COON CREEK WATERSHED DISTRICT
Request for Board Action

MEETING DATE: November 12, 2019
AGENDA NUMBER: 10
ITEM: MSCCR EAW - Determination of Need for an EIS

FISCAL IMPACT: $412,062
POLICY IMPACT: Policy

ACTION REQUESTED
Review record of decision and determine the need for an Environmental Impact Statement (EIS) for the Middle Sand Creek Corridor Restoration project (Project) as provided under Minnesota Statutes 116D and Minnesota Rules 4410.1700.

BACKGROUND
In 2006, Sand Creek was added to Minnesota’s 303(d) list of impaired waters for aquatic life impairments. Excess total suspended sediment, excess phosphorus, altered habitat, and altered hydrology were identified as the primary stressors to macroinvertebrate and fish health in Sand Creek.

In 2015, the routine ditch inspection revealed that the section of Sand Creek between the BNSF railroad and Kumquat Street pedestrian bridge was a sediment and nutrient-loading hotspot due to the extent of active streambank erosion in this reach.

In 2018, the District was awarded a grant from the United States Environmental Protection Agency in the amount of $291,000 and a grant from the Minnesota Board of Water and Soil Resources in the amount of $382,772 for implementation of the Project. The purpose of this project is to reduce sediment and pollutant loading, provide long-term channel stability, and to improve aquatic and riparian habitat along a 2/3-mile reach of Sand Creek between the BNSF Railroad and Kumquat Street pedestrian bridge in Coon Rapids, MN. The Project area is with a city park owned by the City of Coon Rapids.

At the September 10, 2018 Board meeting the Board approved the 2019 budget including $192,062 for the construction of the Project.

At the February 25, 2019 Board meeting the Board executed a Joint Powers Agreement with the City of Coon Rapids, under which the District in consultation with the City intends to implement this water quality improvement Project.

At the June 17, 2019 annual Board tour the Project was discussed.

At the September 9, 2019 Board meeting the Board approved the 2020 budget including $220,000 for the construction of the Project.
At the September 9, 2019 Board meeting the Board was briefed that the Project is within a mandatory category (Minnesota Rules 4410.4300, Subpart 26) for preparation of an Environmental Assessment Worksheet (EAW) and adopted resolution 19-08 designating the District as the Responsible Governmental Unit (RGU) and directed staff to prepare an EAW.

At the September 23, 2019 Board meeting the Board received a draft EAW and adopted resolution 19-09 determining the EAW was complete and approved the EAW for distribution and publication as required by Minnesota Statutes 116D and Minnesota Rules 4410.1400 (B), 4410.1500.

On September 24, 2019 a public meeting was held 6:00 pm at the Coon Rapids City Center, Civic Room A. Approximately 100 invitations were mailed to properties adjacent the park and approximately 100 meeting invitations were taken from three brochure holders installed along the project reach. 20 residents attended the meeting representing 15 properties. Attendees were mostly concerned about the extent of tree removal and disturbance to wildlife. Attendees understood the need for the project and agreed the project design is appropriate once provided with the alternative options. Bill Kiecker (City of Coon Rapids Council Member) and Mark Hansen (City Engineer) were in attendance.

On September 27, 2019 the EAW was made available at the District office and on the District website and was distributed to Minnesota Environmental Quality Board (MEQB) staff and all parties required in Minnesota Rules 4410.1500 and as instructed in the MEQB Environmental Review Distribution Lists document (September 2019 version).

Between September 27, 2019 and October 11, 2019 notice of the EAW was published in the District official newspapers the Anoka County Union Herald and Blaine/Spring Lake Park/Columbia Heights/Fridley Life.

On October 7, 2019 the EAW was published for 30-day comment period through the EQB monitor as required by Minnesota Rules 4410.1600.

On November 6, 2019 the EAW 30-day comment period closed. Comments were received from 4 parties.
ISSUES/CONCERNS

**Record of decision:** Attached is a record of decision which includes findings of fact, all timely comments received on the EAW and recommended District responses as required by Minnesota Rules 4410.1700, Subp. 4, conclusions and recommended resolution.

**Distribution of decision:** As required by Minnesota Rules 4410.1700, Subp.5. the RGU’s decision shall be provided, within five days, to all persons on the EAW distribution list pursuant to part 4410.1500, to all persons that commented in writing during the 30-day review period, and to any person upon written request. All persons who submitted timely comments on the EAW shall be sent a copy of the RGU’s response to those comments prepared under subpart 4. Upon notification, the EQB staff shall publish the RGU’s decision in the EQB Monitor.

OPTIONS

1. Postpone decision on the need for an EIS and provide specific direction to staff on how to proceed.

2. Postpone decision on the need for an EIS based on insufficient information and direct staff to obtain lacking information as instructed by Minnesota Statutes 116D and Minnesota. Rules 4410.1700 Subpart 2a.

3. Adopt attached findings of fact, including responses to written comments, conclusions and negative declaration resolution of decision on need for EIS as provided under Minnesota Statutes 116D and Minnesota Rules 4410.1700.

4. Direct staff to draft a positive declaration resolution of decision on need for EIS as instructed by Minnesota Statutes 116D and Minnesota Rules 4410.1700 to be acted on at the next Board meeting.

RECOMMENDATION

Adopt attached findings of fact, including responses to written comments, conclusions and negative declaration resolution of decision on need for EIS as provided under Minnesota Statutes 116D and Minnesota Rules 4410.1700.
COON CREEK WATERSHED DISTRICT
Anoka County, Minnesota

RECORD OF DECISION
Findings of Fact, Conclusions and Coon Creek Watershed District Resolution 19-11

DATE: November 12, 2019

RE: Determination of Need for an Environmental Impact Statement (EIS)

PROJECT: Middle Sand Creek Corridor Restoration Project, Coon Rapids, MN

The above matter was considered by the Coon Creek Watershed District Board of Managers at its regular meeting on November 12, 2019 at the Coon Creek Watershed District Office Building, 13632 Van Buren Street NE, Ham Lake, MN 55304.

Based upon the record and proceedings in this matter the Coon Creek Watershed District Board of Managers makes the following:

FINDINGS OF FACT

1. Pursuant to Minnesota Rules for Stream Diversion projects, 4410.4300, Subpart 26, the Coon Creek Watershed District (District), Anoka County, Minnesota, acting as the Responsible Governmental Unit (RGU) prepared the mandatory Environmental Assessment Worksheet (EAW) for the proposed Middle Sand Creek Corridor Restoration Project (Project).

2. The EAW is incorporated by reference in this Record of Decision.

3. As indicated in the EAW, the proposed Project includes a combination of bank stabilization and natural channel design methods employed along a 3/4-mile reach of Sand Creek to address aquatic life impairments by improving stream stability and enhancing in-stream and riparian habitat. Work includes channel re-shaping, floodplain excavation, native plant restoration, and installation of vegetated riprap, toe wood, root wads, and j-hooks.

4. The District authorized EAW submittal to the Minnesota Environmental Quality Board (MEQB) on September 23, 2019.

5. A press release announcing the availability of the EAW for public review and comment, including a brief description of the project, was published in the District official newspapers the Anoka County Union Herald and Blaine/Spring Lake Park/Columbia Heights/Fridley Life between September 27, 2019 and October 11, 2019.

6. The EAW was filed with the MEQB and notice for its availability for public review and comment was published in the EQB Monitor on October 7, 2019. A copy of the EAW was sent to all persons on the MEQB Distribution List and to persons who requested a copy. The EAW was also made available at the District office and on the District website.
7. The 30-day public review and comment period for the EAW began on October 7, 2019 and ended on November 6, 2019.
8. During the 30-day public review and comment period, the District received ten (10) written comments on the EAW from four (4) different parties. Comments were received from:
   a. Christopher Smith-Field ecology
   b. Jennifer Tworzyanski- Office of the State Archaeologist
   c. Karen Kromar- Minnesota Pollution Control Agency
   d. Rebecca Horton- Minnesota Department of Natural Resources

The written comments received are presented below with a District response following each comment. Comments and District responses are formatted with reference to item 8 of this Record of Decision as follows:

**Christopher Smith-Field Ecology**

8.a. 1 Comment: Project should use wildlife-friendly erosion control practices (i.e., not allow plastic erosion control blanket and/or hydromulch with plastic fibers).

8.a. 1 Response: Comment noted. Project material specifications will only include wildlife-friendly erosion control products and practices. Project specifications will also require contractor to provide documentation indicating material conformance to engineer prior to installation and/or payment.

8.a. 2 Comment: Some exposed soils along creek banks can be advantageous for wildlife. Turtles like to bask on exposed soils, and some native solitary bees depend on expose shoreline habitats for nesting. In addition, many tiger beetles native to MN depend on exposed soils along riparian shorelines for feeding and reproduction.

8.a. 2 Response: Comment noted. Some exposed soils along the banks will be allowed to remain post construction in areas that do not establish vegetation after initial seeding. All disturbed banks will be seeded with a native seed mix. Based on previous experiences it is anticipated that some areas will germinate and grow better than others. Some exposed soil will occur areas along the banks; especially along shaded north facing slopes.

8.a. 3 Comment: Tree and brush clearing should be completed during the winter months (i.e., Nov. 1 to March 31, inclusive) to minimize impacts to nesting birds and protected bats.

8.a. 3 Response: Tree removal is anticipated to occur during winter months to minimize impacts on nesting birds and protected bats.

8.a. 4 Comment: The project should coordinate with DNR malacologists to avoid and minimize impacts to native mussels.
8.a. 4 Response: Communication has occurred with DNR malacologists. There were no records of previous mussel survey in the area. Mark Hove (University of Minnesota Department of Fisheries, Wildlife and Conservation Biology) has been hired to complete a mussel survey of the project reach when conditions allow.

Jennifer Tworzyanski- Office of the State Archaeologist

8.b. 1 Comment: I’m in the process of reviewing the Middle Sand Creek Corridor Restoration Project EAW and am wondering if the archaeological survey mentioned in the historic properties section of the EAW has taken place yet? If so, is there a report available?

8.b. 1 Response: The Coon Creek Watershed District contracted with Nienow Cultural Consultants, LLC (NCC) to complete a Phase I archaeological survey. All aspects of the project were overseen by Jeremy L. Nienow, Ph.D., RPA who has a 2019 license to complete Phase I Archaeological Survey within the state of Minnesota (19-040). Survey work was completed on October 17-18, 2019. The result of the survey was that “No archaeological sites were recorded during the survey and Nienow Cultural Consultants does not recommend an additional archaeological survey at this time.” The report is available on the project website at https://www.cooncreekwd.org/middlesandcreekresto.

Karen Kromar- Minnesota Pollution Control Agency

8.c. 1 Comment: The EAW mentions that this Project is a subsequent phase of a previous project at Sand Creek. Due to the impairment of the creek, if this Project including the previous project will result in a total of 50 or more acres, the Stormwater Pollution Prevention Plan (SWPPP) may require review by the MPCA prior to obtaining National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) General Construction Stormwater permit (CSW Permit) coverage. Note that only areas above the Ordinary High Water Level (OHWL) are subject to MPCA permit requirements. Areas below the OHWL are subject to erosion and sediment controls required by the Department of Natural Resources.

8.c. 1 Response: The combined acreage of both phases of the project does not exceed the 50 acre threshold for MPCA review for NPDES/SDS CSW permit coverage (Permit #C00051771 was issued for 1 ac of disturbance for Phase 1 of this work). A Public Waters permit application is currently under review by the MN Department of Natural Resources for areas below the OHWL.

8.c. 2 Comment: Due to the stream impairment, disturbed soils at the site will require stabilization (cover) within 7 days of temporarily or permanently ceasing activity on any portion of the site, even if construction is not complete. This requirement must be included in the SWPPP.
8.c. 2 Response: The following language will be included in the SWPPP, “Because of the proximity of the project to an impaired water, all exposed soil areas must be stabilized as soon as possible to limit soil erosion but in no case later than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased”.

8.c. 3 Comment: If construction equipment must cross the stream during construction, a temporary crossing should be provided to prevent tracking of sediment into the stream. Questions regarding CSW Permit requirements should be directed to Roberta Getman at 507-206-2629 or Roberta.Getman@state.mn.us.

8.c. 3 Response: Comment noted. Because there will be construction access points on both sides of the stream, contractors will utilize existing permanent stream crossings to move equipment.

8.c. 4 Comment: The MPCA does not expect any significant impacts to nearby receptors during the creek restoration. Our only recommendation would be for the use of mufflers on construction equipment during the work, as practical. For noise related questions, please contact Fawkes Steinwand at 651-757-2327 or Fawkes.Steinwand@state.mn.us.

8.c. 4 Response: Noise disturbance will be minimized by the use of mufflers on construction equipment as practical and by adhering to restricted working hours, Monday-Friday, 7:00AM to 7:00PM.

Rebecca Horton - Minnesota Department of Natural Resources

8.d. 1 Comment: Blanding’s turtles, (Emydoidea blandingii), a state-listed threatened species have been documented in the vicinity of the project, however this species is not discussed within the EAW. Blanding’s turtles use wetlands as well as upland areas up to and over a mile distant from wetlands, waterbodies, and watercourses. Uplands are used for nesting, basking, periods of dormancy, and traveling between wetlands. Factors believed to contribute to the decline of this species include collisions with vehicles, wetland drainage and degradation, and the development of upland habitat. Any added mortality can be detrimental to populations of this rare species, as they have a low reproduction rate that depends upon a high survival rate to maintain population levels.

The DNR has concerns regarding potential impacts the project may have on this species. To ensure that impacts to this state-protected species are avoided, the DNR requests that the project proposer submit an avoidance plan which should discuss measures that will be employed in order to avoid potential impacts to the Blanding’s turtles.

The DNR Blanding’s turtle factsheet provides recommendations for avoiding and minimizing impacts to this rare turtle; these recommendations may be utilized to develop the avoidance plan. Please contact DNR Non-game Specialist, Erica
Hoaglund, for assistance with preparing the avoidance plan (Erica.hoaglund@state.mn.us). Please contact Endangered Species Review Coordinator, Lisa Joyal, for examples of previously submitted and approved avoidance plans (lisa.joyal@state.mn.us).

8.d. 1 Response: We will work with DNR Non-game Specialist, Erica Hoaglund, to prepare an acceptable avoidance plan to avoid potential impacts to Blanding’s turtles. We will employ the recommended avoidance measures including, but not limited to: educating contractors and area residents about Blanding’s turtles, relocating turtles in imminent danger, properly installing and removing silt fencing, limiting construction activities in potential nesting areas to the period between September 15 and June 1, and by revegetating graded areas with native grasses and forbs.

9. Based on the criteria of Minnesota Rule 4410.1700 Subp. 7., information contained in the EAW and provided in written comments received and in responses to those comments, the District has considered the following are potential environmental effects associated with the proposed project. Responsive mitigation measures are set forth below.

a. **Fish, Wildlife, Plant Communities and Sensitive Ecological Resources**

   **State-Endangered, Threatened or Special Concern**

   Discussed in item 11b) of the EAW. The Minnesota Department of Natural Resources (MnDNR) Natural Heritage Database was searched to determine if any rare plant species, animal species or other significant natural features are known to occur within the proposed project area. The database search index indicates the potential presence of the Leonard’s Skipper (*Hesperia leonardus*) butterfly within the project area. The Leonard’s Skipper is a species of Special Concern based on the August 19, 2013 Minnesota’s list of endangered, threatened, and special concern species. Additionally, the Minnesota Department of Natural Resources submitted a comment regarding the occurrence of Blanding’s turtles (*Emydoidea blandingii*), a state-listed threatened species, in the project vicinity.

   **Mitigation:**

   Regarding the Leonard’s Skipper, the project area is currently dominated by buckthorn and mature trees with little pollinator habitat. During construction there will be temporary habitat disturbance, however, the excavation timeline has been adjusted to avoid disturbance during the growing season when habitat is most critical. Further, the design includes restoration with native pollinator friendly flowering species and the establishment of several new butterfly/bee gardens. Regarding the Blanding’s turtle, an avoidance plan will be prepared with assistance from DNR Non-game Specialist, Erica Hoaglund. Recommended avoidance measures such as educating contractors and area residents about Blanding’s turtles, relocating turtles in imminent danger, properly installing and removing silt fencing, limiting construction activities
b. Physical Impacts on Water Resources

Sand Creek Channel, Floodplain and Wetland Impacts

Discussed in item 11) of the EAW. The proposed project proposes to meander a portion of Sand Creek, excavate a portion of the adjacent floodplain and impact approximately 2 acres of wetland.

Mitigation:
No activity affecting the bed of the protected water may be conducted between March 15 and June 15, to minimize impacts on fish spawning and migration. Temporary environmental impacts during construction will be avoided or minimized by implementation of erosion control measures identified in a Storm Water Pollution Prevent Plan approved by a NPDES General Permit. The project will slow conveyance of stormwater and will directly reduce the TSS & TP loading attributable to streambank erosion. A no rise analysis determined that the net change in flood storage resulting from the project will be a small increase in storage volume. Impacted wetlands will not be lost but might undergo a type change. The excavation and grading will also occur over more than 2 acres of currently upland area that will likely take on wetland characteristics post construction. The project is anticipated to cause positive impacts to the water resource and surrounding environment.

c. Vegetation

Tree and Buckthorn Removal

Discussed in item 6b) of the EAW. Construction between Olive St and the Kumquat Bridge will require selective tree-thinning when in conflict with bank treatments and for construction access. Construction between Olive St and the BNSF railroad requires a larger construction footprint for excavation of the new channel and mass grading to lower the adjacent floodplain which will require vegetation clearing over 8 total acres. The project area is dominated by buckthorn and mature trees. Existing invasive species understory vegetation such as buckthorn and garlic mustard will be removed.

Mitigation:
Existing vegetation removal is anticipated to occur during winter months (November 1 – April 14) to minimize impacts to nesting birds and protected bats. All disturbed areas will be revegetated with a variety of native pollinator friendly grass, shrub and tree species. Construction is anticipated to occur in two phases to enhance the success rate of the revegetation effort and reduce the need for future maintenance disturbance. The project includes the establishment of several new butterfly/bee gardens. Follow-up invasive species management will occur as needed post construction.
10. The following permits and approvals will be required for the project:

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<tr>
<th>Unit of Government</th>
<th>Type of Application</th>
<th>Status</th>
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</thead>
<tbody>
<tr>
<td>US Army Corps of Engineers</td>
<td>Section 404 Permit</td>
<td>To be obtained</td>
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<tr>
<td>Department of Natural Resources</td>
<td>Public Waters Permit</td>
<td>To be obtained</td>
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<tr>
<td>Pollution Control Agency</td>
<td>NPDES General Construction Permit</td>
<td>To be obtained</td>
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<tr>
<td>City of Coon Rapids</td>
<td>Grading and Right-of-way Permits</td>
<td>To be obtained</td>
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**Approvals and Certifications**

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<th>Type of Application</th>
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<tbody>
<tr>
<td>City of Coon Rapids/Coon Creek Watershed District</td>
<td>Joint Powers Agreement</td>
<td>Executed</td>
</tr>
<tr>
<td>Department of Natural Resources</td>
<td>No rise certificate</td>
<td>Under review</td>
</tr>
<tr>
<td>State Historic Preservation Office</td>
<td>Archeological or Historic Features</td>
<td>Under review</td>
</tr>
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**CONCLUSIONS**

1. The Coon Creek Watershed District has fulfilled all applicable procedural requirements of statute and rule regarding the determination of need for an Environmental Impact Statement for the proposed Middle Sand Creek Corridor Restoration Project.

2. Pursuant to Minnesota Rules Part 4410.1700, Subparts 6 and 7, the proposed project has been evaluated by the public and the Coon Creek Watershed District (RGU) to determine potential environmental effects. Based on the findings and record in this matter, The Coon Creek Watershed District has determined that the proposed Middle Sand Creek Corridor Restoration Project does not have the potential for significant environmental effects. Coon Creek Watershed District Board of Managers concurrence by Resolution No. 19-11, declaring a negative need for an Environmental Impact Statement is ATTACHED to this Record of Decision.

3. Pursuant to Minnesota Rules Part 4410.1700, Subpart 5, a copy of this RGU Record of Decision will be provided, within 5 days, to all persons on the MEQB Distribution List, to persons commenting and to persons who requested a copy. This Record of Decision will also be made available on the Coon Creek Watershed District’s website (https://www.cooncreekwd.org/) through December 31, 2019.

Coon Creek Watershed District

By ____________________________
Anthony Wilder, President
Coon Creek Watershed District Board of Managers

Date: ___________________________
RESOLUTION NO. 19-11
COON CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

DECLARING A NEGATIVE NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT FOR THE MIDDLE SAND CREEK CORRIDOR RESTORATION PROJECT

WHEREAS, the Coon Creek Watershed District (District) is acting as the Regulatory Governmental Unit (RGU) for the Middle Sand Creek Corridor Restoration Project (Project); and

WHEREAS, the District as RGU and Project proposer prepared and completed an Environmental Assessment Worksheet (EAW) for the Project in accordance with applicable provisions of Minnesota Rules Chapter 4410 and statutes; and

WHEREAS, the District has distributed a copy of the EAW to all agencies on the EAW distribution list; and

WHEREAS, the District published EAW availability in the District official newspapers, on the District website and in the EQB Monitor on October 7, 2019, in accordance with applicable statutes and rules; and

WHEREAS, the 30-day comment period ended on November 6, 2019 with 4 parties commenting; and

WHEREAS, the District acknowledges the comments from Christopher Smith-Field ecology, Jennifer Tworzyanski- Office of the State Archaeologist, Karen Kromar- Minnesota Pollution Control Agency; and Rebecca Horton- Minnesota Department of Natural Resources

WHEREAS, the comments received do not support a need for an Environmental Impact Statement on the proposed Project; and

WHEREAS, the District has considered the comments that were received and shall complete the Record of Decision supporting the declaration of negative need, including responses to the commenting parties.

NOW, THEREFORE, BE IT RESOLVED, that the Coon Creek Watershed District Board of Managers has made a negative declaration on the need for an Environmental Impact Statement for the Middle Sand Creek Corridor Restoration Project.

Passed by the Coon Creek Watershed District Board of Managers on November 12, 2019.

__________________________________     _____________________________
Anthony Wilde, President                              Date
Coon Creek Watershed District
Board of Managers