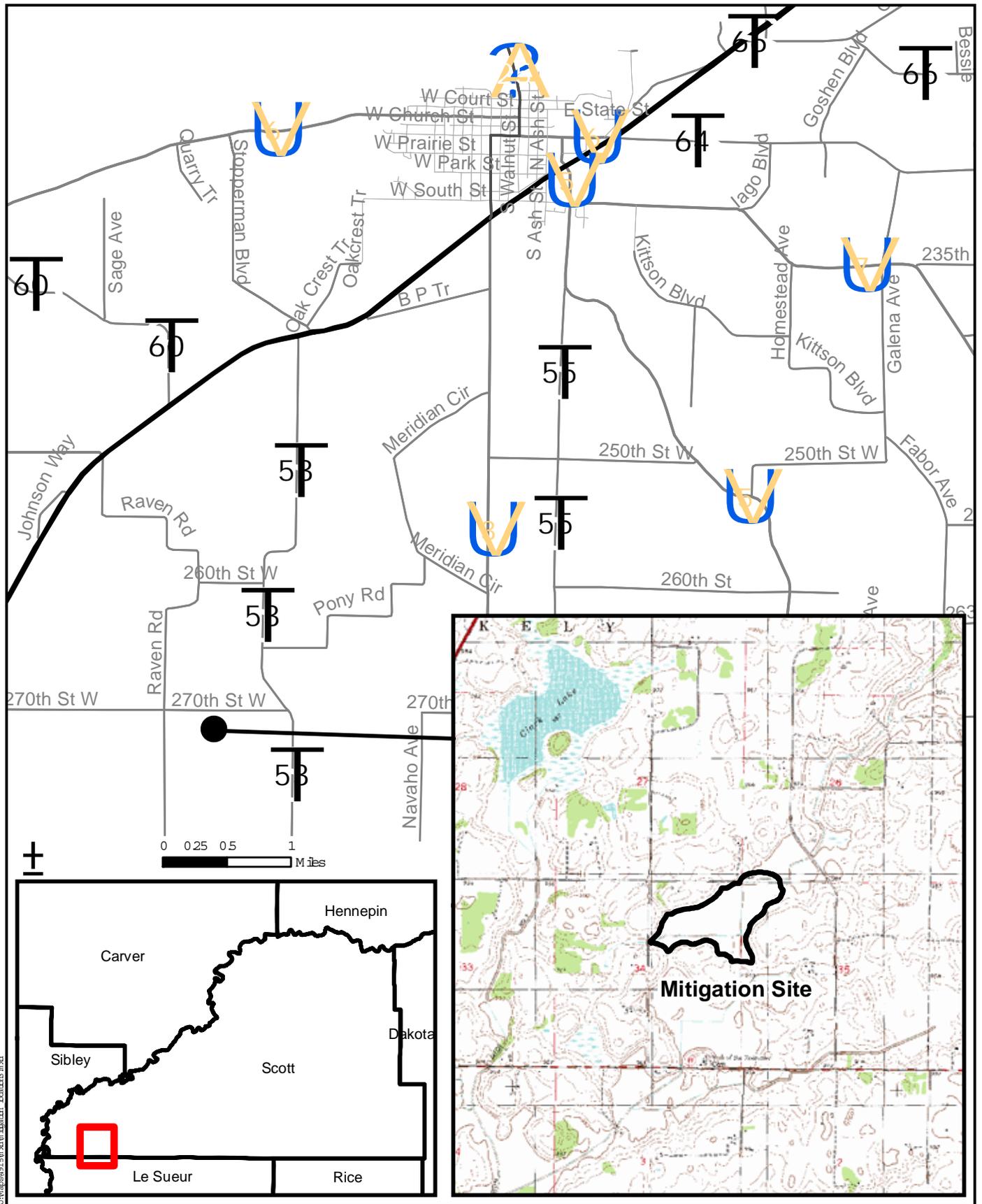
**Figure 4-3**

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HAUER SWAMP LAKE WETLAND MITIGATION SITE

Figure 4-4



GERMAN SETTLEMENT WETLAND MITIGATION SITE

Figure 4-5

## 5.0 MITIGATION COMMITMENTS

This chapter summarizes the adverse environmental impacts of the Preferred Alternative that cannot be avoided and the commitments to mitigate those impacts. See Table 5-1. Unless otherwise noted, mitigation is the responsibility of Scott County.

**TABLE 5-1  
MITIGATION COMMITMENTS**

<b>Issue</b>	<b>Impact</b>	<b>Mitigation</b>
<b>Access</b>	Impact to CSAH 18/CSAH 16.	¾ access at CSAH 18/16 west intersection.
<b>Traffic</b>	Changes in access to the existing county road system, the existing and planned city road systems, and to TH 169.  CSAH 21 will not provide access to individual properties.	As traffic increases, connections will be monitored to determine when improvements may be needed.  Where access to any properties severed by the project is substantially compromised, acquisition of the severed portion of the lot will occur or appropriate damages will be paid.
<b>Right of Way</b>	25.5 acres; 8 property owners.	All acquisition of property due to the proposed project will be conducted in accordance with the Uniform Relocation and Real Property Acquisition Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 and 49 Code of Federal Regulations, Part 24, and effective April 1989 (revised January 2005).
<b>Traffic Noise</b>	8 – 23 dBA increase over existing conditions.	Analysis found that noise barriers could be effective at three receptors along the corridor. Consultation with residents and local governments will occur before decisions are made regarding noise barriers.  Developers will be responsible for cost of noise mitigation in developed and developing areas per development agreements.
<b>Contamination</b>	Dump site in vicinity of proposed transit station and stormwater pond.	Dump site will be investigated prior to construction. If the site is found to be contaminated the County will: <ul style="list-style-type: none"> <li>– Consult the MPCA,</li> <li>– Investigate the need to line proposed stormwater pond,</li> <li>– If clean-up method(s) and cost are determined to be acceptable, the county will undertake necessary actions.</li> </ul>
<b>Vegetation</b>	22.8 acres of forest; 2.3 acres of maple-basswood forest core.	Trees removed will be replaced in accordance with the applicable Prior Lake and Shakopee City ordinances.  Disturbed areas will be re-vegetated with native plants and land in the right of way will be managed to have diverse grassy vegetation with trees and shrubs outside of the required roadway clear zone.

**TABLE 5-1 continued  
MITIGATION COMMITMENTS**

<b>Issue</b>	<b>Impact</b>	<b>Mitigation</b>
<b>Fish and Wildlife</b>	New roadway corridor will create barrier to wildlife movement.	Two grade-separated crossings will be incorporated into the project, one wildlife crossing and one pedestrian underpass that may be used by smaller wildlife.  BMPs will be implemented during construction to control erosion and sediment discharge into water bodies.  Crossing of the Prior Lake Channel will be designed to facilitate continued seasonal fish migration.
<b>Threatened and Endangered Species</b>	Species in the emergent marsh community may be indirectly impacted by isolation/ fragmentation and introduction of invasive species.	If during construction, a protected plant or animal species is discovered, measures will be taken to avoid, minimize, or alleviate impact.  BMPs will be used to minimize disturbance.
<b>Invasive Species</b>	Possible.	Re-vegetation of disturbed soil (with native plants and management of land in the right of way with diverse grassy vegetation) as described under vegetation mitigation) will be done as soon after construction as possible to decrease the opportunity for invasion by exotic species.  Construction equipment will be properly cleaned before entering the project area.
<b>Visual</b>	The project will introduce urban roadway (pavement and structures) in currently undisturbed, wooded, and agricultural lands.  Headlights from northbound traffic may be visible from selected locations within the Southbridge development.	Design and alignment features selected to minimize the cross section (i.e., urban design).  Grassy median and landscaping.
<b>Water Quality</b>	Typical roadway pollutants.  Increased flow rate into Dean Lake.  Potential for bluff erosion and sediment deposition.	Detention/treatment ponds, filter strips, infiltration at pond edges, and treatment ditches consistent with local, state and federal requirements.  Detention area outlet structures will be designed to accommodate downstream capacity constraints.  Special care will be taken along bluff impact zones – BMPs will conform to MPCA guidance.  Temporary sedimentation facilities upstream of Pike Lake may be implemented during construction to avoid further impacts to water quality in the lake.  A total of 6.9 acre-feet of ponding will be required – ponds will meet National Urban Runoff Program standards.
<b>Wetlands</b>	5 wetlands, 7.07 acres of impact total.	Sequencing protocol was followed in order to avoid impacts where reasonable, with priority given to on-site mitigation (consistent with Minnesota Wetland Conservation Act regulations).  14.14 acres of wetland mitigation will occur. 12.35 acres of mitigation have been implemented to date; 1.79 acres will be addressed through purchase of credits from Minnesota Wetland Bank.

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## **6.0 PUBLIC COMMENT AND RESPONSES TO COMMENTS**

### **6.1 OPPORTUNITIES FOR PUBLIC COMMENT**

The CSAH 21 DEIS was distributed in August of 2006 to agencies and organizations on the official Environmental Quality Board (EQB) distribution list, as well as additional agencies/organizations that had either requested a copy of the document and/or that could be affected by the project.

A public hearing to receive comments on the proposed project and DEIS was held on Tuesday September 21, 2006 from 6:00 to 8:00 pm in the County Board Room of the Scott County Government Center (200 Fourth Avenue West, Shakopee, Minnesota). The purpose of the public hearing was to provide an opportunity for public review and comment on the DEIS for the project. Fifty-one (51) persons signed in at the public hearing. Attendees were able to provide oral comment to a court reporter, fill out comment cards at the public hearing, or mail written comments to County staff by October 16, 2006. Subsequent to the public hearing, and at the request of the City of Shakopee, the public comment period was extended to November 20, 2006. At the conclusion of the comment period, a total of 39 comments (8 agency comments, 28 written public comments, and 3 oral comments) had been submitted either at the open house or mailed by November 20, 2006. All written and oral comments were incorporated into the Public Hearing Record for the DEIS.

Consistent with state environmental review rules, substantive comments are responded to in the FEIS. Written responses have been provided for comments pertaining to analysis conducted for and documented in the DEIS. Additionally, responses have been prepared for statements noting incorrect or unclear information or content requirements.

Responses to recurring comments are discussed in Section 6.2. All comments and the corresponding responses are prefaced in Section 6.3 and presented in Appendix A.

### **6.2 RESPONSES TO RECURRING COMMENTS**

In reviewing the comments received, several topic areas of common concern and feedback were evident. To facilitate a more clear and organized response, several categories encompassing common topic areas were defined and responses were drafted to address each. The topics are listed below and detailed in the remainder of Section 6.2.

1. Safety and Noise near Red Oak Elementary School
2. General Noise Concerns
3. TH 169 Congestion
4. Need for the Project
5. Impacts to Property Value
6. The Use of the Roadway By Non-County-Resident Traffic
7. Impacts to the YMCA and SMSC Property

### **Recurring Comment 1: Safety and Noise near Red Oak Elementary School**

Several comments were received that indicated concern about the proposed roadway safety and noise issues near the Red Oak Elementary School, which abuts the proposed corridor on its north side near the intersection of CSAH 21/CSAH 18.

**Response:** The County will provide fencing along the roadway in the area near the school for safety purposes. Noise abatement measures identified in 23 CFR 772.13(c) were evaluated in the DEIS for the proposed project. Noise was evaluated at a location near Red Oak Elementary School and adjacent residences. Noise levels are predicted to increase at this location with completion of the proposed project; however, these levels are anticipated to be below the Federal noise abatement criteria for residential land uses. Noise barriers were evaluated at this location and found to be not reasonable based on Mn/DOT's cost-effectiveness analysis methodology. The County proposes noise mitigation where it has been found to be reasonable, and therefore, no mitigation would be proposed for this location. However, the County will work with the City and neighborhood on desired design features, including landscaping.

### **Recurring Comment 2: General Noise Concerns**

Several comments were received that indicated concern about increased noise levels for residential areas and proposed developments.

**Response:** Noise monitoring and modeling has been completed along the proposed CSAH 21 route. Construction of the new roadway will increase noise levels compared to existing conditions. Noise mitigation measures were evaluated; the County proposes noise mitigation in areas where it has been found reasonable as described in Section 6.2.3 of the DEIS. This analysis assumes all reasonable barriers are also feasible (i.e., no engineering or physical restraints). Additional considerations of noise barrier feasibility will be addressed during final design including public and municipal input. It should be noted that if a berm were constructed it would likely require the removal of additional trees. It should also be noted that developers are responsible for the cost of noise mitigation in developed and developing areas per development agreements.

### **Recurring Response 3: TH 169 Congestion**

Several comments were received that indicated concern about bringing additional traffic to the already congested TH 169 Minnesota River crossing (Bloomington Ferry Bridge).

**Response:** The regional highway system has greater need for capacity improvements than can be met by available or projected funding. Whether motorists access TH 169 from CSAH 17, CSAH 83, CSAH 21, CSAH 18, or TH 13, there will

continue to be backups at this location. It is the County's responsibility to plan and construct the appropriate system for internal trips despite the fact that the regional system fails during certain peak periods in the area. As TH 169 becomes more congested the County needs alternatives in place in order to move traffic within the County.

#### **Recurring Comment 4: Need for the Project**

Several comments questioned the need for an additional north-south roadway in the area and the proposed location of the CSAH 21 extension.

**Response:** The need as described in the DEIS is to respond to existing and forecasted increases in travel demand on the existing roadway system. The existing roadway system does not provide adequate capacity to meet projected travel and transit demand within the travelshed, nor does the existing system function appropriately.

A safe and efficient transportation system requires location and design of specific roadways based on the functions of mobility (e.g. freeways carrying no local access traffic) and access to property (e.g. a cul-de-sac providing only for local-access traffic), with provision of the functional gradations between these two extremes (e.g. arterials, collectors, and local streets). Spacing, design, and access control criteria are established that facilitate the appropriate functioning of various classifications within the transportation network as a whole. The County functional classification plan for its existing and future roadway network is developed in coordination with its local communities and in the context of metropolitan transportation system. The County has concluded that to meet growing needs and the metropolitan functional classification roadway spacing criterion, an additional north-south arterial should be constructed between the two existing north-south arterial roadways in the study area, CSAH 18 and CSAH 83, which are three miles apart.

#### **Recurring Comment 5: Impacts to Property Value**

Several comments indicated concern that the proximity of the proposed roadway to their houses would decrease the property values of the homes.

**Response:** There is no accepted methodology to determine the effects to residential property values or rents resulting from a roadway project.

#### **Recurring Comment 6: The Use of the Roadway by Non-County-Resident Traffic**

Several comments indicated a concern that the proposed roadway would be paid for by Scott County, yet the majority of users would be traveling from outside of the County. These commenters expressed the opinion that the proposed roadway would not serve the residents of Scott County.

**Response:** Travel forecasts were prepared for the roadways within the study area during both the scoping study (years 2025 forecast) and the DEIS study (year 2030 forecast) in order to assess how future travel demand would affect the system with and without the proposed project. In addition, a selected link analysis was conducted during the scoping study (using 2025 forecast data) that identifies how trips generated within the travelshed of the proposed segment of CSAH 21 would be distributed on the remaining roadways in the network if CSAH 21 is not built. Together these analyses show that proposed CSAH 21 would primarily serve the Scott County communities of Shakopee, Prior Lake, and Spring Lake Township, with the travelshed of CSAH 21 being elongated north-south and centered on CSAH 21 south of the river and on TH 169 north of the river.

### **Recurring Comment 7: Impact to YMCA and SMSC Property**

Several comments indicated concerns about the project's impact on the YMCA or SMSC properties.

**Response:** The County has selected the eastern alignment option as the Preferred Alternative. Compared to the western alignment option, the eastern alignment option provides a fair distribution of property impacts to property owners, balances impacts to the YMCA (a community facility), with impacts to the land holdings of the SMSC. Differences between the two alignment options with regard to other impacts are minor.

## **6.3 COMMENTS AND RESPONSES TO COMMENTS**

Comment letters were received from the following governmental agencies and organizations:

- US Environmental Protection Agency
- SMSC
- Minnesota Department of Natural Resources (DNR)
- Minnesota Pollution Control Agency (MPCA)
- Metropolitan Council
- Prior Lake/Spring Lake Watershed District
- City of Prior Lake
- City of Shakopee

Additionally, 28 written public comments, and three oral public comments were received.

Copies of the comments received and the corresponding responses are included in Appendix A.

# **APPENDIX A**

## **Comments and Responses To Comments**



OCT 18 2006

October 16, 2006

Mr. Mitchell Rasmussen  
County Engineer  
Scott County Public Works Division  
600 County Trail East  
Jordan, MN 55352-9339

Re: Comments on CSAH 21 Draft Environmental Impact Statement

Dear Mr. Rasmussen:

Thank you for the opportunity to review and comment on the draft Environmental Impact Statement (EIS) for the proposed County State Aid Highway (CSAH) 21 extension. As you know, a portion of the proposed roadway alignment is within the boundary of the Prior Lake-Spring Lake Watershed District (PLSLWD), and therefore would be subject to the PLSLWD rules. The proposed roadway alignment north of CSAH 16 is outside of the PLSLWD, but crosses the Prior Lake Outlet Channel, which is owned and operated by the PLSLWD in partnership with the City of Shakopee.

The PLSLWD is most interested in the effects of this project on runoff to Pike Lake, the Prior Lake Outlet Channel and Dean Lake. We appreciate the County's efforts to consider these concerns as the proposed alignment and Draft EIS were developed. The PLSLWD does have some comments on the Draft EIS, as follows:

Chapter 6

- Section 6.5.3, page 6-28: The PLSLWD appreciates that the crossing of the Prior Lake Outlet Channel will be designed to facilitate continued seasonal fish migration. We look forward to working with the County as the crossing is designed and as our planned restoration and enhancement of the Prior Lake Outlet Channel moves forward.

← A

Chapter 7

- Table 7-1, page 7-3:
  - Water Quality: The PLSLWD also requires skimming velocities < 0.5 fps for outlet structures.
  - Water Quantity: The PLSLWD has a performance standard requirement for volume control in addition to requiring BMPs. The PLSLWD rules require that the first ½ inch of runoff from newly created impervious areas be controlled, either through volume reduction credits or through constructed practices such as infiltration basins.

← B

← C

## 1 Prior Lake Spring Lake Watershed District (PLSPWD)

- A Comment noted.
- B The FEIS replaces Table 7-1 (DEIS Chapter 7, Page 7-3) to note that PLSLWD requires skimming velocities <0.5 fps for outlet structures.
- C The FEIS replaces Table 7-1 (DEIS Chapter 7, Page 7-3) to note the following two items: 1) Performance standard requirement for volume control, in addition to requiring best management practices (BMPs), requires that the first 1/2-inch of runoff from newly created impervious areas be controlled, either through volume reduction credits or through constructed practices such as infiltration basins; and 2) Erosion and sediment control measures shall be consistent with BMPs, and shall be sufficient to retain sediment on-site.

- o Erosion and sediment control: The PLSLWD rules also address erosion and sediment control requirements.
- Section 7.2.3, page 7-5: The PLSLWD supports the location of regional treatment ponds along the proposed CSAH 21 alignment. We may have resources available to assist in the development of regional ponds, particularly if they are able to reduce existing runoff impacts to Pike Lake or the Prior Lake Outlet Channel.
- Section 7.2.3, page 7-5: The text in the second-to-last paragraph notes that the City of Shakopee has specific discharge limit requirements for the Blue Lake drainage area and therefore an effort has been made to eliminate runoff from discharging to this channel. The City and PLSLWD are in the process of negotiating a revised Joint Powers Agreement for the Prior Lake Outlet Channel that would also limit discharge rates to the outlet channel. That agreement is expected to be finalized this year.
- Section 7.3, beginning on page 7-6: The EIS should note that both Pike Lake and Dean Lake are listed on the state's list of impaired waters due to excess nutrients. The completion of Total Maximum Daily Load studies for these lakes could affect treatment requirements for stormwater runoff to the lakes.
- Table 7-2, page 7-10: Only half of the required infiltration area is identified for the Pike Lake subwatershed, and none for the Dean Lake subwatershed due to groundwater concerns. Controlling the volume of stormwater generated by the proposed CSAH 21 extension is critical for minimizing impacts to these water resources. Infiltration is only one tool for controlling runoff volumes; the PLSLWD recommends investigating other tools, such as the use of biofiltration areas, pervious pavement, or volume reduction credits, to achieve the necessary volume control.
- Section 7.6.4, page 7-17: The PLSLWD appreciates the County's commitment to mitigating wetland impacts within the same watershed. We support the approach of coordinating mitigation needs with the City of Shakopee and providing that mitigation within the PLSLWD watershed.

← C  
← D  
← E  
← F  
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← H  
← I

- D Comment noted. The County looks forward to working with the PLSPWD to explore the resources it has to assist in the development of regional ponds to address runoff impacts to Pike Lake and the Prior Lake Outlet Channel.
- E Comment noted. The County will have access to the information relating to limits on discharge rates to the Prior Lake Outlet Channel when the Joint Powers Agreement between the City of Shakopee, Prior Lake and PLSLWD is finalized.
- F The FEIS includes an update to DEIS Chapter 7, Page 7-6 to include discussion of Pike Lake and Dean Lake as impaired waters and to discuss the status of TMDL studies. See section 2.1.7 of the FEIS.
- G Comment noted. A range of infiltration and/or filtration best management practices will be further investigated during final design for their applicability in managing runoff volume for this project. Issues that may affect the applicability include cost, driver safety, long term maintenance, and groundwater sensitivity. The County is committed to working with the local agencies to address this issue. In addition, the County will explore pervious pavement as an option for the transit station.
- H Comment noted.
- I The FEIS updates DEIS Chapter 10, Page 10-8 to include a discussion of cumulative impacts on water resources. See Section 2.1.10 of the FEIS.

Chapter 10

The PLSLWD would like to see effects on water resources included in the cumulative impacts analysis for the proposed CSAH 21 extension.

Thank you for the opportunity to participate on the Technical Advisory Committee and to review this draft EIS. If you have any questions about these comments, please contact me at (952) 447-4166 or [slotthammer@plslwd.org](mailto:slotthammer@plslwd.org). I look forward to continuing to work with the County as the EIS process moves forward and we coordinate our projects along the CSAH 21 corridor.

Sincerely,



Shannon M. Lothhammer  
District Administrator



16200 Eagle Creek Avenue S.E.  
Prior Lake, MN 55372-1714

November 17, 2006

Mr. Mitch Rasmussen, P.E.  
Scott County Engineer  
Scott County Highway Department  
600 Country Trail East  
Jordan, MN 55352

**RE: CSAH 21 Draft EIS Comments**

Dear Mr. Rasmussen:

Thank you for the opportunity to review the draft EIS for the CSAH 21 Extension. The City has the following comments regarding the EIS:

- 1) The City of Prior Lake supports this project and feels that the CSAH 21 Extension will provide an important transportation link for the City of Prior Lake, City of Shakopee, Shakopee Mdewakanton Sioux Community (SMSC) and Scott County. This project has been identified and funding allocated in the City's 2006 Capital Improvement Program for construction in 2009. ← **A**
- 2) The proposed CSAH 21 extension also will provide a vital transit link in Scott County. The extension will improve transit service routes and better link existing and future transit facilities. ← **B**
- 3) No access has been shown at this time for the City of Prior Lake along CR 21 from CR 42 to the northern City Limits. Access to CSAH 21 along this segment is important to the City and should be addressed prior to construction. The City will work with the County in accordance with County access standards to provide appropriate access to adjacent properties. ← **C**
- 4) The traffic volumes shown on Figure 2-5 appear to be from the County's 2020 Transportation Plan not 2030. Information the City received regarding the current CR 42 Study indicates these are 2020 numbers. ← **D**

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www.cityofpriorlake.com

Phone 952.447.4230 / Fax 952.447.4245

## 2 City of Prior Lake

- A Comment noted.
- B Comment noted.
- C The County has a good working relationship with the City of Prior Lake and will continue to work with the City regarding outstanding access issues as design of the roadway progresses.
- D The traffic volumes for 2030 reported in the DEIS Figure 2-5 are the results from the traffic forecasting completed specifically for the CSAH 21 roadway project. The forecasts are documented in the CSAH 21 EIS 2030 Traffic Forecasts Memorandum, SRF, January, 2005, Appendix to the Scoping Document.

- 5) The forested area that both the east and west alignment options impact was inventoried by the city as High Quality Forest in the Prior Lake Natural Resources Plan. Because of the quality of these wooded areas the City feels the impacts should be mitigated along the corridor with replacement trees. The City of Prior Lake has put a high priority on protecting and mitigating areas of this quality in our updated Tree Preservation Ordinance.
- 6) The City does not have a preference regarding construction of the western or eastern alignment. However because this is an important project the City feels that a successful partnership between the County, Cities and SMSC is very important. For that reason City Staff recommends the eastern option to balance impacts to the properties. Because there is no way to guarantee preservation of the YMCA property in this area staff feels balancing impacts to each parcel will minimize the potential overall impact to the wooded areas due to future development.
- 7) The following community facilities should be included in section 5.1.1.3 of the plan: Jeffers Pond Elementary, Shepard's Path Park, Presbyterian Homes at Shepard's Path and Prior Lake Fire Station No. 2.
- 8) Please revise the City of Prior Lake Population information in Table 5-1 for the years 2010, 2020 and 2030 to reflect our approved 2030 Comprehensive Plan projections:

← E  
← F  
← G  
← H

	1990	2000	2010	2020	2030
Population	11,482	15,917	26,500	33,300	40,000
Household	3,901	5,794	10,000	13,000	16,000

Please contact me at 952-447-9890 if you have any questions or concerns regarding the City's comments.

Sincerely,



Stephen A. Albrecht  
Director of Public Works  
CITY OF PRIOR LAKE, MN

cc: Jane Kansier, Director of Planning & Bldg. Inspection  
Frank Boyles, City Manager

- E Comment noted. The County will comply with the Prior Lake Tree Preservation Ordinance to protect the high quality forest. Project impacts along the corridor will be mitigated with replacement trees as required by the ordinance.
- F Comment noted. See Recurring Response 7.
- G The FEIS updates the DEIS Chapter 5, Page 5-2 to include the following facilities in the City of Prior Lake.
  - Shepherd's Path Park
  - Jeffers Pond elementary school, fire station, and nursing home.
- H The FEIS replaces and updates DEIS Chapter 5, Page 5-1, the City of Prior Lake population information in Table 5-1 for the years 2010, 2020, and 2030 to reflect the City's approved 2030 Comprehensive Plan projections. The new population forecasts are seven percent lower than those in the DEIS. Approximately 50 percent of trip ends on CSAH 21 are in Prior Lake. This may have the effect of reducing forecast volumes on CSAH 21 by as much as 1,200 per day. This is not a substantial enough difference to change the conclusion of the study and is within the margin of error of the original forecasts.

The major difference between the population forecasts is not in the 2030 forecasts but in the 2010 and 2020 forecasts. It appears that Prior Lake expects to grow much slower than was assumed in the DEIS, but still reach almost the same level by 2030 (the traffic forecast year).

November 21, 2006

Mr. Mitchell Rasmussen  
County Engineering, Scott County Public Works Department  
600 Country Trail East  
Jordan, MN 55352-9339

RE: City of Shakopee Comments Regarding the Draft Environmental Impact Statement for  
County State Aid Highway (CSAH) 21 from CSAH 18 to CSAH 42

Dear Mr. Rasmussen:

The City of Shakopee has the following comments regarding the above-titled document.

**Comments on Transportation Analysis:**

- The DEIS evaluation included the analysis at the intersection of CSAH 18/CSAH 16 where CSAH 16 connects to the west. Why wasn't the intersection of CSAH 18/CSAH 16 where CSAH 16 connects to the east also included? ← **A**
- The DEIS notes a reduction in traffic on paralleling roadways CSAH 83, CSAH 18, the connection between TH 169 and TH 13, and TH 13. However, the reduction in traffic on CSAH 83 is minimal, and the corridor will require six lanes in both the Build and the No-Build condition. As a four-lane facility, CSAH 18 should be able to handle the No-Build traffic volume of 18,000 vehicles per day (vpd). The reduction on the connection between TH 169 and TH 13 is also minimal. Therefore, TH 13 will see the most relief from the extension of CSAH 21. ← **B**
- The north-south traffic volumes in the No-Build condition equates to 87,000 vpd. When compared to the Build condition, the north-south volumes increase by 10,000 vpd. Additionally, the east-west movements into the area from the east decrease by 16,000 vpd. Please explain this shift in traffic prior to issuance of, or in the final EIS. ← **C**
- Section 4.4 noted the elimination of the right-in access to Shakopee Crossings. Please further explain in the final EIS any impact to other accesses to Shakopee Crossings. ← **D**

**Chapter 1:**

- At 1.2 ALTERNATIVES, the "Build Alternative" for that section of CSAH 21 south of CSAH 16 is described as follows;

"An urban section with reduced design speed and alignment to avoid impacts to a Minnesota Department of Natural Resources (DNR) wetland."

**3 City of Shakopee**

- A The CSAH 16 and CSAH 18 intersections were evaluated by the County in other studies. A 3/4 access solution is planned for these intersections.
- B As stated in the DEIS, the Scott County Transportation Plan, indicates that CSAH 83 and the connection between TH 169 and TH 13 will be congested (operating level of service E or worse) in 2020, even with the assumption of CSAH 21. Without the construction of CSAH 21, these roadways will experience additional congestion. Without CSAH 21, traffic levels on CSAH 18 will approach capacity as will traffic on TH 13. In addition, as congestion builds on parallel routes, some of the traffic appropriately carried on the arterial system is expected to divert to local/collector roadways (i.e., McKenna Road and Pike Lake Road). The comment states that as a four-lane facility CSAH 18 can handle the No Build traffic volume of 18,000 vehicles per day. The 18,000 vehicles per day on CSAH 18 are those south of CSAH 16. North of CSAH 16 the volumes increase to 32,000 vehicles per day, approaching capacity.
- C Among the north-south arterials in the study area, there is a 10,000 vehicle per day increase in volumes between the No Build and Build conditions. This increase occurs south of CSAH 16. North of CSAH 16, there is virtually no change in volumes among the No Build and Build conditions. The difference between the volumes north and south of CSAH 16 is attributed to how the traffic model assumed that motorists in local areas south of CSAH 16 would access the roadway system.  
  
The decrease in east-west traffic volumes is attributed to the shift that is expected to occur when traffic that used to take TH 13 to get to TH 169 would be able to go more directly north-south. There would be a less circuitous routing of traffic, not a decrease in overall traffic volumes.
- D The County has selected the four-lane at-grade intersection design option as the Preferred Alternative. Elimination of the right-in access to Shakopee Crossings is not required for this design option.

By contrast, the alternatives for intersection design north of CSAH 16 seem to describe a higher speed design for this section of roadway. The City of Shakopee continues to question the efficacy of planning a higher speed section from CSAH 16 north in Shakopee, while a lower speed section is proposed south of CSAH 16. The design requirements of such a higher speed section, and the increased noise impacts from higher speeds are likely to have a negative impact on both existing residential areas of the City (e.g., Southbridge, Riverside Fields) and residential developments currently under construction (e.g., Riverside Bluffs, Ridge Creek, Ridgeview Estates) in the area.

← E

- At 1.2 COSTS/FUNDING, the footnote to TABLE 1-1, COST ESTIMATES FOR CSAH 21 EXTENSION, the footnote indicates a blended value for right-of-way acquisition of about \$105,000 per acre. Based on both the City's and County's knowledge and recent experience with the potential acquisition of park and ride sites along the CSAH 18/21 corridor and CSAH 16/21 corridor, the City suggests that the blended rate may be inadequate, and that the cost of right-of-way acquisition may be substantially higher.

← F

- 1.5 POTENTIAL IMPACTS:

- On page 1-7, it is noted that with the installation of a traffic signal at the CSAH 18/ CSAH 16 intersection 2030 operations on a four-lane section would improve to a level of service (LOS) of C or better. With this information in hand, the City of Shakopee questions the need to consider either the six-lane or interchange intersection alternatives for the Southbridge Parkway/CSAH 18 intersection.

← G

- At page 1-8, it is stated that;

"The project corridor is largely undeveloped and the proposed roadway extension would not divide any existing neighborhoods. No impact to community cohesion regarding existing or planned neighborhoods is anticipated."

This description incorrectly describes the level of development along the corridor in Shakopee. Much of the corridor is bounded by existing development in the form of Southbridge Crossings East, Southbridge Crossings, Southbridge, and Riverside Fields. Additional residential plats under development in this corridor include Riverside Bluffs and Ridgeview Estates. Southbridge Fields is a neighborhood commercial plat under development in the corridor. A new elementary school is under construction south of CSAH 16 in this corridor. The final EIS should be revised to correctly describe and take account of the current state of development within the City of Shakopee,

← H

In Shakopee, a community divided by county roadways more than any other in the County, the construction of CSAH 21 introduces yet one more roadway that poses an obstacle to connections between present and future neighborhoods and makes it difficult to achieve community cohesion in the eastern part of the City of Shakopee. (Note: similar comments are appropriate in response to 5.1.2.1 Community Cohesion.)

← I

- E The posted speed along both sections of CSAH 21, south and north of CSAH 16, will be the same at 55 mph. The difference in design speed of the roadway in the two sections relates to how the roadway is designed to avoid environmental impacts. In an effort to avoid impacts to a Minnesota Department of Natural Resources (DNR) wetland, the southern section was designed with curves in the roadway through the upper bluff (the curve immediately north of CSAH 42 is a 55 mph design, all others are 60 mph). For safety reasons, and to account for drivers who exceed the speed limit, design speed of a roadway is typically higher than the posted speed. Noise modeling was conducted assuming posted speeds of 55 mph in both sections. There is no reason or reasonable opportunity to introduce curves into the segment north of CSAH 16; doing so would result in greater, not lesser, impacts.

- F The FEIS replaces DEIS Chapter 1, Page 1-5, Table 1-1 with updated right of way cost using \$150,000 as the cost per acre.

- G The County has selected the four-lane at-grade intersection design option as the Preferred Alternative because it provides adequate capacity during the design period, minimizes pavement and right of way requirements, and has lower costs than the other two design options.

- H Development in the project area occurred between the time that the DEIS studies were completed and the DEIS public comment period commenced. The FEIS updates the description of development along the corridor in the City of Shakopee in DEIS Chapter 1, Pages 1-8 and 1-9.

- I The CSAH 21 alignment does separate developing residential areas that were once agricultural lands. The provision of a bicycle/pedestrian trail adjacent to the roadway and pedestrian crossing will help maintain connections in the developing areas.

The initial plans for the CSAH 21 extension predate much of the residential and commercial development that has occurred along its proposed route. In 1996 Scott County adopted a countywide transportation plan which included the extension of CSAH 21. In 1998 the City of Shakopee included the extension of CSAH 21 to CSAH 16 as a future principal arterial roadway in its Transportation Plan. In that same year, the area east of Dean Lake was approved for development (Southbridge). Design features of the development that are relevant to the proposed project include a 58-foot buffer between the County right of way, acquired in 1998, and residential lots and the elementary school property, and the design of the Southbridge Parkway for future connection to CSAH 21 to provide additional access to/from the development. In 1999 the City of Shakopee adopted a Comprehensive Plan that reflected residential development east of Dean Lake, west of CSAH 18 and adjacent to future CSAH 21.

• At page 1-9, under “Land Use,” the draft EIS posits that the six-lane and four lane interchange alternatives would have “relatively minor impacts on commercial land.” The City believes that this significantly understates the impacts in the following regards;

- o The interchange alternative would wipe out a commercial lot on which a TCF facility is currently proposed to be built in the near future. ← J
- o The interchange alternative would result in the closure of important right-in access to both Southbridge Crossings and Southbridge Crossings East. ← K

• At page 1-17, under Land Use/Right of Way/Farmland/Indirect Impacts the analysis provided is inadequate. In this letter, in the paragraphs above, the City has set forth more specific descriptions of developments that might be impacted, and the nature of the impacts to both residential and commercial development within the City of Shakopee. ← L

**Chapter 2:**

– At 2.4.2, **Travel Demand/Capacity**, it is asserted that the travel forecast analysis conducted “show that the proposed CSAH 21 would primarily serve the communities of Shakopee, Prior Lake, and Spring Lake Township...” Especially if constructed with a six-lane or interchange design north of CSAH 16, the City of Shakopee believes that 1) CSAH 21 would primarily serve Prior Lake, Spring Lake Township, and areas south and not Shakopee; and 2) that the proposed six-lane and interchange designs would negatively serve Shakopee by further restricting access within Shakopee. ← M

– At 2.4.5, **Transit Need**, and elsewhere in the draft EIS, existing transit services are inaccurately described. Specific inaccuracies are as follows; ← N

- Scott County Transit provides dial a ride service, and express connection to the MVTA transit hub at Burnsville. Scott County Transit does not currently serve the Southwest transit hub in Eden Prairie.
- Regular route (Circulator) service in Shakopee is provided by Shakopee Transit, which contracts with Scott County Transit to operate the service.
- Shakopee Transit will, beginning in 2007, be providing up to four express buses to and from Downtown Minneapolis.
- Prior Lake’s Laker Lines currently operates three buses to and from Downtown Minneapolis.

**Chapter 3:**

– 3.1.1, **1990 Scott County Transportation Study: County Road 18 Alternatives**.

- The description of the current state of Shakopee’s development found at page 3-2 in inadequate, and should be revised to include the information in this letter regarding 1.5, POTENTIAL IMPACTS. ← P

J The County has selected the four-lane at-grade intersection design option as the Preferred Alternative; this option does not affect the TCF Bank.

K The County has selected the four-lane at-grade intersection design option as the Preferred Alternative, therefore the right in access will not be closed.

L Page 1-17 of the DEIS is part of the Executive Summary and is not intended to provide analysis. Analysis of impacts relating to land use is found in Chapter 5 of the DEIS. The FEIS updates the description of development along the corridor in the City of Shakopee (See Comment H above).

M While CSAH 21 will serve communities beyond Shakopee, the roadway will be located partially in the City of Shakopee and therefore Shakopee will be one of the primary communities served. A selected link analysis was conducted during the scoping study (using 2025 forecast data) to identify how trips generated within the travelshed of the proposed segment of CSAH 21 would be distributed on the remaining roadways in the network if CSAH 21 is not built. This analysis showed that proposed CSAH 21 would primarily serve the Scott County communities of Shakopee, Prior Lake, and Spring Lake Township (as compared to other locations in Scott county), with the travelshed of CSAH 21 being elongated north-south and centered on CSAH 21 south of the river and on TH 169 north of the river.

N The County has selected the four-lane at-grade intersection design option as the Preferred Alternative.

O The FEIS updates DEIS Chapter 2, Page 2-5, to describe more accurately existing transit services.

P The FEIS updates DEIS Chapter 3, Page 3-2, to include a more current description of development along the CSAH 21 corridor in the City of Shakopee (see response to Comment H).

**Chapter 4:**

- The description of transit services found at 4.2, TRANSIT SERVICES, should be revised as described above in the comments to Chapter 2.

**Chapter 6:**

- **Section 6.1.5** – The DEIS indicates studies have been completed for the proposed CSAH 21/ CSAH 16 transit station. Please provide a copy of these studies to the City of Shakopee. ← **Q**
- **Section 6.2.3** – The DEIS indicates much of the land in the project corridor is currently vacant. Currently, much of the area west of Dean Lake, north of County Road 16, and west of County Road 18 is in the process of development. Noise mitigation measures may not have been incorporated in these developments. Please provide information explaining the noise mitigation measures the County will implement to reduce impacts to the adjacent developments completed in these areas or in the process of being completed. ← **R**
- **Section 6.5.1.1** – This section does not reference the Natural Resource Inventory of Northern Scott County (2002) as it relates to the natural resources within the proposed CSAH 21 alignment. The area north of County Road 16 is documented in this inventory and provides beneficial information for consideration in the DEIS. ← **S**
- **Section 6.5.1.2** – Please see comment for Section 6.5.1.1. Additionally, the DEIS does not reference the Natural Resource Corridor Map (2005) for the City of Shakopee. This map was created using an analysis of the Natural Resource Inventory of Northern Scott County (2002) and information obtained from other local, state, and federal agencies. Please provide an analysis of the impacts and mitigation measures to this corridor north of County Road 16. ← **T**
- **Section 6.5.3** – The DEIS indicates trees removed as part of the project will be replaced according to local ordinances. The project will be required to be in compliance with the City of Shakopee Woodland and Tree Management Ordinance. For more information please visit [http://www.ci.shakopee.mn.us/nr\\_trees\\_woodlands.cfm](http://www.ci.shakopee.mn.us/nr_trees_woodlands.cfm) or contact the City of Shakopee Natural Resource Specialist. ← **U**
- **Section 6.5.3** – The DEIS indicates a wildlife crossings will be incorporated into the project southeast of Dean Lake. The wildlife corridor crossing is not included in Figure 7.5 or 7.6 for this area. Please include the proposed location of this crossing in these figures for consideration by the City of Shakopee. ← **V**

**Q** The source of the emissions reduction information in the DEIS, for the proposed transit station at CSAH 21 and CSAH 16, is the County's STP application for the transit station dated August 19, 2005. A copy of the application will be provided to the City of Shakopee.

**R** A majority of the land along the project corridor south of CSAH 16 is currently undeveloped. Information was provided in the DEIS regarding estimated future traffic noise levels at various distances from the project corridor. This information can be used by local governments in identifying future land uses and to help prevent future traffic noise impacts on currently undeveloped land.

Traffic noise was modeled at residential locations along the project corridor north of CSAH 16 and west of CSAH 18, including planned developments along the east side of the proposed corridor. The FEIS updates DEIS Chapter 6, Page 6-13 through 6-20 to include new noise analysis and mitigation measures for receptor R11, which was not accurately placed during the DEIS analysis (see Section 2.1.6 of the FEIS). The results show that noise barriers were determined to be reasonable at three locations along the project corridor between CSAH 16 and CSAH 18.

The County proposes noise mitigation where it has been found to be reasonable. Consultation with residents and municipalities will occur before any final decisions are made regarding noise barriers and will occur during final design.

**S** The FEIS updates DEIS Chapter 6, Section 6.5, to include reference to the Natural Resource Inventory of Northern Scott County (2002).

**T** The FEIS updates DEIS Chapter 6, Section 6.5 to include reference to the Natural Resource Corridor Map (2005).

The DEIS is more detailed in its description of vegetation and wildlife in the area than the corridor map. The DEIS describes impacts to the environment along this corridor that would result from the proposed CSAH 21 extension project including impacts to wetlands, farmland, vegetation, wildlife, soils, water quantity and quality, groundwater, and parks.

**U** Scott County will comply with the City of Shakopee's Woodland and Tree Management Ordinance as it relates to tree removal and replacement.

**V** The FEIS updates DEIS Chapter 6, Section 6.5, Page 6-27, to correct the inaccurate statement that two wildlife crossings are proposed. One wildlife crossing is proposed, south of CSAH 16, and is shown on Figures 3-5, 3-6, 7-3, and 7-4. The proposed crossing north of CSAH 16 is not a wildlife crossing but is identified in Figures 3-7 and 3-8 as a pedestrian underpass that could be used by smaller wildlife. The FEIS deletes the word "wildlife" from the reference to this underpass.

← **W**

– **Section 6.7.3** – According to the DEIS the visual effects of the four-lane interchange option with a 27 foot high CSAH 21 bridge over CSAH 18 will be mitigated by the buffer between residential lots and the roadway on the north end and a grassy median and landscaping. Please provide additional information on the visual mitigation in this area i.e. type of landscaping. Additionally, please provide an analysis and mitigation components for the visual impacts from the proposed CSAH 21 alignment from County Road 16 to the Southbridge Parkway segment for the residents in the Southbridge and surrounding Dean Lake area.

← **X**

– **Section 6.9.1** – The DEIS has not evaluated whether highly erodible (HEL) soils are within the proposed alignment. Please provide information pertaining to which HEL soils are within the alignment and what specific BMP's will be utilized to reduce erosion issues associated with disturbing these soils.

**Chapter 7:**

← **Y**

– **Section 7.3.1** – According to the DEIS Dean Lake is an expression of the groundwater table in the area. Based on this information the increased impervious surfaces in the area and soil corrections needed for CSAH 21 may alter the hydrology in the area. Please provide information for the anticipated impacts to the surface water of Dean Lake from the construction of CSAH 21.

← **Z**

– **Section 7.6.2** – According to the DEIS the proposed alignment will cross a 35-acre wetland complex identified on the DNR's Regionally Significant Ecological Areas (RSEA) map. Additionally, the functions and values assessment (MnRAM 3.0) for this wetland rated the area as high for shoreland and water quality protection for Dean Lake and maintenance of hydrologic regime. The wetland also was rated as moderate for flood and stormwater attenuation and maintenance of wetland water quality. Please discuss the wetland replacement plan.

← **AA**

– **Section 7.6.3** – According to the DEIS bridges would have other impacts to adjacent development sites and the park area. Please discuss these impacts in more detail.

Thank you for your considered consideration of the City of Shakopee's comments on the CSAH 21 DEIS. If you have any questions regarding this letter or the comments contained herein, please contact Community Development Director R. Michael Leek at (952) 233-9346.

Sincerely,

John J. Schmitt, Mayor  
City of Shakopee

**W** The County has selected the four-lane at-grade intersection design option as the Preferred Alternative. Decisions about landscaping (visual mitigation) will be made during final design. Landscaping will be used to mitigate visual impacts, especially near the Southbridge development. Efforts will be made to preserve as many existing trees as possible. Scott County will comply with the City of Shakopee's Woodland and Tree Management Ordinance as it relates to tree removal and replacement.

**X** The FEIS updates DEIS Chapter 6, Section 6.9, Pages 6-33 and 6-34, to include discussion of highly erodible land within the proposed alignment and the BMPs that will be used to minimize disruption.

**Y** According to the Minnesota Geological Survey (MGS) geologic atlas of Scott County, Dean Lake and the associated wetland complex are within the northerly flow path of regional groundwater. Situated on a terrace above the Minnesota River following the last glaciation, Dean Lake is on the wind- and stream-deposited silts, sands and clay, and the Dean Lake wetland complex is found on deep peat (greater than three feet in depth). Depth to the Prairie du Chien geologic formation and its associated groundwater in this area is less than 50 feet.

Regional groundwater generally flows to the north from the bluffs, through the Dean Lake wetland complex toward the Minnesota River. The proposed alignment of CSAH 21 through the Dean Lake wetland complex is also in a northerly orientation, generally parallel with the groundwater flow. A roadway crossing in this orientation would not be expected to alter groundwater flow paths, because it would not create any obstacle for the established flow. Furthermore, adequately sized culverts through the roadway section would provide unrestricted surficial flows for the Prior Lake channel into Dean Lake. Therefore, construction of CSAH 21 in this location is not expected to have any effect on the surface water level of Dean Lake.

**Z** The wetland replacement plan is discussed in Section 7.6.4 of the DEIS. Chapter 4 of the FEIS is the Wetland Finding.

**AA** Bridge impacts can include shading effects upon the vegetative communities below the bridge, trash and debris from the bridge structure, and salt spray for winter de-icing. Vegetative communities below bridges can become impacted by opportunistic, invasive species that can crowd out the less adaptable native species.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 07 2006

REPLY TO THE ATTENTION OF:

B-19J

Ms. Cheryl Martin  
Federal Highway Administration  
Galtier Plaza, Suite 500  
380 Jackson Street  
St. Paul, MN 55101

Re: Draft Environmental Impact Statement – County State Aid Highway 21 (CSAH 21)  
Extension from CSAH 18 to CSAH 42 and Transit Station, Scott County, Minnesota.  
CEQ No. 20060354

Dear Ms. Martin:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the United States Environmental Protection Agency, Region 5 (U.S. EPA) has reviewed the Draft Environmental Impact Statement (DEIS) for the proposed County State Aid Highway 21 (CSAH 21) extension project between CSAH 18 (Shakopee) and CSAH 42 (Prior Lake), Scott County, Minnesota. This letter and enclosure provide the results of U.S. EPA's review.

The DEIS identifies a proposal by the Scott County Public Works Department (SCPWD), Minnesota Department of Transportation (MnDOT) and the Federal Highway Administration (FHWA) to extend CSAH 21 as a four-lane expressway for a distance of approximately three miles across new terrain. The project is intended to provide a link in the countywide roadway system to manage current and future traffic. A No Build Alternative and one Build Alternative with two alignment options (western option and eastern option) for a portion of the proposed roadway, along with various intersection/interchange options are analyzed in the DEIS. The proposal also includes a 500-space surface transit station (park-and-ride) in the southwest quadrant of the CSAH 21/CSAH 16 intersection. The DEIS does not identify a Preferred Alternative.

Based on our review of the information provided in the DEIS, we rate the Build Alternative and its various options as "environmental concerns - insufficient information" (EC-2). This rating indicates that we have environmental concerns with certain aspects of the proposal as described in the DEIS and that additional information and discussion concerning alternatives, impacts and mitigation measures are required to fully protect the environment.

← A

#### 4 U.S. Environmental Protection Agency

- A Chapter 3 of the FEIS summarizes the alternatives development process and rationale for selection of a Preferred Alternative. The following responses to comments provide additional information and discussion requested concerning alternatives, impacts, and mitigation measures.

Our concerns focus on insufficient identification, analysis and disclosure of alternatives and cumulative impacts to surface/ground water quality and quantity, wetlands and aquatic resources, maple-basswood forest and wildlife habitat, and the Shakopee Mdewakanton Sioux Community (SMSC). Enclosed you will find: (1) a copy of our rating sheet and (2) our detailed comments.

Thank you for the opportunity to review and comment on the DEIS for the proposed CSAH 21 expansion project. If you have any questions regarding our DEIS comments, you may contact Virginia Laszewski of my staff at (312) 886-7501.

Sincerely,



Kenneth A. Westlake, Chief  
NEPA Implementation Section  
Office of Science, Ecosystems and Communities

Enclosures: (2)

cc: Scott County Public Works Department, 600 Country Trail East, Jordan, MN 55352,  
(Atten: Mitchell Rasmussen, P.E., County Engineer)

## SUMMARY OF RATING DEFINITIONS AND FOLLOW UP ACTION\*

### Environmental Impact of the Action

#### LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

#### EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impacts. EPA would like to work with the lead agency to reduce these impacts.

#### EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

#### EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS sate, this proposal will be recommended for referral to the CEQ.

### Adequacy of the Impact Statement

#### Category 1-Adequate

The EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collecting is necessary, but the reviewer may suggest the addition of clarifying language or information.

#### Category 2-Insufficient Information

The draft EIS does not contain sufficient information for the EPA to fully assess the environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

#### Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\*From EPA Manual 1640 Policy and Procedures for the Review of the Federal Actions Impacting the Environment

**EPA Region 5 Review and Comments on  
County State Aid Highway 21 (CSAH 21) Extension Project, Minnesota,  
Draft Environmental Impact Statement (DEIS)  
CEQ No. 20060354**

**Alternatives**

The DEIS identifies a proposal by the Scott County Public Works Department (SCPWD), Minnesota Department of Transportation (MnDOT) and the Federal Highway Administration (FHWA) to extend CSAH 21 as a four-lane expressway for a distance of approximately three miles across new terrain. The project is intended to provide a link in the countywide roadway system to manage current and future traffic. A No Build Alternative and one Build Alternative with two alignment options (western option and eastern option) for a portion of the proposed roadway, along with various intersection/interchange options are analyzed in the DEIS. The two ½-mile long alignment options (i.e., western and eastern) are located between CSAH 42 and CSAH 16. The maximum distance between the two alignment options is 325 feet. The proposal also includes a 500-space surface transit station (park-and-ride) in the southwest quadrant of the CSAH 21/CSAH 16 intersection. The DEIS does not identify a Preferred Alternative.

Based on the information in the DEIS, EPA suspects there may be one or two other feasible highway build alternatives that have not been identified that may have less overall adverse impact on the human and natural resources environment than the one Build Alternative corridor route with options identified and analyzed in the DEIS. These alternatives would make use of existing highway corridors in the CSAH 21 study area. Alternatives that use existing roadway corridors generally have far less impact on the natural environment than new terrain routes.

We offer several examples. The DEIS (p 2-3) identifies CSAH 83 as a two-lane roadway currently designated in the County Transportation Plan as a principal arterial. CSAH 18 is a 4-lane limited access roadway and Pike Lake Road is unpaved. From the information in the DEIS, it does not appear that build alternatives that include paving Pike Lake Road (between CSAH 42 and CSAH 16) and upgrading CSAH 42 and/or CSAH 16 in combination with an upgrade of existing CSAH 18 (from 2 to 4-lanes) and/or CSAH 83 (4- to 6-lanes) were ever considered. Based on the limited information in the DEIS, these alternatives may satisfy the basic transportation need identified and have no or far less impact on maple-basswood forest (including core forest), surface and ground water quality/quantity, wetlands and tribal land. In addition, information concerning the feasibility of these types of alternatives will be needed to determine compliance with the Clean Water Act (CWA) Section 404(b)(1) guidelines during wetland permitting purposes for this proposal.

**Recommendations:** If these additional alternatives have been identified, evaluated and considered earlier in the NEPA process, this information should be documented and the reason for their early dismissal/elimination from further consideration substantiated in the future NEPA document for this proposal. If these alternatives have not been previously considered, we recommend FHWA/MnDOT and Scott County assess them for their feasibility. For those alternatives that are found to be feasible, we recommend they be analyzed in detail and a

- B Based on increasing demand on the existing roadway system from development in the County and in light of the Metropolitan Council Transportation Development Guide/Policy Plan criteria for establishing a functional classification of roadways in support of the metropolitan highway system, the County concluded that an additional north-south arterial should be constructed between the existing north-south arterial roadways in the study area, CSAH 18 and CSAH 83, which are three miles apart. The scoping process for the project began in 1990 with a study that recommended extension of CSAH 21 as the long-term solution to meet the need for a new north-south arterial in the study area. The process of developing alternatives for the CSAH 21 extension included a number of studies and an increasing level of refinement of alternative concepts over the past 16 years.

A general preferred corridor alignment was defined in 1992 and in 2002-2003 the County conducted a study to document the scoping process that was initiated in 1990. Traffic forecasts and environmental issues were updated for the Scoping Document/Draft Scoping Decision Document dated April, 2003. The Scoping Decision Document, dated July 22, 2003, identified a single Build Alternative. The CSAH 21 extension was supported in the Scott County Transportation Plan (1996 and 2001) which specifically proposes future designation of CSAH 21 between CSAH 42 and CSAH 18/TH 169 as a principal arterial warranted by its intended function as an important commuter route for County residents, particularly from development areas in Prior Lake and Shakopee, to employment centers north of the Minnesota River.

Since the scoping process was initiated, several roadway improvements have been made including the CSAH 18 river crossing (1995) and the TH 101/Shakopee Bypass (1996) that together were redesignated the TH 169 Bloomington Ferry Bridge. In addition, CSAH 18 was constructed as a four-lane roadway north of CSAH 16 to the west of CR 18 and connected to TH 169 with a full access interchange. CR 18 north of CSAH 16 was redesignated Stagecoach Road, a Shakopee City street. CR 18 south of CSAH 16 was widened to four lanes and redesignated CSAH 18.

The alternatives identified in this comment were not evaluated because they did not meet the purpose and need for the roadway. An additional roadway is needed to respond to existing and forecasted increases in travel demand and to help complete an appropriately functioning roadway system in Northern Scott County that efficiently moves traffic by providing adequate capacity for projected travel and transit demand. The roadway will provide a continuous north-south arterial to allow efficient movement through the County, a stated goal of the Scott County Transportation Plan. Upgrading CSAH 42 and/or CSAH 16 (east-west arterials) in combination with an upgrade of CSAH 18 and/or CSAH 83 does not meet the need for a new north-south arterial to complement the existing highway roadway system.

- C See Response to Comment I below.  
D See response to Comment B above.

comparison of their impacts and costs be considered prior to making a preferred alternative decision for the CSAH 21 proposal. This information should be documented in the future NEPA document.

**Tribal Land**

The DEIS identifies that the rights-of-way (r-o-w) for the western alignment and eastern alignment options would directly take 8.3 acres and 3.3 acres, respectively, of Shakopee Mdewakanton Sioux Community (SMSC) property owned in fee. The DEIS identifies that SMSC has plans to build 80 homes, some within the area that the alignment options go through. Both alignment options bisect a maple-basswood forest and part of the forest's core. DEIS Tables 6-6 and 6-7 (Noise Monitory and Modeling Results) show that the western alignment option through SMSC land will have one of the highest increases in noise levels. Proposed noise mitigation is identified in the DEIS as not being cost effective in this area. The DEIS also identifies that SMSC has a pending application to the Bureau of Indian Affairs (BIA) to convert the affected land currently owned in fee to land held in trust (fee-to-trust).

The DEIS discloses that the SMSC 2000 Comprehensive Land Use Plan (updated for 2008) identifies "long range plans" in the area of the CSAH 21 project, including: (1) additional housing planned for 80 acres immediately adjacent to the project; (2) stream and wetland restoration and improvement west of the project area; and, (3) management of the forest area to improve wildlife habitat and reduce impacts of past land use. This area is part of a planned natural area for the SMSC intended to complement the adjacent housing and retain natural wildlife habitat. The DEIS identifies that the development is now being platted. We understand that some of the houses are currently being constructed.

The DEIS identifies that representatives from SMSC were on the technical advisory committee for this project. However, there is no supporting documentation in the DEIS that indicates whether SMSC supports either western or eastern alignment options associated with the DEIS Build Alternative.

Recommendations: We recommend future NEPA documentation better disclose the impacts, including cumulative impacts to SMSC cultural and natural resources, particularly the maple-basswood forest. The analysis should identify how this project will impact SMSC's planned natural areas, and their stream and wetland restoration plans. If either the eastern or western alignment option of the DEIS Build Alternative is pursued, the future NEPA document should identify the mitigation measures that will be undertaken, including noise mitigation, after consultation with SMSC. In addition, the future NEPA document should provide documentation that substantiates SMSC's position on the CSAH 21 proposal, its alternatives (options), impacts (direct, indirect and cumulative), and mitigation.

**Cumulative and Secondary Impacts Analysis**

The analysis does not adequately identify or consider past actions and their contribution to impacts to resources of concern, such as surface and ground water quality and quantity. The analysis does not identify whether there are resources of concern that have already been significantly impacted. The analysis relies heavily on local land use plans. However, there is no information on how the plans were developed. Consequently, the reader has no way of knowing

- E The County, SMSC, Mn/DOT and FHWA have entered into an Intergovernmental Agreement that addresses SMSC concerns. See Appendix B.
- F See response to Comment E above.

← E

← F

whether the land use plans were developed based on the identification of the natural resources base and with an underlying premise to protect and enhance that base. In addition, there are no figures/maps that show proposed future land use in relation to the natural resources base that would allow the reader to readily understand the implications of the implementation of these plans on the natural resources environment. No information is offered as to whether or not enforceable local implementing regulations exist to protect natural resources, such as citing setbacks from wetlands, streams, 100-year floodplains and drinking water supply wells. The DEIS implies that the land use plans were primarily written to enhance economic development.

← G

**Recommendations:** The future NEPA document should provide additional information to address these concerns. This information is important to consider when deciding between the No Build Alternative, the DEIS Build Alternative and/or whether additional development and consideration of new build alternatives is warranted. This information will also assist in identifying the mitigation that should be undertaken to adequately protect the environment.

#### **Surface/Ground Water Quality and Quantity**

The DEIS documents that the topography of the project area varies dramatically and is in close proximity to Pike Lake, Dean Lake and Eagle Creek (a trout stream). In addition, the Minnesota Valley National Wildlife Refuge (MVNWR) is located just north of Highway 101 in the study area. The DEIS Build Alternative alignment would cross Prior Lake Channel and Blue Lake Channel in Shakopee and a 35-acre wetland complex on the east side of Dean Lake. Storm water runoff from the project area reaches the Minnesota River. Area waters are not meeting their designated uses due to sediment deposition and septic system failures. The DEIS identifies that bluff erosion is occurring in areas near the proposed project corridor. Bluff erosion can degrade downstream water quality by increasing turbidity levels in water bodies and siltation of aquatic habitat.

The DEIS Build Alternative and transit station would introduce new impervious surface in the area where none exists, thereby decreasing infiltration, and increasing the quantity of storm water runoff and potential for roadway pollutants and hazardous roadway spills to reach surface and ground water. The DEIS correctly identifies that the extent to which roadway pollutants would affect local water quality is dependent upon the level of treatment provided for surface water runoff prior to discharge to a receiving water body.

**Recommendations:** Beside taking special precautions in designing the roadway and during construction, we recommend the following additional mitigation be incorporated in the future NEPA document to enhance and/or protect these sensitive aquatic resource areas from further degradation: (1) A commitment to restore eroded bluff land in the project area in consultation with the City of Shakopee, SMSC, Minnesota Department of Natural Resources (MnDNR), U.S. Fish and Wildlife Service (USFWS) and the Lower Minnesota River Watershed District; and, (2) A commitment to pre-treat all storm water runoff prior to out-letting into wetlands and/or other regulated waters of the U.S., including the wetlands of the MVNWR.

← H

- G The FEIS updates DEIS Chapter 10 to include a discussion of the cumulative impacts on water resources (see Prior Lake Spring Lake Watershed District Comment I).

The City of Shakopee's Comprehensive Plan Update (2004) states the City has faced the challenge of planning for community infrastructure and natural resource management in the midst of rapid urban growth. To respond to the need to plan for and protect and manage the unique natural resources of Shakopee a Natural Resources Plan was incorporated into the comprehensive plan update. A policy of The City of Prior Lake's Comprehensive Plan states that development is to be conducted in a manner that is sensitive to the impact upon natural features and to environmental constraints, including but not limited to surface water, wetlands, slopes, woodlands, vegetation, drainage ways, shorelands, and floodplain areas. The SMSC Land Use Plan (draft 2000) documents the importance of and intention to protect, preserve, and improve wetlands and natural areas.

The FEIS updates DEIS Chapter 6 to include a reference to the Natural Resources Inventory of Northern Scott County (2002) (See City of Shakopee Comment S).

The FEIS also updates DEIS Chapter 6 (See City of Shakopee Comment T) to include reference to the Natural Resources Corridor Map (2005).

The Cities of Prior Lake and Shakopee adopted shoreland and floodplain ordinances to protect natural resources. The SMSC Land Use Plan (draft 2000) notes some wetlands have been drained and degraded over time and that it is important that remaining wetlands be retained and improved to preserve the historical connection between the people and the land. The SMSC is in the process of developing a wetland management plan.

As of the preparation of the FEIS, the City of Prior Lake, had completed the first phase of a wellhead protection plan and expects to complete the second phase by the end of 2007. The Shakopee Public Utility Commission has a wellhead protection management plan in place though this plan has not been adopted by the City of Shakopee. The SMSC manages land use activities in the drinking water supply areas to ensure that no contaminants accidentally end up in the water supply.

Much of the land to be developed is or was recently under cultivation. Future land use decisions that impact this and other land in the CSAH 21 study area will be based on the aforementioned land use plans. The DEIS provided a map showing natural resources in the project study area (Figure 6-3).

- H The County will comply with all requirements of the NPDES and PLSLWD. The County will mitigate for the impact from the proposed project but will not correct for pre-existing problems such as eroded bluff land. It is the intent of the project to provide water quality treatment whether it is on its own or in conjunction with adjacent projects as discussed in DEIS Section 7.3.3 and as shown in Table 7-2.

**Wetlands**

The DEIS Build Alternative with options would directly impact approximately 7.03 to 7.07 acres of wetlands. However, the alignment of the northern portion of the Build Alternative will segment the 35-acre wetland complex associated with Dean Lake. This wetland complex is part of an area designated by MnDNR as a Regionally Significant Ecological Area (RSEA). The DEIS identifies a 2:1 mitigation ratio and states (p. 7-17) that a wetland mitigation plan for replacement of the affected wetland areas will be developed during the development of the Final EIS (FEIS).

We appreciate the sequencing discussion in Section 7.6.3, including the discussion for possible bridging over wetlands W-4 and W-6, and the Prior Lake Outlet channel. However, all feasible alternatives have not been identified or evaluated for this non-water dependent project (see discussion above under "Alternatives"). There may be other feasible alternatives that have less impact on regulated waters of the U.S., including wetlands, that may need to be considered in order to comply with the Clean Water Act (CWA) Section 404(b)(1) guidelines in association with obtaining a CWA Section 404 permit for a CSAH 21 project.

Recommendations: (Please see our above recommendation under "Alternatives.") We concur that the detailed mitigation plan should be included in the FEIS. We recommend that if the DEIS Build Alternative moves forward, then a major focus of the mitigation plan should be on maintaining the hydrologic regime and enhancing the water quality in the study area. This will be especially important for the 35-acres wetland complex associated with Dean Lake. We recommend wetland mitigation occur near the project area within the Minnesota River watershed. Any wetlands restored should be located in an area anticipated to be free from future development conflicts, and preferably as part of an existing wetlands complex. We recommend that all wetland mitigation sites include upland buffers that are planted with native vegetation to help protect the site.

Note: EPA retains its right to provide additional project review and comments during the CWA Section 404 permitting process for the CSAH 21 proposal.

**Forests and Wildlife Habitat/Corridors**

Forests serve as important cover, food sources and travel corridors for wildlife. Forests also help to protect the water quality of lakes, streams and rivers by acting as a vegetative buffer in the watershed. Many neotropical migrants and forest interior dwelling birds rely on core forests habitat for all or a portion of their life cycle. The DEIS identifies that approximately 23 acres of forest will be lost by the Build Alternative. Both the eastern and western alignment options would cut across a maple-basswood forest, including a portion of its forest core that the MnDNR Minnesota Land Cover Classification System (MLCCS) identifies as having pre-settlement conditions. The DEIS identifies that this maple-basswood forest appears healthy and provides an important resource for wildlife. The maple-basswood forest is located immediately south of the upper bluff in the study area.

The DEIS discloses that the Build Alternative would cross two wildlife corridors (upper bluff and lower bluff), posing a potential safety concern due to conflicts between motorists and animals. The proposed DEIS Build Alternative roadway design includes fencing and

I The County understands that it will need to go through the wetland permitting process and comply with all applicable regulations. Chapter 4 of the FEIS presents the Wetland Finding that describes the process followed during project development to first avoid and then minimize wetland impacts to the extent practicable and then mitigating for any unavoidable impacts that remain. Chapter 3 of the DEIS describes early studies during the scoping process that evaluated impacts on wetlands of various corridor alternatives and notes that wetland protection was among the key objectives guiding the alignment refinement process. The history of alternatives evaluation is discussed in response to Comment B above. Identification of social, economic, and environmental issues during scoping utilized a number of information sources including city and county comprehensive plans, as well as local and state agencies. Local governments and public resource regulatory agencies provided input in potential issues during early project correspondence, public meetings, the project Technical Advisory Committee meetings, and individual contacts. A discussion of alternatives will be included in the appropriate applications to comply with the Clean Water Act (CWA) Section 404(b)(1) guidelines in association with obtaining a CWA Section 404 permit for the project.

J A major focus of the mitigation efforts is on maintaining the hydrologic regime and enhancing water quality in the watershed. Attempts will be made during final design to locate wetland mitigation near the project area and within the local and Minnesota River watershed. The County, in cooperation with the City of Shakopee and BWSR, has developed a mitigation site to address impacts from both the Pike Lake Road and CSAH 21 projects. The site has approval from the U.S. Army Corps of Engineers. See the Wetland Finding (Chapter 4 of the FEIS) for more information.

K The mitigation site that has been developed includes upland buffer planted with native communities. This site, however, did not result in adequate area to mitigate for all impacts proposed with CSAH 21. Therefore, any additional mitigation sites developed for the CSAH 21 site will include upland buffers planted with native communities.

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incorporation of a larger wildlife crossing in the upper bluff area to maintain the opportunity for safe passage of wildlife; the smaller grade-separated crossing at the lower bluff area will also provide for safer animal movement.

However, the cumulative impacts analysis does not indicate whether upland forest and core forest wildlife habitat, and wildlife corridors have already been significantly impacted due to past actions in the Minnesota River watershed. The DEIS indicates that the amount of upland forest and core forest are limited in the study area. EPA suspects that a substantial loss of upland forest and core forest habitat within the Minnesota River watershed has already taken place in the project study area. Consequently, all reasonable efforts should be made to first avoid and then minimize impacts to any riparian, upland and core forest, and finally compensate for any unavoidable loss.

Recommendations: (Please see our above recommendation under "Alternatives.") We recommend voluntary compensation for any unavoidable forest and core forest loss. This might occur by planting replacement saplings in riparian areas and/or in upland buffers of wetland mitigation sites or bluff restoration areas identified as part of project mitigation. Mitigation might include assisting the Minnesota River Watershed District, county, state, or federal agencies with any on-going or planned forest reclamation projects in the affected watershed. Future NEPA documentation should disclose the type of forest mitigation that the project proponents plan to under take.

**Air Quality**

The proposed CSAH 21 project area is considered a maintenance area for carbon monoxide. The DEIS identifies that the proposed project is consistent with the 2005 Twin Cities Metropolitan Council's Transportation Policy Plan (TPP), and in the current September 14, 2005, Twin Cities Transportation Improvement Plan (TIP). The TIP conformity determination was made on September 14, 2005.

Recommendations: In order to protect air quality in the project area during construction, we recommend the Scott County Public Works Department (SCPWD) consider strategies to reduce diesel emissions, such as project construction contracts that require the use of equipment with clean diesel engines and use of clean diesel fuels. Future NEPA documentation should advise as to whether or not SCPWD commits to implementing these strategies for the CSAH 21 proposal.

- L According to the Metropolitan Council, the amount of undeveloped/ agricultural land (which includes forested land/open space) in the City of Shakopee decreased by about 30% from 1990 to 2005; in Prior Lake the reduction was about 20%. Impacts to the forested areas will be mitigated in accordance with the City of Shakopee's Woodland and Tree Management Ordinance and the City of Prior Lake's Tree Preservation Ordinance.
- M During the scoping process and the DEIS alternative refinement process, alternatives were evaluated to compare anticipated impacts so that a Build Alternative could be selected and refined that avoids and then minimizes impacts to riparian, upland, and forest core.
- N Impacts to the forested areas will be mitigated in accordance with the City of Shakopee's Woodland and Tree Management Ordinance and City of Prior Lake's Tree Preservation Ordinance.
- O The County will encourage its contractors to employ strategies to reduce diesel emissions. However, a lack of sufficient transportation funding can limit the County's ability to commit to costly, aggressive measures to reduce emissions in such efforts.

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← O



## Shakopee Mdewakanton Sioux Community

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TRIBAL OFFICE: 952•445-8900 • FAX: 952•445-8906

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*Vice Chairman*  
Keith B. Anderson  
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October 16, 2006

Mitch Rasmussen, P.E.  
County Engineer  
Scott County Public Works Department  
600 County Trail East  
Jordan, Minnesota 55352

**RE: Comments on the Draft Environmental Impact Statement for County State  
Aid Highway 21**

Dear Mr. Rasmussen:

Attached hereto and submitted for filing, please find the Shakopee Mdewakanton Sioux Community's Comments on the Draft Environmental Impact Statement for County State Aid Highway 21. ← A

I am formally requesting a copy of the record of decision and the Final Environmental Impact Statement when such become available.

If you have any questions regarding this matter, please contact Tribal Administrator Bill Rudnicki at 952.496.6145 or Land Manager Stan Ellison at 952.496.6158.

Sincerely,

Stanley R. Crooks  
Tribal Chairman

Enclosure

Cc: Cheryl Martin, Federal Highway Administration

### 5 SMSC

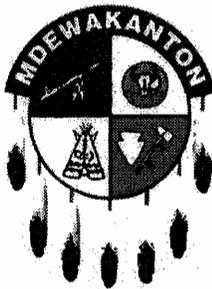
- A The County, SMSC, Mn/DOT and FHWA have entered into an Intergovernmental Agreement that addresses SMSC concerns. See Appendix B.

**COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT  
FOR  
COUNTY STATE AID HIGHWAY 21**

From  
County State Aid Highway 18 to County State Aid Highway 42  
And Transit Station  
Scott County, Minnesota

Submitted to  
U.S. Department of Transportation  
Federal Highway Administration  
And  
Minnesota Department of Transportation  
And  
Scott County

By the  
Shakopee Mdewakanton Sioux Community



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## **INTRODUCTION**

The Shakopee Mdewakanton Sioux Community (“the Community”) is a federally recognized Indian tribe organized under the Indian Reorganization Act (IRA), 25 U.S.C. §461 to 479. The proposed County State Aid Highway (CSAH) 21 extension will affect land owned by the Community in Scott County. The affected parcel includes a portion of remnant Maple-Basswood forest and created wetlands. The remnant forest is used by the Community for cultural activities including hunting, gathering, contemplative, and spiritual purposes.

The Community opposes the proposed CSAH 21 west alignment as it fragments and destroys land that the Community uses for cultural purposes. The Community requests that the Federal Highway Administration (FHWA), the Minnesota Department of Transportation (MNDOT), and Scott County (collectively “the Reviewing Agencies”) consider alternatives that would not disrupt the Community land. The Community requests the Reviewing Agencies to fully consider alternatives that would not destroy the forest.

The Community prefers an alignment located to the east nearer Pike Lake and along the existing Pike Lake Road right-of-way. Such an alignment eliminates impacts on the Community and the YMCA and avoids the forest core completely. If the roadway was constructed as an urban parkway rather than a freeway it may serve the transportation need with lower cost and environmental impact than the proposed project.

## **GENERAL COMMENTS ON THE DEIS**

As noted in these comments, there are several deficiencies in the Draft Environmental Impact Statement (DEIS) that manifest a fundamental failure to adequately consider the impacts of the proposed alternatives on the Community. The Federal Highway Administration (FHWA), the Minnesota Department of Transportation (MNDOT), and Scott County have failed to consider important aspects of the CSAH 21 extension project, such as the cultural use of the Community’s land that would be impacted under the eastern or western alignment. In light of those deficiencies, any “build” decision based on the analysis in the DEIS would be arbitrary and capricious.

### **Federal Fiduciary Responsibility**

It is well-settled that the federal government and its agencies have a special fiduciary relationship with tribes. This special trust relationship is evident in the stated policy of the United States Department of Transportation, which recognizes the special consideration that should be given to impacts of transportation projects on tribes. See U.S. Department of Transportation, DOT Order 5301.1 (November 16, 1999) (recognizing that tribes have “a special place in our Nation’s history and culture” and stating that DOT programs and actions should “avoid infringing on tribal lands”). State agencies are similarly obligated to “recognize the unique legal relationship between the State of Minnesota and Indian tribes” and “endeavor to ensure that tribal interests are

taken into account by the state agency.” See Minnesota Executive Order 03-05, Affirming the Government-To-Government Relationship Between the State of Minnesota and Indian Tribal Governments Located Within the State of Minnesota (April 11, 2003). The special obligations of federal and state agencies are particularly manifest when tribal cultural resources with spiritual significance are at stake. See, e.g., 42 U.S.C. 1996 (The American Indian Religious Freedom Act, which declares national policy to protect and preserve the religious freedoms of Native Americans).

In this instance, the federal Reviewing Agencies have abdicated their special obligations towards the Community by failing to adequately address the impacts and alternatives that would directly and completely impair the ability of the Community to engage in cultural activities on the affected parcel. Moreover, if the western alignment were selected, the Reviewing Agencies would be improperly prioritizing the private, recreational interests of a YMCA camp above the cultural significance of land a tribal community that is owed a trust responsibility by the federal government. Selecting the alternative with the most egregious impacts on the Community would be especially inconsistent with the federal government’s trust responsibility given that an application to take the affected parcel into trust has been pending with the United States Department of Interior since 2000.

Owing to its special fiduciary relationship and internal policies, the Reviewing Agencies should give special consideration to the impacts of the proposed action on the Community and avoid those impacts if possible. Here, the most detrimental impacts to the Community land can be avoided by selecting the eastern alignment. Moreover, alternatives that would avoid the forest core entirely (e.g. alternatives other than the eastern and western alignment) should be considered to further minimize the cultural, social, and environmental impacts to the Community.

#### **The Preferred Alternative Violates Section 4(f)**

The Reviewing Agencies have failed to meet their obligation under the Transportation Act of 1966, 49 U.S.C. § 303, also known as “Section 4(f).” Section 4(f) declares that “[i]t is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.” 49 U.S.C. § 303. See also 23 U.S.C. § 138 (same). To that end, Section 4(f) allows the Secretary of Transportation to approve transportation projects that use publicly-owned lands from public parks only if:

- (1) there is no prudent and feasible alternative to using that land; and
- (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from that use.

33 U.S.C. § 303; 23 U.S.C. § 138. This standard is also codified in the FHWA regulations that implement NEPA and the Transportation Act. See 23 C.F.R. § 771.35.

In this instance, the western alignment would affect land that a sovereign governmental entity – the Community – has designated as a natural area to be used for cultural activities. This use designation is reflected in the Community 2000 Comprehensive Land Use Plan as well as in the trust application that was submitted by the Community to the United States Secretary of the Interior for the affected parcel. The natural area functions as a public park or recreational area. In fact, as reiterated elsewhere in these comments, the natural area is more than a park – it also serves as a museum, spiritual place and classroom to the Community.

Selecting the western alignment as the preferred alternative for this project is improper in light of existing prudent and feasible alternatives. Transportation studies prepared in the 1990s, for instance, identified other potential routes that would meet the stated need for an additional north-south corridor. One such route ran east toward Pike Lake. Other routes that upgrade existing roads should also be considered in order for the DEIS to properly evaluate whether Section 4(f) would prevent the selection of the western or eastern alignment.

Even if there were no other feasible alternatives, the western alignment as presented in the DEIS would still violate the mandates of Section 4(f) because it does not include all possible planning to minimize harm. For instance, the DEIS concludes that noise barriers may not be a reasonable mitigation measure for the affected parcel. (DEIS at 6-18). Moreover, the noise mitigation analysis only addresses residences and not mitigation required for the continued use of the impacted parcel for cultural purposes. For the reasons explained above, it is unlikely that a Section 4(f) analysis would demonstrate that either the western or eastern alignment would satisfy the mandates of the Transportation Act. Moreover, even if the eastern and western alignment did not directly use the land that the SMSC has set aside for a natural area, those alignments would nonetheless implicate Section 4(f). As codified in the FHWA implementing regulations, 23 C.F.R. § 771.135, the prohibition against using Section 4(f) land includes constructive use of the land. “Constructive use occurs when the transportation project does not incorporate land from a section 4(f) resource, but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under section 4(f) are substantially impaired.” 23 C.F.R. § 771.135(p)(2). The constructive uses recognized by the FHWA specifically include situations in which projected noise levels interferes with the use and enjoyment of a noise-sensitive facility, e.g. “the enjoyment of an urban park where serenity and quiet are significant attributes.” 23 C.F.R. § 771.135(p)(4)(i). Constructive use also includes situations where the proximity of the proposed project substantially impairs aesthetic features of the section 4(f) land, 23 C.F.R. § 771.135(p)(4)(ii), or diminishes the value of the wildlife habitat because of an ecological intrusion, 23 C.F.R. § 771.135(p)(4)(v).

In this case, these types of constructive uses would substantially impair the enjoyment of the natural land as a cultural and spiritual resource if either the western or eastern alignment is ultimately chosen as routes for the CSAH-21 extension project. In particular, the aesthetic and noise impacts on the natural land area would devastate its use as a contemplative place used for cultural and spiritual purposes. Therefore, in light of

the prohibitions of Section 4(f), selecting either the western or eastern alignment would violate the Transportation Act of 1966. Moreover, failing to consider the implications of Section 4(f) in the DEIS renders its analysis inadequate and incomplete.

#### **The DEIS Violates NEPA**

Not only does the DEIS fail to address whether building the western or eastern alignment would violate Section 4(f), but the DEIS also violates the National Environmental Protection Act, 42 U.S.C. § 4321 to 4370f (“NEPA”), and its implementing regulations by failing to adequately analyze the social, environmental, cultural, and cumulative impacts of the proposed alternatives.

NEPA requires the Reviewing Agencies to consider the context and intensity of the proposed alternatives. “Context” requires consideration of the locality of the proposed action. See 40 C.F.R. § 1508.27. “Intensity” means that the agency must consider factors such as:

- (1) “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas;”
- (2) “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts;”
- (3) “The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.”

See 40 C.F.R. § 1508.27.

In addition, the CEQ regulations explicitly require environmental impact statements to discuss impacts on cultural resources. See 40 C.F.R. § 1502.16(g). Indeed, Executive Order 11593 requires that, in the furtherance of the purposes and policies of NEPA, the federal government “shall provide leadership in preserving, restoring, and maintaining the historic and cultural environment of the Nation.” See Executive Order 11593, Protection and Enhancement of the Cultural Environment (May 13, 1971).

In this case, considering the cultural significance of the Community land is critical to evaluating the context and intensity of the proposed action. The DEIS, however, fails to adequately consider the context and intensity of the proposed action by ignoring the cultural significance of the affected Community land and by sidestepping the historical context of tribal lands in this region. As discussed below in the section-by-section analysis, many of the shortcomings that pervade the DEIS – ranging from the shortsighted characterization of the land as undeveloped land to the analysis of economic

and social impacts purely in terms of buildings, facilities, and residences – are products of the Reviewing Agencies failure to recognize the proper context and intensity of the proposed action with regard to the Community land.

The failure to recognize unique cultural impacts to the Community in the NEPA process is particularly disconcerting and inappropriate in light of the Department of Transportation policy recognizing that “American Indians and Alaska Natives have a special place in our Nation’s history and culture.” See U.S. Department of Transportation, DOT Order 5301.1 (November 16, 1999). In support of that recognition, the Department of Transportation requires its personnel to “adapt processes to recognize American Indian, Alaska Native, and tribal culture and traditions” and to “avoid infringing on tribal lands.” See id.

Moreover, the DEIS does not properly evaluate the cumulative impacts to the Community, by considering the current proposed taking in the context of a history wrought with government takings of tribal land. See 40 C.F.R. § 1508.27 (explaining that cumulative impacts is part of the intensity of the proposed action); 40 C.F.R. § 1508.7 (noting an adequate EIS must analyze the cumulative impacts of the proposed agency action when such action is added to impacts from other past, present, and reasonably foreseeable future actions). In light of the history of the Community on the land in the vicinity of the proposed action, the taking of 8.3 or even 20 acres of Community land is unacceptable as it continues to chip away at an already depleted land base and frustrates the incremental and gradual work of the Community to restore its connection to the land in the area.

The DEIS also fails to “rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. Indeed, the DEIS basically evaluates two variations of the build alternative – the eastern and western alignment. The DEIS does not consider options that would involve upgrading existing roads rather than destroying undeveloped, natural areas. And while the DEIS provides some descriptions of alternate routes that had previously been considered, the DEIS does not analyze those alternate routes under the rigors of NEPA. The failure to rigorously evaluate alternatives to the proposed action is particularly improper given that the decision to narrow the alternatives to the western and eastern alignment was made without consulting with the Community, as noted in detail below.

#### **Environmental Justice Impacts Improperly Analyzed**

Not only would selecting the western or eastern alignment violate Section 4(f), but the western alignment must also be rejected because it will have a disproportionately high and adverse effect on the Community. See Department of Transportation (DOT) Order to Address Environmental Justice in Minority Populations and Low-Income Populations, 62 Fed. Reg. 18377 (April 15 1997) (defining “disproportionately high and adverse effect” to mean “predominantly borne by” or “appreciably more severe or greater in magnitude”). As such, the western alignment gives rise to serious environmental justice concerns and must be deemed an inappropriate alternative on that basis. A more detailed discussion of the flawed environmental justice analysis is provided below.

## COMMUNITY SECTION-BY-SECTION COMMENTS ON THE DEIS

The following are the Community comments responding to the DEIS. The comments generally following the order of appearance in the DEIS and are listed with the corresponding section number. The deficiencies outlined in the general comments above are manifested in the section-by-section comments discussed below.

### SECTION 2.0, PURPOSE AND NEEDS

The proposed project is a response to existing and forecasted travel demand. Support for the proposed project is found in the Metropolitan Council's roadway spacing criteria that nominally indicate a requirement for an additional north-south roadway between CSAH 83 and CSAH 18. Metropolitan Council policy also supports flexible, efficient growth and transportation solutions.

#### Section 2.4, Need for the Proposed Project

The stated purpose of the project is to "help complete an appropriately functioning roadway system in northern Scott County that efficiently moves traffic by providing adequate capacity for projected travel and transit demand." The following sections in the DEIS then discuss north-south arterial development and the need for another north-south corridor. There is little discussion of the distribution trip origins and destinations, possible east-west connections, demands on the TH 169 river crossing, and the need to spread access to TH 196 over time and space both for traffic and transit access. In fact, the majority of the need discussion assumes the single build alternative eventually proposed as the only solution.

#### Section 2.4.2, Travel Demand / Capacity

The DEIS fails to adequately consider the indirect and cumulative effects of adding a new congestion source to this area. See 40 C.F.R. § 1502.16 (requiring the evaluation of indirect effects of the proposed action); 40 C.F.R. § 1508.7 (requiring evaluation of cumulative impacts). In particular, the DEIS does not discuss the current a.m. congestion on TH 169 and the potential issues of adding the projected amount of traffic at this single point.

Moreover, the FWHA regulations implementing NEPA require the proposed action to "have independent utility or independent significance, i.e. be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made." See 23 C.F.R. § 771.111(f). The purpose of this requirement is to "ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated." Id.

One of the identified purposes of the project is to alleviate congestion on CSAH 18, TH 169 and TH 13. The proposed alignment will connect to CSAH 18's existing TH 169 interchange. The DEIS recognizes the potential for increased congestion at the TH

169/CSAH 21 and 18 intersection. It also recognizes the need for an interchange rather than an at-grade intersection. The DEIS does not, however, evaluate the Minnesota Department of Transportation's plan to upgrade the TH 169 river crossing and interchanges south of the river. Even though the TH 169 interchange is not jurisdictionally a part of the proposed CSAH 21 alignment or the existing CSAH 18, the ability to upgrade this intersection is extremely relevant to whether or not the proposed project can achieve its goal of relieving congestion. In other words, the ability to upgrade this intersection is critical to the independent utility of the proposed action. Moreover, the future plans for alleviating the foreseeable congestion that will be caused by the proposed action must be considered as part of a cumulative impacts analysis. See 40 C.F.R. § 1508.7 (noting an adequate EIS must analyze the cumulative impacts of the proposed agency action when such action is added to impacts from other past, present, and reasonably foreseeable future actions).

The DEIS failed to include recent development and upgrades to CSAH 83, including Right-of-way (ROW) acquisitions. Given the ability to upgrade CSAH 83 and CSAH 18 for less money and still improve transit efficiency, the CSAH 21 project may not be appropriate as proposed. Alternative routes and roadway designs should have been considered. Failure to "rigorously explore and objectively evaluate all reasonable alternatives" violates NEPA. See 40 C.F.R. § 1502.14. Indeed, evaluating a range of alternatives is the heart of NEPA. See *id.*

#### **Section 2.4.4, Land Use considerations**

In evaluating the environmental consequences of a proposed agency action, an environmental impact statement must discuss the "possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(c).

The DEIS is not consistent with the Community comprehensive plan, and yet the discussion regarding the selection of alternatives to the proposed action DEIS does not address the Community's land use planning. Moreover, the studies in the 1990s, evaluating potential routes for alleviating projected traffic congestion in the area, were conducted without the participation of the Community. The failure to involve Community in the early planning processes contradicts the stated policies of the FHWA. See DOT Order 5301.1 (requiring the FHWA to "ensure tribes' involvement in DOT decision-making that significantly or uniquely affects them").

These earlier studies identified several other potential routes that would meet the stated need for a north-south corridor. Among these routes was one lying to the east nearer Pike Lake. This alternative route was a preferred alternative in 1992 but was eliminated from consideration in a later action. The current DEIS does not review these potential routes in light of the current status of the transportation system and the land lying along the proposed routes. This further manifests the failure of the DEIS to rigorously explore and

objectively evaluate alternatives to the proposed action, as required by NEPA. See 40 C.F.R. § 1502.14.

### **SECTION 3.0, ALTERNATIVES**

The key objectives listed for the project are: (1) safe and efficient road design, (2) minimize grading impacts, (3) vegetation/habitat preservation, (4) wetland protection, and (5) minimize property impacts. The impact review focused on the western alignment build alternative and concludes that this alternative best satisfies these objections. The DEIS analysis is inadequate in both substance and procedure, however. First, without a review of the other previously rejected alternatives, taken in light of the current circumstances, the analysis of potential alternatives is insufficient and out-dated. Second, the substantive conclusion that the western alignment best satisfies the objectives outlined above is based on an incorrect understanding of the cultural significance and use of the Community's affected parcel. Moreover, such a conclusion is based on DEIS's failure to analyze impacts to functioning wetlands created on the Community's property.

#### **Section 3.1.1, 1990 Scott County Transportation Study: County Road 18 Alternatives**

This 1990 study developed three alternatives in addition to the no build alternative. Alternatives 3 and 4 met the transportation need. The study preferred alternative 4, a route that extended CSAH 21 north of CSAH 42 in a diagonal alignment to the east. This would avoid the forest core, the Community's land, and still meet the transportation need. At the time that such reasonable alternatives were being evaluated, however, the Community was not consulted and was afforded no opportunity to review or state its support for such an alternate route.

#### **Section 3.1.2 1992 Scott County CSAH 18 and CSAH 21 Feasibility Study**

In 1992 a study more clearly defined the two alternatives. At this time, the westerly alignment (old alternative 3) was chosen over the easterly diagonal alignment (old alternative 4). This was based on access, right-of-way and intersection efficiency. The project was also generally aligned to lie primarily on YMCA owned land. The Community had no input in this decision nor any of the analysis or discussion that preceded it, and was not provided opportunity to comment on the plan.

#### **Section 3.1.3, Relevant Project History (1992-2002)**

This Section purports to list relevant history from 1992 through 2002. The list includes the 1999 Prior Lake and Shakopee Comprehensive Plans. It also includes the 2001 Scott County Comprehensive Plan. It does not include the 2000 Community Comprehensive Plan. The Community land use planning and intended use for its lands was not reviewed nor was it considered as relevant history even though the preferred alternative directly impacts land owned by the Community. The following provides additional information for this section.

- In the 1990 study corridor alternatives, the Community was a property owner in the study corridor yet was not invited to participate, and did not participate, in the scoping process.

- In 1992, the alignment alternatives looked at the easterly and westerly alternatives. The westerly was chosen due to intersection angle and to avoid noise impacts to two homes. The Community was not invited to participate in this process even though the Community owned the land that is now the East Village Subdivision and had applied for transfer to trust status.
- In 1996, the Community acquired the affected parcel for use as a natural area on the bluff, and housing to the north. The Community's Members consistently use the forested area for hunting, maple sugaring, spiritual uses and other activities related to Dakota culture and heritage.
- In 1999, the Community completed its *Comprehensive Land Use Plan*, which includes preserving the forested portion of the affected parcel as a natural area.
- In 2000, the Community requested trust status for the affected parcel from the United States Secretary of the Interior. The decision is still pending. The planned use for the land in the trust application includes a natural area for cultural use.
- In 2003, the County invited the Community to participate in the CSAH 21 environmental impact evaluation process. During this process, the County presented several alignment options to the Community.
- Since 2003, the Community has had representatives on the TAC.
- In 2003, the Community submitted Minnesota Land Cover Classification System, breeding bird, and significant tree data for the affected Community and adjacent YMCA parcel.
- In 2004, the County was notified in writing of the Community objection to the western alignment.
- In 2005, the Community granted the County all requested easements along CSAH 83, anticipating a future four-lane upgrade (not mentioned in DEIS).
- In 2005, the construction of the East Village subdivision began. East Village is adjacent to the affected parcel.
- In 2005, the construction of the East Village stormwater treatment system began on the affected Community parcel, including ponding and wetlands.
- In 2006, the Community participated in negotiating an agreement with the Prior Lake Spring Lake Watershed District (PLSLWD) and local communities concerning the Prior Lake Outlet Channel restoration and maintenance, pledging no more than 0.05 cfs output to the channel.
- In 2006, by October, 11 occupied homes were located in East Village homes with 58 homes planned. These homes are under active construction.

### **Section 3.1.5 Draft Environmental Impact Statement (DEIS) Build alternative Refinement Alternative Review**

This section discusses several objectives used to refine the alternatives. Several of these objectives are discussed below.

#### Minimize Grading Impacts

In terms of grading impacts, the DEIS shows that the eastern alignment is actually preferable to the western alignment. Alternative alignments, i.e. along Pike Lake Road, may have even lower grading impacts. Such alternate alignments are not, however, considered in the DEIS.

#### Vegetation/Habitat/Wildlife Preservation

As compared to the eastern alignment, it is true that the western alignment would have less of a short-term impact to the forest core. Choosing the western alignment as the preferred alternative on that basis, however, is disingenuous. The YMCA is a private entity with the full right to alienate its lands. The parcel is guided for residential use in the Prior Lake Comprehensive Plan. The long-term preservation of the forest core is therefore not guaranteed or even likely. In fact, the likely disposition of the parcel results in the eventual development and complete destruction of the forest core. And if the western alignment were allowed to destroy the Community's forest, then all viable Maple-Basswood forest in the area would be destroyed.

#### Wetland Protection

The DEIS fails to recognize the impacts to the constructed wetland area lying on Community land. The affected ponds are part of the Community's East Village subdivision's stormwater treatment system. The area impacted was specifically constructed to have wetland characteristics. It is a wetland under the definition of the Minnesota Wetland Conservation Act, Minnesota Rules Chapter 8420. As long as the land is held in fee status, this state law may apply to any activity on the land.

The ponding area and by-pass channel are also essential to treatment and management of surface water originating in the East Village Subdivision and upstream in other parts of the sub-watershed. Water from portions of Prior Lake and Shakopee flow into and through the East Village Subdivision. This system is designed to treat and infiltrate some of this water to minimize direct runoff and mimic the natural system. This system is therefore an integral part of the Community's pledge of no more than 0.05 cfs runoff per acre as part of the Prior Lake Channel restoration and maintenance agreement with the Prior Lake / Spring Lake Watershed District (PLSLWD) and surrounding communities.

#### Minimize Property Impacts

The East Village Subdivision is an urban development rather than rural residential. This subdivision lies directly to the west of the proposed corridor.

The DEIS incorrectly states that no structures will be impacted. Although not buildings, the outlet structures, engineered soils and drainage ways in the East Village ponding system are structures of significant value.

#### **Section 3.1.5.2 Sub –Alternatives Evaluated During the EIS Process**

The Community suggested and supported alternative non-forested routes at public meetings and as members of the TAC. The Community's written objection to the western alignment points out the potential for an easterly alignment along Pike Lake Trail that avoids all forest impact and conforms to topography. Coincidentally, the suggested routes are similar to the alternative preferred in the 1990 study but rejected in the 1992 study.

#### **SECTION 4.0, TRANSPORTATION IMPACTS**

Failure to fully analyze the various alternatives limits any ability to correctly analyze the impacts on the regional transportation system. The DEIS should have looked at the eastern diagonal alignment (the preferred route in the 1990 study) to see if it could meet the need. The analysis should have looked at the regional system potential and included upgrades to existing roadways in the capacity analysis. Integrating upgrades to the existing roadways and a parkway design to the east of Pike Lake may have met all needs at less expense and lower environmental impact. Such a system would also lower the cumulative impact by distributing the traffic along multiple entry and exits points for TH 169. This could alleviate congestion projected to occur at the TH 169/CSAH21/CSH18 intersection. It would also support the planned transit options and give transit users more entry points into the system.

#### **SECTION 5.0, SOCIAL AND ECONOMIC IMPACTS**

The DEIS fails to correctly describe and evaluate the impacts on the Community related to the proposed options. The Community, by definition, is a minority group. See, e.g., DOT Order 5610.2. As explained above, the remnant forest on the Community's land is used by the Community for cultural activities including hunting, gathering, contemplative, and spiritual purposes. The western alignment (and even the eastern alignment to a lesser extent) would diminish or destroy the cultural value of the remnant forest on the Community land. Such an impact also disrupts Community cohesion in light of the cultural significance of the land. In order to properly address the social, environmental, and cultural impacts of the alternatives, the DEIS must evaluate those impacts in the context of the cultural significance of this Community. See 40 C.F.R. § 1508.27; 40 C.F.R. § 1502.16(g).

In addition to the cultural impacts that would be caused by the western alignment, the impacted Community parcel also has a residential subdivision lying just to the west of the proposed alignment. In fact, the western alignment would place the edge of the right-of-way within 1000 feet of existing residential structures. This residential area is actively occupied at this time.

##### **Section 5.1.1, Social Impacts, Affected Environment**

For the Community, the concepts of "cultural resources" and "cultural impacts" have a much broader meaning than the concept suggested by the limited scope of the cultural issues in the DEIS, which dealt only with historical, architectural, and archeological properties. Even though the County has consulted with the Community and been informed of its views regarding this area, the County failed to represent the issues the Community has put forth.

The County, MN DOT and FHWA are all well aware of the significance of natural areas to the American Indian Community. FHWA and MN DOT have had a high volume of consultation with the American Indian Community and specifically the eleven federally recognized tribes in Minnesota in regards to protection of natural and cultural resources. Both Agencies are well aware of the shortcoming in the terminology of regulations related to "cultural resources," especially in regards to the much broader and all-inclusive

meaning of “cultural resources” to the American Indian Community. The DEIS is severely lacking and incomplete in its consideration of the Community’s position of its members use of the area resulting in a significant cultural importance placed upon this area of forest. In consultation over the past several years, the Community has repeatedly expressed its concerns to the County. In June of 2003 the Community’s Cultural Resources Department responded to the Scott County’s request for comments on its proposed Scoping Document. At that time, the Community was under the understanding that the County would use the consultation proposed at that time and the resulting information to assist in the formulation of a sound and accurate plan. But the DEIS shows that the County has failed to listen and acknowledge the position and concerns of the Community.

#### Section 5.1.1.1, Population

Although the Community is a small percentage of the overall population of northern Scott County, it is by definition a minority population. In this situation, the reason the Community’s Members are a minority is especially relevant. It was the loss of land that reduced the Dakota to their current population numbers. Because of the significant use of the area by Community Members, and due to the traditional cultural aspects of these uses being a part of the everyday lives of Native American who use this area, the impacts of this proposed project are severe. The DEIS must be found to be totally lacking in its treatment of the Community and its members. The text states figure 5-1 shows the traffic analysis zones (TAZ) used for analysis input. The specific zones are not shown on Figure 5-1.

#### Section 5.1.1.3, Community Facilities and Services

The DEIS states that the closest parkland is west of the proposed project. The Community Comprehensive Plan and actual Community practice, reserve the forested area of Community’s land as a natural area. This natural area would be obliterated by the western alignment option. Failure to recognize the natural area as “park” is likely related to the failure to review the Community Comprehensive Plan and address the Community’s written comments. It is in fact more than a “park” in the European sense. It is a museum, recreation area, spiritual place and a classroom for the Community.

Because the impacted land is at least the functional equivalent of a public park or recreational area, selecting the western or eastern alignment as the preferred alternative in the Final EIS would likely violate Section 4(f), 49 U.S.C. § 303. See Community General Comments, supra. The DEIS, however, fails to consider an important aspect of the project by failing to undertake a Section 4(f) analysis entirely.

#### **Section 5.1.2 Social Impacts, Environmental Consequences**

##### Section 5.1.2.1, Community Cohesion

The DEIS discusses segmentation of the Community land. This discussion understates both the amount of land taken from beneficial use and the impact on Community cohesion for the Community. The total acreage taken from beneficial use, based on

mapping provided by the DEIS consultant is closer to 20 acres than the 8.3 stated in the document. If the construction limits are overlain on the property boundary, the total area of land taken for right-of-way plus that severed without access is over 21 acres.

Due to the disruption of the forest by running a major highway through and severing Community access to the forest interior, cultural uses are impacted to a point that the remaining area is too small for the continuation of the current uses by Community members. In addition, failure to require a noise barrier would result in noise disruption that would preclude some Dakota social, spiritual, or educational activities. The active hunting, gathering, spiritual activities and other culturally related uses would be eliminated completely by the western alignment of the proposed project. The impact on Community cohesion would touch the Community at its core. Preservation of some lands in their natural state is central to preservation of a Dakota Community. Since a large portion of the 80-acre parcel is a natural area used for hunting, gathering, contemplative and spiritual purposes, the alienation of land and its close proximity to a major roadway would result in the Community loss of cultural use of nearly the entire parcel. This impacts all Community members, not just those living in close proximity.

#### Section 5.1.2.3. Community Facilities and Services

The DEIS states that the Build Alternative will not affect Community facilities and services provided by the Community, as these are not located in the project area. It notes that the affected parcel is used as a passive nature preserve. The Community views natural areas as a Community service, including the wooded and forested bluff on the affected parcel. Community natural areas are important sites for participating in Dakota cultural heritage through hunting, gathering, contemplative, and spiritual purposes. For all practical purposes, the potentially affected area controlled by the Community, consisting of old-growth Maple-Basswood forest, can be considered a Community facility. To place this in the context of the non-Native American terminology for "facility," the varied Community cultural uses of this site constitute cumulative facility uses. The uses are equivalent to that of a church, school, park, playground, health club, medical clinic, craft store, and grocery store. This parcel is indicated in Community planning as a preserved natural area, in order to provide the Community with an area for continuation of cultural practices. The members of the Community use this area for spiritual purposes, hunting and gathering, education, natural resources, traditional and contemporary cultural learning, and recreation. The proposed western alignment significantly directly impacts (the eastern alignment to a lesser extent) these Community services.

#### Section 5.1.2.4. Environmental Justice

In 1994, President Clinton signed Executive Order 12898, which requires federal agencies to identify and address "disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, or its programs, policies, and activities on minority populations and low-income populations in the United States." See Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994. The Department of Transportation subsequently adopted DOT Order 5610.2, which limits the circumstances under which Department of Transportation officials can carry out activities that will have a disproportionately high and adverse effect on protected populations. See

Department of Transportation (DOT) Order to Address Environmental Justice in Minority Populations and Low-Income Populations, 62 Fed. Reg. 18377 (April 15 1997). To that end, DOT Order 5610.2 allows such activities only if:

- (1) a substantial need for the program, policy or activity exists, based on the overall public interest; and
- (2) alternatives that would have less adverse effects on protected populations . . . either (i) would have other adverse social, economic, environmental or human health impacts that are more severe, or (ii) would involve increased costs of extraordinary magnitude.

See DOT Order 5610.2, 62 Fed. Reg. at 18380.

The Department of Transportation defines “minority” to include a person who is “American Indian and Alaskan Native.” See id. at Appendix. The environmental justice analysis must consider the totality of significant individual or cumulative human health and environmental effects. Id. Those effects include a wide range of impacts such as noise pollution; destruction of natural resources; destruction or diminution of aesthetic values; destruction or disruption of Community cohesion; or destruction of the availability of public facilities and services. Id.

In this case, the DEIS analysis used to address impacts to the minority Community population is insufficient and fundamentally flawed in several aspects. It fails to account for the actual distribution of the minority population relative to the project; it falsely equates the land taking to impacts on other non-minority populations; and it fails to recognize the cultural significance of the Community cohesion, facilities, and services that would be disrupted were this natural area to be destroyed. Moreover, the environmental justice analysis considered only the impacts of displacing residences rather than the cultural, Community, and natural resource loss that would also impact the Community.

The census tracts selected for analysis exclude a large percentage of minority population residing in two other Community subdivisions located just to the west of the project area in Census Tract 080903. These Community Members live less than one mile away and are among those who regularly use the forested area for hunting, gathering and spiritual activities. They reside on original reservation land, which has been populated by Mdewakanton Dakota since at least 1891. The census tracts that were analyzed included a portion of the TAZ and include many non-Community residential areas not actually in the TAZ; yet, specifically excluded from analysis was census tract 080903, which includes the two Community subdivisions, located within the TAZ. (DEIS Figure 5-1).

The analysis of disproportionate impact fails to state the actual impact to the Community because it ignores the character of the land impacted and evaluates the loss from a majority viewpoint rather than how it impacts the minority population. The land in this instance is not simply a commodity. It is valuable to the Community because of the cover

type, not simply as acreage to be developed. This particular cover type is now rare in Scott County. It was, at one time, common and considered a valuable resource to the Mdewakanton Dakota. It was a primary source of food, fiber and fuel. It was also a place of retreat in a spiritual sense. Retention of such areas, under Community control, is important to the Community and its Members. The Community Members minority status and the importance of this land are inextricably intertwined. To equate the land to the general population's view of land as a commodity to sell, barter and develop regardless of its natural features is to ignore the basic intent of Executive Order 12898 that requires review of impacts on minorities.

Even if viewed on an acre-impacted basis the analysis is flawed. It must be viewed as a percentage impact on the Community's land, not a relative impact to the general Scott County land base. The immediate loss of use to the Community is approximately 21 acres after accounting for the severed portions of the parcel. The Community holds approximately 100 acres of Maple-Basswood forested area that is of a quality and extent to be maintained as forest cover. The area impacted is 23% of this total. An impact of 20% of the total land available for such use is significant.

If the parcel is evaluated based on its use the impact is even more significant. The western alignment would effectively remove all ability to use the forested area for several Community uses. There would be insufficient room for hunting. Gathering would be severely curtailed. The noise impacts alone would eliminate the spiritual use potential. This effectively eliminates over 35% of the land available for such uses.

The DEIS wrongly states that the project will not have a disproportionate impact on the Community's minority population. It incorrectly analyzes the impacts on community cohesion, facilities and services as it relates to the tribe. It also incorrectly characterizes the loss of land and the impacts of those losses on the minority population. The fact that the Community was represented on the TAC, and clearly stated its objection to the westerly alignment, does not mitigate this improper analysis. The Community made it clear that it does not agree to the westerly alignment and that the land is preserved for use by the Community Members for their own purposes. The fact that these uses are not those of the majority population does not allow those uses to be discounted or ignored.

As explained above, the impacts on the Community are not only severe, but they are disproportionately so. The impacts of the eastern alignment to the YMCA camp or trails, for instance, do not compare to the destruction of a significance cultural resource for the Community. Indeed, the severity of the impact caused by interfering with the Community cultural and spiritual resource is underscored by the Shakopee City Code 10.52, which makes it unlawful for any person to prevent another person from "performing any lawful act enjoined upon them, or recommended to them by the religion which that person professes."

### **Section 5.1.3, Mitigation for Social and Community Impacts**

The Community places a high value on the affected natural area as a social and cultural resource. The loss is not amenable to financial compensation. The only suitable compensation would be lands adjacent to the Community with equivalent cover type, high quality Maple-Basswood forest. Since there are no other areas of such forest cover available, other than the YMCA camp, the probability of such compensation is unlikely.

### **Section 5.2.1, Land Use, Affected Environment**

#### Section 5.2.1.1, Existing Land Use

This section does not list any Community land use in the area, which includes residential, natural areas, and created wetlands. In the case of the natural area, this land use has cultural and spiritual significance.

#### Section 5.2.1.2, Land Use Planning

Platting on the adjacent 80 acres is complete, the development is in place and housing is being constructed.

### **Section 5.2.2, Land Use, Environmental Consequences.**

#### Section 5.2.2.1, Land Use Consequences

The direct impacts analysis does not discuss the effective removal of land from the Community's current use. The indirect analysis does not discuss the elimination of all current use due to noise and traffic impacts. It also fails to address the need to relocate and reconstruct significant stormwater management facilities on Community's land.

#### Section 5.2.2.2, Right of Way and Relocation

This section misstates the impact on the Community's land. The western alignment total impact is greater than 20 acres. This includes the actual right of way and the severed portion located east of the right of way. The Community would have no access to this land. It would be of insufficient size to use for the current purposes. Access restrictions preclude other uses. The total land loss to the Community is significantly greater than stated.

### **Section 5.2.3, Land Use, Mitigation**

#### Section 5.2.3.1, Land Use

The CSAH 21 extension is not contemplated in all current land use plans. It was not contemplated in the Community plan. County planning does not provide information on the exact location of proposed alignments. The Community was not included in the 1990 or 1992 planning efforts. Indirect impacts include loss of use due to noise and relocation and reengineering stormwater management facilities on Community land.

#### Section 5.2.3.2, Right of Way

The loss to the Community is not amenable to financial compensation. The only suitable compensation would be lands adjacent to the Community with equivalent cover type.

Since there are no other areas of such forest cover available, other than the YMCA land, the probability of such compensation is unlikely.

#### **Section 5.3.1, Economic Impacts, Affected Environment.**

There is no figure that shows which 10 TAZs were used for analysis. Given the employment figure of 710 within the study area it is presumed that the Community enterprises are not included.

#### **SECTION 6.0, PHYSICAL AND NATURAL ENVIRONMENTAL IMPACTS**

In its initial written comment to the western alignment the Community suggested that an easterly alignment, similar the 1990 option 4 alignment, would solve all issues. This was based on an assumption that the roadway is needed and that most environmental impacts can be avoided. The Community disagrees that other native habitats should be impacted in an effort to avoid wetland impacts. This has been one of the stated purposes for abandoning some previous layouts such as a future CSAH 21 that connects with Pike Lake road. The Community believes that a mature Maple-Basswood forest, especially one with forest interior, likely has greater ecological function and value than many wetlands in the project vicinity. Maple-Basswood forest has many cultural benefits to Native Americans beyond the aesthetics that would be appreciated by nearly everyone. Unfortunately, forests are only protected by disjunctive, local tree preservation ordinances that will not achieve equal function and value within the next three or four generations, if ever. By contrast, in a suitable wetland restoration site, functions and values can be accomplished in a few growing seasons.

Northern Scott County likely has less than 1% of what were originally vast expanses of Maple-Basswood forest. Natural resources in the area of this cover type are quickly diminishing. The portion of forest located in the southwest corner of CSAH 21 and 42 was eliminated with the Jeffers Pond development. Community staff just learned that the 55-acre forest located in the northeast corner of CSAH 42 and 18 is being reviewed for a high density residential / commercial development. Again by contrast, approximately half of the pre-settlement wetlands still occur in northern Scott County.

#### **Section 6.2, Noise Impacts**

The evaluation of the noise impacts to the Community parcel falls short of acceptable. Current noise level at receptor R11 is  $L_{10}$  40 dB and  $L_{50}$  38dB; the lowest noise levels along the corridor. This low noise level contributes to the cultural use of the parcel. Other forest areas under Community control are located near highways that generate significant noise thus reducing their utility for certain cultural activities. To that end, the noise impacts to this parcel should be analyzed under the FHWA noise abatement criteria for Category A lands, which are special areas requiring serenity.

The west alignment option will increase  $L_{10}$  by 29 dB and  $L_{50}$  26dB, placing the receptor above state standards. This is also the highest level of increase experienced at any receptor. This level of noise will effectively eliminate the entire parcel from any sound-sensitive use.

### Section 6.2.3, Mitigation

Disregarding any cultural uses, the residential uses still require noise mitigation. Noise mitigation at R11 was found reasonable under MN/DOT cost criterion. The DEIS noise mitigation analysis determined that it could be considered less than reasonable because the Community development is planned, and residents would not have been exposed to traffic noise impact over a long period of time. Community members have been using the affected parcel since 1996 as a quiet natural area. The residences are occupied or being constructed and will exist before any noise is generated. So contrary to the DEIS assumption, Community members and residents will be exposed to a traffic noise impact over a long period of time. Therefore, the noise mitigation for R11 should be reevaluated to acknowledge Community land use and current residential use.

There is apparent disparate treatment of impacts on Community land as compared to other lands in the area, in violation of 23 C.F.R. § 771.105(f). In the discussion of mitigation on pages 6-18 and 6-19 the noise increase at Receptor 11, nearest the Community development, is actually a lower cost per decibel per residence than that found at R13. Receptor 11 mitigation is, however conditioned and, largely, dismissed. At R13 it is simply accepted as necessary, and was planned to be included in the Southbridge Development. The two situations need to be made equal or further explanation is required for the higher standard being applied to impacts on Community land. An explanation justifying such disparate treatment is not likely to be acceptable under general fairness or environmental justice considerations.

On page 6-20, *Alternative Noise Abatement*, the DEIS recommends that development be restricted in an area 200 feet from the right-of-way. If residential development must be limited in this area, the limitation for a noise sensitive outdoor use will be significantly greater. This supports the above stated contention that the western alignment will eliminate cultural uses for the entire forested parcel.

### **Section 6.5, Vegetation, Wildlife and Fisheries, Affected Environment.**

#### Section 6.5.1.1, Vegetation

The western alignment is stated as having less forest-core impact than the eastern alignment. The YMCA is a private entity; with the full right to alienate its lands. This parcel is guided for residential use in the Prior Lake Comprehensive Plan. *Without any actual protection of the forest core, the Community does not agree that the western alignment has less environmental impact than the eastern alignment.*

In addition, the Community feels that the analysis of forest core impacts was inadequate. Using its own Minnesota Land Cover Classification System (MLCCS) data<sup>1</sup>, the Community compared its forest core analysis to the DEIS. The forest core was calculated to be 26.4 acres, using the 394 ft forest edge criterion. To determine impacts, the Community used the construction limits for its analysis. Use of construction limits is appropriate because of presumed vegetation and tree removal, as well as soil disturbance. Furthermore, a portion of the construction limits will become part of the ROW, resulting in future impacts. The results of the analysis are summarized in Table 1.1.

<sup>1</sup> The Community MLCCS data was shared with the MN DNR in Fall 2005.

Table 1.1—Analysis of Forest Impacts†

	Direct impact to forest (acres)	Direct impact to forest core (acres)	New forest core (acres)	Actual impact to forest core (acres)†	New edge Created (feet)
West Alignment	9.44	2.1	15.8	8.8	3,212
East Alignment	9.75	5.06	9.41	15.2	3,320

†Using construction impacts.

†Existing forest core minus new forest core.

By creating a new forest edge, a new reduced forest core is created. The new forest core was calculated by using the 394 ft from edge criterion for forest edge. The DEIS only looked at impacts to the existing forest core. This analysis is inappropriate and makes the impacts appear smaller. Actual forest core impacts are 8.0 and 12.9 acres greater for the west and east alignment, respectively, than reported in the DEIS. Using this method of analysis is more appropriate because it allows a more accurate analysis of impacts to vegetation and wildlife.

Mitigation for the environmental impacts does not adequately address management strategies or cost to affected property owners. The western alignment creates 3,212 new feet of edge, and the eastern alignment creates 3,320 feet. Non-native invasive species like buckthorn (*Rhamnus cathartica*), garlic mustard (*Allaria petiolata*), tartarian honeysuckle (*Lonicera tartarica*) first establish at the forest edge. Buckthorn is present at very low levels, and garlic mustard and honeysuckle are not present. The DEIS fails to acknowledge the potential for remaining habitat degradation and the increase costs to property owners to manage against these invasive species.

The above analysis supports the Community suggestion of an alignment similar to the 1990 preferred alignment. This far easterly alignment avoids all impacts to the forest core and nearly all cultural impacts to the Community or the YMCA. Without evaluation of this alternative, the true scope of impacts and potential avoidance cannot be assessed.

#### Section 6.5.1.2, Wildlife

Using the Community analysis of actual forest core impacts, the impacts to wildlife can better be evaluated. Forest interior birds like Ovenbird and Wood thrush, which require intact forest core, will not experience the 0.8 and 2.3 acres of habitat loss reported in the DEIS. Instead, they will experience an 8.8 and 15.2 acres loss of habitat. While both Ovenbird and Wood thrush are not federally or state listed, they are rare birds with declining populations due to habitat loss.

The DEIS does not look at the loss of gaming species such as deer and turkey. These species will likely be impacted due to habitat loss. Indirectly, this impact will affect hunting activities by the minority-status Community members.

As stated above, the far easterly alignment avoids these impacts.

#### **Section 6.8, Parks and Trails**

The Parks and Trails analysis exemplifies the cultural differences and jurisdictional difficulties. It further manifests the pervasive failure of the DEIS to consider the context and intensity of the proposed action.

The Community has a different view of parkland than neighboring areas. While the Community has tot-lot type playgrounds, most of its "parks" are natural areas. These natural areas are used for a variety of uses including hunting, gathering, contemplative, ceremonial and spiritual uses. Trails exist in these natural areas, but are "unimproved" to preserve the landscape character and land use. The Community's view of parks and trails is not included in the affected environment or environmental consequences. The trails proposed as mitigation are "improved" (DEIS, 6-33) and do not preserve the character and existing land use by the Community or YMCA in the forest.

The Community's statements and comments during the entire process regarding cultural activities relates to this view of land use. Cultural activities include a host of activities, many of which are personal in nature.

#### **SECTION 7.0, WATER RESOURCES**

##### **Section 7.1.1, Regulatory Environment**

This list does not include the Community. Community trust land lies just upstream from the project area. The western alignment will impact stormwater management facilities that handle stormwater from trust lands. These impacts will affect the Community MS4 NPDES permit compliance and any agreement between the Community and the PLSLWD. The fact that the Community does not have direct regulatory control does not mean it is not an affected regulatory body. If the land is transferred to trust status the Community will become a permitting body replacing some of the functions of the watershed district and the State of Minnesota. The United States Environmental Protection Agency will also be more involved at that point.

##### **Section 7.2, Surface Water**

East Village ponding and wetlands impacts are not mentioned in the DEIS. Over 1 mi<sup>2</sup> watershed drains through the East Village pond system. This system is an integral part of the Community's pledge of no more than 0.05 cfs runoff per acre as part of the Prior Lake Outlet Channel restoration and maintenance agreement with the PLSLWD and surrounding areas. The 2<sup>nd</sup> cell of the stormwater treatment system pond will be directly impacted by either the west or east alignments. This pond was designed with a permanent interior lining to retain water and provide sediment removal. In addition, this pond was designed with a large infiltration shelf in order to meet PLSLWD requirements. The Community has invested considerable resources in this system, including \$208,000 in contracted construction cost.

No outflow has been observed during the 1.5 years the pond has been in existence. During this period there have been two 48 hour storm events with greater than 3.5 inches of precipitation and one storm event with greater than 4 inches of precipitation in 48 hours. Should this pond experience outflow, water quality is likely enhanced by the dual treatment of the 1<sup>st</sup> and 2<sup>nd</sup> cells of the pond system.

#### Section 7.5, Groundwater

The DEIS references used for an assessment of groundwater impacts are inadequate to predict impacts at the local scale of the proposed road construction project (DEIS 7.5.1). References must include: the Shakopee Public Utilities Commission Wellhead Protection Plan – Parts 1 & 2 prepared by Bonestroo, Rosene, Aderlik & Associates for the City of Shakopee on September 24, 2004; the Shakopee Mdewakanton Sioux Community Wellhead Protection Plan issued in December 2001; the Southwest Metro Ground Water Work Group Management Plan issued in December 2002; and the Minnesota County Well Index (online at the Minnesota Department of Health website).

The DEIS makes no mention of nearby private and public wells that may be impacted by construction activities. The Minnesota County Well Index indicates two private wells in close proximity to the project corridor. A plan to protect these wells, or to abandon them according to State specifications, should be included.

While the project corridor does not fall within current Drinking Water Supply Management Areas (DWSMAs) for the City of Shakopee or the Shakopee Mdewakanton Sioux Community, new delineation guidelines put forth by the Minnesota Department of Health (MDH) will extend the Shakopee Mdewakanton Sioux Community's DWSMA to the southernmost portion of the project corridor. The MDH recognizes the possibility of rapid groundwater flow through karst features in the Prairie du Chien aquifer, and recommends extending the DWSMA to the edge of the buried bedrock valley. Special precautions are recommended in this area to prevent groundwater contamination by vehicle leaks, spills, and post-construction runoff. Community public water supply wells provide high quality drinking water to members and to surrounding communities for emergency water needs.

The DEIS characterization of unconsolidated sedimentary deposits and bedrock geology (DEIS 7.5.1) is inadequate to predict impacts to groundwater resources. Stating that, "regional groundwater flow direction within the unconsolidated deposits is generally north to the Minnesota River" is misleading. This simplifies complex groundwater flow paths that connect surface water to bedrock aquifers used as public and private water supplies. It should be clarified that unconsolidated sedimentary deposits in the project area are in contact with the Prairie du Chien Group (a known karst aquifer) and the Jordan Sandstone (the primary water supply for the City of Shakopee, the Shakopee Sioux Community, and numerous private residences). The hydraulic interaction between the unconsolidated sedimentary deposits and bedrock units is unknown.

The DEIS states that, "the soil type and the ability of the bedrock to form confining layers determine the susceptibility of groundwater resources to contamination" (DEIS 7.5.1). The DEIS should clearly note the lack of a continuous confining unit within the project corridor. The Shakopee Mdewakanton Sioux Community has measured infiltration rates of 14 cubic feet per second along a stream channel in middle-terrace deposits only 1 mile west of the proposed road construction site. This extremely high infiltration potential makes groundwater in the project corridor immediately susceptible to almost any type of contaminant.

The DEIS states that, "minor dewatering may be necessary near the wetlands north of CSAH 16 and DNR wetland #70-248W" (DEIS 7.5.2). No volume estimates are included.

The DEIS states that, "road runoff is not considered a major source of groundwater contamination due to the relatively low concentrations and the ability of soil to filter these pollutants as water infiltrates through the soil layers." (DEIS 7.5.2). This claim contradicts previous DEIS statements that a portion of the project corridor is in a zone of high susceptibility to groundwater contamination (DEIS 7.5.1). A growing body of water resource research in the United States, Canada, and Finland has shown that chloride from road salt is a growing groundwater contamination problem in cold climates. Elevated chloride in groundwater can degrade the taste of private and public water supplies and increase water treatment costs, and chloride in surface and groundwater can kill plants in lakes and wetlands.

The DEIS states that, "the proposed construction would not likely have any regional affect on groundwater recharge due to the relatively narrow area of impact in the overall watershed." (DEIS 7.5.2). This statement ignores changes to the quality of recharging water. It also ignores the obvious effect, even purpose, of road construction – the increased development of adjacent properties. The river terraces are among the most important recharge areas in Scott County, as much of the county is covered by thick clay soils. These terrace deposits provide rapid recharge near the City of Shakopee, which supplies huge volumes of water to area residents, businesses and visitors. Reductions in recharge at this location will accelerate dewatering of the Prairie du Chien-Jordan aquifer in northern Scott County. Impacts to local groundwater-related resources may also affect the quality of life of northern Scott County residents. For example, changes in groundwater volume and quality at Deans Lake may degrade the lake and associated park areas. Groundwater modeling by the Metropolitan Council indicates that land use changes in and around the project corridor will impact Deans Lake and/or nearby wetlands in ten years or less.

#### **Section 7.6, Wetland**

Both the eastern and the western alignment impact a wetland area on land owned in fee by the Community. The impact was highest with the western alignment. The wetland was created as the second cell in a two-cell water management system that is designed to nearly eliminate surface water discharge from the Community East Village subdivision

that occurs west of the proposed alignment. This area is wetland even though the area was created in non-wetland because its construction was intended to create wetland and the area has assumed wetland characteristics. This wetland area would be protected by the Minnesota Wetland Conservation Act, Minn. Stat. § 103G.222-103G.2373, and the accompanying regulations, Minn. Rules Chapter 8420. Furthermore, the *Community Design Manual* specifies mitigation compatible with the Minnesota Wetland Conservation Act unless the Business Council provides a special exemption.

The Community does not necessarily agree that mitigation should be onsite unless such areas can clearly achieve similar function and value to the impacted wetlands. Larger wetlands have higher function and value and a road corridor project usually cannot accommodate large wetlands because of their linear layout. Larger mitigation areas, close to the project area, are more desirable than smaller mitigation sites with limited function and value. Wetland restoration is preferable to wetland creation. Both WCA and USCOE policy specifically requires replacement of function and value but this requirement is rarely enforced. Secondly, monitoring and management often does not get accomplished at public wetland mitigation areas. The Community would like to see money allocated within the project budget to adequately cover the design, build, monitoring, and management of all mitigation areas. One ideal area in close proximity to the project site is located at the southeast corner of CSAH 21 and 42 that currently serves as a cow pasture. If it could be acquired and restored it would be a large wetland with high public visibility within an urbanizing area near an elementary school.

#### **SECTION 8.0, CULTURAL IMPACTS**

The cultural impacts to the Community are greater than suggested by limited scope of the DEIS definition of cultural impacts, which were limited to historical, architectural, and archeological properties. For the Community, the concepts of "cultural resources" and "cultural impacts" have a much broader meaning. The Reviewing Agencies, especially the FHWA, have had a high volume of consultation with tribes in regards to the protection of natural and cultural resources. Both agencies are well aware of the of the shortcomings in the terminology of regulations regarding "cultural resources", especially in regards to the much broader, all-inclusive meaning of "cultural resources" to the American Indian Community. As described above, the DEIS generally fails to recognize the cultural significance of the affected parcel to the Community and subsequently reviews cultural impacts under false contexts.

The DEIS is severely lacking and incomplete in its consideration of the Community's position of its members use of the area resulting in a significant cultural importance placed upon this area of forest. In consultation over the past several years, the Community has repeatedly expressed its concerns to the County. In June of 2003, the Community's Cultural Resources Department responded to Scott County's request for comments on its proposed Scoping Document. At that time, the Community was under the understanding that the County would use both the consultation proposed at that time and the resulting information to assist in the formulation of a sound and accurate plan. But the DEIS shows that the County has failed to listen and acknowledge the position and concerns of the Community.

This proposed project affects an area that is of significant cultural use, including spiritual, traditional teaching, hunting and gathering, natural resources education, recreation, and ceremonial use by the members of the Community. The Community holds only limited resources such as this parcel. The loss of this area would be a loss that for practical purposes cannot be mitigated due to the cultural use being related to cover-type. This parcel represents a portion of one of the last remaining stands of maple basswood forest in Northern Scott County and one of the few natural old-growth forested areas in the control of the Community. There are specific cultural activities that can take place only in an area such as this. This impact would be of extreme cultural significance because the loss of this area would affect the Community's ability to have sufficient tribal land holdings, with resources conducive to specific cultural activities, on which to maintain conditions that allow for continued teaching and practicing of Dakota traditional social, educational and spiritual activities. The County has completely disregarded the cultural uses of the area and the impact of the proposed undertaking upon a minority Native American population. The claim that there would only be a limited impact on the affected lands is false and shows only that the County has disregarded the Community's views of the significance of cultural practices within this area.

In addition, Reviewing Agencies are required under 36 CFR Part 800.2 to consult with any Indian tribe that attaches religious or culturally significant properties affected by an undertaking. While the DEIS states that the Reviewing Agencies met their obligations under Section 106 of the National Historic Preservation Act the DEIS describes only an assessment for archaeological or architectural significance. The DEIS does not analyze or refer to any evaluation undertaken regarding the cultural significance of the area. As stated several times above, the regulatory language lacks the terminology to cover the broad meaning of "cultural resources" as used in the American Indian context. When the Community states that it uses the land for cultural purposes it is speaking in the broad context.

The Minnesota River Valley and surrounding areas have been home to the Shakopee Mdewakanton Sioux since time immemorial. Ancestral lands that exist in their natural states much as they did prior to European settlement are especially important in passing along the culture and heritage to young Community members. Hunting, gathering, contemplative and spiritual activities occur in the wooded and forest bluff portions of the affected Community parcel. These are all culturally and religiously significant to the Community, and not revealed in a limited definition of cultural impacts. The west alignment (and the eastern alignment to a lesser extent) eliminates this area as a cultural resource for the Community. Impacts to this resource must not be considered lightly, and monetary compensation is entirely insufficient. In-kind compensation for impacted lands would require Maple-Basswood land adjacent to existing Community land.

#### **SECTION 9.0, CONSTRUCTION IMPACTS**

Construction impacts to the forested corridor can be considered irretrievable impacts from the human perspective. Trees impacted within the construction impact zone include old-growth sugar maple, basswood, red oak, and black cherry. Functional replacement of

these trees would take 75-100 years. Construction impacts to forest lands are as harmful as roadway footprint.

#### **SECTION 10.0, CUMULATIVE IMPACTS**

Cumulative impacts need to look at all past, current, proposed and future impacts to a resource. See 40 C.F.R. § 1508.27 (explaining that cumulative impacts is part of the intensity of the proposed action); 40 C.F.R. § 1508.7 (noting an adequate EIS must analyze the cumulative impacts of the proposed agency action when such action is added to impacts from other past, present, and reasonably foreseeable future actions).

The DEIS fails to look adequately at the cumulative cultural impact this project will have on the Community. The Minnesota River Valley and surrounding area have been home to the Community since time immemorial. The land holdings of over 24,000,000 acres dwindled to less than 258 acres by 1880, through bad faith dealings by government agents and opportunistic traders. Using its own resources, the Community is gradually purchasing back its land. These land purchases are limited to those adjacent or contiguous to existing tribal lands. While all land owned by the Community is valued, forested parcels are especially important for cultural and spiritual activities. The proposed western alignment (and the eastern alignment to a lesser extent) seeks to remove this land from the cultural heritage of the Community. Community planning protects forested Community properties, especially those with high-quality forest, such as the affected forest. The cumulative impact is the loss of the Community's natural environment required to support its cultural heritage, and though the current land acquisitions of the Community mitigate for this historic loss, the proposed action furthers an alienation of cultural heritage. This alienation is borne by all Community members, not only those living adjacent to the affect parcel.

The EIS document also does a poor job of considering the inevitable, cumulative impacts on the forest core that would result from building a highway through this area. As noted above, the YMCA land is alienable and the Prior Lake plans call for development in this area. The YMCA will therefore be under increasing pressure to sell its property to a developer regardless of the alignment chosen. In light of the alienability of the YMCA land, choosing the western alignment does not necessarily preserve the forest core.

#### **SECTION 11.0, IRREVERSIBLE AND IRRETRIEVABLE IMPACTS**

No mention is given to the loss of a 200+ year old forest as an irreversible and irretrievable impact. A disproportionate amount of discussion and mitigation for wetland is not commensurate with the loss of such a forest under either the east or west alignment.

## COMMUNITY COMMENTORS

Staff Name	Organization	Position
Stan Ellison	Community	Land Manager
Shawn Kelley	Community	Environmental / GIS Specialist
Sanne Knudsen	Faegre & Benson LLP	Lawyer
Mark Perry	Bolton & Menk, Inc.	Natural Resource Specialist
Victoria Ranua	Community	Environmental Assessment Specialist
Lanya Ross	Community	Hydrogeologist
Leonard Wabasha	Community	Interim Cultural Resources Director
Scott Walz	Community	Hydrologist
Jim Warren	Community	Consultant
Mike Whitt	Community	Senior Environmental Specialist / Wetland Professional

## REFERENCES

Metropolitan Council (2004). *2030 Transportation Policy Plan*. Metropolitan Council; Saint Paul, Minnesota.

Minnesota Department of Health (2006). *County Well Index*.

Minnesota Department of Natural Resources (2005). *Field Guide to the Native Plant Communities of the Minnesota: The Eastern Broadleaf Forest Province*. DNR Information Center; St. Paul, Minnesota.

Prior Lake, City of (2005). *2020 Comprehensive Land Use Plan Map*. City of Prior Lake Engineering Department.

Shakopee, City of (2002). *Land cover of Northern Scott County: A natural resource inventory of the City of Shakopee, Jackson and Louiseville Townships*. The Kestrel Design Group, Inc.; Minneapolis, Minnesota.

Shakopee, City of (2005). *Concept Greenway Corridor*. Internet portable document file (\*.pdf), accessed October 2005.

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Shakopee Mdewakanton Sioux Community (2001) *Wellhead Protection Plan*.

Shakopee Public Utilities Commission (2004). *Wellhead Protection Plan—Part 1 & 2*. U.S. Department of Transportation, Minnesota Department of Transportation, and Scott County (2006). *Draft Environmental Impact Statement: CSAH 21 From CSAH 18 to CSAH 42 and Transit Station, Scott County, Minnesota*. State Project Number: SP 70-621-24

†Any Community document is available upon request from the Community's Land and Natural Resource Department.

October 12, 2006

Mitchell Rasmussen  
County Highway Engineer  
Scott County Public Works Division  
600 Country Trail East  
Jordan, MN 55352

RE: CSAH 21 Prior Lake and Shakopee  
Draft Environmental Impact Statement  
Metropolitan Council District 4 (Jules Smith)  
Referral File No. 19821-1

OCT 13 2006

Dear Mr. Rasmussen:

The proposed project is an extension of Scott County State Aid Highway (CSAH) 21 between CSAH 42 in Prior Lake, Minnesota and CSAH 18 at Southbridge Parkway in Shakopee, Minnesota. The Metropolitan Council staff has reviewed the Draft Environmental Impact Statement for this project to determine its adequacy and accuracy in addressing regional concerns; its potential for significant environmental effects, and potential alternatives that would reduce expected environmental effects. The following comments are offered concerning specific items in the document:

*1. Functional Classification/Controlled Access Approval (Ann Braden 651-602-1705)*

According to the Scoping Document, CSAH 21 will be designated as a principal arterial and the functional classification of existing CSAH 18 will revert from principal arterial to "A" Minor Arterial. The portion of CSAH 42 between CSAH 21 and CSAH 18 will be upgraded to a Principal Arterial when the CSAH 21 extension is built.

Mn. Statute 473.166 requires Metropolitan Council approval of any controlled access highway in the metropolitan area before right of way acquisition or construction can begin. The Council reviews the project to determine that it is consistent with the policy plan and the development guide. If the County controls access along Highway 21, it should request approval from the Council under this statute. Typically, the Final EIS is the document submitted for Council review and approval under this statute. Table 1-5 (Permits and Approvals) of the DEIS should be amended to include this required approval.

← A

*2. Environmental (Jim Larsen 651-602-1159)*

3.0 Alternatives: Section 3.1.5.2. of the draft document discusses two alignment options (Western and Eastern) for the Build, Sub-Alternative 8 portion of the project, located south of CSAH 16. The Council's environmental planning staff recommends the Western Alignment Option as the preferential of the two options, to minimize the impacts to the maple-basswood-oak forest remnant located on the upper river bluff in the southern portion of the project area. As noted in the draft document, this Western Alignment Option minimizes impacts upon the 'forest core' of this healthy maple-basswood forest remnant.

← B

6.0 – Physical and Natural Environmental Impacts: The draft document states that the entire roadway is proposed to be constructed with an urban design, utilizing curb, gutter, and storm sewer. Figure 3-12

## 6 Metropolitan Council

- A The County understands the Metropolitan Council's role in approving controlled access highways in the metropolitan area before right of way acquisition or construction can begin. The County will control access along CSAH 21 and will request such approval from the Council through the FEIS submittal to the Metropolitan Council. The FEIS updates DEIS Chapter 1 with an updated Table 1-5 that includes Metropolitan Council Approval.
- B Comment noted. See Recurring Response 7.

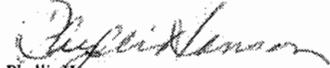
indicates that a Minnesota Department of Transportation (MnDOT) Curb and Gutter Design No. B424 is proposed for use on the project. The construction of curb and gutter, in addition to the expanse of new roadway surface, will introduce a wildlife impediment across several known preferential wildlife corridors, where none currently exists. Due to the significant aerial extent of wetlands along both sides of the proposed roadway, Council staff recommends that the project specify requiring utilization of surmountable curbing (e.g., MnDOT Curb and Gutter Design No. S524 or its equivalent). This gently sloping curb will significantly reduce the anticipated high mortality risk of turtles and other small fauna from becoming trapped within the roadway while crossing between wetlands that have been dissected by the roadway, without impacting storm water flow or the safety of those utilizing the proposed roadway/trail system.

3. Sanitary Sewer Service (Roger Janzig, 651-602-1119)

This project crosses the Metropolitan Council's Gravity Interceptor (7120) north of County Road 16 (Eagle Creek Boulevard) and east of Dean Lake; and also at the intersection of Eagle Creek Avenue NE and County Road 42 (140<sup>th</sup> Street NW). To insure the integrity of our interceptor, prior to initiating this project, final plans should be sent to Scott Dentz, Interceptor Engineering Manager (651-602-4503) at the Metropolitan Council Environmental Services for review and comment.

This concludes the Council's review of the Draft Environmental Impact Statement. The Council will take no formal action on these documents. If you have questions, please contact Ann Braden, Principal Reviewer, at 651-602-1705.

Sincerely,



Phyllis Hanson  
Manager, Local Planning Assistance

Cc: Jules Smith, Metropolitan Council District 4  
Ann Braden, Senior Planner  
Tom Caswell, Sector Representative  
Cheryl Olson, Referrals Coordinator

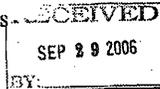
- C The surmountable curb recommended can be incorporated into the roadway design to reduce impacts to turtles and other small fauna. It may affect catch basin spacing slightly. This will be addressed in final design.
- D Comment noted. The FEIS updates DEIS Chapter 1, Page 1-19, Table 1-5: Permits and Approvals to include the Metropolitan Council's Environmental Services Review. This will provide the opportunity for comment on the project plans as they relate to the Council's gravity interceptor (7120).

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Minnesota Department of Natural Resources

500 Lafayette Road  
St. Paul, Minnesota 55155-4025



September 27, 2006

Cheryl Martin, Environmental Engineer  
Federal Highway Administration  
Galtier Plaza, Suite 500  
380 Jackson Street  
St. Paul, MN 55101

RE: County State Aid Highway 21 Draft Environmental Impact Statement  
SP 70-621-24

Dear Ms. Martin:

The Department of Natural Resources (DNR) has reviewed the Draft Environmental Impact Statement (Draft EIS) for the proposed County State Aid Highway 21 Extension project in Scott County, MN. We offer the following comments for your consideration.

Through many Technical Advisory Committee meetings, DNR has provided a substantial amount of information that has gone into the development of this document. For the most part, the Draft EIS is complete. We have more information about the maple-basswood forest and we recommend that it be included in the document (attached). At the very least, it could be included by reference in Appendix D, Data Sources and References.

← A

Thank you for the opportunity to review this document. Please contact me with any questions regarding this letter.

Sincerely,

Matt Langan, Environmental Planner  
Environmental Review Unit  
Division of Ecological Services  
(651) 259-5115

Attachment:

c: Steve Colvin, Joe Kurcinka, Wayne Barstad, Mitchell Rasmussen - Scott Co., Jon Larsen - EQB

ERDDB#20030901 - 0005, D:\AA\_OMB\comment letters\092706\_DEIS\_CSAH21.doc

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Report of field visit to maple-basswood forest in Prior Lake

T115N, R22W, portions of Section 22, 23

by Hannah Dunevitz Texler, Regional Plant Ecologist, Natural Heritage and Nongame Research Program, Minnesota DNR

I visited the site on October 20, 2005 with Shawn Kelley and Victoria Ranua, who work for the Land Office of the Shakopee Mdewakanton Sioux Community. The forest is about 100 acres in size, and includes three ownerships: the Mdewakanton Community, the YMCA, and one small private parcel north of the YMCA property. The site was not identified as a Minnesota County Biological Survey (MCBS) site, possibly because of its rather small total size, the presence of buildings within the forest on the YMCA property, and the fact that much of the canopy is relatively young compared to some older maple-basswood forests in the area. I evaluated the site's ecological significance in part because there is a proposed county road with an alignment being considered through the forest.

While most of the site is a maple-basswood forest community, it does grade to an oak woodland on the highest ridge near the north edge of the forest, and becomes maple-basswood forest again on the north-facing slope below the ridge. The forest grades to a disturbed past-logged former pasture on its northwest edge, on the Mdewakanton land. This pasture is dominated by non-native grasses and dense shrubs.

The late fall date precluded a full evaluation of the forest's quality, because I wasn't able to assess the spring flora or to fully see the summer herbaceous ground layer. I assigned a preliminary quality rank of BC to the maple-basswood forest on a scale of A to D, where A is the highest possible quality ranking and D is assigned to places where the plant community is recognizable but highly degraded. Sites meeting the minimal size criteria and with a rank of C or higher are mapped as significant by MCBS, so this forest would qualify for mapping. The BC rank was assigned because the site has received some past logging; there are scattered occurrences of the invasive shrub glossy buckthorn; the ground layer is relatively low in diversity, but dominated by native species; and the forest has an overall good canopy cover with scattered very large trees within a matrix of younger forest. This BC rank makes the forest comparable to nearby maple-basswood forests mapped by MCBS in Prior Lake, which were ranked BC to C rank.

One notable observation for this forest was the abundance of the orchid puttyroot (*Aplectrum hyemale*), a species generally considered to occur in rich mesic forests and relatively uncommon in the state. It occurs in maple-basswood forests in the Big Woods subsection and on north-facing slopes in the Paleozoic Plateau.

A tree inventory completed in the forest by the Land Office of the Shakopee Mdewakanton Sioux Community found an average diameter at breast height (dbh) of all trees greater than or equal to 15 inches (38 cm) dbh of 22 inches (56 cm). The largest basswoods, red oaks, and sugar maples were over 100 cm dbh.

Species noted during the October 20th field visit are listed in the table below. A spring visit is recommended to assess spring ephemerals in the ground layer and to determine the forest's importance to migratory songbirds.

**Species List of Maple Basswood Forest**

Scientific Name	Common Name
<b>Canopy Trees</b>	
<i>Acer saccharum</i>	sugar maple
<i>Celtis occidentalis</i>	hackberry
<i>Quercus rubra</i>	red oak
<i>Tilia americana</i>	basswood
<b>Subcanopy Trees</b>	
<i>Acer saccharum</i>	sugar maple
<i>Carya cordiformis</i>	bitternut hickory
<i>Ostrya virginiana</i>	ironwood
<i>Prunus serotina</i>	black cherry
<b>Shrubs</b>	
<i>Rhamnus cathartica</i>	glossy buckthorn
<i>Ribes cf missouriensis</i>	gooseberry
<i>Sambucus sp.</i>	elderberry
<b>Ground Layer</b>	
<i>Aplectrum hyemale</i>	puttyroot
<i>Athyrium filix-foemina</i>	lady fern
<i>Carex pensylvanica</i>	Penn's sedge
<i>Cryptotaenia canadensis</i>	honewort
<i>Gallium triflorum</i>	sweet-scented bedstraw
<i>Laportea canadensis</i>	wood nettle
<i>Menispermum canadense</i>	Canada moonseed
<i>Osmorhiza claytonii</i>	Clayton's sweet cicely
<i>Phryma leptostachya</i>	lopseed
<i>Sanicula sp.</i>	black snakeroot
<i>Smilax sp.</i>	carriion flower
<i>Solidago flexicaulis</i>	zig-zag goldenrod
<i>Thalictrum dioicum</i>	early meadow rue
<i>Viola pubescens</i>	yellow violet



**Minnesota Pollution Control Agency**

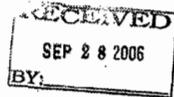
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**8 Minnesota Pollution Control Agency**

- A Comment noted. Both the NPDES Permit and Water Quality Certification are noted in Table 1-5 Permits and Approvals, included in the updated table in the FEIS.

September 25, 2006

Mr. Mitchell Rasmussen  
County Engineer  
Scott County Public Works Division  
600 County Trail East  
Jordan, MN 55352-9339



RE: CSAH 21 Extension  
Draft Environmental Impact Statement

Dear Mr. Rasmussen:

The Minnesota Pollution Control Agency (MPCA) has received copies of the Environmental Assessment Worksheet (EAW) prepared for the above project, prepared by Scott County, Responsible Governmental Unit (RGU). The MPCA has not reviewed the EAW for this project. Therefore, the MPCA has no specific comments to provide the RGU. This decision not to review the EAW does not constitute waiver by the MPCA of any pending permits required by the MPCA. Ultimately, it is the responsibility of the project proposer to secure any required permits and to comply with any requisite permit conditions. The enclosed checklist identifies permits that the project may require, together with the most recent contacts at the MPCA.

← A

We remind the RGU that, pursuant to Minn. R. 4410.1700, subp. 5 (Environmental Quality Board Rules), a copy of the RGU's decision on this EAW needs to be sent to the MPCA.

Sincerely,

Jessica Ebertz  
Project Manager  
Environmental Review and Operations Section  
Regional Division

JE:mbo

Enclosure

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10/16

CHECKLIST

After a cursory review of the proposed project, the Minnesota Pollution Control Agency (MPCA) staff noted areas that may need additional follow-up and/or a permit from the MPCA. Those specific areas are checked below:

SDS Permit – Sanitary Sewer Extension Permit

A State Disposal System (SDS) Permit is required for any extension of a sanitary sewer. If a sanitary sewer is proposed as a part of this project, an application for the SDS Permit should be made to the MPCA by contacting David Sahli, Municipal Division (MUN), Metro Region, at 651/296-8722.

NPDES/SDS Permit for dredged material disposal.

If disposal of dredged material is anticipated, then Brett Ballavanco (Duluth office) at 218/723-4837 or Jaramio Logelin (Duluth office) at 218/529-6257 (northern), or Elise Doucette (MUN/Metro Region) at 651/296-7290 or Jeff Smith (Rochester office) at 507/285-7302 (southern) should be contacted.

NPDES Permit – Construction Stormwater.

A General National Pollutant Discharge Elimination System (NPDES) Permit from the MPCA for construction activities will be required for all projects that disturb one (1) or more acres of land. The NPDES Permit specifically requires Best Management Practices which are detailed in the permit (additional information can be found in the MPCA document *Protecting Water Quality in Urban Area*) to prevent erosion and control sedimentation during construction and a stormwater pollution prevention plan to manage pollutants in stormwater runoff from the site that will occur after construction is complete. As a requirement of the NPDES Permit, stormwater wet-detention ponds must be installed to treat the stormwater runoff whenever a project replaces surface vegetation with one or more cumulative acres of impervious surface. If you have need of technical assistance regarding this, please contact Michael Findorff (MUN/Metro Region) at 651/296-6798 or Todd Smith (MUN) at 651/215-6008. For more general information, please contact the appropriate MPCA Regional Office staff below:

- Brainerd, Lisa Woog at 218/855-5017
- Duluth, Jim Dexter at 218/529-6253
- Detroit Lakes, Joyce Cieluch at 218/846-7387
- Willmar/Marshall, Judy Mader (St. Paul office) at 651/296-7315 or Mark Hanson (Marshall Office) at 507/537-6000
- Rochester, Roberta Getman at 507/280-2996
- Metro, Brian Gove (REM/Metro Region) at 651/296-7597

Industrial Stormwater

- Brainerd, Robin Novotny at 218/828-6114
- Duluth, John Thomas at 218/723-4928
- Detroit Lakes, Jack Frederick at 218/846-0734
- Marshall, Brad Gillingham at 507/537-6381
- Menkato, Teri Roth at 507/389-5235
- Rochester, Dennis Hayes at 507/280-2991
- Rochester, Jeff Smith at 507/285-7302
- Major Facilities, Elise Doucette (MUN/Metro Region) at 651/296-7290
- Willmar, Ben Koplin at 320/231-5321

Septic Tank System

Individual septic tank systems design and construction must comply with Minn. R. 7080. For additional information, contact Mark Wespel (MUN, Water Policy and Coordination) at 651/296-9322.



**Water Quality Certification**

Waiver of the Clean Water Act Section 401 Water Quality Certification is required. When wetlands are altered or impacted by filling, drainage, excavation, or inundation as part of the federal Clean Water Act Section 404 permit process, a statement waiving the 401 Certification from our agency must be obtained.

If you have any questions regarding this, please contact Jennifer Olson, of the Regional Division, Business Systems Unit 1, at 651/297-8611. The MPCA requires the project be evaluated for mitigation in accordance with the following hierarchy of preference:

- a. Avoid the impact.
- b. Minimize the impact.
- c. Mitigate the impact through wetland replacement.



**Demolition Debris**

Demolition debris must be disposed of at a properly permitted disposal facility. For information on the location of one nearest you, please contact the appropriate MPCA Regional Office staff below:

- Brainerd, Curt Hoffman at 218/828-6198
- Detroit Lakes, Roger Rolf at 218/846-0774
- Duluth, Heidi Kroening at 218/723-4795 or Tim Musick at 218/723-4708
- Marshall, Brad Gillingham at 507/537-6381
- Rochester, Mark Hugelack at 507/280-5585
- Motro, Jackie Densen (MUN) at 651/297-5847



**Asbestos**

Asbestos may be present in the building(s) that will be demolished, which requires special handling. Please contact Jackie Densen (MUN) at 651/297-5847 for additional information.



**Wells**

Abandonment and/or installation of wells must be done by a licensed well driller. Please contact the Minnesota Department of Health 651/215-0823 for additional information.



**Above and Below Ground Tanks**

The installation and/or removal of ALL above and below ground tanks must be reported to the MPCA before any work begins. Please contact the MPCA Customer Assistance Center at 651/297-2274 or 800/646-6247 for additional information.



**Potential Cumulative Effects**

The section of the EAW designated for the analysis and discussion of potential cumulative effects is incomplete. Please refer to *Citizens Advocating Responsible Development v. Kandjohi Board of Commissioners*, 713 N.W.2d 817 (Minn. 2006). The Court held that a "cumulative potential effects" inquiry under Minn. R. 4410.1700, subp. 7, requires a Responsible Governmental Unit to inquire whether a proposed project, which may not individually have the potential to cause significant environmental effects, could have a significant effect when considered along with other projects that (1) are already in existence, are actually planned for, or for which a basis of expectation has been laid; (2) are located in the surrounding area; and (3) might reasonably be expected to affect the same natural resources.



**Other Issues Identified by Staff**

\_\_\_\_\_  
\_\_\_\_\_

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm – 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: JON GRAF  
Address: 7450 WHITEHALL ROAD SHAKOPEE MN 55379  
Phone: 952-402-0971

Comments: I BELIEVE THE CSAH 21 EXTENSION SHOULD BE A LANE  
EACH WAY LOCAL TRAFFIC ROAD. THERE IS ALREADY MAJOR TRAFFIC JAMS  
IN THE MORNING AT THE SOUTHBRIDGE - 18 INTERSECTION. TO DUMP ADDED  
TRAFFIC THERE IS JUST PLAIN INSANE. THE PLAN IS TO GO ONLY 50 FT.  
FROM THE RED OAK SCHOOL + NEIGHBORHOOD. THERE WOULD NEED TO BE  
A HUGE WALL OR BURN CONSTRUCTED FOR SAFETY AND NOISE. WHAT OTHER  
RESIDENTIAL ARE HAS 3 MAJOR HIGHWAYS SURROUNDING IT? AND WHY  
WOULD YOU PUT THE TRANSIT STATION SO CLOSE TO 169? STOP  
THAT TRAFFIC SOME WHERE SOUTH OF HOME DEPOT. EVERYTHING  
MY NEIGHBORHOOD HAS DONE TO CHANGE OR PREVENT THIS ROAD HAS  
BEEN IGNORED. BE SURE ALL ARE PETITIONS ARE MADE A PART  
OF THIS DOCUMENT! YOU DO NOT SEEM TO GET THE MESSAGE  
AT ALL. WHY DO YOU INSIST ON MAKING A BAD SITUATION  
WORSE? IS THE COUNTY'S ONLY DEVELOPMENT PLAN TO FILL  
EVERY SQUARE INCH WITH HOMES + TOWN HOMES AND ROADS THAT  
ALL JAM AT ONE SINGLE LANE RAMP?

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**9 Jon Graf**

- A A roadway with one lane in each direction does not meet the purpose and need for the CSAH 21 extension project as described in the DEIS. The need as described is to respond to existing and forecasted increases in travel demand on the existing roadway system. Specifically, the project is needed to help complete an appropriately functioning roadway system in northern Scott County that efficiently moves traffic by providing adequate capacity for projected travel and transit demand. A two-lane roadway will not adequately accommodate forecast travel volumes. Therefore, a four-lane arterial is planned for CSAH 21 to meet the identified need.
- B Good suburban highway system planning calls for minor arterials to be spaced every 1 to 1-1/2 miles apart. The County's only through highways in the area are CSAH 21 and CSAH 17. The County's 2020 Transportation Plan identified the need for CSAH 17, CSAH 83, CSAH 21, CSAH 18, and TH 13 to become four-lane highways by 2020. This means that if one of them is not constructed there will be a missing link in the grid system and opportunities for connections that need to be made. Traffic operations at the intersection with Southbridge Parkway will be evaluated and a signal installed if, and when, it meets signal warrants.
- C See Recurring Response 1.
- D A park-and-ride transit station in Scott County is identified in the Metropolitan Council's Park-and-Ride Facility Plan (2005) as a regional need in the next five years. The study identifies TH 169 as a priority corridor for such a facility. The County proceeded with a facility at the southeast quadrant of TH 169 and CSAH 18 (Southbridge) as a separate project. The Southbridge transit station currently under construction is not the transit station evaluated in the DEIS, which is located south of the Southbridge neighborhood at the proposed intersection of CSAH 21 and CSAH 16.
- E The DEIS process has provided several opportunities for public input and comment through open house meetings, public hearing, and written comments. Sub Alternative 4 was selected over Sub-Alternative 5A based in part on comments received. The alignment is shifted to the south within the existing County right of way in order to avoid tree impacts and to maximize the buffer between the Southbridge residential development and the proposed roadway. In addition, the Southbridge development was planned with consideration of the future roadway.

← A  
← B  
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← D  
← E

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm – 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: Jennifer and Scott Meyer  
Address: 7342 Whitehall Rd, Shakopee  
Phone: 612-387-9938 or 612-387-9918

Comments: *Thank you for accepting & addressing our concerns*  
*① Proximity of 21 to Red Oak Elementary. As many families nearby, we have a child that will attend ROES. The proposed road is too close to where children will be & potentially have access to.*  
*② Removal/minimization of forest behind Whitehall Rd. As residents extremely near, the proposed road we are deeply concerned about any loss of trees.*  
*③ Property value impact. Concerned about what impact this will have on our property, value and resale.*  
*④ This project will cause all 1 a.m. bottlenecks on the CR18 to 169N ramp.*  
*⑤ Why can't the existing CR16 be expanded instead of incurring the cost/community burden of a brand-new system?*

← A  
← B  
← C  
← D  
← E

**10 Jennifer and Scott Meyer**

- A See Recurring Response 1.
- B Any trees that are lost as a result of the project will be replaced in accordance with the tree replacement provisions of the tree preservation ordinances of the Cities of Prior Lake and Shakopee, and in accordance with the Intergovernmental Agreement among the SMSC, FHWA, Mn/DOT and Scott County (Appendix B).
- C See Recurring Response 5.
- D See Recurring Response 3.
- E The need for an additional north-south arterial in the area was identified in the early 1990s and, in a series of studies since, the County identified and evaluated alternatives for meeting that need. Alternatives that did not meet the purpose and need were eliminated from further consideration. CSAH 16 runs east-west; therefore it does not meet the identified need.

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

11 Joseph Chin

A See Recurring Response 3.

10/16/2006 07:57 FAX 952 829 2743

SURMODICS

001/001

JOSEPH A. CHINN, PH.D.

6428 Oxford Rd S ♦ Shakopee, MN 55379-7000  
(952) 496-0030 jachinn@mn.rr.com

October 16, 2006

Mitchell Rasmussen  
County Engineering  
Scott County Public Works Department  
600 Country Trail East  
Jordan, MN 55352-9339

Dear Mr. Rasmussen,

I wish to comment on the CSAH 21 extension.

This project is a horrendously bad idea at this time. Every morning, Scott country residents traveling north on CSAH 18 sit in their cars and wait as the US 169 Minnesota River bridge backs up. The bridge is already over capacity, and the CSAH extension will only serve to divert traffic away from IH-35, ultimately to CSAH 18 to feed an already over-capacity bridge. Knowing that our taxes funded a road that worsens our commute would be a bitter pill to swallow as Scott County residents wait even longer to get across the Minnesota River.

← A

Given other pressing road needs in the County, we should postpone the CASH 21 extension until the State increases the capacity of the bridges that cross the Minnesota River.

Sincerely,



Joseph A. Chinn

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

--- PUBLIC HEARING ---

September 21, 2006  
6:00 pm - 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: Patrick McFarlane  
Address: 7506 Derby Lane Shakopee MN 55379  
Phone: 952-233-2165

Comments: I'm opposed to the proposed CSAH 21 extension between CSAH 42 and 18. First of all it would only increase traffic congestion at Southbridge and 18. It's already a mess at rush hour in the morning and the proposed alignment of 16 right across a wetland area east of Pike Lake. It not only disrupts the wetland and alters the flood plain but increases construction costs also an additional intersection or bridge is going to have to be constructed near Pike Lake and the proposed 21 intersection north of Hwy 16 in the mall area. CSAH 21 extension will also create another busy and dangerous intersection at Hwy 16 near the new school. It would be more cost effective and convenient to current roads to widen 83 first then 18 from 42 to 169. Access to 169 from 18 must also be addressed first before adding more traffic to 18. The distance from 83 to 18 is minimal so how can this better serve the future traffic needs if its being funnelled into the same traffic corridors. Why did future planning not allow for a direct 21 to 169 on and off ramp before allowing all the housing development in the Southbridge area.

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← D  
← E

**12 Patrick McFarlane**

- A Good suburban highway system planning calls for minor arterials to be spaced every 1 to 1-1/2 miles apart. The County's only through highways in the area are CSAH 21 and CSAH 17. The County's 2020 Transportation Plan identified the need for CSAH 17, CSAH 83, CSAH 21, CSAH 18, and TH 13 to become four-lane highways by 2020. This means that if one of them is not constructed there will be a missing link in the grid system and opportunities for connections that need to be made. Traffic operations at the intersection with Southbridge Parkway will be evaluated and a signal installed if, and when, it meets signal warrants.
- B The County understands that it will need to go through the wetland permitting process and comply with all applicable regulations. Chapter 4 of the FEIS presents the Wetland Finding that describes the process followed during project development to first avoid and then minimize wetland impacts to the extent practicable and then mitigating for any unavoidable impacts that remain. Chapter 3 of the DEIS describes early studies during the scoping process that evaluated impacts on wetlands of various corridor alternatives and notes that wetland protection was among the key objectives guiding the alignment refinement process.
- C There are no mapped floodplains directly within the project area and therefore no floodplain impacts are expected. Pike Lake has a mapped floodplain, however this area will not be affected by the project.
- D See Recurring Response 1.
- E See Recurring Response 4.
- F See Recurring Response 3.

The County did plan for direct CSAH 21 to TH 169 access before the Southbridge housing development was built. At the time that the Southbridge housing development came forward the City of Shakopee acquired the right of way needed for the roadway, which it had included in its Comprehensive Plan, and provided for a 58-foot buffer from the development in anticipation of the CSAH 21 extension.

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm – 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

**Name:** Nancy Martin  
**Address:** 1932 TURNBRIDGE CT, SHAKOPEE 55379  
**Phone:** 952-391-4030 (cell)

Immediate concerns/comments from the public hearing are:

- 1) Still question the need for building the new thorough-fare vs utilizing existing roads (i.e, Canterbury Trail and CSAH 18). The extension provides yet another option to the current design, where residents already have >3 options to commute to Hwy 169. ← A
- 2) Still feel that although the CSAH 21 extension will decrease commuting times of residents in the Prior Lake/Scott County area, this will be offset by the increase in traffic congestion and decreased commuting times at the already existing 'bottleneck' which occurs as a result of the current design of the Hwy169/Bloomington Ferry bridge interchange. In otherwords, will the extension simply get more traffic to arrive sooner at an already congested area? ← B
- 3) Still unsure of the impact of the proposed high speeds for the CSAH 21 extension, especially around housing developments and school (i.e, North of CSAH 16). Would like to see either traffic lights placed at both the intersections of Southbridge Pkwy/CSAH 21 and CSAH 21/CSAH 18. ← C
- 4) Feasibility of erecting a barrier at site #8, where cost-effectiveness was assessed at \$3,750/resident vs the cutoff of \$3,250. The survey being so close I would like to see alternatives explored to provide a barrier at this site either through County or City assessments. ← D
- 5) Do recognize and appreciate Scott County's response to community concerns and to their efforts to minimize impact on existing communities. Thank you for this opportunity to provide feedback.

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**13 Nancy Martin**

A Providing a commuter route to TH 169 is not the sole purpose and need for the CSAH 21 extension. The need as described in the DEIS is to respond to existing and forecasted increases in travel demand on the existing roadway system. Specifically, the project is needed to help complete an appropriately functioning roadway system in northern Scott County that efficiently moves traffic by providing adequate capacity for projected travel and transit demand.

See Recurring Response 4.

B See Recurring Response 3.

C Traffic operations at the proposed CSAH 21/Southbridge Parkway intersection will be evaluated and a signal installed if, and when, it meets signal warrants. The County selected the four-lane at grade intersection design option as the Preferred Alternative. Therefore, the CSAH 21/CSAH 18 intersection will be signalized. The four-lane at-grade intersection at CSAH 21/CSAH 18 provides adequate capacity during the design period, minimizes pavement and right of way requirements, and has lower costs than the other two design options. While the interchange provides better system benefits, it increases vehicle stops on CSAH 18/Southbridge approaches, extends noise and visual impacts further into the neighborhood, has more pavement to maintain, greater right of way impacts, and higher construction cost. While the six-lane at-grade intersection provides additional transportation benefit, it does so at additional cost.

D A noise barrier was found to be not reasonable at this location as part of the DEIS analysis. Consultation with residents and municipalities will occur before any decisions are made regarding noise barriers and will occur during final design. The County will install noise barriers as determined through consultation but the cost will be borne by the developer according to the development agreements detailed in plat approvals.

10/13/06

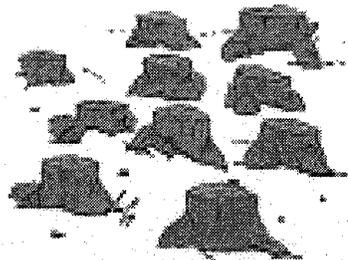
To Whom It May Concern,

My name is Chance Crooks, and I'm fifteen years old. Why do we need County Road 21 extended through the only woods we have in and near my community? There are thirty-one rare species and/or native plant communities within a mile radius of this project. Why risk killing animals our forest, and habitat by the area around us? You would have a chance of killing all or some of the species, and even if you don't kill all of them, the pollution and the car crashes might. Why do that, when you can make sidewalks and parks?

← A

We don't need more roads, we need more people walking out side and having fun exercising and hanging with friends. We need people walking and not polluting the air. We don't need to wreck our woods by putting a four-lane expressway through it that carries 26000 vehicles a day. Why don't you make McKenna or Canterbury bigger? We don't need more roads; we need more parks, trails, sidewalks and skate parks.

← B



This is a waste of trees, what are you going to do with



all the trees you knock down?

Think about the

### 14 Chance Crooks

A During the scoping and the DEIS alternative development process, efforts were made to consult the DNR Natural Heritage Program and U.S. Fish and Wildlife Service to evaluate whether rare or endangered species are present in the study area. These findings were reported in the DEIS. Where impacts to wildlife and vegetation are unavoidable, the effect of the impacts will be mitigated through design features. Trees removed as part of the project will be replaced in accordance with applicable Prior Lake and Shakopee City ordinances. Disturbed areas would be re-vegetated with native plants and land in the right of way would be managed to have diverse grassy vegetation with trees and shrubs outside the required roadway clear zone.

To minimize wildlife/vehicular conflicts in the upper bluff wildlife corridor, a fence could be constructed along the right of way. This will be considered during final design. A grade-separated wildlife crossing would be incorporated into this project along the northern edge of the maple-basswood forest. A second crossing is proposed along the base of the northern oak forest that borders the wetland corridor southeast of Dean Lake and would be an important safe crossing opportunity for smaller fauna. These locations were chosen as crossing points because they are in corridors of likely wildlife movement, i.e., at the base of bluffs along the forest edge where wildlife can easily travel and be near cover.

B See Recurring Response 4.



animals  
animals

don't kill trees

keep them!!!!

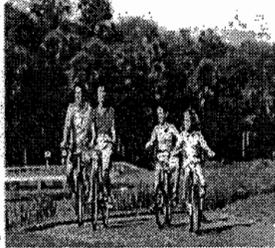
Preserve the



When and if you put the road here this what would happen!



Why destroy?



This is what I want to

see!!!!

Thanks for reading my report on how I feel about the situation. I hope you change your mind?

*Choree  
Ordey*

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm - 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: Marcene McFarlane  
Address: 7506 Derby Lane, Shakopee  
Phone: 952-233-2165

Comments: \_\_\_\_\_

Expanding 18 into 3 or 4 or whatever lanes  
is ludicrous! You only have one lane  
to get onto 169 and it backs up beyond  
Home Depot and up the hill - How is  
adding lanes going to help? The only  
way to help traffic now and in the future  
is to have another road - a new road -  
another option or alternative to access  
169. By no means should any major  
road be done right behind the elementary  
school! DO NOT ADD ANY LANES TO 18!

← A

← B

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**15 Marcene McFarlane**

A See Recurring Response 3.

B See Recurring Response 1.

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm – 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: Brian Bolz  
Address: 1697 Windsor Drive  
Phone: (952) 897-3920

Comments: I have been told that fighting a road is impossible. I really don't see how this road can help. I am very concerned about not being able to get out of my neighborhood at times. The congestion already is one of the worst that I know of in the area. In the morning there is only 1 way out of Southbridge & already is horrible. Cars have to wait to get around others. I've heard of road rage and now we will have more congestion & it's planned out by adding more traffic to this already known problem. How can the bridge handle this? Savage is growing also. And then we are going to have a 500 spot park & ride!! I also think that being about 50 yards from an elementary school is very dangerous. In closing, this road in my opinion will create a much less desirable neighborhood. The noise, smell & added traffic jams will someday make my dreamhouse not as desirable as it presently is. I love Shakopee but this road is a huge mistake!

← A  
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← D  
← E

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

Thank you for reading this

Brian Bolz

**16 Brian Bolz**

- A Traffic operations at the intersection with Southbridge Parkway will be evaluated and a signal installed if, and when, it meets signal warrants.
- B See Recurring Response 3.
- C The intent of the park-and-ride transit station is to reduce the number of vehicles traveling from the area to downtown Minneapolis.
- D See Recurring Response 1.
- E See Recurring Response 5.

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

**--- PUBLIC HEARING ---**

September 21, 2006  
6:00 pm - 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: Charles R Vig  
Address: 2432 Redwing Dr. Shakopee mn 55379  
Phone: 952-445-5197 - 612-716-1230

Comments: why not take R1 down to pitk  
lake Rd.

← A

Also I would have liked to see  
updated plans at the time of the hearing.  
The plans looked like they were 2-4 yrs  
old.

← B

If R1 has to go in why wouldn't  
you put it right down the property line.

← C

that would be fair to both properties  
owners.

I live near the woods that will be  
impacted and my children & I still hunt  
& walk in the woods all the time

Hope you do the ~~best~~ best thing for everyone

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**17 Charles Vig**

- A See Recurring Response 4.
- B The plans and layouts presented at the public hearing included the most up-to-date information available about the proposed project. The aerial photography used for the base of the layouts was from 2005, the most recent available at the time layouts were developed.
- C See Recurring Response 7.

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm - 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: Patty Bolz  
Address: 1693 Windsor Drive S. Shakopee 55379  
Phone: (952) 897-3920

Comments: This is the 4<sup>th</sup> time I have written a letter of disapproval for the CSAH 21 Extension Project. As stated in earlier writings I feel the extension is too close to the houses on the south side of Southbridge Lane of which I mine. It is also way too close to Red Oak Elementary. We were alerted by different neighbors about the possibility of a road in our back yard. I know this is not your problem, I am just stating the facts. The road will bring both air & noise pollution to our home & neighborhood & result in lower property values. You will be destroying more trees & woods which is why we moved to Shakopee and bought this lot. The biggest problem, however, is the fact that now there will be even more cars trying to get on 169 from Hwy 18. It is already a huge problem and you are all aware of it! Traffic is backed up many mornings on 18 south almost all of the way to 42. There has to be another way to get people who live south of us onto 169 without having everyone lined up at the same entrance ramp. CSAH 21 is going to make an already horrible problem a lot worse! However, if this extension does get built please put in the 4 lane grade separated interchange. Do not put stoplights in - learn from past mistakes. Look at all the money spent taking stoplights out of Pioneer Trail & Anderson Lakes Pkwy on 169. Look at all the

← A  
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← C  
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← G

**18 Patty Bolz**

- A The County acquired right of way for the roadway (which was included in the County and City Comprehensive Plans) at the time that the Southbridge housing development came forward, and in configuration with the development of the Southbridge plats, which also provided for a 58-foot buffer from the development in anticipation of the CSAH 21 extension.
- B See Response 1.
- C No specific long-range mitigation measures for this project are necessary to maintain air quality standards because projected CO levels for the worst-case conditions are below state and federal standards.
- D See Recurring Response 2.
- E There is no accepted methodology to determine the effects to residential property values or rents resulting from a roadway project. (Recurring Comment)
- F See Recurring Response 3.
- G The County selected the four-lane at-grade intersection option as the Preferred Alternative. The four-lane at-grade intersection at CSAH 21/CSAH 18 provides adequate capacity during the design period, minimizes pavement and right of way requirements, and has lower costs than the other two design options. While the interchange provides better system benefits, it increases vehicle stops on CSAH 18/ Southbridge approaches, extends noise and visual impacts further into the neighborhood, has more pavement to maintain, greater right of way impacts, and higher construction cost. While the 6-lane at-grade intersection provides additional transportation benefit, it does so at additional cost.

(Continued)

money spent taking stoplights out on  
Hwy 100 over the past few years.  
If this road is to go in and be  
effective something must be done to  
the entrance onto #169 and stoplights  
must not be part of the plan @  
Southbridge.

6388 Oxford Rd S  
Shakopee, MN 55379  
September 25, 2006

Mitchell Rasmussen, P.E.  
County Engineer, Scott County Public Works  
600 Country Trail East  
Jordan, MN 55352

Dear Mr. Rasmussen:

There are several factors that make me opposed to County Road 21 extension.

The *county* road is not being built to serve Scott County, but rather for people who live south of Scott County. I've been told one main reason for the extension is to give people traveling on 35W an alternative to get to 494. State highways should be built for this purpose. Furthermore, it will bring more traffic to a river crossing that is already bottlenecked with the current traffic flows. The Bloomington Ferry Bridge is very important to Scott County and those who live and work in the county, yet it will be reduced to a rush hour parking lot as future traffic volumes increase. Scott County has County Road 18 and County Road 83 that move people through the county.

County Road 16 could use more upgrades with the money that would've been spent on extending County Road 21. County Road 16 is narrow and seems dangerous to drive on and is only going to get worse with the new housing developments and an elementary school being built next to it.

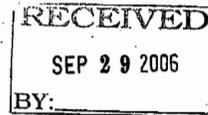
The County Road 21 extension runs extremely close to an elementary school and neighborhoods. The affect on safety and the noise level at that school and its playground needs to be considered. As a taxpayer, I believe my children deserve a safe school environment and a classroom atmosphere not hindered by continuous traffic noise. The extension also runs very close to a beautiful YMCA camp and wildlife area. Once these areas are removed they cannot be replaced.

I oppose this extension because it does not serve Scott County, is dangerous and noisy for an elementary school and the money could be spent to improve the safety of the roads we desperately need to use, like County Road 16. Everyone I talk to feels the same way; however, most of them feel their voice will not be heard because they think the decision has already been made. I hope this is not the case and that you truly want input from the people who are affected by the extension. Thank you for your consideration.

Sincerely,



Debra K. Voit



## 19 Debra Voit

A See Recurring Response 6.

The need for the new roadway as described in the DEIS is to respond to existing and forecasted increases in travel demand on the existing roadway system. Specifically, the project is needed to help complete an appropriately functioning roadway system in northern Scott County that efficiently moves traffic by providing adequate capacity for projected travel and transit demand. The County has concluded that to meet growing needs and the metropolitan functional classification roadway spacing criterion, an additional north-south arterial should be constructed between the two existing north-south arterial roadways in the study area, CSAH 18 and CSAH 83, which are three miles apart.

See Recurring Response 3.

B Upgrading CSAH 16 does not meet the purpose and need for the project, as discussed in the response to Comment A above. The County went through an evaluation of alternatives beginning in the early 1990s. Alternatives were evaluated in terms of how they met the purpose and need of the project. Alternatives that did not meet the purpose and need were rejected from further consideration. County State Aid Highway 16 runs east-west; the need for the CSAH 21 extension project identified the need for an additional north-south arterial.

C See Recurring Response 1.

D See Recurring Response 7.

← A

← B

← C

← D

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

**— PUBLIC HEARING —**

September 21, 2006  
6:00 pm – 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: LORRI HELKAMP  
Address: 6408 DEXTER RD S SHAKOPEE  
Phone: 952-445-0558

Comments: IF CSAH 21 IS BUILT - THE WESTERN ALIGNMENT WOULD  
BE PREFERRED SINCE IT IMPACTS LESS FOREST  
CORE. (AND THE 4 LANE INTERSECTION - LESS IMPACT)  
IDEALLY THE NO BUILD SCENARIO IS BEST.  
THE ROADWAY WILL BE TOO CLOSE TO THE  
ELEMENTARY SCHOOL. ALSO, THE BLOOMINGTON  
FERRY BRIDGE CANNOT HANDLE THE # OF  
VEHICLES CURRENTLY USING I-9. THE CSAH 21  
WILL BE AN ENTRANCE RAMP IN ESSENCE.  
ALSO IF 21 IS BACKED UP, THE TRAFFIC WILL  
ROUTE ONTO SOUTH BRIDGE PIKWAY - WHICH IS  
DESIGNED FOR NEIGHBORHOOD TRAFFIC NOT  
TO BE A THOROUGH FARE

← A

← B

← C

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**20 Lorri Helkamp**

- A See Recurring Response 7.
- B See Recurring Response 1.
- C See Recurring Response 3.

21 Lee Wraspir

A See Recurring Response 3.

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm - 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: LEE WRASPIR  
Address: 1744 TURNBRIDGE COURT  
Phone: 952-403-6969

Comments: Why do we need another road to feed  
into an existing bottleneck at #18 & #169 intersection?  
It would be best served to move the ramp  
entrance onto #169 to move traffic through faster.  
I understand that Scott County has nothing  
or very little to do with Minnesota #169 and the  
DOT. But this is just another example of poor  
planning and the local and state governments  
not working together. Lets stop playing  
politics and start to listen to the people we  
common sense. You just cannot pour more  
water into a small funnel. It does not work.  
Figure out a new way!

← A

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm - 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: Rita Baden  
Address: 13866 Pike Lake Trl, Prior Lake, MN 55370  
Phone: 952-445-4353

Comments: Some of my concerns are the rising  
noise levels that will come out of this  
It would make more sense to go further  
West & not cut down so many trees, use  
trees as buffer, the trail along the  
road does not make for a good place  
because you are having people walk or  
bike along an area that is loaded w/  
polluted air from the cars & trucks etc.  
When people go out for these activities  
you need CLEAN air not fumes from  
vehicles, a trail along the outlet creek  
right of way would make more sense  
& it would be more pleasing to the eye.  
We need to save more of our natural resources.  
Thanks.

← A  
← B  
← C

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**22 Rita Baden**

- A See Recurring Response 2.
- B The Build Alternative alignment has been located to minimize impacts to vegetation by following existing topography and by utilizing an urban section that minimizes the construction limits. Where impacts to vegetation are unavoidable, the effect of the impacts will be mitigated through design features. Trees removed as part of the project will be replaced in accordance with applicable Prior Lake and Shakopee City ordinances. Disturbed areas would be re-vegetated with native plants and land in the right of way would be managed to have diverse grassy vegetation with trees and shrubs outside the required roadway clear zone.
- C No specific long-range mitigation measures for this project are necessary to maintain air quality standards because projected CO levels for the worst-case conditions are below state and federal standards.

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

--- PUBLIC HEARING ---

September 21, 2006  
6:00 pm - 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: BILL RUDNICKI  
Address: 2330 SIOUX TRAIL, PRIOR LAKE, MN 55372  
Phone: (952) 496-6145

Comments: Presented letter to County Engineer M. Rasmussen for  
necessary information to review the document. To date have not received  
information. The Shakopee Mdewakwan Sioux will provide formal  
comments to the draft EIS by the ~~the~~ deadline. In general,  
the Community does not support this roadway through or near  
tribal lands, and would want the County to review other options  
to include upgrading other roadways, or looking at other alignments  
and options. we will make complete comments by the deadline  
on these thoughts.

← A

Bill Rudnicki  
of Mr. Rudnicki

NOTE: Comments should be received by October 6, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**23 Bill Rudnicki**

- A The County, SMSC, Mn/DOT and FHWA have entered into an Intergovernmental Agreement that addresses SMSC concerns. See Appendix B.

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm – 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: Dave Baden  
Address: 13866 Pike Lake Trail, Prior Lake 55372  
Phone: 445 4353

Comments:

1. Please keep the highway as far away from Pike Lake as possible.
2. Leave the trees. Leave as many as possible to roadside to muffle noise, slow the wind, and cool with shade.
3. Use quiet blacktop instead of noisy concrete.
4. Locate a bike trail thru the woods along the Prior Lake Outlet Creek right of way. People do not bicycle and push baby strollers in order to enjoy road noise and breathe fumes. Any walkway within throwing range from a car has broken beer bottles. Broken glass is hard on bicycle tires and even harder on dog feet.
5. Have people who use trails lay out all trails.
6. Thanks you for reading this!

← A  
← B  
← C  
← D

NOTE: Comments should be received by October 16, 2006.  
CSAH 21 Extension Project Draft Environmental Impact Statement

**24 Dave Baden**

- A No impact to Pike Lake is anticipated from the proposed project.
- B The Build Alternative alignment has been located to minimize impacts to vegetation by utilizing an urban section that minimizes the construction limits. Where impacts to vegetation are unavoidable, the effect of the impacts will be mitigated through design features. Trees removed as part of the project will be replaced in accordance with applicable Prior Lake and Shakopee City ordinances. Disturbed areas would be re-vegetated with native plants and land in the right of way would be managed to have diverse grassy vegetation with trees and shrubs outside the required roadway clear zone. Trees and bushes do little to reduce noise, however, the County will discuss mitigation options with the community during final design.
- C The pavement type determination for the CSAH 21 extension project will be made during final design and is dependent upon durability and life cycle economic considerations.
- D The County will work with the City on trail locations. Standard transportation policy provides for trails along major roadways. The County will continue to engage with the City in trail-planning efforts.

**CSAH 21 Extension Project  
Draft Environmental Impact Statement**

— PUBLIC HEARING —

September 21, 2006  
6:00 pm - 8:00 pm  
County Board Room  
Scott County Government Center  
200 Fourth Avenue West, Shakopee, Minnesota

**Comment Sheet**

Name: Beth Pricer  
Address: 11672 Windsor Dr. S.  
Phone: 952-445-9991

Comments: Because of the location of my home  
I have several concerns. The noise and disruption  
by my home and the traffic congestion problem  
going onto the 1169 Ferry Bridge.

The noise and destruction of the forested  
areas is disturbing. The quality of life in the  
homes surrounding this area will drastically be  
affected. (refer to environmental study). The home  
may face a devaluation in price. Many of the  
people in the development were lied to about  
the road possibility or size.

The actual congestion problem on 1169  
will be increased by funneling more traffic  
onto the very small entrance onto 1169. The  
traffic is backed up so badly from every  
exit. How will increasing traffic solve this  
problem. It won't! Planning was done very

poorly and now the citizens will have to pay the  
price. Stop this from happening!

← A

← B

← C

← D

← E

**25 Beth Pricer**

- A See Recurring Response 2.
- B The Build Alternative alignment has been located to minimize impacts to vegetation by following existing topography and by utilizing an urban section that minimizes the construction limits. Where impacts to vegetation are unavoidable, the effect of the impacts will be mitigated through design features. Trees removed as part of the project will be replaced in accordance with applicable Prior Lake and Shakopee City ordinances. Disturbed areas would be re-vegetated with native plants and land in the right of way would be managed to have diverse grassy vegetation with trees and shrubs outside the required roadway clear zone.
- C See Recurring Response 5.
- D At the time that the Southbridge housing development came forward the City of Shakopee acquired the right of way needed for the roadway, which it had included in its Comprehensive Plan, and provided for a 58-foot buffer from the development in anticipation of the CSAH 21 extension.
- E See Recurring Response 3.

From: Holm, Aaron [mailto:Aaron.Holm@cdicorp.com]  
Sent: Monday, October 23, 2006 9:04 AM  
To: Rasmussen, Mitch  
Subject: Co Rd 21

Please re-consider the Co Rd 21 project.

The infrastructure that you are planning to route 21 into (Co 18 / 169) is not capable of handling additional volume - I am sure this has been stated by several residents already.

Anyone trying to cross the river bridge in the morning hours is already experiencing major delays. By routing residents from the south in you are only creating more havoc. Outside of the congestion issues that we are faced with - why are we spending county money on "easing" the commute of those outside of our county. Perhaps we need to become a bit more fiscally responsible in our prioritizations with county monies. Let's fund a project that will help ease the commute of those whose tax money would be utilized for this project.

Regards,

Aaron G. Holm

Area Manager

CDI Business Solutions / IT Services

510 1st Avenue North, Suite 600

Minneapolis, MN. 55403

612.573.1105 office #

952 221 0500 mobile #

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## 26 Aaron Holm

A See Recurring Response 3.

B See Recurring Response 6.

← A

← B

From: Hansen, Riana [mailto:Riana.Hansen@cdicorp.com]  
Sent: Monday, October 23, 2006 9:49 AM  
To: Rasmussen, Mitch  
Subject: No to County Rd. 21 Project

Hello,  
I am a resident of Shakopee working in downtown Minneapolis. Currently my commute takes between 50-60 minutes, over half of which is spent sitting on 169, south of the 494 intersection. County Road 21 proposes routing additional north-bound traffic onto 169, which would only worsen a bad situation. Traffic on 169 heading north is stand-still every day, and is usually backed up from the Bloomington Ferry Bridge all the way to 494. As a daily commuter, I do not wish to add traffic to the worst part of my travel, thus I can not support the County Road 21 Project.

**Riana Hansen**  
Account Manager  
CDI Business Solutions Group  
612-573-1124

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## 27 Riana Hansen

A See Recurring Response 3.

← A

From: Miller, Betsy [mailto:betsy.miller@cdicorp.com]  
Sent: Monday, October 23, 2006 9:40 AM  
To: Rasmussen, Mitch  
Subject: Concerns about the County Road 21 project

**28 Betsy Miller**

A See Recurring Response 3.

Good Morning,

I am a resident of Scott county and I would like to voice my concerns about the possibility of the County Road 21 project actually happening. I commute into Downtown Minneapolis every day and the drive on 169 going North is already very congested all the way to 494. If the County Road 21 project does happen the commute will obviously be worse which is hard to imagine.

← A

Basically to sum it up, intentionally adding more traffic on 169 during rush hour makes Scott County an unappealing area to live when having to make a commute out of the south metro. Unless things change on 169 N (removing stoplights at 494) I strongly oppose moving forward with the County Road 21 project.

Thank you,

**Betsy Miller**

*Scott County Resident*

612-573-1125 (direct)

612-573-0075 (fax)

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From: John C. Jacobs [mailto:John.Jacobs@jedunn-nc.com]  
Sent: Sunday, October 22, 2006 11:51 PM  
To: Rasmussen, Mitch  
Subject: CSAH 21 Extension Comments

Mr. Rasmussen,

My name is John Jacobs, and I am Vice President of JE Dunn Construction Northcentral, based in Eden Prairie. I live in Shakopee in the Southbridge neighborhood. Like many of my fellow residents in Scott County, I am very concerned about the planned CSAH 21 Extension. Because I live south of the river in Shakopee, and travel across the Hwy 169 bridge, I see first hand the fact that this bridge is at or over capacity. The extension of highway 21 will do nothing but make this problem even worse by adding NON SCOTT COUNTY RESIDENTS to the congestion. Why would our county dollars be spent on providing alternate traffic means to those outside of our county rather than improving conditions within our own county? I emphatically request that this option be eliminated.

As an alternative, I would ask that county road 16 from 18 to Marchall road be widened. As a father of 4, I am concerned about the safety of my children when buses begin to use this very narrow route. This is a very specific need for Scott County, that would be a much better use of dollars for our county residents than the CSAH 21 extension.

I plan to continue to do whatever I can to have this extension project cancelled. Please consider what I have said, and therefore the residents of this county as you consider the options moving forward.

Respectfully,  
John Jacobs

## 29 John Jacobs

A See Recurring Response 3.

See Recurring Response 6.

B See Recurring Response 4.

← A

Upgrading CSAH 16 does not meet the purpose and need for the project, as discussed above. The County went through an evaluation of alternatives beginning in the early 1990s. Alternatives were evaluated in terms of how they met the purpose and need of the project. Alternatives that did not meet the purpose and need were rejected from further consideration. County State Aid Highway 16 runs east-west; the need for the CSAH 21 extension project identified the need for an additional north-south arterial.

← B

From: ZCH9120@aol.com [mailto:ZCH9120@aol.com]  
Sent: Sunday, November 12, 2006 2:03 PM  
To: Rasmussen, Mitch  
Subject: CR21 Comment

Dear Mitchell Rasmussen,

I have been traveling around this supposed CR21 area for quite a while. I have worked at Camp Kici Yapi for the last 6 years, and went to the camp as a camper before that. I often use the Prior Lake Library and a couple other facilities nearby.

My issue with this project is the fact that it needs to go through Camp Kici Yapi. Camp Kici Yapi is one of the only outdoor day camps offered to inner city kids from Minneapolis. It is crucial that this camp keeps as much as possible, if not all, of its land.

My second issue is that you have CR21 connecting to 18. Let me tell you about 18. Every morning it backs up about a mile and a half going north onto the 169 Bloomington Ferry Bridge. Later, in the evening commute, it will slow down traffic at the end of the bridge to 25-30 mph. Adding another intersection to this area would really slow down traffic, more than anyone would like.

That is one way that we could spend this money, by adding a double on-ramp onto 169. I'm sure that all citizens would appreciate that.

Another problem I've encountered is the intersection of 16 and 18. It is probably the most dangerous intersection I have to go through. With new development sprouting all over 16, another way to spend the money would be to build a stoplight at this intersection.

Also, another way to spend the money would be to pave Pike Lake Trail. I'm sure over time it would save money for both cities of Shakopee and Prior Lake. Plus, with the new school being built at the intersection of Pike Lake Tr. and 16 there's going to be a lot more traffic on both roads.

Speaking of the School, the proposed expansion of 21 would go right next to it. Is that safe for the kids?

In Conclusion, I would like to thank you for taking time to read my recommendations and ideas. I personally would like to see the money spent in other places since McKenna Road and Pike Lake trail are fairly close together and both very close to where the proposed CR21 would go. Thanks again and have a great day.

PS: If you could e-mail me back a scheduled city council or MnDot meeting date open to the public that I could attend, that would be wonderful! Thanks.

Zach Hanson,  
ZCH9120@aol.com

### 30 Zach Hanson

A The YMCA camp is a non-public facility and therefore not subject to Section 4(f) legislation as established under the Department of Transportation Act of 1966 (49 USC 303, 23 USC 138) which applies to publicly owned parks and recreation facilities.

B See Recurring Response 3.

The level of service (LOS) at the CSAH 21/CSAH18 intersection, for the four-lane at grade intersection option that was selected by the County as the Preferred Alternative, is D/E in the A.M. peak and D in the P.M. peak. LOS D is generally considered acceptable by drivers. The four-lane at-grade intersection at CSAH 21/CSAH 18 provides adequate capacity during the design period, minimizes pavement and right of way requirements, and has lower costs than the other two design options. While the interchange provides better system benefits, it increases vehicle stops on CSAH 18/Southbridge approaches, extends noise and visual impacts further into the neighborhood, has more pavement to maintain, greater right of way impacts, and higher construction cost. While the six lane at-grade intersection provides additional transportation benefit, it does so at additional cost.

C See Recurring Response 3.

D Traffic operations at the CSAH 16/CSAH 18 intersection will be evaluated as necessary and a signal installed if, and when, it meets signal warrants.

E See Recurring Response 4.

F See Recurring Response 1.

G. See response to Comment E above. (Recurring Comment)

← A

← B

← C

← D

← E

← F

← G

From: Kathy Hellkamp [mailto:khellkamp@wwdb.org]  
Sent: Tuesday, November 07, 2006 8:08 PM  
To: Rasmussen, Mitch  
Subject: County Rd. 21 Extension

Mr. Rasmussen:

We are residents of Savannah Oaks, Shakopee, Scott County. Upon examination of all proposed extensions of County Road 21 to connect with County Road 18, we see little benefit to the residents of Scott County and a major cause of congestion where County Road 18 and 21 would meet. The congestion as 18N merges onto 169N is already at maximum during rush hour making it impossible to get onto 13N and sometimes the traffic is backed up to the Home Depot. What would that intersection look like with hundreds of extra vehicles trying to get north? In addition, this major artery (21) would run right through three or four residential developments increasing the noise and danger to the children in the area.

← A

← B

← C

Because the benefits are few and the challenges incalculable, we respectfully ask that this extension be rejected.

Sincerely,

Bill and Kathy Hellkamp  
1470 Ashbourne Circle  
Shakopee, MN 55379  
952-445-7402

### 31 Bill and Kathy Hellkamp

- A See Recurring Response 6.
- B See Recurring Response 3.
- C See Recurring Response 1.

From: Leah Rolley [mailto:lrolley@mn.rr.com]  
Sent: Wednesday, November 01, 2006 3:16 PM  
To: Rasmussen, Mitch  
Subject: Cty RD 21 Extension

Dear Mr. Rasmussen:

I am writing concerning the extension of county road 21 and would like to express my opinion as a home owner in the Southbridge development.

With the extension of Southbridge Parkway to connect to Pike Trail, it doesn't seem the addition of another major road is going to be very beneficial. I am concerned about additional road noise and also the bottle neck at the inter section of 18 and 169 that all ready is a major problem during rush hours. Adding a 4 or 6 lane road without addressing the 18/169 intersection seems like it's just creating an additional problem to this area.

← A  
← B  
← C

I would like to see this road extension project put on hold or eliminated.

Thank you for extending the time to hear our comments and concerns.

Sincerely,

Leah Rolley  
6462 Oxford PL

### 32 Leah Rolley

- A See Recurring Response 1.
- B See Recurring Response 1.
- C See Recurring Response 3.

### 33 Douglas Burns

- A The pavement type determination for the CSAH 21 extension project will not be made until final design and is dependent upon durability and life cycle economic considerations.



## Douglas W. Burns

895 240th Street East  
Jordan, MN 55352  
952-492-5974 home phone

November 9, 2006

NOV 13 2006

Mitchell Rasmussen  
County Engineer  
Scott County Public Works Division  
600 Country Trail East  
Jordan, MN 55352-9339

Mr. Rasmussen,

My name is Doug Burns. I live at 895 E. 240th Street, Jordan, MN. I was not able to make it to the public information/hearing meeting for the CASH 21 Extension, EIS, and park-and-ride transit station project. But I would like to submit the following comment, for your response:

As a concerned citizen of Scott County and Minnesota, I'm aware of the current transportation funding shortfalls at all levels of government. Therefore, I think it is imperative that we spend the dollars we have judiciously. I see the state and County DOT's using asphalt almost exclusively to skim over or "band aid" construct or fix our roads creating an expensive continuous maintenance cycle.

I'd like to make sure that during pavement selection for this project the County considered life time costs. Is the County considering concrete pavement and doing a life cycle cost analysis? Are there accurate calculations for considering seal coat, chip and seal, crack sealing, overlays, etc. for asphalt? I also understand that asphalt prices have risen dramatically recently. Does the County take alternate bids on concrete as well as asphalt?

← A

Also, are we comparing equal pavements? Concrete has greater load carrying capacity. Asphalt has historically been underdesigned and concrete overdesigned. A too thin asphalt pavement potholes and breaks-up even quicker with the increasing traffic in our County. This creates more maintenance costs.

It is vital that we provide Scott County taxpayers with the best value for our growing infrastructure. Thank you for your time and consideration. I look forward to your response.

Sincerely,

Doug Burns

Cc: Public Works Director - Lezlie Vermillion  
County Board

From: Dean Roper [mailto:drroper@attglobal.net]  
Sent: Saturday, October 14, 2006 10:33 PM  
To: Marschall, Barbara  
Subject: County Rd 21 Extension Project- Against

Hello Mrs Marschall,

I am a resident of Shakopee Precinct #7 and in your District.

I do not support the County Road Extension project. I feel the routing of traffic into the Southbridge Parkway area will create a massive traffic roadblock situation. I see no problem with traffic being funneled over to Cty Rd 18 as is currently the case. During morning rush hour, traffic is already backed up getting onto Hwy 169. I also feel the money used for this project is better spent on other projects in the county.

Dean Roper  
1377 Blue Heron Trl  
Shakopee, MN 55379

drroper@attglobal.net

### 34 Dean Roper

- A See Recurring Response 3.
- B The County has concluded that to meet growing needs and the metropolitan functional classification roadway spacing criterion, an additional north-south arterial should be constructed between the two existing north-south arterial roadways in the study area, CSAH 18 and CSAH 83, which are three miles apart.

← A

← B

11-17-2006

Jim Gerlach  
4855 Eagle Creek Boulevard  
Shakopee, MN 55379

NOV 20 2006

To : Mitchell Rasmussen, County Engineer  
Scott County Public Works Division  
600 County Trail East  
Jordan, MN 55352-9339

Regarding: Public comments on the CSAH 21 EAW

I have been questioning the validity of the ordinary high water level of Dean Lake for many years and believe that this mark should be under review before construction of the CSAH 21 project begins. This OHWL elevation is an important feature of the lands and wetlands in very close proximity to the CSAH 21 project.

#### MINNESOTA STATUTE

Minnesota Statutes, Section 103G.005, subdivision 14 defines "ordinary high water level" (OHWL) as the boundary of waterbasins, watercourses, public waters, and wetlands and:

(1) the OHWL is an elevation delineating the HIGHEST water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

#### FROM DNR booklet *GUIDELINES FOR OHWL DETERMINATIONS* (available online on the MN DNR website)

Page 1

The OHWL is the landward extent of DNR jurisdiction over any one who works in the bed of public water or public waters wetlands (collectively referred to as public waters) It is commonly used in public waters work permits and by local zoning authorities to determine lot size, structure setback, and drainfield location and elevation. It is **NOT**:

- \*a runoff elevation
- \*an average water level
- \*an extreme high water level
- \*nor an arbitrary elevation set by an individual, group or agency.

It has no significance with respect to private ownership.

Page 2

TREE EVIDENCE.

### 35 Jim Gerlach

- A The ordinary high water level (OHWL), as defined in Minnesota Statutes Section 103G.005, applies only to the jurisdiction of the Department of Natural Resources (DNR) over public waters and wetlands. Wetland areas outside of the OHWL are regulated at the state level by the Wetland Conservation Act (WCA), as spelled out in Minnesota Rules Chapter 8420, and at the federal level by Section 404 of the Clean Water Act. Regardless of whether the OHWL established for Dean Lake needs to be reviewed, and possibly changed, any change would have no effect on the delineation of the edge of wetlands in the surrounding area.

← A  
Wetland edges are delineated in accordance with the U.S. Corps of Engineers 1987 Wetland Delineation Manual (Environmental Laboratory. 1987. Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1. U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, MS). This method is required under both the federal Clean Water Act and the Minnesota Wetland Conservation Act (WCA). Using this method, wetland boundaries are determined through a close examination of vegetation, soils and hydrology. Criteria and indicators for each of these parameters are outlined in the Corps Delineation Manual. It is not uncommon for the OHWL of a public water (including public water wetlands) to differ from the delineated edge of wetlands because of the different procedures for establishing each line.

The process of identifying wetlands in the project area involved reviewing USGS quadrangle maps, National Wetlands Inventory (NWI) maps, DNR Protected Waters maps, aerial photos and finally, an on-site visit to delineate wetland boundaries using the methodologies set forth in the 1987 Wetland Delineation Manual. Field conditions and results were documented in a wetland delineation report. Following submission of this delineation, it was determined that a separate delineation of the Hanson property (located in the northern portion of the project area) had been submitted to and approved by the Technical Evaluation Panel (TEP), as established in WCA. An additional delineation was also completed by the developer of the former Shutrop property. Through review by the TEP, the delineations were coordinated and one set of wetland lines was accepted and carried forward for impact review of alternatives for the CSAH 21 project. These surveyed wetland delineations would not be affected by any potential change to the OHWL of Dean Lake.

With respect to the request for review of the OHWL of Dean Lake, DNR Division of Waters (DOW) staff has done extensive research through review of aerial photography, soil surveys, groundwater/surface water studies, and assorted engineering and survey work, as well as the historic water level data review. The findings have been shared with interested local officials and citizens alike. The

"Trees are the most permanent type of vegetation on the landscape and their growth patterns around the perimeter of a basin reflect the fluctuation of water levels within the basin. Therefore, whenever appropriate tree evidence is available, the OHWL is based on that evidence."

From these Minnesota OHWL statutes and policies of the DNR, it is conclusive that:

1. The law states that the OHWL must delineate the HIGHEST water level that has been maintained for a sufficient period of time to leave a mark on the landscape.
2. It is not an arbitrary elevation set by an individual, group, or agency.
3. It has no significance with respect to private ownership.

The current OHWL of Dean Lake does not seem to match the above statutes and policies put forth by the state of Minnesota. It is not an arbitrary mark set by the DNR, or any other agency, and it has no significance with respect to private ownership. At any time, regardless of what was built in the past on an incorrect mark, the mark should be determined based upon the long term action of water on the landscape. As I see it, anything built going forward, regardless of ownership, is only defensible by an OHWL determined by the acts of water on the landscape as defined by MN statute and policy.

I have been sent data in 2 DNR work reports. The first, supplies this data, "On 9-13-1977 we ran levels one way from the previously mentioned T.B.M. to the lake basin proper and obtained some O.H.W. evidence. From this we estimated the O.H.W. to be 747.0." The second Dean Lake DNR work report from 5-5-1983 states, "We found a line of large oaks (1.5-2.5' diameter, all growing on good slopes, and from these trees would estimate the historic level of Deans Lake to be 748.6. Between these oaks and the present waters edge there is a conspicuous fringe of trees, mostly popple, with some small oaks and elms scattered amongst them. These trees were the same trees from which the O.H.W. was determined." I have included these DNR work reports in this letter.

It is quite apparent that the OHWL of Dean Lake was determined from trees by the MN DNR as referenced in this work report. Mr. Lynch, area hydrologist with the MN DNR sent me this data upon request for data supporting an OHWL of 747, and upon request for further data, replied in an email sent 7-26-06, "I sent you all I have in my files with respect to the Deans Lake OHWL plus some additional information I felt might be of interest or otherwise assist you in understanding the OHWL."

I can find no marker trees surrounding Dean Lake which would give an elevation of 747 as the correct OHWL. I have located markers placed by the City of Shakopee to delineate 747 around the basin of Dean Lake, (photos enclosed), and from the readings of 747 to the very first fringe of small trees, there is an obvious and substantial rise in

OHWL for Dean Lake was established in 1977 and reviewed in 1983. According to DNR staff contacted for this project, the OHWL of 747.0 is properly established, based upon review of all available information. In recent years, DOW and City of Shakopee (City) staff confirmed that the benchmark and datum used to determine the OHWL of Dean Lake was accurate. As is the case with the vast majority of wetlands regulated by DNR, Dean Lake has a wetland fringe that extends above the OHWL. This wetland fringe is regulated by the City under WCA and the Corps of Engineers under Section 404 of the Clean Water Act, as described above.

Formal review of an OHWL can be requested by the local governmental unit (LGU) within which the basin is located, or by the local soil and water conservation district, or by a watershed district. According to DNR staff, none of those units of government has expressed concern or doubt about the Dean Lake OHWL, but are aware of citizen input to the contrary. Furthermore, it is rare that an OHWL is changed. The methodology for determining OHWLs dates to the 1930s and upheld in court decisions several times. Further information is available at:

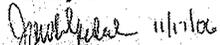
[http://files.dnr.state.mn.us/waters/surfacewater\\_section/hydrographics/ohwl.pdf](http://files.dnr.state.mn.us/waters/surfacewater_section/hydrographics/ohwl.pdf).

elevation not explainable by the diameter of the trees. The OHWL is determined to 1/10<sup>th</sup> of a foot. The procedure outlined in the *Handbook For OHWL Determinations* involves finding marker trees around the basin aligned at a relatively uniform elevation; reading the elevation at the base of the tree, then subtracting the tree's diameter or a half diameter breast high, in inches, depending on the type of tree, and subtracting those inches from the elevation at the base of the tree. The resulting average reduced elevation of these marker trees around the basin should be the OHWL. Even taking into account that these trees have grown greatly in diameter since 1977 & 1983, a period of nearly 30 years tree growth, I can still find no trees that would support an elevation of 747. On the contrary, the first lakeward tree fringe (which may not have existed 30 years ago) may support a much higher elevation as the OHWL. Further, there is no detail in the DNR work reports that would identify the size and type of tree used in these determinations, how many trees were used in calculations, nor the location of the trees. Data is also not present detailing how many tree locations were used around the basin.

In conclusion, I am asking that all officials involved in this project uphold the MN statute regarding the OHWL of Dean Lake, to record and use the OHWL at the highest level as indicated by the presence and action of water. Please consider the ramifications of constructing a large highway through wetlands connected to and very close to Dean Lake, where the OHWL may be incorrectly recorded.

I am also petitioning city, county, and state officials to schedule a time with me and explain to me this data that determines the OHWL of Dean Lake before the CSAH 21 project is approved. I believe under the Minnesota Data Practices Act, we all have the right to have government data explained to us in a way that we can understand. I believe I have asked for an explanation of the Dean Lake OHWL of 747 from the City of Shakopee, the Lower Minnesota Watershed District, and the MN DNR, over a period of many years. To date, no explanation has been given to me by any of these units of government that would support the OHWL level of 747 on Dean Lake as the elevation delineating the highest water level maintained for a sufficient period of time to leave evidence upon the landscape. If the mark of 747 incorrect, it should be corrected before construction of CSAH 21, to update the various jurisdictions and setbacks involved.

Thank you

  
Jim Gerlach  
952-496-1927

20-01  
25)

MINNESOTA DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF WATERS

PROJECT: Deans Lake LAKE NO. 70-74  
 AT/NEAR Shakopee - Scott COUNTY REG. NO. 83-83

PURPOSE: SURVEY  INVESTIGATION  MAINTENANCE   
 TYPE: LEVELS  TOPOGRAPHY  NOHW/OHW  RECONNAISSANCE

**HYDROGRAPHIC WORK REPORT**

Date: 5/5/83  
 Survey crew: Scherek, Young  
 Datum: NAD 1929  
 Vertical control: From D.O.W. staff gage 1983  
                    $g^{PO} = 743.43$   
                   G.R. = 4.39, 5/5/83  
 Water surface, Deans Lk. = 747.82

At this time we obtained the present runoff elevation of Deans Lake and elevations on the new culvert thru Dean Lake road north of the lake. We found the following:

"At runoff area (NW $\frac{1}{4}$ , SE $\frac{1}{4}$  of Sec. 10)"

Present runoff (L in swale)	746.9
Note: 9/9/77 runoff was 747.0	
Water surface in marsh just north of outlet swale	746.78
T.B.M. - twin spikes in place in west side of a 0.7' popple at right side of swale (probable Suburban Engineering B.M.)	749.39
General low in swale at path marked "natural spillway"	747.0

"At Dean Lake road, north of lake - just west of  $\frac{1}{4}$  corner between Sections 10 & 11"

Water surface in outlet channel, approx. 200' upstream of road	744.23
& channel at same location	742.6
Headwater at road	743.45
End of upstream apron on new 36" S.C.P. thru road	741.95
Top upstream end	745.05
Invert upstream end	741.72
L of road	746.3
Top downstream end	743.78
Invert downstream end	740.39
End of downstream apron	740.18
Tailwater at road	741.00
L channel approximately 25' downstream of culvert	739.3



May 12, 1983

*John M. Scherek*  
John M. Scherek

Survey Crew Supervisor \_\_\_\_\_



KDR

W-84  
REV. 10/78

MINNESOTA DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF WATERS

PROJECT: DEANS LAKE LAKE NO. 70-74

AT/NEAR Shakopee - Scott COUNTY REG. NO. 78-11

PURPOSE: SURVEY  INVESTIGATION  MAINTENANCE

TYPE: LEVELS  TOPOGRAPHY  NOHW/OHW  RECONNAISSANCE

WORK REPORT

Deans Lake is located in Sections 10, 14, & 15, T 115, R 22 in the Lower Minnesota River Watershed Unit. It is 128 acres planimetered; 228 acres meandered.

On 9/8/77 L. Jones, D. Heuer and I ran looped levels from M.H.D. bench mark "7005 F 1971" (Elev. = 731.90), to a culvert crossing thru the township road (E-W $\frac{1}{2}$  line of Section 10) near the  $\frac{1}{4}$  corner between Sections 10 & 11, north of Deans Lake and established a T.B.M. (20d spike in place in south side of power pole in north side of township road, 1st pole west of culvert; Elev. = 750.31).

We then did a stadia profile of the outlet swale from the above mentioned culvert upstream to the runout point. We obtained the following elevations:

Top south end 24" CMC thru township road =	746.19
Flow line south end =	744.9
Invert south end =	744.2
$\frac{1}{4}$ township road =	746.9

Note: North end of culvert is completely buried.

Centerline of swale thru ridge in the <sup>SW $\frac{1}{4}$</sup>  of the SE $\frac{1}{4}$  of Section 10 (approx. runout) = 747.0

On 9/13/77 we ran levels one way from the previously mentioned T.B.M. to the lake basin proper and obtained some O.H.W. evidence. From this we estimated the O.H.W. to be 747.0.

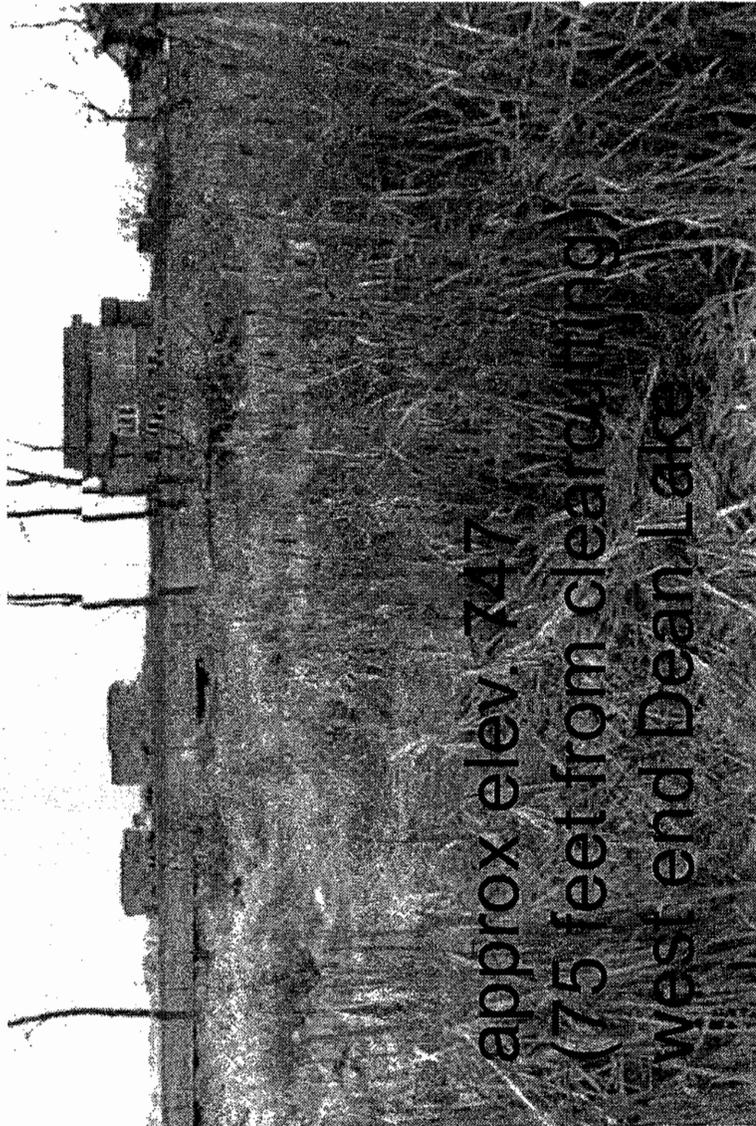
Finally on 9/23/77 we ran levels to the basin northeast of Deans Lake (NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 11) and obtained bottom elevations ranging from 741.8 to 744.2. USGS Quad S 16c 1954 shows an elevation of 745 for this basin. It also shows an elevation of 746 for Deans Lake. No water surface could be obtained for Deans Lake at this time.



10/7/77

John M. Schuck

SEA



approx elev. 747  
(75 feet from clearing limit)  
west end Dean Lake







Deans Lake continued

At this time we also made an additional examination of the shoreline of Deans Lake. We found a line of large oaks (1.5'-2.5' diameter), all growing on good slopes, and from these trees would estimate the historic level of Deans Lake to be 748.6. Between these oaks and the present waters edge there is a conspicuous fringe of trees, mostly popple, with some small oaks and elms scattered amongst them. These trees were the same trees from which the O.H.W. was determined.

In addition we found a gage inplace in the outlet bay near the power line crossing and obtained the following:

Water surface, Deans Lake	=	747.82
Gage reading	=	1.95
Gage zero	=	745.87
Top of gage reads	=	6.50
Top of gage	=	752.37

Note: The gage is a temporary gage made of a wooden board with numbers painted on. We did not substantiate whose gage this was, but I would suspect it was set by Suburban Engineering.

Comments on the CSAH 21 DEIS  
Kathy Gerlach, Shakopee Citizen, Chair, Shakopee EAC  
To: Mitchell Rasmussen, Scott County  
November 20, 2006

Thank you for the extended opportunity to respond to the EIS for CSAH 21 project. Overall, I feel that this project has had unaddressed flaws from the start and is detrimental to the City of Shakopee for the following reasons:

- 1) It cuts through and alters much of the last land available for future, high quality, single family development (which it is guided for) and by its very presence, encourages further development of attached housing, retail, institutional and other development that brings with it traffic, lights and noise which already exists, *in abundance*, in areas in close proximity northeast and west of this proposed road. ← A
- 2) It negatively affects the quality of life and real estate value of the Southbridge community, particularly the Hamlet neighborhood, as well as future developments south of proposed CSAH 21 some of which are already platted. (The Hamlet area of Southbridge is one of Shakopee's nicest neighborhoods). The impacts are far greater than acknowledged, and the mitigation proposed is inadequate in addressing the magnitude of this impact. ← B
- 3) The original impetus for CSAH 21, for Shakopee, which was to provide an outlet to the Southbridge neighborhood, has been met, at great expense to wetlands, by the Pike Lake Road extension.
- 4) CSAH 21 takes commuters to problem areas with no real identified solutions on both ends of this stretch of the project: the bridge and downtown area of Prior Lake and the bottleneck to get on North 169. They will arrive faster only to wait longer.
- 5) The enormous expense to value of future residential areas, rare remaining woodland, existing neighborhoods and unacceptable cumulative impacts to a unique hydrological recharge and wildlife area is not worth the stated "need" of placing a north/south regional road every 1-2 miles. Certainly there are exceptions to this "rule" and other proposals should be seriously explored. ← C

The particular comments related specifically to environmental concerns are as follows:

#### Air Pollution 6.1

General Comment: Much time spent explaining then justifying doing no modeling for five of the six pollutants plus air toxics. Because of the many residences planned in very close proximity to this road (just south of it on the north side of 16 as well as along the road from 42 to 16), the studies mentioned on page 6-3 paragraph 4 should be included in this EIS, and cumulative effects should at least be modeled. ← D

### 36 Kathy Gerlach

- A Plans for the CSAH 21 extension were initiated prior to the residential and commercial development that has occurred and continues to occur along its proposed route. As discussed in the DEIS, in 1996 Scott County adopted a countywide transportation plan which included the extension of CSAH 21. In 1998 the City of Shakopee included the extension of CSAH 21 to CSAH 16 as a future principal arterial roadway in its Transportation Plan. In that same year, the area east of Dean Lake was approved for development (Southbridge). In 1999 the City of Shakopee adopted a Comprehensive Plan that reflected residential development east of Dean Lake west of CSAH 18 and adjacent to future CSAH 21. Developments that have occurred or will occur subsequent to the identification of the planned CSAH 21 extension are being undertaken with the full knowledge of the County's intent to construct a new roadway. The need for the roadway is a result of the anticipated and planned development in the area.

- B See Recurring Response 5.

The proposed CSAH 21 extension will provide benefits to the public in terms of increasing roadway capacity and providing access to businesses and residences.

- C See Recurring Response 3.

The DEIS describes in detail the purpose, need, and alternatives development process for the CSAH 21 project. The DEIS also documents impacts to vegetation, wildlife, and wetlands and the avoidance and minimization efforts taken in the design process.

A safe and efficient transportation system requires location and design of specific roadways based on the functions of mobility (e.g. freeways carrying no local-access traffic) and access to property (e.g., a cul-de-sac providing only for local-access traffic), with provision of the functional gradations between these two extremes (e.g. arterials, collectors, and local streets). Spacing, design, and access control criteria are established that facilitate the appropriate functioning of various roadway classifications within the transportation network as a whole.

Providing an additional outlet to the Southbridge neighborhood is not the purpose of the CSAH 21 extension, but rather the development included features in anticipation of the proposed project.

- D At the time that the Air Quality section of the DEIS was prepared, the FHWA had not released a policy on air toxics. A policy was subsequently released and under the new policy, this project would not qualify for a quantitative assessment of air toxics. It would qualify for a qualitative assessment of air toxics. That assessment would state that while air toxics emissions are roughly proportional to VMT, and emissions in some areas may be higher in some areas and lower in other areas under the Build Alternative, there is no accepted method for doing dispersion analysis or risk assessment. Increases in fleet technology and emissions requirements mean that overall mobile source air toxics (MSAT) emissions will drop by over 60 percent from now to 2030.

Reducing background CO emissions based on assumed future reduced vehicle emissions seems speculative. Is this the standard?

If traffic levels and LOS at intersections are changed or challenged then this section will also have to be updated.

Table 6-2. The wind speed of 1 meter/sec seemed like a slow wind speed for modeling assumptions.

An emissions budget is discussed on page 6-7. Do other area projects affect that budget? How often is it updated? Have other area projects drawn from this "budget"?

In two places (pg 6-6 and 6-7) emission reduction information is given on a proposed 500 vehicle park and ride. What is the source of this analysis?

#### Noise 6.2

General comment: Noise and light are generally downplayed in these types of environmental statements, yet it has been my experience that, at least in the Southbridge area, they have played a significant role as pollutants, reducing use and enjoyment (and value) of Shakopee's premier residential area.

The noise impacts are clearly huge, way over the 5dBA increase considered significant in all but a few, more distant, receptors. (Tables 6-6 & 6-7) They especially affect the newer areas, those proposed but not yet built, and, most significant, a park complex. The mitigation proposed is expensive, inadequate and subjective (certainly the margin of error is more than 1dBA). The solutions offered don't address the noise issues.

Adjacent vacant lands are not studied and the suggested solution to sound mitigation is placing the burden back on local municipalities and developers (wider setbacks, zoning, other "land use controls", etc). The true cost of "doing it right" along this corridor should be considered, as it is a very expensive form of mitigation. The park would be severely limited and this parkland is a major expense/investment for the City of Shakopee.

The suggestion of locating new residences 200 feet away from the CSAH 21 ROW (page 6-20) may already put approved or soon to be approved plats outside this suggested mitigation. Changing the setbacks is either not an option or too expensive.

#### Contaminated Properties 6.4

The extent of the problem with the dump site located at the proposed CSAH 21 and CSAH 16 should be part of this report, especially since it is a key site for ponding. In addition to dumping, it was used as a shooting range, not unlike the old Eagle Creek town hall site.

- ← E E Reducing background emissions based on assumed reduced future vehicle emissions is common air quality modeling practice. One of the largest contributors to background CO is background traffic. Improvements in the vehicle fleets will reduce those emissions in future years.
- ← F F Comment noted.
- ← G G The wind speed of 1 m/s (2.3 mph) is the minimum wind speed allowed in the CAL3QHC model. Slow wind speeds are a worst case condition. At higher wind speeds, CO disperses more rapidly and 1- and 8-hr average concentrations are lower.
- ← H H The emissions budget is updated by the Metropolitan Council as part of the regular Transportation Policy Plan (TPP) updates. All projects included in the TPP are included in the emissions budget.
- ← I I The source of the emission reduction information in the DEIS is the STP Application dated August 19, 2005.
- J Noise abatement measures identified in 23 CFR 772.13(c) were evaluated in the DEIS for the proposed project. This included the evaluation of noise barriers at planned residential locations along the corridor north of CSAH 16. See response to City of Shakopee Comment R in regard to proposed noise abatement measures.
- ← J Future traffic noise levels were estimated for currently undeveloped lands south of County Road 16 along the project corridor, consistent with the regulations outlined in 23 CFR 772.15. The purpose of this analysis is to provide local governments with information that can be used for land used planning in such a way as to prohibit noise-sensitive land uses adjacent to the roadway, or that the proposed developments are planned and designed in a manner that minimizes noise impacts. (U.S. Department of Transportation. Federal Highway Administration. Highway Traffic Noise in the United States. Problem and Response. April 2000)
- K Plans for the CSAH 21 extension predate the residential development that has occurred and continues to occur along its proposed route. Approval of developments that have occurred or will occur subsequent to the identification of the planned CSAH 21 extension were or are being undertaken with the full knowledge by the City of the County's intent to construct a new roadway.
- ← K
- ← L L Traffic noise was modeled at various distances from the project corridor at the site of a proposed community park. Estimated daytime traffic noise levels 200 feet from the proposed roadway during peak traffic periods are 65 dBA (L10). This noise level meets State daytime noise standards for park uses, and is below the Federal noise abatement criteria threshold for parks. As noted above, this site is currently undeveloped but is planned for future park uses. The DEIS presented noise modeling information to local officials responsible for land use and planning decisions so that future park amenities can be designed and implemented to minimize future potential noise impacts.
- ← M M See Comment I above.
- ← N N The DEIS reports that there are no sites within the project area that have been identified as having a high potential for contamination. The DEIS also states that the dump site will need to be investigated prior to construction. The history of the site will be investigated, including any history of its use as a shooting range, prior to construction.

Vegetation, Wildlife and Fisheries 6.5

General Comment: There exists a strange lack of consulting Shakopee's data concerning natural resources. Shakopee has a Natural Resources Inventory, identified Natural (Greenway) Corridors contained in reports as well as part of the draft Comp Plan submitted to the Met Council. In addition, there have been two other environmental reports (East Dean Lake EAW and The Shakopee Crossings AUAR) that could yield a wealth of information. This report fails to adequately address the impacts and mitigation expected by the City of Shakopee based on its new philosophy and goals.

← O

Page 6-27. After indicating the wildlife crossing north of 16 is almost twice as long as that south of 16, a culvert one half the width is suggested. This should be revisited or explained better.

← P

Very little part of this report describes the true impact of 22-23+ acres of forest being removed and replaced by pavement. It would be good to see more data on the percent of remaining forest in both Prior lake and Shakopee that this represents. Also, Shakopee has given quality ratings to remaining woodland that should be of interest. Perhaps the SMSC and Prior Lake have done the same. No mitigation or alternative plan are given other than a "wibble and a wobble" between 16 and 42. As with wetlands, Shakopee does have a replacement plan for tree removal that should be addressed in the mitigation section.

← Q

Endangered Species 6.6

General Comments: Movement and habitat of many species will be greatly affected, but this report should include specific focus on the bird migration, movement and use of the Dean Lake wetland complex as an extension of the river flats area managed by the National Wildlife Service and the State. Of particular interest is the Blue Heron, but perhaps there are many other species that have come to rely on this area as part of their natural seasonal movement.

← R

All the letters quoted and referenced should be included in the appendix.

← S

There have been Bald Eagles nesting on the south side of Dean Lake in the past. (present?)

← T

Visual Impacts 6.7

General Comments: It is hard to get a picture of the visual impacts without some sort of artist rendering of this project at various locations. Another alternative would be a photo of a similar design used elsewhere (a bridge, overpass or retaining wall)

← U

O. The FEIS updates DEIS Chapter 6 to include reference to the Natural Resource Inventory of Northern Scott County (2002) and highlight findings that relate to CSAH 21 (see City of Shakopee Comments S and T).

P The proposed crossing north of CSAH 16 identified in DEIS Figures 3-7 and 3-8 is not a wildlife crossing but is a pedestrian underpass that could be used by smaller wildlife. The DEIS incorrectly referred to it as a wildlife crossing on Page 6-27. A wildlife crossing that conforms exactly to the recommendations for the ratio of length to width of opening would be impractical for this site. The FEIS updates DEIS Chapter 6 to correct this reference. (See City of Shakopee Comment V.)

Q Scott County is aware of and will comply with the City of Shakopee's Woodland and Tree Management Ordinance as it relates to tree removal and replacement. Minnesota Land Cover Classification System data indicate that there are 3,849 acres of forested land in northern Scott County. This means that the 23 acres of impact from the proposed project would be approximately 0.6 percent (less than one percent) of the total forest in the region.

R As identified in the DEIS, the Prior Lake outlet channel and Dean Lake wetland complex likely serve as a wildlife corridor, connecting the wetland habitat associated with Dean Lake with upland forests. The wildlife function of the Dean Lake wetland complex was assessed at a moderate level. Affected wildlife movement corridors are typically reviewed for impacts associated with land-based animals, as birds can adjust to obstacles by flying over them. Loss of wetland habitat will be offset with on-site mitigation to the extent practicable, as well as off-site mitigation by the County in nearby locations.

S Comment noted. All of the correspondence discussed in Section 6.6.2 of the DEIS is included in Appendix A.

T Correspondence with the U.S. Fish and Wildlife Service dated July 20, 2005 states that there are no records of a bald eagle nest site in the general vicinity of the project area

U The design and lighting of the roadway and park-and-ride transit station will be consistent with the City's regulations relating to the construction, use, and operation of the facility. According to the Metropolitan Council's Park-and-Ride Facility Plan, there is an unmet transit demand of 400 riders in the southern metropolitan area, Minneapolis Corridor, along TH 169 in the year 2010. By adding transit stations, the goal is to reduce single occupancy vehicle trips during peak periods through increased transit use.

One way to minimize visual impacts would be to eliminate the park and ride concept at 16 and 21. These are usually accompanied by intrusive lighting as well as attached housing and commercial components. This area should stick to its guided use-single family housing, with or without CSAH 21 and the park and ride should be placed in an area already guided for commercial/multi-unit housing.

← V

V A rendering depicting visual impacts will not be prepared.

Unnatural, sudden breaks in bluff lines and forests are also not pleasing, visually. Again, how will this look?

W Comment noted.

#### Parks and Trails 6.8

The YMCA camp should remain intact.

← W

X The DEIS provided a complete picture of existing conditions using data that was available at the time and was adequate to assess the impacts from the proposed project and to design mitigation measures. The information cited in the comment may enhance understanding of existing conditions but would not change findings or impact proposed roadway design or mitigation. The developments that the commenter references came about after the preliminary design work and DEIS analysis had been completed.

#### Geology and Soils 6.9

General comment: Because of the sensitive and complex nature of the whole Dean lake Basin, this report needs a more complete, birds eye picture, drawing information from available resources such as the numerous environmental statements previously prepared, developer stormwater plans from Southbridge and Shakopee Crossings, the hydrologic review done by Sheily in 2000 and a thorough report on Dean Lake completed for the City of Shakopee and the LMRWD in 1976.

← X

Y The DEIS discusses the information obtained and includes research about bedrock depth in general in the area as well as actual measurements and observations from on-site soil borings, thus the variation in findings.

The report is unclear on this big picture, especially the depth of the bedrock and the movement and depth of the surficial groundwater. In one place it says ten feet in another 40-500 feet for bedrock depths.

← Y

Z Amendment of poorly suited soils, such as organic or hydric soils, for road construction is a common practice. Where a road is proposed to cross areas of hydric or unstable soils, the soil may be excavated and replaced with a stable substrate, such as sand and gravel, for the roadway. Another amendment practice is referred to as surcharging the soil in preparation for later development. In surcharging, a pre-determined depth of sand or gravel is placed on top of the unstable soil sufficient to compress the unstable material until it becomes stable. The appropriate method of site stabilization will be determined during the final design process. Any limitation for development on hydric soils would mainly be related to the suitability for building depending upon the stability of the substrate for the final use of the area.

No discussion on the hydric soils affected. It is my understanding that these soils are viewed as an important resource for water quality management and from the County's perspective, development on these soils is limited or not allowed. The location of this highway seems a poor choice since the bulk of it north of CSAH 16 will be built on hydric soils.

← Z

With regard to water quality management, soils of all types provide some level of filtration as water infiltrates through the various layers. Searches of City of Shakopee design criteria, Scott County zoning ordinance, and Scott Watershed Management Organization rules did not show a direct reference to the importance of these soils as noted by the commenter. Cumulative impacts may include potential changes in groundwater flow patterns due to differences in the porosity of amended soils.

The cumulative impact of digging out these soils and replacing them is not discussed. Most of the other developments in this area north of CSAH 16 have also done soil removal and replacement.

#### Water Resources 7.0

##### Groundwater/Surface Waters

(These two are linked, especially in the area of Dean Lake)

General comment: It's unclear who is in charge of what in regards to water. Is there a manager in charge of coordinating all aspects of the water related impacts and design? Have the cities of Shakopee and Prior Lake completed their water management plans?

← AA

AA Because the project crosses many jurisdictions, coordination with all of the appropriate agencies will be necessary to ensure that all rules and requirements are met. The County will continue to work with these agencies on these issues. As of January 2007, the City of Shakopee had not yet issued its updated stormwater management plan. The City of Prior Lake's stormwater management plan has been adopted but as of January 2007 was not yet available in printed or electronic format.

Water resources will bear the greatest environmental impacts, because of the unique and extensive Dean Lake wetland basin. These sections were hard to read and summarize. (FUZZY)

Although not being able to adequately control quantity flow as well as the risk of reduced water quality and contamination of both ground water and surface waters are described, the answers to the many questions raised were dealt with in very general terms. Not enough detail for comment The maps (7-1,7-2) were not helpful.  
Again, there is lots of data out there and completed developments that could provide data to answer questions. (See general comment for geology/soils)

Of specific concern in these sections is:

- Just how much water (quantity) is anticipated to runoff 21 from 42 to 18.
- Infiltration verses containment around Dean Lake. Which will it be?
- What designs have been utilized by the other development in this area?
- Regional ponds...design,size,cost
- Ongoing maintenance of lined ponds/pretreatment strategies.
- Ongoing monitoring of water quality in Dean Lake and Pike Lake
- Feasibility and process for cooperation with area developers as mentioned
- How the Prior Lake channel is involved.
- Lack of Dean lake Data/the need for the proposed study BEFORE CSAH 21

\*\*\*Wetlands\*\*\*\*

General comment: This section was well organized and easy to follow. The City has replaced acres of wetland from this area to offsite locations and has denied a recent request from a developer wanting to do the same. This whole discussion is where cumulative effects come into play. Further downsizing of the wetland acres to far away areas (as proposed) alters the Dean Lake basin's function as a prime wildlife and water recharge system benefiting THIS area. If wetlands cannot be replaced onsite or in the watershed then the impacts cannot be mitigated adequately. This is the most significant impact in this report and my closing comment would be the CSAH 21 Build Alternative arrived a little late to the trough in regards to diminishing wetlands.

~\*~

Thank you very much for this opportunity to comment. I look forward to the County's response to all comments provided and want to express appreciation to Scott County's continued commitment to listening to citizen and city viewpoints.

Regards,

Kathy Gerlach  
952 356 2111 (cell)  
k\_ger@hotmail.com

BB The developments that the commenter references came about after the preliminary design work and EIS analysis had been completed.

The proposed roadway project was designed to provide adequate stormwater runoff storage and treatment to handle the quantity of anticipated runoff. Table 7-2 in Section 7 of the DEIS provides information on runoff volumes. This information does not account for infiltration. Providing the calculations noted by the commenter would not change the impacts, proposed road design, or mitigation measures. In addition, any direct impacts to wetlands or to other parcels due to pond placement have been accounted for based on appropriate sizing computations.

Infiltration will likely be one of the best management practices (BMPs) used in upland areas where there is adequate depth to groundwater and bedrock. National Urban Runoff Program (NURP) style ponds may be used with infiltration fringe in the low areas near Dean Lake. Many of the other developments in the area have been using a NURP-style pond. The exact pond size, location, and method of treatment will be determined during final design.

In terms of regional ponding, further coordination with the cities, SMSC, and the watershed districts would be required during final design to determine the drainage areas and therefore size and costs.

As with any BMP, ponds included, there will be some regular maintenance required. The frequency of maintenance is dependent on the BMP and its design.

The water quality of Dean Lake has been monitored since 2002 by volunteers as part of a Metropolitan Council program.

The County continues communications with the City of Shakopee for on-going planning and opportunities for cooperation on regional ponding.

The Prior Lake Channel will be conveyed under the proposed roadway through a culvert, the design of which will be coordinated with the Watershed Districts during final design.

The DEIS provided a complete picture of existing conditions using data that was available at the time and was adequate to assess the impacts from the proposed project and to design mitigation measures.

CC Wetland W-6 is the wetland complex associated with Dean Lake, 6.21 acres of which are proposed to be impacted with the CSAH 21 project. On-site mitigation of the proposed impacts is preferable to off-site and distant replacement. The Wetland Conservation Act (WCA) and Corps of Engineers (COE) Section 404 regulations have provisions for increasing the minimum mitigation ratios to account for out-of-kind and off-site

replacement. Wetland mitigation should occur – consistent with availability of mitigation sites – at locations following this priority order:

- 1) On-site or in the same minor watershed as the affected wetland
- 2) In the same watershed as the affected wetland
- 3) In the same county as the affected wetland
- 4) In an adjacent watershed or county
- 5) Statewide

While the amount of wetlands existing on site creates a difficult challenge for on-site mitigation, any on-site opportunities that exist will be fully pursued. Replacement of important on-site functions must be done to the extent practicable. The County is working with the City of Shakopee and BWSR on a cooperative plan for mitigation that is tied to Pike Lake Road construction. The plan has approval from the U.S. Army Corps of Engineers. The County is aware that it will need to provide further mitigation.

As noted in the DEIS, this wetland functions at a high level in providing shoreland and water quality protection for Dean Lake, as well as maintenance of the hydrologic regime. This wetland has moderate vegetative diversity, although it is considered to be dominated by the invasive reed canary grass (*Phalaris arundinacea*). A moderate level of flood and storm water attenuation and maintenance of wetland water quality is provided by this wetland.

Chapter 4 of the FEIS presents the Wetland Finding, including wetland mitigation plans for replacement of affected wetland areas. On-site opportunities to address the shoreland and water quality protection and hydrologic maintenance functions that wetland W-6 provides for Dean Lake will be pursued with the final design efforts. These ideas could include on-site excavation adjacent to the existing wetland area to create additional wetland. In addition, organic and hydric soils in the location of the proposed road bed will be collected and used in the new wetland areas to facilitate the establishment of wetland characteristics. Eradication and control of reed canary grass in any new and existing wetland will also be included as additional mitigation efforts.

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PUBLIC HEARING AND DRAFT ENVIRONMENTAL IMPACT STATEMENT  
FOR THE  
COUNTY STATE AID HIGHWAY 21 EXTENSION PROJECT  
IN THE CITIES OF PRIOR LAKE AND SHAKOPEE IN SCOTT COUNTY  
-----

\* \* \* PUBLIC COMMENTS \* \* \*

The above-entitled matter came on for Public Hearing on September 21, 2006, in the County Board Room, at the Scott County Government Center, in the City of Shakopee, County of Scott, State of Minnesota.

ORIGINAL

1                                   \*   \*   \*

2                   JUDY McDONALD: Judy, J-U-D-Y, McDonald,

3                   M-C-D-O-N-A-L-D, TCF National Bank.

4                   I am here to express our concern/questions

5                   about the 21 and 18 intersection, whether or not there

6                   will be a full interchange or just the four or

7                   six lanes, because it would impact -- we are looking

8                   at that site for a possible development for TCF Bank,

9                   and the interchange design would eliminate that site

10                  for us because it would take up too much of the site.

11                                  \*   \*   \*

12                  JOE HELKAMP: Joe, J-O-E, Helkamp,

13                  H-E-L-K-A-M-P.

14                  As far as the build alternatives go, I

15                  prefer the westerly alignment that stays as far away

16                  from the sensitive wildlife area; and then I prefer

17                  the four-lane intersection at Southbridge Parkway.

18                  I feel that cost wise, it will carry 95 -- it will

19                  only be a 95 percent capacity at 2030. So, it still

20                  won't be overloaded. I think that's sufficient.

21                  Some of the other ones, particularly the

22                  overpass option, there will only be a 30 percent

23                  capacity in 2030 , and that's a lot of money to spend

24                  and a lot of underutilized capacity for a very long

25                  time. So, I don't think that's acceptable; but that's

**37 Judy McDonald**

A    The County has selected the four-lane at-grade intersection design option as the Preferred Alternative. This design option does not affect the TCF bank. City of Shakopee staff participated in the Technical Advisory Committee meetings for the CSAH 21 project and were aware of the project alternatives when proposals for the bank came forward.

**38 Joe Helkamp**

← A    A    See Recurring Response 7.

B    The County selected the four-lane at-grade intersection option as the Preferred Alternative. The four-lane at-grade intersection at CSAH 21/CSAH 18 provides adequate capacity during the design period, minimizes pavement and right of way requirements, and has lower costs than the other two design options. While the interchange provides better system benefits, it increases vehicle stops on CSAH 18/Southbridge approaches, extends noise and visual impacts further into the neighborhood, has more pavement to maintain, greater right of way impacts, and higher construction cost. While the six-lane at-grade intersection provides additional transportation benefit, it does so at additional cost.

← A

← B

C See Recurring Response 3.

1 if they decide to build it.

2 I would prefer them not to build it. I

3 prefer the no-build situation the most. I don't think

4 the idea of collecting traffic from outside of

5 Scott County and routing them over the Bloomington

6 Ferry Bridge is good for Scott County. The bridges

7 are our only crossing across the river. It has

8 already got too much traffic on it; and if we start to

9 collect cars from outside the County, particularly

10 cars coming up 35, and routing them up and across our

11 bridge, we are giving away capacity that is already

12 being exceeded.

13 So, we are just going to make a bad

14 situation much worse by building that road and

15 allowing that extra traffic to come through; and I

16 also don't see how it works as a very good corridor in

17 Prior Lake or on the Wagon Wheel Bridge. There's some

18 very steep curves in there, and I don't see a lot of

19 traffic making it through downtown Prior Lake. I

20 don't think that's going to be an efficient travel

21 route.

22 But my biggest concern is the -- is the

23 extra traffic that we are going to put across the

24 bridge to the detriment of the residents of

25 Scott County.

← C

\* \* \*

JEFF SCHWIEGER: My name is Jeff Schwieger, spelled S-C-H-W-I-E-G-E-R, and I live in the Montecito -- off of Montecito Drive, M-O-N-T-E-C-I-T-O, Drive, just down the road from the intersection of 16 and 21, the proposed 21.

My first concern is with the transit station that is proposed on the southwest corner of 16 and 21 or, for that matter, on the other corner. That's the last stop for anybody coming from Minneapolis, and it is also as close as anybody can get to Mystic Lake and Canterbury Downs.

I currently have lots of people that could barely afford to get to Mystic Lake and who, obviously, lost everything they didn't have at Mystic Lake, not even being able to afford a cab, walking down 83 and through our neighborhood now. We have people from Minneapolis stealing cars and dropping them off in our neighborhood, and then footing it the rest of the way to Mystic Lake or Canterbury.

There is an elementary school being built on that corner. We are providing a clean-cut, straight artery straight to a place we are going to send our children, and dropping them off and telling

39 Jeff Schwieger

- A The intent of the park-and-ride transit station is to provide service for commuters to downtown Minneapolis. Mystic Lake Casino offers free daily shuttle bus service from areas throughout the Twin Cities Metropolitan area to the casino and is about 4.5 miles from the proposed park-and-ride facility. Canterbury Park offers shuttles from the Mall of America on Saturday and Sundays from May through September and is about 2.5 miles from the proposed park-and-ride facility.
- B The County will provide fencing along the roadway in the area near the school for safety purposes.

← A

← B

1 these people now you have to get to Mystic Lake on  
 2 your own. I have seen the people that go out to  
 3 Mystic Lake early in the mornings, late at night.

4 I have picked up their garbage coming past my house.

5 It is -- it is inevitable that we need mass  
 6 transit. We need to be hooked up to Minneapolis. If  
 7 we could only have the other transit station maybe  
 8 closer to the Canterbury Downs or Mystic Lake area so  
 9 that -- or even bus service back and forth along 42 or  
 10 16, but there is no other place for people to go at  
 11 the end of the bus line than through our neighborhood,  
 12 and that just doesn't look like a very good idea.

13 I guess that's about all.

14 Development of trail systems by the County,  
 15 you may want to consider expanding the width of the  
 16 trails to include golf carts as our senior citizens  
 17 get older and as they become more mobile. We could  
 18 provide a means for alternative vehicles like  
 19 three-wheel bicycles like the retirement communities  
 20 in Arizona have where most of the seniors and the  
 21 people in these communities just drive around in their  
 22 golf carts from the store to the golf course to the  
 23 hardware store to wherever.

24 It is hard for me to talk only having one  
 25 side here.

- C The County will work with the City of Shakopee in final trail design. It is possible that a wider trail would require the acquisition of additional right of way.

← C

1 I guess the transit station is my biggest  
 2 concern being that it is just too close to the  
 3 elementary schools and that it's a means for a lot  
 4 more undesirable people from Minneapolis coming in. I  
 5 think we were only thinking about people from the area  
 6 going into Minneapolis, and maybe not the other way  
 7 around, what that will attract out to us.

8 The other concern, I guess, I have is that  
 9 from the charts and the studies out there, by building  
 10 County Road 21, it will increase traffic by 1,000 cars  
 11 a day past my house on 16 between 83 and 21, and there  
 12 is no means or provisions for improving that section  
 13 of County Road 16, and people are already passing in  
 14 the no passing zones.

15 The drunks coming back from Mystic Lake and  
 16 Canterbury late at night are driving in the ditches  
 17 and getting into accidents out there. It is a very  
 18 unsafe area about any time of day already, and now you  
 19 are going to add another 1,000 cars to it without any  
 20 plans of improving it. That's another poor idea.

21 Not that anybody is going to hear any of  
 22 this. So, I'm done.

23 \* \* \*

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25

D Traffic volumes on CSAH 16 are expected to increase more under No Build conditions than under Build conditions.

← D

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STATE OF MINNESOTA )

) REPORTER'S CERTIFICATE

COUNTY OF SCOTT )

I, Mary C. Johnson, do hereby certify that  
the foregoing transcript, consisting of the preceding  
6 pages, is a true and complete transcript of the  
proceedings had of record.

Dated: September 25, 2006

  
Mary G. Johnson  
Official Court Reporter

# **APPENDIX B**

## **Intergovernmental Agreement**

**Shakopee Mdewakanton Sioux Community,  
Scott County, FHWA, and Mn/DOT**

MN/DOT AGREEMENT NO. 91900

INTERGOVERNMENTAL AGREEMENT  
REGARDING STATE PROJECT NO. 70-621-24  
CSAH 21 RECONSTRUCTION

This Intergovernmental Agreement (“Agreement”) is made this 9<sup>th</sup> day of October, 2007 by and between the Shakopee Mdewakanton Sioux Community (“Tribe”), Scott County, Minnesota (“County”), the U.S. Department of Transportation, Federal Highway Administration (“FHWA”), and the Minnesota Department of Transportation (“MNDOT”).

**WHEREAS:** The Tribe is a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934 (“IRA”), 25 U.S.C. §§ 461-479, and possesses those inherent sovereign powers of self-government contained in the Constitution of the Shakopee Mdewakanton Sioux Community, the IRA, and federal common law; and

**WHEREAS:** The County is a political subdivision of the State of Minnesota, possessed of the full powers of a county government, including the ability to build and maintain county highways; and

**WHEREAS:** The FHWA is a federal agency of the United States government, which possesses the responsibility to carry out the Federal Aid Highway Program in partnership with the State and local agencies to meet the transportation needs of the United States; and

**WHEREAS:** The MNDOT is a statutory agency of the state of Minnesota, possessed of the authority to develop, implement, administer, consolidate and coordinate state transportation policies, plans and programs pursuant to Minn. Stat., Ch. 174; and

**WHEREAS:** The Tribe maintains governmental authority over all its lands and all lands within the boundaries of the Shakopee Mdewakanton Sioux Community Reservation; and

**WHEREAS:** The relationship between the Tribe and the United States, the State, and the County is a unique government-to-government relationship; and

**WHEREAS:** The Tribe places a high value on its land as a social and cultural resource, particularly those areas used for active hunting, gathering, spiritual, and other culturally-related uses, and the Tribe has a substantial interest in protecting its land from the impacts of development, including transportation systems; and

- WHEREAS:** The Tribe and the County have a common interest in the existence of a safe and efficient transportation system that accommodates the needs of their respective citizens and the uses of their respective lands; and
- WHEREAS:** The County proposes to extend County State Aid Highway 21 (“CSAH-21”) as a four-lane expressway from County State Aid Highway 18 at Southbridge Parkway in Shakopee, Minnesota to County State Aid Highway 42 (“CSAH-42”) in Scott County, Minnesota (the “Project”), a distance of approximately three miles; and
- WHEREAS:** The Project as proposed will affect a parcel of land owned by the Tribe in fee simple title (the “Affected Parcel”); and
- WHEREAS:** The County, FHWA and MNDOT jointly prepared a Draft Environmental Impact Statement (“DEIS”) pursuant to 42 U.S.C. § 4332(2)(c), 23 U.S.C. § 138, and Minn. Stat., Ch. 116D, dated June 2006, that evaluates the environmental impacts of the Project; and
- WHEREAS:** The DEIS contains a description of the Project, including two alignment options for the portion of the Project between CSAH-42 and County State Aid Highway 16 (“CSAH-16”), known as the “West Alignment” and the “East Alignment”, *see* DEIS at p.1–3; and
- WHEREAS:** The West Alignment crosses the property line of the Tribe and traverses the Affected Parcel, affecting approximately 21 acres of the Tribe’s land; and
- WHEREAS:** The East Alignment follows the property line between the Affected Parcel and the adjacent parcel of land operated as a camp by the Young Men’s Christian Association, affecting 3.3 acres of the Affected Parcel; and
- WHEREAS:** The Tribe submitted comments in response to the DEIS that *inter alia*, state the Tribe’s opposition to the West Alignment because it fragments and destroys land that the Tribe uses for cultural purposes.
- NOW, THEREFORE:** in consideration of the foregoing, the Tribe, the County, and the FHWA agree that the Project shall be implemented in accordance with the following stipulations to account for the impacts of the Project on the Affected Parcel.

## ARTICLE 1

### Scope

1.1 Scope. The terms and conditions of this Agreement apply only to actions proposed that would have effects on the Affected Parcel and to the parties signatory to this Agreement, defined as the Tribe, the County, FHWA, and MNDOT (“Party(ies)”). This Agreement does not make any conveyance of land or otherwise constitute the Tribe’s consent as to the exact location of the Project on the Affected Parcel.

## ARTICLE 2

### Representations and Warranties

2.1 Representations and Warranties of the Tribe. The Tribe represents and warrants to the County that:

(a) Organization. The Tribe is a federally recognized Indian tribe, validly existing under its Constitution and eligible for the special programs and services provided by the United States to Indian tribes.

(b) Ownership of the Affected Parcel. The Tribe possesses fee title to the Affected Parcel. At this time, an application to place the Affected Parcel into trust for the Tribe has been approved by the United States Department of the Interior, Bureau of Indian Affairs. If this parcel is placed into trust for the Tribe, the United States will possess the legal title to the Affected Parcel and the Tribe will possess the beneficiary rights to the same.

(c) No Consents. No consent from any governmental authority not heretofore obtained is required for the Tribe to enter into this Agreement or to perform its obligations hereunder.

(d) No Violation or Conflict. The execution, delivery, and performance by the Tribe of this Agreement does not violate any provision of the Shakopee Mdewakanton Sioux Community’s Constitution.

(e) Full Disclosure. To the best of its knowledge, the Tribe has not omitted any material fact necessary to make the statements in this Agreement or any instrument referred to in this Agreement or any other information, report, or statement delivered to the parties to this Agreement by the Tribe not misleading.

2.2 Representation and Warranties of the County. The County represents and warrants to the Tribe that:

(a) Organization. The County is a county in the state of Minnesota possessed of full powers of county government.

(b) Authority. The County has the legal authority to enter into this Agreement and to perform its obligations hereunder.

(c) No Violation or Conflict. The execution, delivery and performance by the County of its obligations under this Agreement will neither violate any contract or Agreement to which the County is a party nor violate any federal, state of Minnesota, Scott County or other applicable law (“Applicable Law”).

(e) No Consents. No consent from any governmental authority not heretofore obtained is required for the County to enter into this Agreement or to perform its obligations hereunder.

(f) Full Disclosure. To the best of its knowledge, the County has not omitted any material fact necessary to make the statements in this Agreement or any instrument referred to in this Agreement or any other information, report, or statement delivered to the parties to this Agreement by the County not misleading.

2.3 Representation and Warranties of the FHWA. The FHWA represents and warrants that:

(a) Organization. The FHWA is a federal agency of the United States government, authorized to administer Title 23 of the U.S. Code.

(b) Authority. The FHWA has the legal authority to enter into this Agreement and to perform its obligations hereunder.

(c) No Violation or Conflict. The execution, delivery and performance by the FHWA of its obligations under this Agreement will neither violate any contract or Agreement to which the FHWA is a party nor violate any Applicable Federal Law.

(e) No Consents. No consent from any governmental authority not heretofore obtained is required for the FHWA to enter into this Agreement or to perform its obligations hereunder.

(f) Full Disclosure. To the best of its knowledge, FHWA has not omitted any material fact necessary to make the statements in this Agreement or any instrument referred to in this Agreement or any other information, report, or statement delivered to the parties to this Agreement by the FHWA not misleading.

2.4 Representation and Warranties of the MNDOT. The MNDOT represents and warrants that:

(a) Organization. The MNDOT is a statutory agency of the state of Minnesota, possessed of full powers defined in Minn. Stat., Ch. 174.

(b) Authority. The MNDOT has the legal authority to enter into this Agreement and to perform its obligations hereunder.

(c) No Violation or Conflict. The execution, delivery and performance by the MNDOT of its obligations under this Agreement will neither violate any contract or Agreement to which the MNDOT is a party nor violate any Applicable Law.

(e) No Consents. No consent from any governmental authority not heretofore obtained is required for the MNDOT to enter into this Agreement or to perform its obligations hereunder.

(f) Full Disclosure. To the best of its knowledge, the MNDOT has not omitted any material fact necessary to make the statements in this Agreement or any instrument referred to in this Agreement or any other information, report, or statement delivered to the parties to this Agreement by the MNDOT not misleading.

### **ARTICLE 3**

#### **Covenants**

3.1 Covenants of the Tribe. The Tribe covenants and agrees as follows:

(a) Agreement Regarding Effects on Cultural Uses of the Affected Parcel. Provided that the County and the FHWA agree to the conditions set forth in part (b) of this section and in consideration for the covenants set forth in sections 3.2, 3.3 and 3.4 of this Agreement, the Tribe agrees that the Tribe's cultural use of the Affected Parcel is able to continue without significant impairment and that the County, MNDOT and FHWA have fulfilled their responsibilities with respect to the question of the Tribe's cultural use of the parcel under federal, Shakopee Mdewakanton Sioux Community, state of Minnesota, Scott County, or other applicable law.

(b) Conditions Precedent to Tribe's Agreement

- (1) As set forth in sections 3.2(a), 3.3(a), and 3.4(a), the County, FHWA and MNDOT eliminate the Western Alignment and any alignment that locates CSAH-21 further west than currently proposed in the Eastern Alignment from further consideration as options for the location of the Project because those proposed alignments would result in unacceptable impacts to the Affected Parcel; and
- (2) The County, FHWA and MNDOT independently meet their respective obligations as set forth in sections 3.2(b), 3.3(b), and 3.4(b) respectively, of this Agreement to mitigate noise impacts.

(c) Further Negotiations Regarding Location of CSAH-21. The Tribe will make a good faith effort to negotiate with the County, the FHWA, and MNDOT regarding the alignment of CSAH-21 and construction of the Project as it affects the Affected Parcel.

3.2 Covenants of the County. The County covenants and agrees as follows:

(a) Alignment of CSAH-21. The County will immediately and permanently eliminate the Western Alignment as an option for the location of CSAH-21 as part of the Project. The County will not select or approve any alignment of CSAH-21 for the Project that extends further west than the proposed Eastern Alignment, nor any alignment that would place more than half of the Project on the Affected Parcel.

(b) Mitigation of Noise Impacts. The County recognizes the unique nature of the Affected Parcel and the need to minimize noise impacts to this land. To mitigate noise impacts, the County will consult with the Tribe and FHWA to identify and implement practicable measures to control noise to levels consistent with FHWA Noise Abatement Criteria for Category A Land Use. Notwithstanding the foregoing, nothing in this paragraph will require the County to implement any mitigation measure that would lead to any inconsistency with any standard or requirement imposed by MNDOT.

(c) Records. The County will maintain reasonably adequate records with respect to the progress of the Project. The County will immediately inform the Tribe of any lawsuits, administrative appeals, or any other County actions related to the Project, particularly with respect to the alignment of CSAH-21.

(d) Further Negotiations Regarding Location of CSAH-21. The County will make a good faith effort to negotiate with the Tribe, the FHWA, and MNDOT regarding the alignment of CSAH-21 and construction of the Project as it affects the Affected Parcel.

3.3 Covenants of the FHWA. The FHWA covenants and agrees as follows:

(a) Alignment of CSAH-21. The FHWA will concur in the decision of the County to eliminate the Western Alignment as an option for the location of CSAH 21 as part of the Project. The FWHA will not approve any alignment of CSAH-21 for the Project that extends further west than the proposed Eastern Alignment, nor any alignment that would place more than half of the Project on the Affected Parcel.

(b) Mitigation of Noise Impacts. The FHWA recognizes the unique nature of the Affected Parcel and the need to minimize noise impacts to this land. To mitigate noise impacts, the FHWA will be available to consult with the County and the Tribe to identify practicable measures to control noise to levels consistent with FHWA Noise Abatement Criteria for Category A Land Use. FHWA will not impose any condition on the Project that is inconsistent with mitigation of noise effects as set forth in paragraph 3.2(b). Notwithstanding the foregoing, nothing in this paragraph will require the FHWA to require the County to implement any mitigation measure that would lead to any inconsistency with any standard or requirement imposed by MNDOT.

(c) Records. The FHWA will maintain reasonably adequate records with respect to the progress of the Project. The FHWA will immediately inform the Tribe of any lawsuits or administrative appeals related to the Project and any other federal actions related to the selection of an alignment CSAH-21.

(d) Further Negotiations Regarding Location of CSAH-21. The FHWA will make a good faith effort to negotiate with the Tribe, the County, and the MNDOT regarding any design changes and construction of the Project as it affects the Affected Parcel.

3.4 Covenants of the MNDOT. The MNDOT covenants and agrees as follows:

(a) Alignment of CSAH-21. The MNDOT will immediately and permanently eliminate the Western Alignment as an option for the location of CSAH-21 as part of the Project. The MNDOT will not select or approve any alignment of CSAH-21 for the Project that extends further west than the proposed Eastern Alignment, nor any alignment that would place more than half of the Project on the Affected Parcel.

(b) Mitigation of Noise Impacts. The MNDOT recognizes the unique nature of the Affected Parcel and the need to minimize noise impacts to this land. MNDOT will not impose any condition or requirement on the Project that is inconsistent with mitigation of noise effects as set forth in paragraph 3.2(b) unless such condition or requirement is required by state law or is reasonably necessary for safety reasons.

(c) Records. The MNDOT will maintain reasonably adequate records with respect to the progress of the Project. The MNDOT will immediately inform the Tribe of any lawsuits, administrative appeals, or any other state actions related to the Project, particularly with respect to the alignment of CSAH-21.

(d) Further Negotiations Regarding Location of CSAH-21. The MNDOT will make a good faith effort to negotiate with the Tribe, the County, and the FHWA regarding the alignment of CSAH-21 and construction of the Project as it affects the Affected Parcel.

## ARTICLE 4

### **Breach of Agreement**

#### 4.1 Breach by the County, FHWA or MNDOT.

(a) In the event that the County, FHWA or MNDOT breach any of their covenants set forth in this Agreement, including but not limited to selecting, approving, or adopting any alternative that would site the Project west of the Eastern Alignment, the Tribe may pursue any and all remedies and claims it may have against the County, FHWA or MNDOT in any forum with jurisdiction or under any Applicable Law.

(b) In the event that the County, FHWA or MNDOT breach any of their covenants set forth in this Agreement, including but not limited to selecting, approving, or adopting any alternative that would site the Project west of the Eastern Alignment, the County, FHWA and MNDOT waive any objection they might otherwise have to the admissibility of this Agreement in any claim, suit or administrative proceeding brought against the County, FHWA or MNDOT, by the Tribe.

4.2 Breach by the Tribe. In the event that the Tribe breaches any of its covenants set forth in this Agreement, the Tribe waives any objection it might otherwise have to the admissibility of this Agreement in any claim, suit or administrative proceeding brought against the Tribe, whether by the County, FHWA or MNDOT.

## ARTICLE 5

### **Miscellaneous Provisions**

5.1 Effective Date. This Agreement is effective upon the approval of all parties.

5.2 Amendments. This Agreement may not be amended except by written instrument executed by the signatories below, or their successors in office.

5.3 Severability. If any provisions of this Agreement is held to be illegal or void by final order of a court of competent jurisdiction, the remaining portions of this Agreement must be enforced as if it did not contain the adjudicated illegal or void clauses, and the undersigned parties will use their best efforts to negotiate an amendment to this Agreement that will comply with the court order and maintain the originally contemplated rights, duties, and obligations of the parties hereunder.

5.4 Counterparts. This Agreement may be signed in counterparts, and a copy of same shall have the same effect as the original.

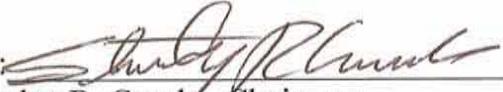
5.5 Third Party Beneficiaries. No third party shall have any rights or obligations under this Agreement.

5.6 Entire Agreement. This Agreement, including all exhibits, represents the entire agreement of the parties.

5.7 Government Data Practices Act. The parties acknowledge that all data and documents submitted to the MNDOT related to this Agreement will be governed by the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13.

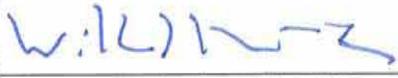
IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of October 9, 2007

**SHAKOPEE MDEWAKANTON SIOUX COMMUNITY**

By:   
Stanley R. Crooks, Chairman

By:   
Keith B. Anderson, Secretary/Treasurer

Approved as to form and execution:

By:   
William J. Hardacker, Staff Legal Counsel

SCOTT COUNTY, MINNESOTA

ATTEST:

By Barbara Marschall  
Barbara Marschall  
Chair of Its County Board

Date 10-2-07

RECOMMEND FOR APPROVAL:

By Lezlie A. Vermillion  
Lezlie A. Vermillion  
Public Works Director

Date 10-22-07

Upon proper execution, this Agreement  
will be legally valid and binding.

By Susan K. McNellis  
Susan K. McNellis  
Assistant County Attorney

Date 10-22-07

APPROVED AS TO EXECUTION:

By Susan K. McNellis  
Susan K. McNellis  
Assistant County Attorney

Date 10-22-07

U.S. DEPARTMENT OF TRANSPORTATION,  
FEDERAL HIGHWAY ADMINISTRATION

By  \_\_\_\_\_  
Thomas K. Sorel  
Division Administrator

Date 10-9-07

MINNESOTA DEPARTMENT OF TRANSPORTATION

By Carol Molnau  
Carol L. Molnau  
Lt. Governor  
Commissioner of Transportation

Date 10-09-07

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

<b>Date:</b>	October 2, 2007
<b>Resolution No.:</b>	2007-150
<b>Motion by Commissioner:</b>	Ulrich
<b>Seconded by Commissioner:</b>	Hennen

**RESOLUTION NO. 2007-150; AUTHORIZING ENTERING INTO A MEMORANDUM OF AGREEMENT (MOA) WITH FHWA, SMSC AND MN/DOT RELATED TO COMMENTS RECEIVED REGARDING IMPACTS AFFECTING THE SELECTION OF A PREFERRED ALIGNMENT IN THE FEIS FOR CSAH 21**

WHEREAS, this MOA is between Scott County, FHWA, SMSC and Mn/DOT; and

WHEREAS, the MOA clarifies the alignment for CSAH 21 and addresses the comments made by the SMSC's DEIS comment letter; and

WHEREAS, staff is recommending execution of this MOA as it clarifies the alignment decision for the FEIS and allows FEIS to move forward for public review.

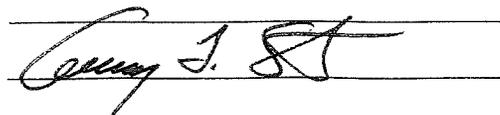
NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners in and for the County of Scott, Minnesota, adopts Resolution No. 2007-150, approving the Memorandum of Agreement (MOA) with the FHWA, SMSC and Mn/DOT regarding the alignment on FEIS for CSAH 21, and authorizes the Chairperson and Public Works Director to execute the MOA, subject to approval by the County Attorney's Office as to form.

<b>COMMISSIONERS</b>	<b>VOTE</b>			
Wagner	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Vogel	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Hennen	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Marschall	<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, David J. Unmacht, duly appointed qualified and 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 2nd day of October, 2007 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 2nd day of October, 2007.



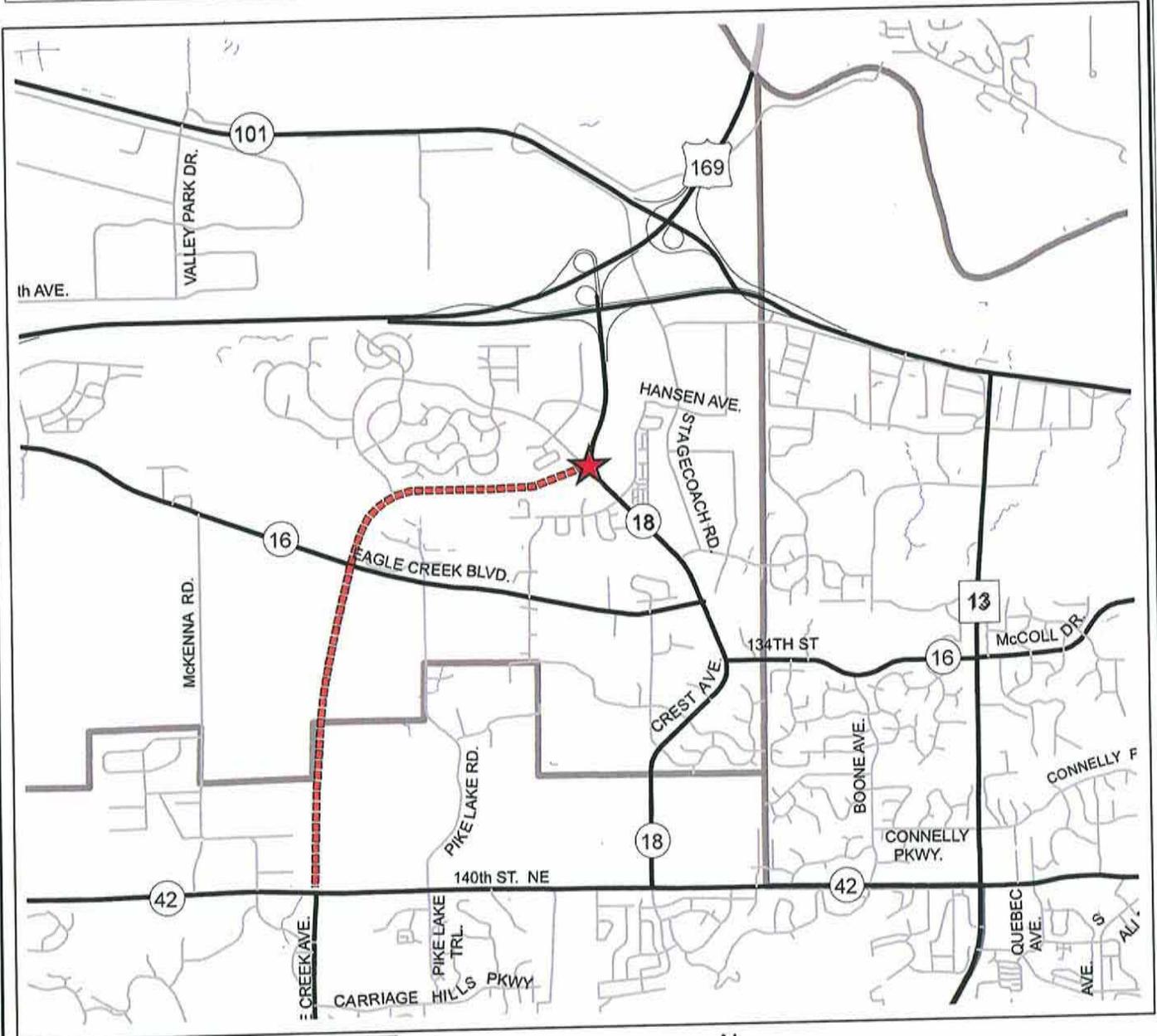
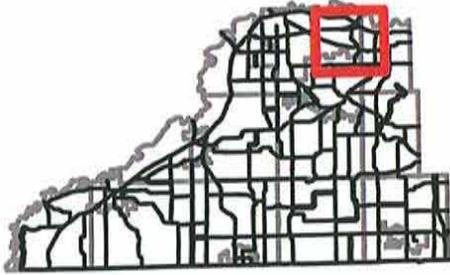
County Administrator  
Administrator's Designee

# SCOTT COUNTY

## 2007 RBA

### CSAH 21 Extension EIS

### Project Location



This drawing is neither a legally recorded map nor a survey and is not intended to be used as one. This drawing is a compilation of records, information, and data located in various city, county, and state offices, and other sources affecting the area shown, and is to be used for reference purposes only. Scott County is not responsible for any inaccuracies herein contained. If discrepancies are found, please contact the Scott County Surveyors Office.



Map Date: September 26, 2007

Scale: 1 inch = 3,500 ft. R.F.: 1 : 42,000