

FINDING OF NO SIGNIFICANT IMPACT

Environmental Assessment for the Brighton Beach Road Reconstruction Project City of Duluth, St. Louis County, Minnesota Public Assistance Program

Federal Emergency Management Agency, Department Of Homeland Security Disaster #DR-4414-MN, Project 95035 PW 8

The Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA) proposes to provide funding to the City of Duluth (subrecipient), to reconstruct/realign Brighton Beach Road approximately 3,250 linear feet in length. The subrecipient applied for funding from FEMA's Public Assistance Program (PA) to underwrite the proposed project. The PA Program is authorized under Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5170c. FEMA's PA Program provides disaster recovery funds to repair damage caused by natural or man-made disasters and to help prevent similar future damages.

The proposed project is located along Brighton Beach Road in Kitchi Gammi Park, City of Duluth, St. Louis County, Minnesota. St. Louis County is located in the Arrowhead Region of Minnesota.

The Proposed Action includes the relocation of approximately 3,250 linear feet of the existing approximately 4,400-foot of Brighton Beach Road that provides access to Lake Superior and the Kitchi Gammi Park. The project will relocate the severely degraded roadway above the wave impact line. The relocation of the roadway will provide an average of 160 feet of separation from the edge of the shoreline, and it is anticipated that this separation will be adequate to protect the roadway from shoreline encroachment for at least twenty years. In addition, between three and eight feet of vertical separation will be maintained from the Minnesota Department of Natural Resources (MNDNR) ten-foot wave zone of the shoreline. As such, no stabilization work, seeding or other stabilization efforts on the eroded area of the shoreline are proposed with this project.

FEMA prepared the Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. §§ 4321 – 4370h, President's Council on Environmental Quality regulations to implement NEPA (40 Code of Federal Regulations [C.F.R.] Parts 1500 to 1508); U.S. Department of Homeland Security (DHS) Directive No. 023-01; rev. 1, *Implementation of the National Environmental Policy Act* (Oct. 31, 2014); DHS Instruction Manual 023-01-001-01, rev. 1, *Implementation of the National Environmental Policy Act* (Nov. 6, 2014); FEMA Directive 108-1, *Environmental Planning and Historic Preservation Responsibilities and Program Requirements* (Oct. 10, 2018), and FEMA Instruction 108-01-1, *Instruction on Implementation of the Environmental and Historic Preservation Responsibilities and Program Requirements* (Oct. 10, 2018). The purpose of the EA was to analyze the potential individual and cumulative environmental impacts of the construction of the proposed project and to determine whether to prepare an Environmental Impact Statement or this Finding of No Significant Impact.

Based on a preliminary screening of resources and the project's geographic location, the EA found that the following resources were not present in the project area and did not require a detailed

assessment: coastal barrier resource systems, seismic hazards, sole source aquifers, essential fish habitat, and wild and scenic rivers.

The following resources required a detailed assessment, however the Proposed Action would not result in any significant adverse impacts to them: geology, soils, topography, floodplains, air quality, biological resources (i.e., terrestrial and aquatic environment, threatened and endangered species, migratory birds, invasive species), hazardous materials, zoning and land use, noise, visual resources, public services and utilities, traffic and circulation, environmental justice populations, safety and security, archaeological resources, and tribal and religious sites.

During the construction period, short-term impacts on soils and topography, water resources, floodplain, air quality, biological resources, hazardous materials, noise, public services and utilities, traffic, and safety and security. All potential short-term impacts require conditions to avoid, minimize, and mitigate impacts. With the implementation of these conditions, none of the potential impacts will be significant.

The Proposed Action, as described in the EA, will involve impacts to several jurisdictional wetlands and will require Clean Water Act permitting through the US Army Corps of Engineers and the Local Government Unit. Wetland bank credits will also be purchased from the Minnesota Wetland Bank. All necessary permits and approvals will be obtained prior to construction and completion of the project.

In the long term, the project will have beneficial effects on several resources including but not limited to soils and topography, coastal zones, floodplains, public services, and traffic circulation. With the implementation of conditions, mitigation, and treatment measures, none of the potential impacts of the Proposed Action are considered significant.

FEMA coordinated with the Minnesota State Historic Preservation Office, Minnesota Department of Natural Resources, Minnesota Pollution Control Agency, US Fish and Wildlife Service, US Army Corps of Engineers, US Environmental Protection Agency, and federally recognized Indian tribes with interests in the area. The public information process included a public notice with information about the Proposed Action. The Draft EA was available for agency and public review and comment for a period of 30 days. Comments from the US Environmental Protection Agency were received on February 9, 2023, and were addressed in the Final EA. Comments from Duluth Engineering, received on July 10, 2023, were also addressed in the Final EA. No other substantive comments were received during the public review and comment period.

PROJECT CONDITIONS

The subrecipient is responsible for compliance with federal, state, and local laws and regulations, including obtaining any necessary permits prior to beginning construction activities, and adhering to any conditions laid out in these permits. Any substantive change to the scope of work would require re-evaluation by FEMA for compliance with NEPA and any other laws or Executive Orders.

The subrecipient must adhere to the following conditions should the Proposed Action be implemented. Failure to comply with FEMA grant conditions may jeopardize federal funding. FEMA requires the following standard conditions for the Proposed Action:

General Project Conditions

1. The subrecipient is responsible for obtaining and complying with all required local, state, and federal permits and approvals.
2. If deviations from the proposed scope of work result in substantial design changes, the need for additional ground disturbance, additional removal of vegetation, or any other unanticipated changes to the physical environment, the subrecipient must contact FEMA so that the revised project scope can be evaluated for compliance with NEPA and other applicable environmental laws.

Water Resources, Water Quality, Wetlands, Coastal Zones, and Soils

3. Prior to beginning work, the subrecipient will coordinate with the MPCA to determine permitting needs under the National Pollutant Discharge Elimination System (NPDES) permit program, and to develop a Stormwater Pollution Prevention Plan (SWPPP) identifying BMPs to be followed during construction.
4. A local, state, and federal joint permit application for water and wetland project will be submitted to the regulatory agencies having jurisdiction.

Air Quality

5. To reduce the emission of criteria pollutants, construction equipment engine idling will be minimized to the extent practicable, and engines will be kept properly maintained.
6. Open construction areas will be minimized and watered as needed to minimize particulates such as fugitive dust.
7. Hauling routes shall be established and designed to minimize the effect of short-term emissions on homes, schools, daycare centers, and playgrounds.

Threatened and Endangered Species

8. Required Avoidance and Minimization Measures (AMMs) - Northern long-eared bat
 - a. General AMM 1: Ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable AMMs. Notify contractor(s) during the pre-construction meeting. Bat sightings (including sick, injured, and/or dead bats) on the project must be reported to OES wildlife ecologist (651-366-3605).
 - b. Tree Removal AMM 2: Restrict all tree clearing activities to when NLEB are not likely to be present. Winter tree clearing required - tree clearing allowed November 1 to March 31, inclusive.
 - c. Tree Removal AMM 3: Tree removal must be limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).

- d. Tree Removal AMM 4: Tree removal must not remove documented NLEB roosts, or trees within 0.25 miles of roosts; or documented foraging habitat any time of the year.
9. Additional Conservation Measures
 - a. If used, erosion control blanket should be limited to ‘bio-netting’ or ‘natural netting’ types, and specifically not products containing plastic mesh netting or other plastic components. These are Category 3N or 4N in the 2016 & 2018 MnDOT Standards Specifications for Construction. Be aware that hydro-mulch products may contain small plastic fibers to aid in its matrix strength. These loose fibers could potentially re-suspend and make their way into Public Waters impacting protected aquatic species (e.g., mussels, fishes).
 - b. Revegetation of disturbed soils must follow D1 Vegetation Establishment Recommendations and use native mixes in areas that are not proposed for mowed turf grass. Include mowing and weed spraying as indicated in the District Vegetation Establishment Recommendations.

Migratory Birds

10. Vegetation removal should be avoided during the migratory bird nesting season (approximately May to October) to the extent practicable.

Invasive Species

11. Graded areas will be revegetated with native grasses and forbs, or native seed mixes.
12. All equipment will be cleaned (including but not limited to vehicles, clothing, and gear) at a site prior to moving to another site. All soil, aggregate material, mulch, vegetation, seeds, animals, etc. need to be removed using a hand tool, brush, compressed air, pressure washer, or otherwise.
13. If equipment is not cleaned before arriving to the work site, then clean the equipment in the parking or staging area, ensuring no material is deposited at the new site. Material cleaned from equipment should be disposed of legally.

Hazardous Materials

14. If hazardous source materials are encountered during former road removal or construction activities for the proposed action, contingency plans will be prepared that detail the procedures that the contractors will follow to identify, manage, and dispose of contaminated materials, in accordance with all local, state, and federal regulations. These specifications sections should include, but are not limited to, procedures that address Safety, Health, and Emergency Response Procedures; Environmental Protection Procedures; Contaminated Soil Excavation; Transportation and Disposal of Contaminated Material; and Contaminated Dewatering and Drainage.
15. MPCA will be notified if contaminated material is encountered.

Noise

16. Construction activities to take place during the less noise-sensitive daylight hours.

Safety and Security

17. To minimize risks to safety and human health, construction activities will be performed using qualified personnel trained to use the required equipment properly.

18. The construction site will be secured from public access.

19. All construction activities will be conducted in accordance with the standards specified in the Occupational Safety and Health Administration (OSHA) regulations.

20. All conditions of the project Health and Safety Plan will be adhered to.

Archeological, Tribal, and Religious Sites

21. The subrecipient will monitor ground disturbance during the construction phase. Should human skeletal remains or historic or archaeological materials be discovered during construction, all ground-disturbing activities on the project site shall cease and the subrecipient will notify the coroner's office (in the case of human remains), the recipient (Minnesota HSEM), and FEMA. FEMA will notify the SHPO and the Office of the State Archaeologist.

22. All borrow or fill material must come from pre-existing stockpiles, material reclaimed from maintained roadside ditches (provided the designed width or depth of the ditch is not increased), or commercially procured material from a source existing prior to the event. For any FEMA-funded project requiring the use of a non-commercial source or a commercial source that was not permitted to operate prior to the event (e.g., a new pit, agricultural fields, road ROWs, etc.) in whole or in part, regardless of cost, the City of Duluth must notify FEMA and HSEM prior to extracting material. FEMA must review the source for compliance with all applicable federal environmental planning and historic preservation laws and executive orders prior to a subrecipient or their contractor commencing borrow extraction. Consultation and regulatory permitting may be required. Non-compliance with this requirement may jeopardize receipt of federal funding. Documentation of borrow sources utilized is required at closeout.

FINDINGS

Based upon the conditions and information contained in the EA and in accordance with FEMA Directive 108-1, *Environmental Planning and Historic Preservation Responsibilities and Program Requirements*, and Executive Orders 11988 (Floodplain Management), 11990 (Protection of Wetlands), and 12898 (Environmental Justice), FEMA has determined that the Proposed Action will not have any significant impacts on the quality of the natural and human environment. As a result of this FONSI, an Environmental Impact Statement will not be prepared.

APPROVAL

DUANE D CASTALDI Digitally signed by DUANE D
CASTALDI
Date: 2023.08.01 15:39:35 -05'00'

Duane Castaldi
Regional Environmental Officer, FEMA Region 5

Date

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Final Environmental Assessment

Brighton Beach Road Reconstruction

City of Duluth, St. Louis County, MN
July 2023

Prepared by
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List of Acronyms, Chemical Formulas, and Abbreviations

AADT	Average Annual Daily Traffic	NAAQS	National Ambient Air Quality Standards
ACS	American Community Survey	NEPA	National Environmental Policy Act
APE	Area of Potential Effect	NHPA	National Historic Preservation Act
BCC	Birds of Conservation Concern	NO ₂	Nitrogen Dioxide
BMP	Best Management Practice	NO _x	Nitrogen Oxides
CAA	Clean Air Act	NPDES/SDS	National Pollution Discharge Elimination System/State Disposal System
CBRS	Coastal Barrier Resource System	NRCS	Natural Resources Conservation Service
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act	NRHP	National Register of Historic Places
CEQ	Council on Environmental Quality	NWI	National Wetland Inventory
C.F.R.	Code of Federal Regulations	OSHA	Occupational Safety and Health Administration
CO	Carbon Monoxide	O ₃	Ozone
CSAH	County State Aid Highway	PA	FEMA's Public Assistance Program
cu yd	Cubic Yard	Pb	Lead
CWA	Clean Water Act	PM	Particulate Matter
EA	Environmental Assessment	PMP	Private Nonprofit Organizations
EDDMapS	Early Detection and Distribution Mapping System	RCRA	Resource Conservation and Recovery Act
EFH	Essential Fish Habitat	SHPO	Minnesota State Historic Preservation Office
EJ	Environmental Justice	SO ₂	Sulfur Dioxide
EO	Executive Order	SWPPP	Stormwater Pollution Prevention Plan
EPA	Environmental Protection Agency	THPO	Tribal Historic Preservation Office
ESA	Endangered Species Act	TMDL	Total Daily Maximum Load
FEMA	Federal Emergency Management Agency	USACE	U.S. Army Corp of Engineers
FIRM	Flood Insurance Rate Map	U.S.C.	United States Code
FONSI	Finding of No Significant Impact	USDA	U.S. Department of Agriculture
IPaC	Information for Planning and Consultation	USFWS	U.S. Fish and Wildlife Service
LGU	Local Government Unit	USGS	U.S. Geological Survey
MBTA	Migratory Bird Treaty Act	VOC	Volatile Organic Compound
MnDOT	Minnesota Department of Transportation		
MNOSHA	Minnesota Occupational Safety and Health Administration		
MPCA	Minnesota Pollution Control Agency		

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1 Background

1.1 Project Authority

On October 10, 2018, waves and flooding associated with a severe winter storm resulted in significant damage and erosion, especially along the shores of Lake Superior in Minnesota. Effects of the storms on Kitchi Gammi Park,¹ located in Duluth, St. Louis County, Minnesota, resulted in significant damage to the motor vehicle lane running through the park, deposited significant amounts of debris, and caused extensive erosion to both the shoreline and portions of the road, jeopardizing the safety of the road. President Trump issued disaster declaration DR-4414-MN for the State of Minnesota on February 1, 2019, which made disaster recovery assistance available through the Federal Emergency Management Agency (FEMA). The City of Duluth, Minnesota applied for funding from FEMA's Public Assistance (PA) Program to underwrite the proposed project to repair damages and mitigate against future damages by relocating the road. FEMA's PA grant program provides federal assistance to government organizations and certain private nonprofit (PNP) organizations following a Presidential disaster declaration. Public Assistance is authorized by Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assurances Act (Public Law [P.L.] 93-288), 42 U.S.C. §§ 5121-5207.

This environmental assessment (EA) was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. §§ 4321 - 4370h; President's Council on Environmental Quality (CEQ) regulations to implement NEPA (40 Code of Federal Regulations [C.F.R.] Parts 1500 to 1508); U.S. Department of Homeland Security (DHS) Directive No. 023-01; rev. 1, *Implementation of the National Environmental Policy Act* (Oct. 31, 2014); DHS Instruction Manual No. 023-01-001-01, rev. 1, *Implementation of the National Environmental Policy Act* (Nov. 6, 2014); FEMA Directive No. 108-01, *Environmental Planning and Historic Preservation Responsibilities and Program Requirements* (Aug. 22, 2016); and FEMA Instruction 108-01-1, *Instruction on Implementation of the Environmental and Historic Preservation Responsibilities and Program Requirements* (Aug. 22, 2016). FEMA is required to consider potential environmental impacts before funding or approving actions and projects. The purpose of this EA is to meet FEMA's responsibilities under NEPA and to analyze the potential environmental impacts of the proposed project. FEMA will use the findings in this EA to determine whether to prepare an Environmental Impact Statement for the proposed project or to issue a Finding of No Significant Impact (FONSI).

In accordance with federal laws and FEMA regulations, the EA process for a proposed federal action must include an evaluation of alternatives and a discussion of the potential environmental impacts. As part of this NEPA review, the requirements of other environmental laws and executive orders are addressed.

¹ The park is sometimes referred to as "Brighton Beach Park," but will be referred to here as "Kitchi Gammi Park" to avoid confusion.

1.2 Project Location

The proposed project is located in Kitchi Gammi Park, Duluth, St. Louis County, Minnesota as shown in **Figure 1-1**. The Park is located southwest of the intersection of Scenic North Shore Drive (Highway 61) and Brighton Beach Road and consists of approximately 46-acres of undeveloped, forested land with a combination access road and trail. There are no residences in the park and the only significant structure in the park is an open gazebo.

Figure 1-1: Project Location

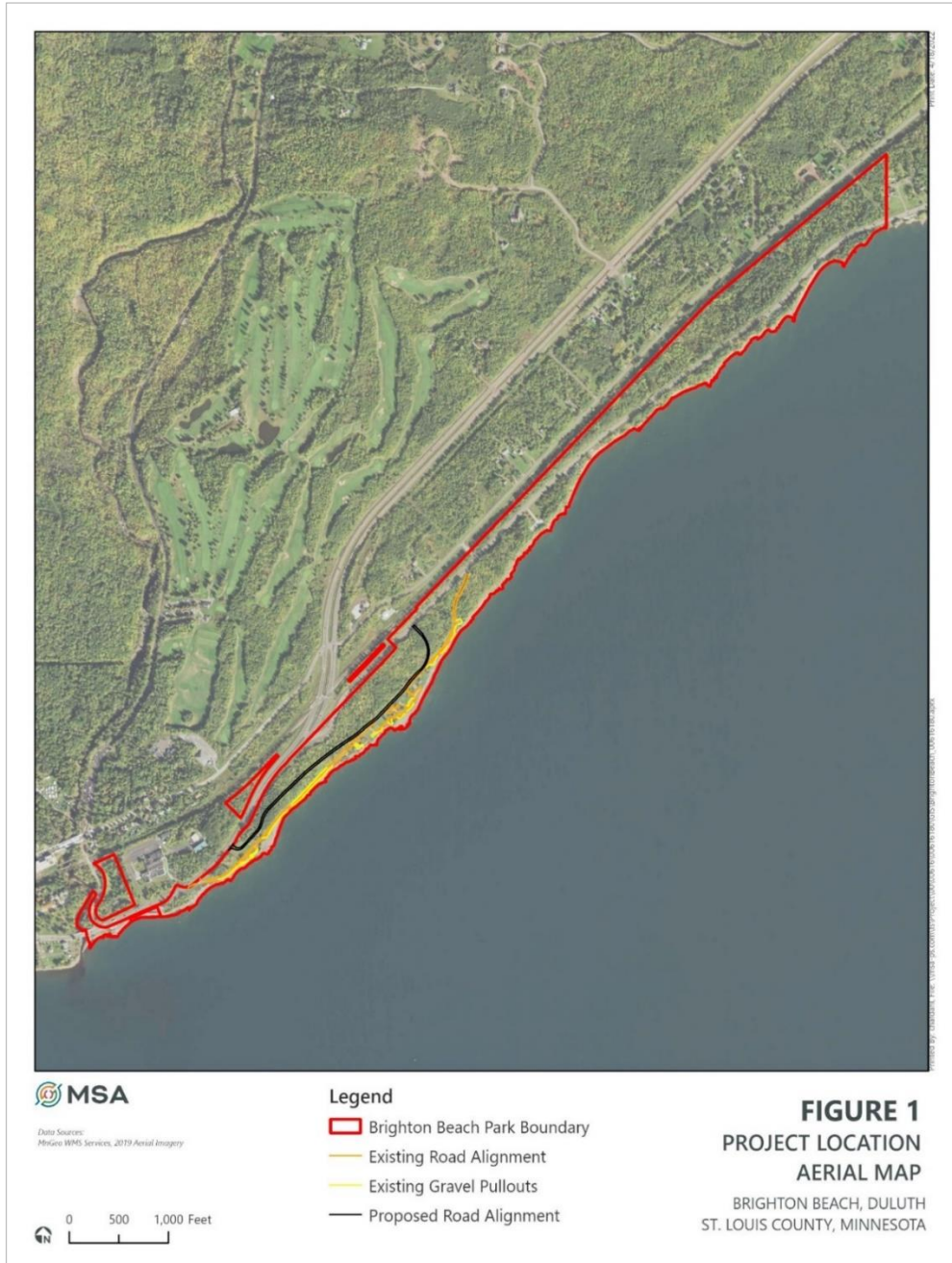


Table 1-1: Existing Road Location and Coordinates

Roadway	Start	Midpoint	End
Brighton Beach Road	46.838083, -92.001691	46.842124, -91.994468	46.846374, -91.990659

The project area includes approximately 3,250 linear feet of Kitchi Gammi Park including approximately 1,260 linear feet of existing Brighton Beach Road where Lake Superior has eroded the shoreline and damaged the road surface. Brighton Beach Road currently provides access to Kitchi Gammi Park. The Park is approximately 46-acres with approximately one mile of Lake Superior shoreline.

1.3 Purpose and Need

FEMA’s Public Assistance (PA) Grant Program provides disaster recovery funds to repair damage caused by natural or man-made disasters and to help prevent similar future damages. This project is needed because of historically unprecedented shoreline erosion and flooding caused by the fluctuations of Lake Superior water levels and increased frequency and intensity of storm events. Severe storm damage has affected the park four times since October 2018. The City of Duluth has repeatedly repaired the roadway following these storm events, however, due to the cyclical nature of these storm events and damages, action is needed to relocate the roadway to prevent these costly damages from recurring.

The purpose of the project is to ensure the continued resident and tourist access to the amenities and activities provided at Kitchi Gammi Park. Present user counts during mid-summer reflect an average daily use by 400 bicyclists, 975 pedestrians and 278 vehicles daily. Reconstructing the roadway will address the need to provide access to the park, which has no alternative means of vehicle access.

2 Alternative Analysis

NEPA requires FEMA to evaluate alternatives to the proposed project and describe the environmental impacts of each alternative. NEPA also requires an evaluation of the No Action alternative, which is the future condition without the project. This section describes the No Action alternative, the Proposed Action, and alternatives considered but eliminated from further consideration.

2.1 Alternative 1 – No Action

Under the No Action alternative, Brighton Beach Road would not be relocated or repaired. The proximity of the erosion to the roadway would continue to pose an immediate safety concern. Severe storm damage has affected the site four times since October 2018 and it is anticipated that in less than 5 years, the continuing erosion of the Lake Superior shoreline due to waves and severe storm activity would encroach further into the roadway, necessitating the closure of the road and portions of the trail system and therefore limiting access to the park.

2.2 Action Alternative 2 – Proposed Action

The Proposed Action includes the relocation of approximately 3,250 linear feet of the existing approximately 4,400-feet of Brighton Beach Road that provides access to Lake Superior and the Kitchi Gammi Park. The project will relocate the severely degraded roadway above the wave impact line. The relocation of the roadway will provide an average of 160 feet of separation from the edge of the shoreline, and it is anticipated that this separation will be adequate to protect the roadway from shoreline encroachment for at least twenty years. In addition, between three and eight feet of vertical separation will be maintained from the Minnesota Department of Natural Resources (MNDNR) ten-foot wave zone of the shoreline. As such, no stabilization work, seeding or other stabilization efforts on the eroded area of the shoreline are proposed with this project.

The existing park entrance on the southwest side of the park will also be relocated further north along Highway 61. To improve safety, the road will be converted to a one-way with traffic exiting the park on the northeast end to Scenic North Shore Drive (Congdon Boulevard) to eliminate traffic entering onto Highway 61 from the south end of the park. Parallel parking will be placed on one side of the road as well as curb and gutter to provide additional access to the park and limit any automobile impacts to the road surface. The road configuration will also separate pedestrian and non-motorized vehicle users from automobile traffic on the road. Reconfiguring the road/entrances will eliminate conflicts with the shared-use path and its associated crossings, which were reconstructed in 2021. The road will be designed with 11-foot minimum width driving lanes with 2-foot minimum shoulders as required per State Aid Standards.

The relocated roadway would be located on property already owned by the City of Duluth, and no additional parcels would need to be acquired.

The road relocation would occur in three stages:

- Stage 1: Mobilization, Maintenance of Traffic, and Erosion Control
- Stage 2: Earthwork and Roadbed Relocation
- Stage 3: Roadway Surfacing and Curb Construction

Figure 2-1: Project Location



Figure 2-2: Proposed Road Alignment



Stage 1: Mobilization, Maintenance of Traffic, and Erosion Control

Stage 1 would involve the mobilization of construction equipment and materials, temporary erosion control and clearing and grubbing of trees. This stage would include the following activities:

- Mobilize equipment and secure materials for construction. It is anticipated that all equipment will be able to be staged on site on or adjacent to the existing road.
- Provide temporary erosion control for the relocation of the road and related work.
- Clear and grub trees within construction limits, disposing of wood and debris in accordance with all regulations.
- Maintain limited temporary access along the alignment of the existing road.

Grubbed materials will be disposed of in accordance with MNDOT specifications for grubbing and following MN Statutes 18.12 with regards to treatment and movements of woody noxious weeds which may be located with the construction limits and adhering to plant pest quarantines by the Mn Department of Agriculture. Wood chips used within the construction limits for erosion control, construction exit pads, or other project related needs will be disposed of in accordance with existing quarantine requirements. The project contractor(s) may chip the wood through a chipping machine or tub grinder to create Type 6 mulch for use within the construction limits. Topsoil that is removed during grading will be stockpiled and will be reused on the site. At no time will materials be disposed of into any wetlands or Waters of the U.S. or Waters of the State.

Stage 2: Earthwork and Roadbed Relocation

Stage 2 would involve earthwork and relocation of the roadbed, and would include the following activities:

- Relocate the roadbed approximately 160 feet northwesterly from the shoreline. The disturbed area for the relocated road segment would be approximately 3,250 linear feet long and approximately twenty-two feet wide.
- Relocate the park road entrance from Minnesota Trunk Highway 61 approximately 450 feet to the north.
- Relocate the park road outlet to Congdon Boulevard approximately 750 feet to the south.
- Remove the remaining existing asphalt roadway including any culverts under the old roadbed. A portion of the old roadbed (areas of this project site previously disturbed long before this project was proposed) is being used at either end for trails allowing visitors to enter and exit the park.
- Grade the new roadbed to elevate the road up to eight feet above its existing elevation and slope the shoulders to match the slope of the surrounding area. The raised roadbed would be approximately twenty-two feet wide and surfaced with aggregate.
- Add topsoil and grass seed adjacent to the graded roadbed (two feet on each side) to match the additional height of the fill and sloped down toward the base of the graded earthwork.
- Remove temporary concrete barriers.

Stage 3: Roadway Surfacing, Final Grading and Turf Restoration

Stage 3 would involve road surfacing, curb and gutter construction, turf restoration and landscaping. This stage of the project would include the following activities:

- Install a twenty-foot-wide and four-inch-deep asphalt surfacing over the prepared aggregate roadbed.
- Construct curb and gutter separator at portions of the roadway which run adjacent to the multi-use trail.
- Grade and shape topsoil, restore turf and apply permanent erosion control measures.

2.3 Alternatives Considered and Eliminated from Further Consideration

Three alternative design options were studied during the planning process. The conceptual alternatives described below were considered but dismissed from further analysis because of cost and community impact.

- One alternative option included a tight to shoreline condition at the northwest corner of the project area, which would have been costly based on already-failing banks in this area and the community's desire for retention of as much of the Lester School Forest as possible.
- Full closure of the western entrance of the park in favor of a loop turnaround was also studied but later dismissed because of the failing bank at the northwest corner as well as community input to preserve a through road condition at the park.
- The City also evaluated installing extensive retaining wall systems and other infrastructure to address the erosion and storm damage issues to keep the roadway in its current configuration. However, it was decided that such infrastructure would detract from the scenic and natural qualities which characterize the park and its shoreline. In addition, since one of the primary park uses is for direct access to Lake Superior for shoreline and water recreation, it was determined that a large retaining wall would eliminate this accessibility and use.

3 Affected Environment and Consequences

This section describes the natural and human environment of the study area potentially affected by the alternatives, evaluates potential impacts, and recommends measures to avoid or reduce those impacts. When possible, quantitative information is provided to establish potential impacts, but qualitative information may also be used where data are unavailable. Potential impacts are then evaluated qualitatively based on the criteria listed in **Table 3-1**.

The “study area” generally includes the improvements area and access and staging areas needed for the proposed action. If the study area for a particular resource category is different from the project area, the differences will be described in the appropriate subsection.

Table 3-1 Evaluation Criteria for Potential Impacts

Impact Scale	Criteria
None/Negligible	The resource area would not be affected, or changes or benefits would be either nondetectable or, if detected, would have effects that would be slight and local. Impacts would be well below regulatory standards, as applicable.
Minor	Changes to the resource would be measurable, although the changes would be small and localized. Impacts or benefits would be within or below regulatory standards, as applicable. Mitigation measures would reduce any potential adverse effects.
Moderate	Changes to the resource would be measurable and have either localized or regional scale impacts/benefits. Impacts would be within or below regulatory standards, but historical conditions would be altered on a short-term basis. Mitigation measures would be necessary, and the measures would reduce any potential adverse effects.
Major	Changes would be readily measurable and would have substantial consequences on a local or regional level. Impacts would exceed regulatory standards. Mitigation measures to offset the adverse effects would be required to reduce impacts, but long-term changes to the resource would be expected.

3.1 Preliminary Screening of Assessment Categories

Based on a preliminary screening of resources and the project’s geographic location, the following resources do not require a detailed assessment.

- *Coastal Barrier Resources System (CBRS)*. The Coastal Barrier Resources Act, 16 U.S.C. §§ 3501 - 3510, is not applicable because the project is not within or near a CBRS unit (U.S. Fish and Wildlife Service [USFWS] 2019). Note, full citations to reference documents are found in **Subsection 7.3** to this Environmental Assessment, listing source documents by author, or agency and year.
- *Seismic Risks*. Executive Order (EO) 13717 Establishing a Federal Earthquake Risk Management Standard does not apply because there is low seismic risk in the project area based on seismic hazard maps developed by the U.S. Geological Survey (USGS). This

includes less than 1 percent chance of potentially minor damage ground shaking in the 2018 Short-Term Seismicity Model (2018a), and the lowest hazard in the 2018 Long-Term National Seismic Hazard Map (2018b).

- *Sole Source Aquifers*. There are no sole-source aquifers regulated by the Safe Drinking Water Act of 1974, 42 U.S.C. §§ 300f *et seq.*, in the vicinity of the project area (EPA, 2022a).
- *Essential Fish Habitat (EFH)*. The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.*, does not apply because there are no Habitat Areas of Particular Concern and no EFH Areas identified at the project site according to the National Oceanic and Atmospheric Administration (NOAA) Essential Fish Habitat Mapper (NOAA, 2021).
- *Wild and Scenic Rivers*. The Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271 *et seq.*, is not applicable because there are no federally designated wild and scenic rivers in the project areas based on a review of the National Wild and Scenic Rivers System website maintained by the National Park Service (NPS, 2021).

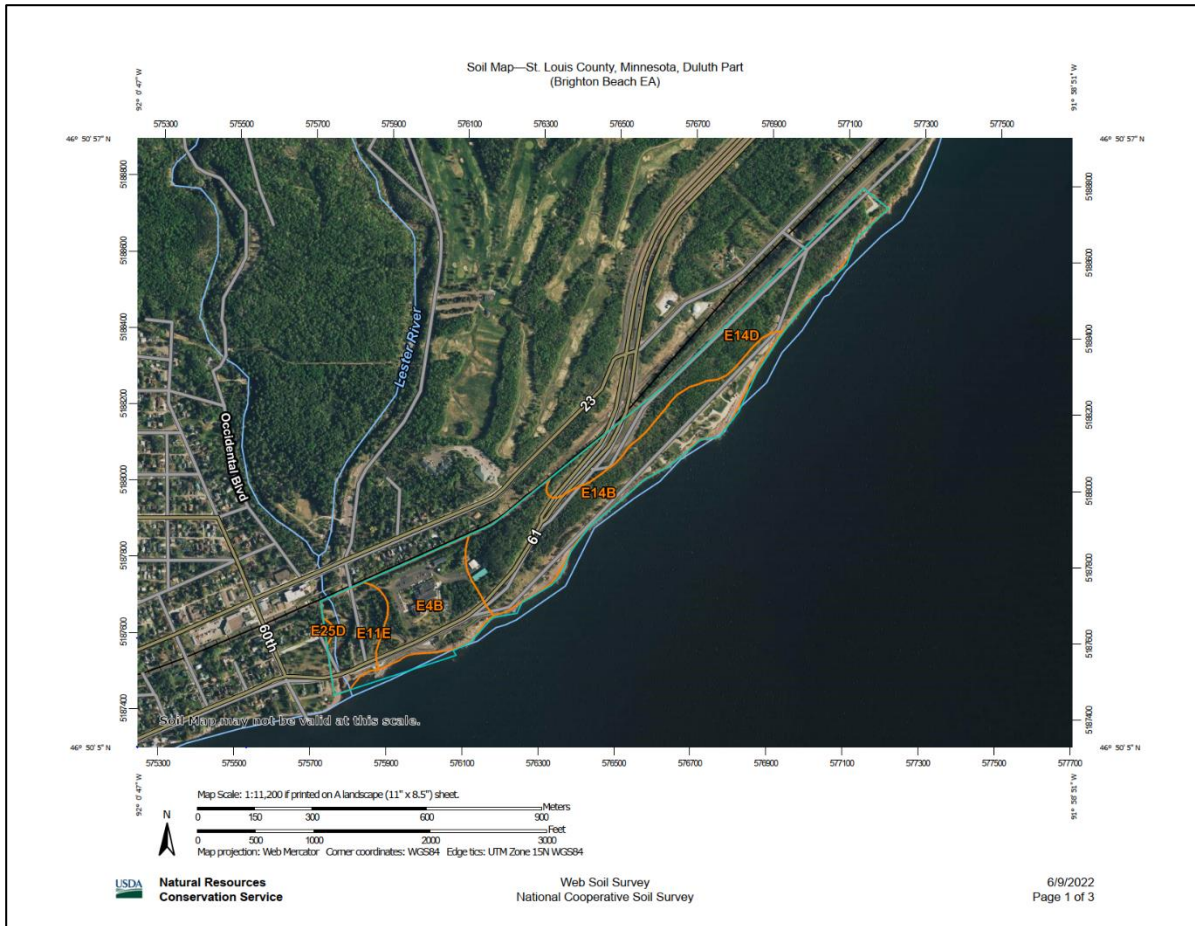
3.2 Physical Environment

3.2.1 Geology, Soils, and Topography

Bedrock geology was characterized using the Minnesota Geological Survey Geologic Map of the Duluth Complex and Related Rocks, Northeastern Minnesota (Map M-119, 2001). Underlying bedrock in the project area consists of Lester River sill, described as composite intrusion of intergranular gabbro at margins and ophitic olivine gabbro in core; granophyre in upper part, approximately 280 meters thick. The bedrock dates back to the Mesoproterozoic era (approximately 1,600 to 1,000 million years ago). Surficial geology was characterized using data from the Minnesota Geological Survey Geologic Map of Minnesota – Quaternary Geology (Map S-23, 2019). Surficial geology in the area of the site is described as clayey, glaciolacustrine sediment consisting of silty clay. The bedrock unit is relatively shallow in this area with bedrock outcrops common.

Soils in the project area were identified using the U.S. Department of Agriculture (USDA) Natural Resource and Conservation Service (NRCS) Web Soil Survey. The majority of the subject site consists of Barto, stony-Greysolon-Rock outcrop complex. This soil type consists of well-drained gravelly sandy loam over shallow bedrock (NRCS, 2022). Soils at the northern project extent consist of Barto, stony-Greysolon-Rock outcrop, with much potentially much steeper slopes ranging from 0 to 18 percent. The web soil survey characterizes slopes ranging from 0 to 8 percent. Soils near the south end of the project area, the park entrance removal and the southern portion of Brighton Beach Road consist of Cuttre-Eutrudepts Complex with 1 to 18 percent slopes. These soils comprise poor drained silty clays at the surface to moderately well drained fine sandy loams found in riverine areas, swales, flats on till plains, and depressions on the till plains. Soil types in the project area are identified in **Figure 3-1**.

Figure 3-1: Soils



The Farmland Protection Policy Act of 1981, 7 U.S.C. §§ 4201 *et seq.* is meant to minimize the extent that federal programs contribute to the unnecessary and irreversible conversion of prime and important farmland to non-agricultural uses. The conversion of prime or unique farmland must be considered whenever Federal funding or time is used in the direct or indirect conversion of prime farmland unless an exemption exists (NRCS, 2012).

Topography in the project area was determined using the MNDNR MnTOPO Viewer (MnDNR, 2022a). The existing alignment of Brighton Beach Road parallel to the shore of Lake Superior cuts into the step hill at roughly 650 feet mean sea level (MSL) (NAD83 UTM 15) with moderate downhill slopes to the southeast toward Lake Superior. The slope from the existing roadway to the Lake Superior shoreline is approximately 2.9 percent. The edge of the eroding slope is in some places only 1 to 3 feet from the edge of the roadway. There are also former stream channels to the northwest of the roadway ranging from 5 to 10 feet deep.

Alternative 1 – No Action

Under the No Action alternative, in less than 5 years, the continuing erosion of the Lake Superior shoreline due to waves and severe storm activity would encroach further into the roadway, causing unsafe roadway conditions and necessitating the closure of the roadway and adjacent

park trails to vehicle and pedestrian traffic. Based on surrounding site use, area soil types and relatively shallow depth to bedrock in the area, no impacts to prime or unique farmland would be expected.

Action Alternative 2 – Proposed Action

The disturbed area is expected to be approximately 3,250 feet long and 22 feet wide (1.64 acres). The relocation of Brighton Beach Road would have minor negative short-term impacts on soils during construction activities. Additional minor short-term impacts on soil topography will result from construction. There will no impact on bedrock, but the alternative will result in long-term reduction in erosion along the shoreline due to the new road's higher elevation and increased setback from the shoreline. No farmland to be converted to non-agricultural use

As a mitigation measure, prior to beginning work, the subrecipient will coordinate with the MPCA to determine permitting needs under the National Pollutant Discharge Elimination System (NPDES) permit program, and to develop a Stormwater Pollution Prevention Plan (SWPPP) identifying BMPs to be followed during construction.

Based on surrounding site usage and the area soil types found in the NRCS Soil Survey mapper, no portion of the project area contains prime and important farmland.

3.2.2 Water Resources and Water Quality

Water resources include surface water, groundwater, stormwater and drinking water (wetlands are evaluated in **Subsection 3.3.2**). The project area is located adjacent to Lester River and Lake Superior, which are regulated as waters of the United States and waters of the State of Minnesota under federal and state law. There are additional intermittent unnamed streams in the project area that drain to Lake Superior. While the project area is located directly to the east of Lester River, it is located within the Lake Superior South watershed (MPCA, 2022a).

The Clean Water Act (CWA) of 1977, 33 U.S.C. §§ 1251 *et seq.*, regulates the discharge of pollutants into water, with various sections falling under the jurisdiction of U.S. Army Corps of Engineers (USACE) and the U.S. Environmental Protection Agency (EPA) or as delegated to the state. Section 404 of the CWA establishes USACE permit requirements for discharge of dredged or fill materials into waters of the United States. Section 401 of the CWA is administered by Minnesota Pollution Control Agency (MPCA) and provides regulations for the protection of water quality on projects that involve dredge or fill in waters of the United States (Minnesota Statutes 2020, section 115.01 to 115.09, Water Pollution Control Act). Under the National Pollution Discharge Elimination System/SDS (NPDES/SDS) (Section 402 of the CWA), regulation of both point and nonpoint pollutant sources, including stormwater and stormwater runoff, has been delegated to the state and is administered by the MPCA. As part of the NPDES/SDS, a Stormwater Pollution Prevent Plan (SWPPP) is required. USACE regulation of activities within navigable waters is also authorized under the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 403 *et seq.*, ch. 425 (Mar. 3, 1988, 30 Stat. 1151.)

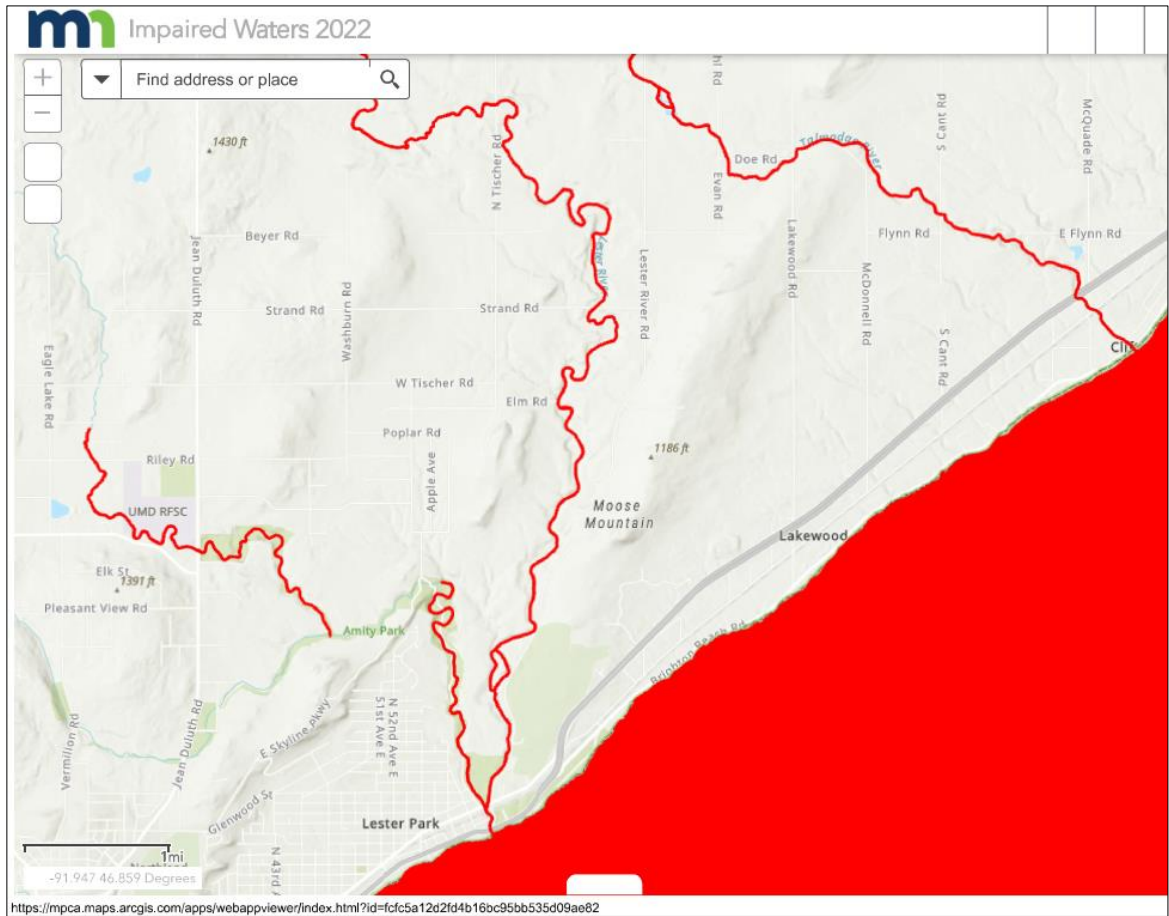
The city, as part of the process for updating the zoning code in 2010, adopted a specific overlay zone to address the unique concerns of the natural environment. Specifically, the purpose of this Natural Resources Overlay Zone (NRO) is to “promote, preserve and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development. It is intended to implement the Minnesota Wetland Conservation Act (WCA), federal emergency management agency (FEMA) rules, and the Minnesota department of natural resources (DNR) shoreland and flood plain regulations. In accordance with this regulatory framework, wetlands, flood plains and shorelands are protected by regulating developments that would have an adverse or potentially irreversible impact on unique and fragile land, by minimizing conflicts and encouraging compatibility between environmentally sensitive lands, and by requiring detailed review standards and procedures for developments proposed for such areas, thereby achieving a balance between urban growth and development and protection of natural areas”. In furtherance of the policies declared by the state legislature, waters in the city have been classified as general development waters (GD), natural environment waters (NE) or coldwater rivers (CW). The shoreland overlay applies to lands within 1,000 feet of Lake Superior or within 300 feet of rivers, creeks, streams and tributaries and floodplains, as designated on the NR-O map.

The MPCA manages the Total Daily Maximum Load (TMDL) List and Inventory of Impaired Waters per Section 303(d) of the CWA. The 2022 TMDL List and Inventory of Impaired Waters lists Lake Superior, Lester River, Talmadge River, and Amity Creek as impaired near the project area (**Figure 3-2**).

- Lake Superior is listed as impaired for mercury and PCBs in fish tissue.
- Lester River is listed as impaired for mercury in fish tissue, mercury in the water column and turbidity.
- Talmadge River is listed as impaired for turbidity.
- Amity Creek is listed as impaired for turbidity (MPCA, 2022b).

A TMDL plan for streams in the Lake Superior-South watershed was approved in 2019 (TMDL ID PRJ07657-001) (MPCA, 2018). This plan identifies total suspended solids (TSS) as the TMDL pollutant of concern.

Figure 3-2: Impaired Waterways



Groundwater underlying the project area is either perched atop or contained within the gabbro bedrock. Lake Superior water elevation is 600 feet above mean sea level (AMSL) (MNDNR, 2022a). The project area is located within the Lake Superior-South watershed basin. Shallow perched groundwater conditions (0 to 10 feet below ground surface [bgs]) exist along the shore of Lake Superior near the project area. Depth to groundwater increases to the northwest as ground elevation and depth to bedrock increase.

EPA defines water quality as “the condition of a water body as it relates to purposes such as recreation, scenic enjoyment, aquatic habitat, and human health.” Water quality is regulated by both the CWA and Minnesota State Statutes.

Stormwater runoff affects water quality in surface waters, such as the Lester River and Lake Superior. The Lake Superior-South watershed in which the project area is located encompasses over 400,000 acres of commercial, urban, and rural residential properties (MPCA, 2022). Contaminants, including eroded soils, fertilizers, herbicides, pesticides, and road chemicals, can be transported from lawns and roads to Lake Superior and tributary streams during storm events and flooding.

Alternative 1 – No Action

Under the No Action alternative, minor long-term impacts from sedimentation, soil erosion, and pollutants will result from stormwater runoff. No additional construction activities will add to any surface water pollutants. The No Action alternative would not be expected have an impact on groundwater.

Alternative 2 – Proposed Action

Minor short-term impacts on water quality would occur for both the removal of the existing roadbed and the installation of a new alignment for Brighton Beach Road. The existing roadway would be seeded for soil stabilization. The new alignment would be compacted, and the new road would be elevated five to eight feet above the existing grade, storm curbing installed, with the shoulders sloped gradually to match surrounding areas and seeded.

During construction, exposed soil is vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of habitat for aquatic species. Clearing and grading during construction would cause the temporary loss of vegetation and exposure of soil to the elements. To mitigate potential impacts from erosion during construction, the project sponsors would be responsible for preparing a Stormwater Prevention Plan (SWPPP) and obtaining a National Pollutant Discharge Elimination System (NPDES) Permit from the MPCA as well as all other applicable permits. An SWPPP may be required due to the area likely to be disturbed in the construction of a new road alignment, removal of the old roadway, and proximity to highly erodible areas (MSS 130F.411).

Minor, short-term impacts on water resources and water quality from construction runoff would be minimized with the implementation of Best Management Practices (BMPs), and mitigation measures specified in the NPDES/SDS permit.

The proposed action does not include any shore stabilization along Lake Superior. Erosion would be expected to continue due to storm events and flooding, though not as a result of the proposed action. In addition, the proposed action does not include any work in the intermittent streams in the project area. In some cases, moving the roadway back away from Lake Superior will allow for on average 20 feet of culvert to be removed from the intermittent streams. A local, state, and federal joint permit application for water and wetland projects will be submitted to the regulatory agencies having jurisdiction. Though, it is not a focus of the project it will have some minor benefit on the intermittent streams between Lake Superior and the new roadway.

3.2.3 Coastal Zone Management

The project area is located within a Coastal Boundary area defined under the Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451-1464, Ch. 33, enacted in 1972 by Congress to provide for the management of the nation's coastal resources, including the Great Lakes. The goal of this national policy is to "preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation's coastal zone."

The Minnesota Coastal Management Program was approved by the National Oceanic and Atmospheric Administration (NOAA) in 1999 and consists of a network of agencies and programs led by the MNDNR.

Alternative 1 – No Action

Under the No Action alternative, there would be no development or preservation of the current roadway. This alternative would result in negative long-term impacts from continued soil erosion. Continued erosion would be expected to encroach upon the roadway within five years and require full closure of the road, including access to Kitchi Gammi Park.

Action Alternative 2 – Proposed Action

The relocation of the roadway will provide an average of approximately 160 feet of separation from the edge of the shoreline, and it is anticipated that this separation will be adequate to protect the roadway from shoreline encroachment for at least twenty years. In addition, between three and eight feet of vertical separation will be maintained from the MNDNR ten-foot wave zone of the shoreline.

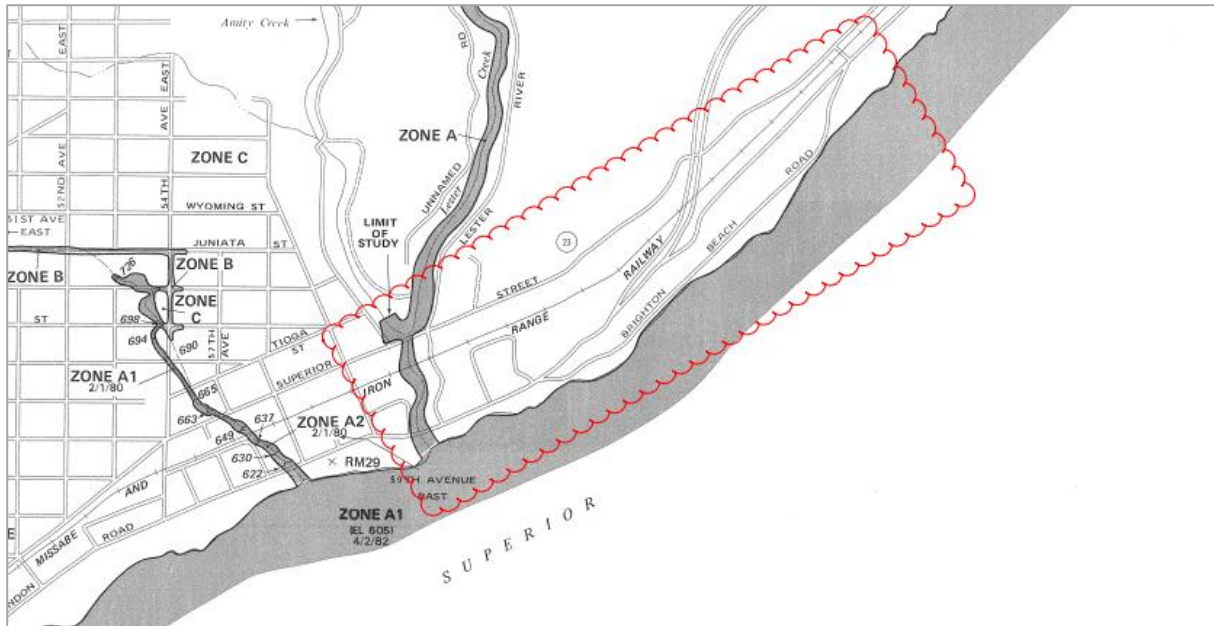
On June 30, 2022, FEMA submitted a determination to the MNDNR indicating that FEMA finds this project will be consistent with Minnesota’s approved coastal management program and will be conducted in a manner consistent with such program.

The proposed roadway relocation and elevation would have a long-term benefit of preserving vehicular access to the park and trail systems of the project area located within the Coastal Zone.

3.2.4 Floodplain Management (Executive Order 11988)

Executive Order (EO) 11988, Floodplain Management, requires federal agencies to minimize occupancy and modification of the floodplain. Specifically, EO 11988 prohibits federal agencies from funding construction in the 100-year floodplain unless there are no practicable alternatives. FEMA’s regulations for complying with EO 11988 are promulgated in 44 C.F.R Part 9. Based on those regulations, no Floodplain Management checklist is required.

Figure 3-3: Flood Insurance Rate Map



Alternative 1 – No Action

Under the No Action alternative, there would be no construction, and therefore, no direct modification of any potential floodplain. There would be long-term impacts from continued erosion of the Lake Superior shoreline adjacent to the existing Brighton Beach Road. It is expected that erosion will encroach upon the roadway within five years and require full closure of the road, including road access to Kitchi Gammi Park.

Action Alternative 2 – Proposed Action

Relocation of Brighton Beach Road will require the removal of the existing road alignment and construction of a new road approximately 120 feet northwesterly. Lake Superior is classified as a flood zone. Minor short-term impacts to the flood zone are possible from soil removal during the abandonment of the existing road. The relocated road will be located above the base flood elevation of the Lake. As such, there are no flood zones in the project area where the relocated road is to be constructed per the FEMA FIRM Panel #2704210030C (see **Figure 3-3**). Therefore, the proposed activities are not anticipated to have long-term negative impacts on the adjacent flood zone. The proposed project will have long-term beneficial impacts on the Lake Superior flood zone since the new road will be located further away (both vertically and horizontally), reducing erosion into the Lake.

3.2.5 Air Quality

The Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.*, requires EPA to set National Ambient Air Quality Standards (NAAQS) for pollutants considered harmful to public health and the environment. The CAA established two types of national air quality standards. Primary standards set limits to protect public health, including the health of sensitive populations such as

asthmatics, children, and the elderly. Secondary standards set limits to protect public welfare, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. Current criteria pollutants are carbon monoxide (CO), nitrogen dioxide (NO₂), ground-level ozone (O₃), lead (Pb), particulate matter (PM), and sulfur dioxide (SO₂).

Federally funded actions in nonattainment and maintenance areas are subject to EPA conformity regulations, 40 C.F.R. Parts 51 and 93. The air conformity analysis process ensures that emissions of air pollutants from planned federally funded activities would not affect the state's ability to achieve the CAA goal of meeting the NAAQS. Section 176I of the CAA requires that federally funded projects must not cause any violations of the NAAQS, increase the frequency or severity of NAAQS violations, or delay timely attainment of the NAAQS or any interim milestone. Activities that would cause emissions to exceed the NAAQS or cause an area to fall out of attainment status would be considered a significant impact. The emissions from construction activities are subject to air conformity review.

Under the general conformity regulations, a determination for federal actions is required for each criteria pollutant or precursor in nonattainment or maintenance areas where the action's direct and indirect emissions have the potential to emit one or more of the six criteria pollutants at rates equal to or exceeding the prescribed *de minimis* rates for that pollutant. The prescribed annual rates are 50 tons of volatile organic compounds (VOCs) and 100 tons of nitrogen oxides (NO_x) (O₃ precursors) and 100 tons of PM_{2.5}, SO₂, or NO_x (PM_{2.5} and precursors).

An area is classified as nonattainment when it does not meet NAAQS standards. According to EPA's NAAQS County attainment record, St. Louis County meets attainment for all NAAQS criteria pollutants. (EPA, 2022b).

Alternative 1 – No Action

Construction activities would not occur under the No Action alternative. The existing Brighton Beach Road would eventually need to be closed for safety purposes due to continued erosion and roadway damage. This would have a minor, long-term positive impact on air quality due to decreased emissions from motor vehicles.

Action Alternative 2 – Proposed Action

The Proposed Action would have short-term impacts on air quality owing to the use of construction equipment with diesel and gasoline engines. During the construction phase, exposed soil could temporarily increase airborne particulate matter into the project area. Emissions from construction equipment could have minor temporary effects on the levels of some pollutants, including CO, VOCs, NO₂, O₃, and PM. Emissions would be temporary and localized, and only minor impacts to air quality in the project area would occur. BMPs and mitigation measures for air quality impacts are provided in **Subsection 6.2.3**.

Long-term operation of the road would have negligible impacts on air quality with only localized recreational trips using Brighton Beach Road. The Proposed Action would not increase traffic capacity.

3.3 Biological Environment

3.3.1 Terrestrial and Aquatic Environment

Land use in St. Louis County consists of a mix of industrial, residential, and agricultural land uses. Residential and mixed-use industrial are the predominant uses in the Duluth area. Parks, residential and rural residential are the predominant land uses directly adjacent to the project area. Slopes near Lake Superior and nearby ravines are heavily forested.

Most wetlands and forested lands in St. Louis County are adjacent to river corridors, and the highest quality and greatest diversity of wetlands are in the river corridors. The Lester River Corridor terrestrial habitat consists primarily of river bottom forests with hardwood forests along slopes.

Forests in the area generally consist of Northern Mesic Mixed Forest consisting of mesic pine, aspen, white cedar, or birch forests on loamy soils over bedrock in scoured bedrock uplands and on loamy, rocky, or sandy soils on glacial moraines, till plains and outwash plains. (MnDNR 2022).

The areas around Lake Superior form part of a migratory corridor for songbirds, raptors, waterfowl, and congregations of bald eagles and tundra swans. Some areas also have a high diversity of reptiles and amphibians.

Aquatic habitat in the project area includes the shoreline of Lake Superior. Major fish species found along the north shore of Lake Superior include walleye, northern pike, cisco, lake whitefish and various salmon and trout species (MnDNR, 2022c).

Alternative 1 – No Action

Under the No Action alternative, there would be minor, long-term, adverse impacts on the terrestrial and aquatic environment resulting from the continued erosion of the shoreline adjacent to Brighton Beach Road. This is a naturally occurring process which will damage and destroy upland areas while adding sediment to Lake Superior, contributing to higher levels of turbidity. Note that in the project area where recent scouring has occurred, very little viable terrestrial habitat is present.

Alternative 2 – Proposed Action

Relocation of Brighton Beach Road would cause minor short-term impacts on terrestrial habitat, such as soil disturbance and removal of vegetation, while the existing roadway is being removed and the relocated road is constructed. Relocation will cause minor long-term impacts on terrestrial habitat through the removal of mature trees and shrubs and the permanent loss of some forested areas located near the new alignment. Tree replacement selection will be made

by City of Duluth City Forester, as the City Forester or Park and Recreation Division determines they are needed.

The shoulders of the new roadway would be graded and seeded. The seed mixes used will be 32-241 and 36-311 to revegetate disturbed areas; these seed mixes are recommended by Mn Department of Natural Resources and the Board of Water and Soil Resources (northeast and native mixes).

The existing roadway will be removed, topsoil added, and seeded. The existing south park entrance will be removed and reconstructed 450 feet north. The north entrance will also be relocated 750 feet south of the present location. The establishment of additional grassy, shrubby, or wooded areas in the location of the existing road and park entrances would add some terrestrial habitat and be considered minor, long-term beneficial impacts.

3.3.2 Wetlands (Executive Order 11990)

Executive Order (EO) 11990, Protection of Wetlands, requires federal agencies to take action to minimize the loss of wetlands. FEMA regulation 44 C.F.R. Part 9, *Floodplain Management and Protection of Wetlands*, sets forth the policy, procedures, and responsibilities to implement and enforce EO 11990. EO 11990 prohibits FEMA from funding activities in a wetland unless no practicable alternatives are available. The NEPA compliance process requires federal agencies to consider direct and indirect impacts on wetlands which may result from federally funded actions. Based on the requirements of 44 C.F.R. Part 9, a Floodplain Management Checklist is not required to ensure compliance with EO 11990.

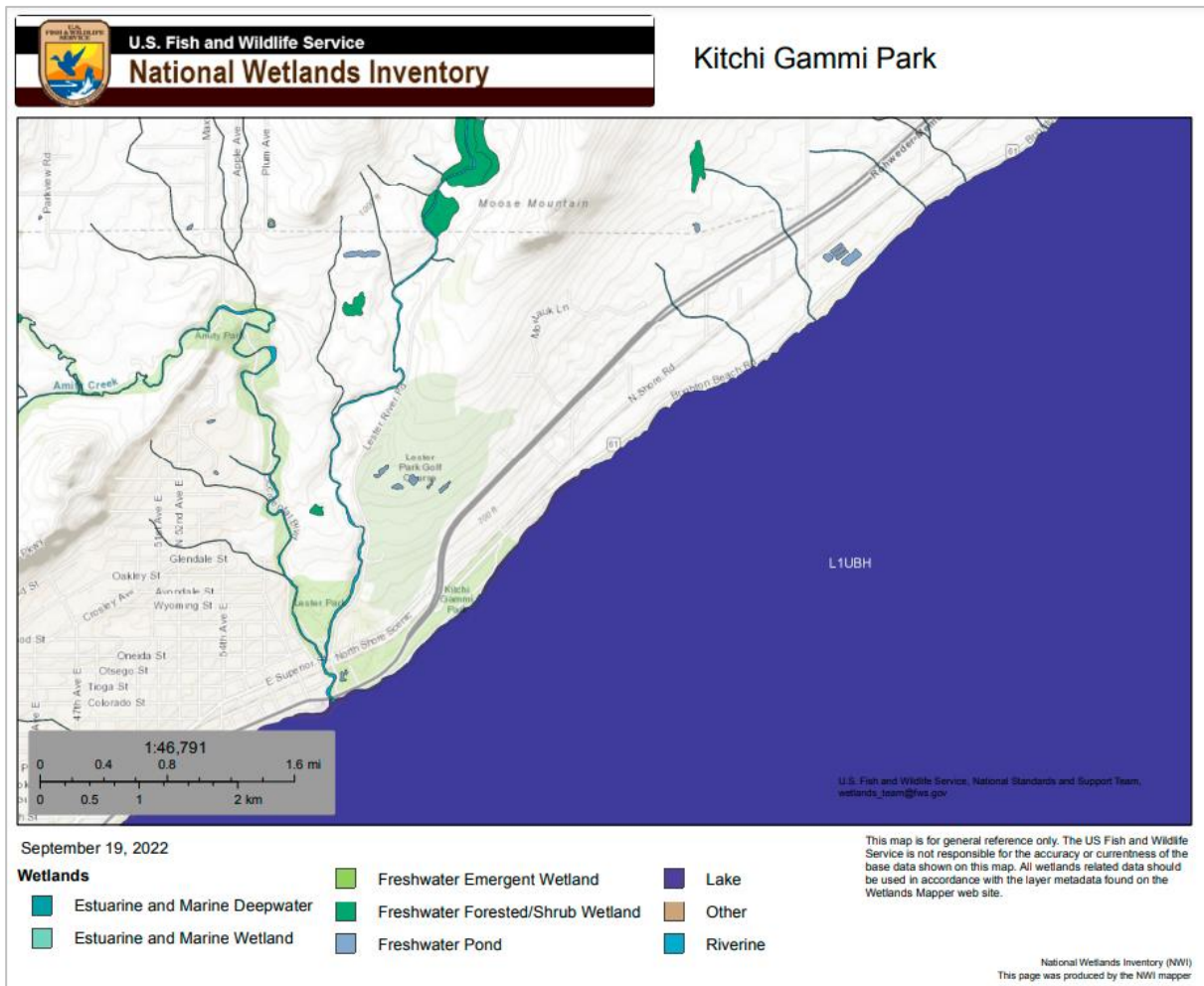
USACE and EPA define wetlands as “areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions” (40 C.F.R. § 122.2).

The National Wetlands Inventory (NWI) was reviewed to identify potential wetlands in the project area (USFWS, 2022). The NWI classifies the Lester River as Riverine habitat, including “all wetlands and deep-water habitats contained within a channel, with the exception of wetlands dominated by trees, shrubs, persistent emergent, emergent mosses, or lichens; and habitats with water containing ocean-derived salts of 0.5 ppt or greater” (USFWS, 2013). A channel is a naturally or artificially created open conduit which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water. **Figure 3-4** below, depicts NWI wetlands identified near the project area.

Lake Superior, located just southeast of the existing Brighton Beach Road, is designated a 31,700 square miles (20.28 million acres) Freshwater Lake and part of the Lacustrine NWI classification. No wetlands were identified along the Lake Superior shoreline within the project area (USFWS, 2022). Riverine wetland areas bordering the Lester River and the Talmadge River are located outside of the proposed project area.

The City of Duluth's Planning Division conducted wetland delineations in all proposed areas that warranted such analysis; there are portions of the study area where there is no potential for wetlands to exist and no delineations were conducted in those locations. Appendix C contains information from the 2020 Wetland Assessment which identified eight wetlands totaling 70,123 square feet (1.61 acres) within the project area. The wetlands located on this site are administered by the Wetland Conservation Act and are regulated by the Local Government Unit (LGU). The LGU at this site is the City of Duluth Planning Division. The Planning Division staffs a Technical Advisory Panel, comprises of staff from USACE, MnDNR, Minnesota Board of Soil and Water Resources (BWSR), and the South St. Louis County Soil and Water Conservation District. The USACE, MnDNR, and BWSR may also have jurisdiction over the wetlands.

Figure 3-4: Wetlands



Alternative 1 – No Action

Under the No Action alternative, there would be no project-related short- or long-term impacts on the identified riverine wetland area associated with Lester River. There would be minor, long-term, adverse impacts to Lake Superior resulting from the continued erosion of the shoreline adjacent to Brighton Beach Road. This is a naturally occurring process which will

damage and destroy upland areas while adding sediment to Lake Superior, contributing to higher levels of turbidity.

Alternative 2 – Proposed Action

Relocation of Brighton Beach Road would result in only minor, short-term impacts to the shore of Lake Superior from the disturbed soils associated with the removal of the existing roadway and its relocation. A Stormwater Pollution Prevention Plan and effective best management practices initiated during construction would decrease construction-related impacts below the level of significance. Disturbed areas will be graded to match the surrounding slopes, topsoil added and seeded to stabilize soils.

This alternative utilizes much of the existing road corridor while allowing for minimal additional disturbances and impacts. The project will impact up to 12,000 square feet (0.275 acres) of wetlands. A local, state, and federal joint permit application for water and wetland projects will be submitted to the regulatory agencies having jurisdiction. Wetland replacement credits, as required by the LGU, will be purchased. The Proposed Action minimizes wetland impacts to the best extent practical, and includes alignment shifts to cross at narrow areas, limiting the overall construction limits and providing steep side slopes at the wetland crossing.

The proposed project does not include any shoreline stabilization along Lake Superior. Erosion would be expected to continue due to wave impact and storm events, though not as a result of the proposed action.

3.3.3 Threatened and Endangered Species

The Endangered Species Act (ESA) of 1973, 16 U.S.C. §§ 15–1 – 1544, provides a framework for the conservation of endangered and threatened species and their habitats. Federal agencies are required to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any listed species (including plant species) or result in the destruction or adverse modification of designated critical habitats for such species.

In August 2022, and updated in March 2023, via the U.S. Fish and Wildlife Service’s Information for Planning and Consultation (IpaC) tool, FEMA obtained a list of species with the potential to occur in the project vicinity. This search found that there is one critical habitat in the vicinity for the Canada Lynx (*Lynx canadensis*) and potential for the following species to be present: Gray Wolf (*Canis lupus*), Canada Lynx (*Lynx canadensis*), Piping Plover (*Charadrius melodus*), Monarch Butterfly (*Danaus plexippus*), Red Knot (*Calidris canutus rufa*), Tricolored Bat (*Perimyotis subflavus*), and Northern Long-eared Bat (*Myotis Septentrionalis*).

- Northern Long-Eared Bat (endangered): This medium-sized bat is found across much of the eastern and north central United States and all Canadian provinces from the Atlantic coast west to the southern Northwest Territories and British Columbia. This bat has been affected by white-nose syndrome; a fungal disease known to affect bats. Population declines up to 99 percent from pre-white-nose-syndrome levels has been documented at some hibernation sites. White-nose-syndrome has been confirmed in several counties

throughout Minnesota, including a confirmed case in St. Louis County during the 2015-2016 recording season (MnDNR, 2022f). Habitat for this bat includes Fire Dependent Forest, Mesic Hardwood Forest, Floodplain Forest, and Subterranean areas.

- Tri-Colored Bat (Proposed as Endangered): The tricolored bat is one of the smallest bats native to North America. The once common species is wide ranging across the eastern and central United States and portions of southern Canada, Mexico and Central America. During the winter, tricolored bats are found in caves and mines. During the spring, summer and fall, tricolored bats are found in forested habitats where they roost in trees, primarily among leaves. As its name suggests, the tricolored bat is distinguished by its unique tricolored fur that appears dark at the base, lighter in the middle and dark at the tip. Similar to the Northern Long-Eared Bat, White-nose syndrome, has led to 90 to 100% declines in tricolored bat winter colony abundance at sites impacted by the disease.
- Canada Lynx (threatened): It is a medium-sized cat with long legs, large, well-furred paws, tufted ears and a short, black-tipped tail. The distribution of lynx in North America is connected to the boreal forest ecosystem. Canada Lynx are most likely to persist in areas which receive deep snow and have high-density populations of snowshoe hares (USFWS, 2022). They are more likely to be found in Minnesota during low points in the snowshoe hare population cycle in Canada (MnDNR, 2022d).
- Gray Wolf (threatened): The Minnesota gray wolf population has remained stable over the last ten years, with most areas of suitable habitat now occupied (MnDNR, 2022). Gray wolves are identified as habitat generalists, living throughout the northern hemisphere in areas with ungulate prey and low human-caused mortality rates (USFWS, 2022). Specific gray wolf habitat in Minnesota includes Fire Dependent Forest, Mesic Hardwood Forest, Forested Rich Peatland, Forested Acid Peatland, Non-forested Acid Peatland and Non-forested Rich Peatland (MnDNR, 2022e).
- Monarch Butterfly (candidate): As the Monarch Butterfly is listed as a candidate species, FEMA has no responsibility for this species under Sec. 7. Its wings feature an easily recognizable black, orange, and white pattern, with a wingspan of 8.9–10.2 cm (3.5–4.0 in).
- Piping Plover (endangered): The Piping Plover is a small (15-18 cm (6-7 in.)), sand-colored shorebird that is well camouflaged against the sandy beaches it inhabits. Distinctive markings of breeding-plumaged adults include a narrow black band between the eyes, a narrow black breast band, and orange-yellow legs. Management efforts in the Duluth area began in 1977 and focused on vegetation removal and predator trapping. These efforts could not prevent the extirpation of this small breeding population, and there has been no successful nesting here in over 25 years. Although small numbers of birds are sporadically observed in the Duluth harbor area, the small amount of potential habitat and the intensive human use of potential nesting areas limit recovery opportunities in this area.
- Red Knot (threatened): The Red Knot is a plump, stocky sandpiper with a straight, medium-sized bill. No critical habitat has been established for this species.

According to the U.S. Fish and Wildlife Service IpaC system, there is 1 critical habitat within the project area for the Canada Lynx. In October 2019, the MnDNR responded to the City’s request to determine if any rare species or natural features exist within the project area. MnDNR provided mitigation measures that can be found in **Subsection 6.2.4**. Therefore, FEMA has determined that the project may affect, but not likely to adversely affect, the Northern Long-Eared Bat, Tricolored Bat, Canada Lynx, Gray Wolf, Piping Plover, and Red Knot due to the park’s urban setting and habitat present. Please see **Table 3-2** for the status of the identified species in the APE.

Table 3-2: Threatened and Endangered Species Impact

Species	Species Present	Species ESA Status	Effect Determination	Notes
Northern Long-eared Bat	No critical habitat has been designated for this species	Endangered	May affect, not likely to adversely affect	<ul style="list-style-type: none"> Per the Northern Long-Eared Bat Rangewide Determination Key from the USFWS IpaC system, the project area is not near a known hibernacula/roosting tree site and not likely to adversely affect the bat or suitable habitat.
Tricolored Bat	No critical habitat has been designated for this species	Proposed Endangered	May affect, not likely to adversely affect	<ul style="list-style-type: none"> Per the Minnesota-Wisconsin Federal Species Determination Key, the project’s proposed actions will not likely have an adverse effect on the Tricolored Bat and suitable habitat.
Canada Lynx	**Location overlaps critical habitat	Threatened	May Affect, not likely to adversely affect	<ul style="list-style-type: none"> Tree clearing is limited to less than one acre immediately adjacent to existing roads. Suitable habitat is not anticipated to be impacted by the proposed project. Critical Habitat is not expected to be destroyed or adversely modified.
Gray Wolf	Not present	Threatened	May Affect, not likely to adversely affect	<ul style="list-style-type: none"> No documented occurrences for this species exist within the Action Area. Tree clearing is limited to less than one acre immediately adjacent to existing roads. Suitable habitat is not anticipated to be impacted by the proposed project.
Monarch Butterfly	Unknown	Candidate	No-effect	<ul style="list-style-type: none"> FEMA has no responsibility for this species under Sec. 7 as it is listed as a candidate.
Piping Plover	Not present	Endangered	May Affect, not likely to adversely affect	<ul style="list-style-type: none"> No documented occurrences for this species exist within the Action Area. Suitable habitat is not anticipated to be impacted by the proposed project.
Red Knot	Not present	Threatened	May affect, not likely to adversely affect	<ul style="list-style-type: none"> No documented occurrences for this species exist within the Action Area. Suitable habitat is not anticipated to be impacted by the proposed project.

Alternative 1 – No Action

The No Action alternative would not directly impact federally listed threatened or endangered species because there would be no construction. The existing erosion west of Brighton Beach

Road would be expected to continue and could affect other habitat at the shoreline and/or areas of nearby upland vegetation.

Alternative 2 – Proposed Action

The relocation of the road would require the clearing of less than one acre immediately adjacent to existing roads for the new road alignment. Northern Long-Eared Bats are known to make use of tree roosts during the summer, especially near water sources. Loose bark, broken tree limbs, cavities, and cracks in a tree can all be used by bats as roosting sites. The removal of upland trees could remove existing or potential bat roosting sites and permanently impact an endangered species. To mitigate potential impacts on the Northern Long-Eared Bat, trees will be removed during the Bat's hibernation period between November 1st through March 31st. With mitigation, this alternative is not likely to adversely affect the Northern Long-Eared Bat.

In March 2023, FEMA received effects determinations from USFWS using the Northern Long-Eared Bat Rangewide Determination Key and Minnesota-Wisconsin Federal Endangered Species Determination Key within the IpaC system. Verification letters were received in March 2023 and May Affect, not likely to adversely affect determinations were documented for all listed species. Correspondence is included in **Appendix F**.

The proposed action does not include shoreline restoration activities; therefore, erosion of the shoreline would be expected to continue. The existing erosion west of Brighton Beach Road could affect other habitat at the shoreline and/or areas of nearby upland vegetation.

3.3.4 Migratory Birds

A migratory bird is any species or family of birds that live, reproduce, or migrate within or across international borders at some point during their annual life cycle. The Migratory Bird Treaty Act (MBTA) of 1918, as amended, 16 U.S.C. §§ 703–712, protects migratory birds and their nests, eggs, and body parts from harm, sale, or other injurious actions. All native birds, including common species such as American robin (*Turdus migratorius*) and American crow (*Corvus brachyrhynchos*) are protected by the MBTA. The project area would support migratory birds.

The Bald and Golden Eagle Protection Act of 1940, 16 U.S.C. §§ 668 *et seq.*, prohibits the take, possession, sale, or other harmful action of any golden (*Aquila chrysaetos*) or bald eagle (*Haliaeetus leucocephalus*), alive or dead, including any part, nest, or egg (16 U.S.C. § 668(a))

The IpaC identified fifteen (15) migratory birds of concern either because they occur on the USFWS Birds of Conservation Concern (BCC) list or warrant special attention due to the project location. See Table 3-3 for a list of the migratory birds in the project area and their likelihood of observation per eBird.org.

Table 3-3: List of Migratory Birds in the Project Area

Scientific Name	Species	Likelihood of Observation
<i>Haliaeetus Leucocephalus</i>	Bald Eagle	17.18%
<i>Dolichonyx Oryzivorus</i>	Bobolink	1.37%
<i>Cardellina Canadensis</i>	Canada Warbler	1.05%
<i>Tringa Flavipes</i>	Lesser Yellowlegs	0.63%
<i>Chaetura Pelagica</i>	Chimney Swift	0.42%
<i>Contopus Cooperi</i>	Olive-Sided Flycatcher	0.42%
<i>Coccothraustes Vespertinus</i>	Evening Grosbeak	0.42%
<i>Vermivora Chrysoptera</i>	Golden-Winged Warbler	0.42%
<i>Sterna Hirundo Hirundo</i>	Common Tern	0.32%
<i>Coccyzus Erythrophthalmus</i>	Black-Billed Cuckoo	0.20%
<i>Aquila Chrysaetos</i>	Golden Eagle	0.11%
<i>Hylocichla Mustelina</i>	Wood Thrush	0.11%
<i>Oporornis Agilis</i>	Connecticut Warbler	0.11%
<i>Antrastomus Vociferus</i>	Eastern Whip-Poor-Will	0.00%
<i>Asio Otus</i>	Long-Eared Owl	0.00%

Source: eBird.org

The Bald Eagle is most likely to be in the project area between August and May, with their breeding season occurring between December and August. The Golden Eagle may be visible in the park between the months of September and December. The Evening Grosbeak may be within the project area between February and mid-May and again between mid-July and early December, with their breeding season occurring between May and mid-August. The other twelve (12) migratory birds listed in Table 3-3 will be present and/or breeding approximately May through mid-October (see **Appendix F** for related USFWS correspondence and IpaC results).

According to the eBird mapping tool, there is a 17% chance that a birdwatcher will see a Bald Eagle. The Bobolink and the Canada Warbler can be observed 1.4% and 1.1% respectively. The remaining species listed in Table 3-3 have less than a 1.0% likelihood of being observed.

Alternative 1 – No Action

The No Action alternative would not directly impact migratory birds because there would be no construction. The existing erosion west of Brighton Beach Road would be expected to continue and could affect other habitat at the shoreline and/or areas of nearby upland vegetation.

Alternative 2 – Proposed Action

Relocation of Brighton Beach Road would have minor, permanent impacts on migratory bird species, particularly the Bald Eagle, through the removal of less than one acre of trees needed for the new roadway alignment that could serve as habitat for migratory birds. The removal and seeding of the existing Brighton Beach Road and shortening the length of the roadway by

relocating the south and north park entrances will result in a minor benefit of expanded migratory bird habitat.

There would be minor, short-term impacts from construction activities disturbing bird activities in the project area. A BMP to avoid and minimize impacts on migratory birds is provided in **Subsection 6.2.4.**

The proposed action does not include shoreline restoration activities; therefore, erosion of the shoreline would be expected to continue. The existing erosion west of Brighton Beach Road could affect other habitat at the shoreline and/or areas of nearby upland vegetation.

3.3.5 Invasive Species

Executive Order 13112, Invasive Species, requires federal agencies to prevent the introduction of invasive species and provide for their control to minimize the economic, ecological, and human health impacts caused by invasive species. The State of Minnesota has also established laws to prevent and curb the spread of invasive species of aquatic plants and wild animals (MINN. STAT. 84D (2020)). This program is managed by the MNDNR, with the assistance of the Minnesota Department of Agriculture.

Per the University of Georgia Center for Invasive Species and Ecosystem Health Early Detection and Distribution Mapping System (EDDMapS) and St. Louis County, several invasive plants and animals are present in Minnesota and are also confirmed in St. Louis County. Non-aquatic invasive species in the project area include common tansy (*Tanacetum vulgare*), Canada thistle (*Cirsium arvense*), reed canarygrass (*Phalaris arundinacea*), spotted knapweed (*Centaurea stoebe ssp. micranthos*), wild parsnip (*Pastinaca sativa*), common buckthorn (*Rhamnus cathartica*) and purple loosestrife (*Lythrum salicaria*). (University of Georgia, 2022a).

Aquatic invasive species which have been identified in Lake Superior include Eurasian watermilfoil (*Myriophyllum spicatum*), Eurasian ruffe (*Gymnocephalus cernuus*), round goby (*Apollonia melanostomus*), zebra mussel (*Dreissena polymorpha*), quagga mussel (*Dreissena bugensis*), rusty crayfish (*Orconectes rusticus*), New Zealand mudsnail (*Potamopyrgus antipodarum*), spiny waterflea (*Bythotrephes longimanus*) and sea lamprey (*Petromyzon marinus*) (University of Georgia, 2022b).

Alternative 1 – No Action

The No Action alternative would have no project-related impacts because construction would not occur. However, there could be minor long-term, adverse impacts on the area as invasive plant species would persist in open, disturbed areas as the existing roadway continues to deteriorate.

Action Alternative 2 – Proposed Action

Relocation of Brighton Beach Road could have minor, short-term impacts from the potential spread of invasive weeds caused by construction activities via the movement of equipment,

materials, and personnel. Construction activities on land could result in the transport of reed canary grass, purple loosestrife, or other invasive terrestrial weed species to or from the project area as cuttings or seeds attached to vehicles. Disturbed soils associated with both the removal of the existing Brighton Beach Road and the new alignment could present existing invasive seeds or vegetation with an opportunity to germinate and become established in the absence of native vegetation.

Introduction or dispersion of aquatic invasive species would not be expected, as work in or near Lake Superior will not be completed as part of this project.

To avoid the introduction and spread of invasive species, all equipment will be inspected, cleaned, and dried before entering or leaving the project site. All applicable and practical measures to reduce the spread of non-native invasive species will be implemented. All disturbed areas, including staging areas, will be planted as soon as practicable; stormwater management and sediment and erosion control is particularly important to the community. In addition, this specific location is extremely important to the community as a major tourist destination and a gateway to the city.

BMPs to avoid and minimize the spread of invasive species are provided in **Subsection 6.2.6**.

3.4 Hazardous Materials

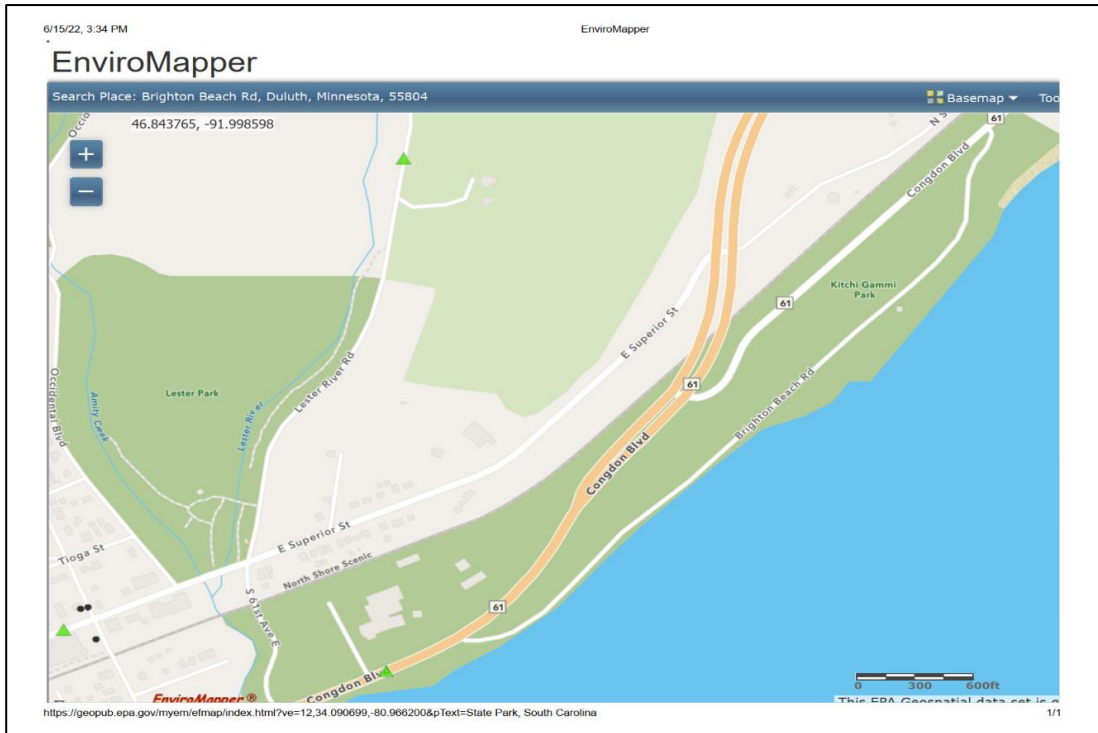
Hazardous materials are any items or agents (biological, chemical, radiological, or physical) that have the potential to cause harm to humans, animals, or the environment either by itself or through interaction with other factors. Sites within or adjacent to the project area, regulated by federal hazardous materials laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 96–1 – 9675, and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 *et seq.*, were identified using the EPA Envirofacts and NEPAAssist websites (EPA, 2022c; EPA, 2022d).

Envirofacts and NEPAAssist did not identify any regulated sites within 0.5 miles of the project area. Documentation from Envirofacts and NEPAAssist sites are depicted in Figure 3-5 and Figure 3-6.

Figure 3-5: Potential Contaminant Sources – NEPAassist



Figure 3-6: Potential Contaminant Sources – EnviroMapper



Alternative 1 – No Action

The No Action alternative would have no effect on hazardous materials or chemical because there would be no construction under the No Action alternative, and no sites were identified near the project area.

Action Alternative 2 – Proposed Action

The Proposed Action, including existing road removal and proposed road construction, would not involve the addition of any hazardous materials or chemicals to the site, nor would it increase the overall risk of hazardous materials known to already exist in the environment. Construction equipment used for the project would have small quantities of gasoline and fuel, but no releases are anticipated from these machines as they would be kept in good working order in accordance with state and local ordinances.

Hazardous materials are not known to be present within the project area at concentrations that pose a risk to human health or the environment. The possibility exists that previously unknown contaminated materials (including soil or groundwater) could be encountered during site work that would represent a moderate short-term impact to onsite workers through direct, dermal contact or inhalation of VOCs emanating from the source material, and a potential minor impact to residents near the site through inhalation of VOCs.

If suspected contaminated materials are encountered in any part of the project area, the following steps will be taken to mitigate effects. Contingency plans, in the form of design specifications, would be prepared if suspected contaminated materials are encountered in any part of the project area and submitted to MPCA for approval. These specifications would detail the procedures that would be implemented by the subrecipient to identify, manage, and dispose of contaminated materials in accordance with applicable local, state, and federal regulations. If contaminated material is encountered and removed, its removal would positively impact the project area by removing a source of contaminant loading to soil and/or groundwater. See **Subsection 6.2.7** for project conditions related to hazardous materials.

3.5 Socioeconomics

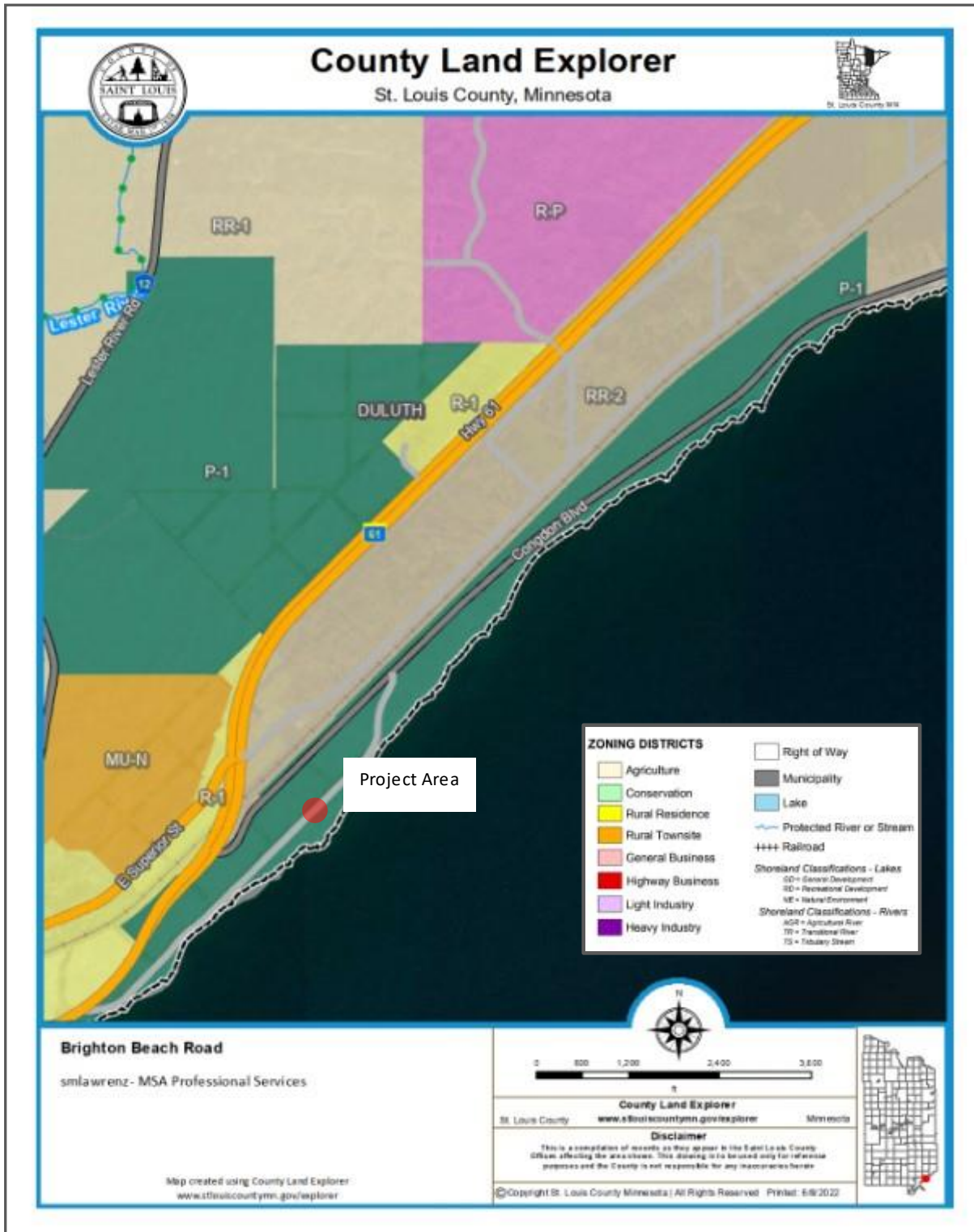
3.5.1 Zoning and Land Use

The Project Area is located within the City of Duluth and is subject to the city land use plan, zoning code, and zoning map. The zoning code and map specify the permitted land uses within the project area, while the land use plan guides policy decisions about the physical development within the City of Duluth. These documents were used to evaluate the project's consistency with local zoning and land use.

The project area is located entirely within parcels zoned P-1 (Park and Open Space District). The City of Duluth zoning code specifies that the purpose of this district is to “protect and reserve lands for recreational, scenic and natural resource uses” (City of Duluth, 2021). The code sets out

the permitted, interim, and conditional uses for the P-1 zoning district. Figure 3-7 depicts the city zoning map.

Figure 3-7: St. Louis County Zoning Map



The City of Duluth Comprehensive Plan (2006, Imagine Duluth 2035 plan update adopted June 25, 2018) describes the vision, principles, policies, and recommended strategies chosen by the City of Duluth to help govern decision-making through 2035. The Plan is structured around five topics including economic development, energy and conservation, housing, open space, and transportation, all of which are viewed through the “lenses of health, fairness, sustainability and access for everyone” (City of Duluth, 2018).

The Open Space mission included in the Plan indicates that *“Duluth will strive for a sustainable open space system that enriches the lives of all Duluthians. These open spaces will reflect the community’s ecological, historical, cultural and recreational values, and will contribute to its resilience to natural disasters”* (City of Duluth, 2018).

Key policies within the Open Space mission include:

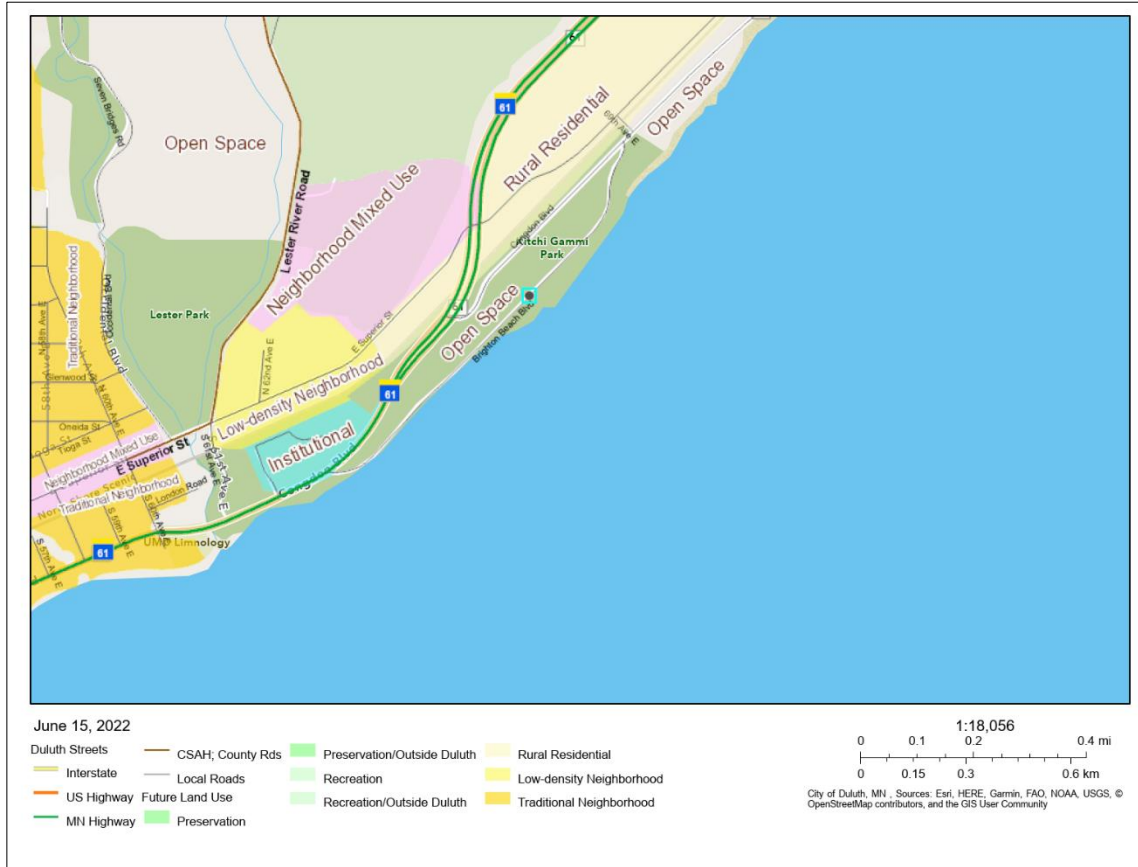
- Policy #1 – Improve Duluth’s resiliency to flooding and natural disasters
- Policy #2 – Examine the value and need for all of Duluth’s publicly owned open space
- Policy #3 – Remove barriers to accessing parks and open space
- Policy #4 – Improve the delivery of parks and open space services to the community
- Policy #5 – Encourage urban food growth.

The land use plan includes the City of Duluth Future Land Use Map, which labels the project area as Open Space (as opposed to the existing “Park” land use category). This “Open Space” category is described as lands having “high natural resource or scenic value, with substantial restrictions and development limitations” (City of Duluth, 2018). Error! Reference source not found. shows the area of Kitchi Gammi Park and the proposed project area identified as Open Space.

Alternative 1 – No Action

The No Action alternative would have a negative effect on conformity with the City of Duluth land use plan. With no changes to the current roadway alignment, Brighton Beach Road will continue to erode and be damaged by severe weather events, and access to the park will be further restricted or potentially closed to vehicular traffic due to impaired roadway access. Lack of vehicle access to the park could potentially conflict with Policy #3 and Policy #4 of the Open Space mission of the land use plan, to “remove barriers to accessing parks and open space” and “improve the delivery of parks and open space services to the community.”

Figure 3-8: City of Duluth Future Land Use Map



Action Alternative 2 – Proposed Action

The Proposed Action would enhance the project area’s conformance with the City of Duluth’s future land use plan. Land use within the project area is listed as open space, and the Proposed Action does not introduce other features or structures to the project area which would affect this use. Relocating the existing roadway above the wave impact line would provide adequate separation to protect the roadway from shoreline encroachment and damage by severe storm events for an estimated twenty years. This would in turn allow for continued vehicular access to the park. The Proposed Action would have positive long-term impacts as it will allow for conformance with Land Use Plan Policies #1, #3 and #4, which include improving Duluth’s resiliency to flooding and natural disasters, removing barriers to accessing parks and open space, and improve the delivery of parks and open space services.

3.5.2 Noise

The Noise Control Act of 1972 defines “noise” as an undesirable sound. Noise is regulated at the federal level by the Noise Control Act of 1972, 42 U.S.C. §§ 4901, *et seq.* Noise standards developed by EPA (EPA, 1974) provide a basis for state and local governments’ judgments in setting local noise standards. The project area is located within the Kitchi Gammi Park boundaries. There are no residences within the park, nor are there residences adjacent to the

proposed park entrance or exit relocation areas. The nearest residence is an assisted living facility located approximately 1,050 feet north of the existing south park entrance and a single-family residence located approximately 400 feet northwest of the existing north park entrance. These residences are defined as noise-sensitive land uses using Federal Highway Administration noise abatement criteria (23 C.F.R. § 772.5).

Alternative 1 – No Action

Closure of Brighton Beach Road would cause a minor long-term reduction in ambient noise levels within the park due to reduced vehicle traffic. Rerouted traffic would have the potential to cause a minor long-term increase in ambient noise where traffic was rerouted, but this minor increase in traffic noise would not likely exceed local ordinance thresholds.

Action Alternative 2 – Proposed Action

The Proposed Action would cause short-term changes in the ambient noise levels in the project area associated with existing road removal and construction activities. Short-term impacts related to removal and construction activities would include trucks hauling materials to and from the site and the operation of equipment for demolition, excavation, and fill activities. Minor traffic noise would also be expected from construction vehicles and haul trucks arriving and departing from the project area. It is anticipated that demolition and construction activities will take place during the less noise-sensitive daylight hours. Traffic is not anticipated to increase on Brighton Beach Road following reconstruction activities, therefore there will be no long-term change in noise levels.

3.5.3 Public Services and Utilities

Kitchi Gammi Park is served by the City of Duluth Police and Fire Departments and St. Louis County Sheriff's Office. The public school district is Duluth Public Schools, with Lester Park Elementary School, Ordean-East Middle School and Duluth East High School serving residents near the project area. The hospital closest to the project area, St. Luke's Hospital, is located approximately 5.7 miles southwest. No police, fire, public schools, or municipal facilities are located within or adjacent to the project area.

The Minnesota Department of Transportation (MNDOT) manages Minnesota Trunk Highway 61 near the southwestern park access. The St. Louis County Public Works Department manages Congdon Boulevard near the northeastern park access. The City of Duluth provides street repair services to Brighton Beach Road, along with water, sanitary sewer and storm sewer services to areas bordering the project site. There are no public utilities present within the project area.

Alternative 1 – No Action

The No Action alternative would have short-term minor impact on public services in the project area. If Brighton Beach Road continues to be damaged by severe weather events, access to the park will be further restricted or potentially closed to vehicular traffic due to impaired roadway

access. Lack of vehicle access to the park could potentially conflict with Policies #3 and #4 of the Open Space mission of the land use plan, to remove barriers to and delivery of access to parks and open spaces, as the park would be inaccessible to the public.

Action Alternative 2 – Proposed Action

The Proposed Action would have a minor short-term impact on public services during the construction phase. There are currently no public utilities available within the project area, and nearby electric utilities would not be expected to be shut down during construction activities. If utilities do need to be temporarily shut off during construction, the subrecipient would follow local ordinances regarding shut down procedures and notification.

The Proposed Action would provide minor long-term benefits to public services by reducing the potential for future road closures due to erosion, which would provide a more reliable route for emergency vehicle access.

3.5.4 Traffic and Circulation

Data on roads was obtained from the Revised 2019 City of Duluth Mini-Master Use Plan. Brighton Beach Road is classified as a city road that provides access to the park and the adjacent Lake Superior shoreline. Brighton Beach Road was formerly the only access road to the park, serving conflicting modes of transportation including motorists, bicyclists, in-line skaters and pedestrians. A paved multi-use trail serving bicyclists, in-line skaters and pedestrians is located to the north of the existing Brighton Beach Road.

Brighton Beach Road has also been subject to road damage caused by significant shoreline erosion from recent and historical storms which has historically been exacerbated by the conflicting modes of transportation. User counts during mid-summer reflect an average of 400 bicyclists, 975 pedestrians and 278 vehicles daily. There are no residences along the roadway and park amenities include a pavilion, a historical fireplace building, benches, and grills.

Alternative 1 – No Action

The No Action alternative would have both minor short- and major long-term impacts on traffic and circulation in the area. Brighton Beach Road will continue to erode and access to the park will be further restricted or potentially closed by the impaired access.

Action Alternative 2 – Proposed Action

The relocation of Brighton Beach Road would result in minor short-term increases in construction vehicle traffic on surrounding roadways resulting from the operation of construction vehicles and equipment to and from the site. Since Brighton Beach Road is currently closed, a detour will not be provided. The proposed reconstruction would provide both major short-term and long-term benefits to traffic and circulation in and around the project area by separating conflicting transportation use, eliminating roadway trail crossings, increasing accessibility, and maintaining road integrity.

3.5.5 Environmental Justice (Executive Order 12898)

The purpose of Executive Order 12898 is to identify, address, and avoid disproportionately high and adverse human health or environmental effects on minority and low-income populations. Minorities are defined as anyone who identifies as black or African American, American Indian or Alaska Native, Asian American, Native Hawaiian or Pacific Islander, Hispanic, or multiracial. Low-income populations are those with incomes at or below the federal poverty level.

The Environmental Protection Agency’s (EPA) Environmental Justice Screening and Mapping tool (EJScreen) was used to investigate the presence of readily identifiable low income or minority populations within a 0.25-mile buffer of the project improvements. This 0.25-mile buffer is considered the “project area” for the environmental justice analysis. Low-income or minority populations in a project area can be identified by meeting either one or both of the following criteria:

- The affected area (e.g., census block group) contains 50 percent or more minority persons or 25 percent or more low-income persons.
- The percentage of minority or low-income persons in an affected area (e.g., census block group) is more than 10 percent greater than the average of the surrounding county.

The project area is located within St. Louis County census tract 2, primarily within a single census block group 4 (GEOID# 271370002004) with a small portion of the southwestern extent of the buffered project area located in census block group 1 (GEOID #271370002001). The project area crosses into thirteen census blocks, including blocks 4027, 4028, 4029, 4030, 4031, 4037, 4038, 4039, 4043, 4049 and 4050 in census block group 4 and census blocks 4032 and 1000 in census block group 1 (U.S. Census Bureau, 2020). Low-income composition for the project area (project area plus a 0.25-mile buffer zone) and the county is summarized in Table 3-4, racial composition is summarized in Table 3-5.

Table 3-4 Low-Income Populations

Source: 2019 ACS.

	Project Area Population	Project Area Percentage	St. Louis Co. Population	St. Louis Co. Percentage
Low-Income	13	20%	61,925	31%

Table 3-5 Minority Populations

Source: 2019 ACS.

Race	Project Area Population	Project Area Percentage	St. Louis Co. Population	St. Louis Co. Percentage
Total Population	66	100%	199,759	100%
White	62	94%	183,938	92%
Black or African American	1	1%	3,154	2%
Asian	1	1%	2,060	1%
American Indian and Alaska Native	1	1%	3,655	2%

Race	Project Area Population	Project Area Percentage	St. Louis Co. Population	St. Louis Co. Percentage
Native Hawaiian and Other Pacific Islander	0	0%	91	0%
Some Other Race/Multiracial	2	4%	6,861	3%
Hispanic ²	3	4%	3,394	2%
Total Minority Population ^{3,4}	7	10%	17,978	9%

Alternative 1 – No Action

Under the No Action alternative, damages to and closure of Brighton Beach Road would likely continue, causing continued closure of the park to vehicle traffic. There are no identifiable EJ populations within the project area or the vicinity of Kitchi Gammi Park. Therefore, road damages and closures would have a negligible effect on EJ populations.

Action Alternative 2 – Proposed Action

The Proposed Action would not have any disproportionately high and adverse effects on EJ populations. There are no identifiable EJ populations within the project area or the vicinity of Kitchi Gammi Park. Minor short-term construction-related effects would include noise, traffic, and air quality impacts. No residential relocation is proposed, and no long-term impacts from traffic, noise, or air quality due to the Proposed Action are anticipated.

3.5.6 Safety and Security

The Occupational Safety and Health Act, 29 U.S.C. §§ 651 – 678, requires safe and healthful conditions for working men and women by setting and enforcing standards; and providing training, outreach, and education and compliance assistance. The act created the Occupational Safety and Health Administration (OSHA) which established construction standards under 29 C.F.R. Part 1926. The Minnesota Department of Labor and Industry has adopted Minnesota Occupational Safety and Health Administration (MNOSHA) as conferred by MN Statutes Chapter 182 Occupation Safety and Health. The construction and safety standards set forth general rules for the safe use, operation, and maintenance of equipment, and for safe work practices pertaining to all employers and employees performing construction operations.

² The terms Hispanic and Latino can apply to members of any race, including respondents who self-identified as “White.” The total numbers of Hispanic and Latino residents for each geographic region are tabulated separately from the racial distribution by the U.S. Census Bureau.

³ A minority is defined in CEQ’s environmental justice guidance as a member of the following population groups: American Indian/Alaskan Native, Asian or Pacific Islander, Black (non-Hispanic), or Hispanic (CEQ 1997).

⁴ “Total Minority” includes all people who are not “White alone,” plus Hispanics and Latinos who identify as white alone. This number may capture individuals who identify as both “not white” and those who identify as Hispanic or Latino, essentially counting those individuals twice.

Alternative 1 – No Action

Under the No Action alternative, Lake Superior would continue to erode Brighton Beach Road, perpetuating hazardous conditions which would have a long-term impact on safety at Kitchi Gammi Park.

Action Alternative 2 – Proposed Action

Standard construction-related safety risks would occur for construction workers at the project site. During construction, site safety from the equipment would be ensured by the contractors performing the work following standard industry safety practices and those stated in MN Statutes 182.

Post-construction, the project would reduce natural hazard impacts to Brighton Beach Road through the realignment away from high wave impact line on the shore of Lake Superior, potentially reducing safety risks to the public using the road.

3.6 Historic and Cultural Resources

Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, 54 U.S.C. §§ 3001–1 – 307108, requires that federal agencies consider the potential effects on cultural resources of actions it proposes. Cultural resources are defined as prehistoric or historic archaeology sites, historic standing structures, historic districts, objects, artifacts, cultural properties of historic or traditional significance—referred to as Traditional Cultural Properties—that may have religious or cultural significance to federally-recognized Indian Tribes (Tribes), or any other physical evidence of human activity considered important to a culture, subculture, or community for scientific, traditional, religious, or other reasons.

Cultural resources listed, eligible for listing, or potentially eligible for listing on the National Register of Historic Places (NRHP) are subject to protection from adverse impacts resulting from a federally funded undertaking.

Pursuant to 36 C.F.R. § 800.4(a)(1), the Area of Potential Effects (APE) is defined as the geographic area(s) within which the undertaking may directly or indirectly affect cultural resources. Within the APE, impacts on cultural resources are evaluated for both historic structures (aboveground cultural resources) and archaeology (belowground cultural resources).

In addition to the NHPA, FEMA must also comply with other federal laws that relate to historic and cultural resources:

- The Archaeological and Historic Preservation Act of 1974, 16 U.S.C. §§ 4–9 – 469c-2, provides for the survey, recovery, and preservation of significant scientific, prehistoric, archeological, or paleontological data when such data may be destroyed or irreparably lost due to a federal, federally licensed, federally funded (in part or whole) project.

- American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996, which provides for the protection and preservation of American Indian sites, possessions, and ceremonial and traditional rites.
- Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa–470 mm, which provides for the protection of archaeological resources on public lands and Indian lands.
- Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013, in cases where Native American cultural items are found on federal and tribal lands.

To comply with the NHPA, the City completed a Phase I Archaeological Reconnaissance Survey for historic and archaeological properties in December 2019. The investigation defined an APE coterminous with the park boundary. Following the 2019 investigation, FEMA initiated consultation with the SHPO to confirm the finding that no historic properties would be affected if the project were implemented. The SHPO concurred with the finding of No Historic Properties Affected on August 25, 2022 (see correspondence in **Appendix H**).

3.6.1 Historic Structures

FEMA has identified six (6) previously recorded Architecture/History properties that are located completely or partially within the APE for this project:

- Brighton Beach Tourist Camp (SL-DUL-2328)
- Brighton Beach Fireplace/Shelter (SL-DUL-3132)
- Brighton Beach Gazebo (SL-DUL-3125)
- Trunk Highway 61 (XX-ROD-006)
- Congdon North Shore Boulevard Segment of Skyline Parkway (SL-XXX-001)
- Skyline Parkway Historic District

Alternative 1 – No Action

The No Action alternative would have no effect on historic structures listed or eligible for listing in the NRHP because no work would be conducted in the APE.

Action Alternative 2 – Proposed Action

FEMA found and SHPO concurred that the Proposed Action would have no effect on historic structures listed or eligible for listing in the NRHP. Consultation documentation is included in **Appendix H**.

3.6.2 Archaeological Resources

A Phase I archaeological survey report titled Kitchi Gammi Park Trail, Phase I Archaeological Reconnaissance Survey, St. Louis County, Minnesota (December 2019) was prepared by Merjent, Inc. No archaeological resources were identified within the Project APE as a result of the field investigations. FEMA found and SHPO concurred that no further archaeological work is warranted for the project as it is currently defined.

Alternative 1 – No Action

The No Action alternative would have no effect on archaeological resources as no construction or ground disturbance activities would occur.

Action Alternative 2 – Proposed Action

The Proposed Action would have no effect on any known archaeological sites or resources. Consultation documentation is included in **Appendix H**. The following project conditions, also included in **Subsection 6.2.10**, would provide additional protection to unknown archaeological sites:

- The contactor will monitor ground disturbance during the construction phase. Should human skeletal remains or historic or archaeological materials be discovered during construction, all ground-disturbing activities on the project site shall cease and the City will notify the coroner's office (in the case of human remains), the recipient (Minnesota HSEM), and FEMA. FEMA will notify the SHPO and the Office of the State Archaeologist.
- All borrow or fill material must come from pre-existing stockpiles, material reclaimed from maintained roadside ditches (provided the designed width or depth of the ditch is not increased), or commercially procured material from a source existing prior to the event. For any FEMA-funded project requiring the use of a non-commercial source or a commercial source that was not permitted to operate prior to the event (e.g., a new pit, agricultural fields, road ROWs, etc.) in whole or in part, regardless of cost, the City of Duluth must notify FEMA and HSEM prior to extracting material. FEMA must review the source for compliance with all applicable federal environmental planning and historic preservation laws and executive orders prior to a subrecipient or their contractor commencing borrow extraction. Consultation and regulatory permitting may be required. Non-compliance with this requirement may jeopardize receipt of federal funding. Documentation of borrow sources utilized is required at closeout.

3.6.3 Tribal Coordination and Religious Sites

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, directs federal agencies, "to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes...."

Requests for information on the presence or absence of known archaeological sites and sites of cultural or religious interest within the proposed project area were submitted to federally recognized tribal nations with potential interests in the project. On March 9, 2022, FEMA notified the following tribal nations regarding the scope of this undertaking:

- Bad River Band of Lake Superior Tribe of Chippewa Indians
- Bois Forte Band of Chippewa Indians

- Fond du Lac Band of Lake Superior Chippewa
- Fort Peck Assiniboine and Sioux Tribes
- Grand Portage Band of Lake Superior Chippewa
- Keweenaw Bay Indian Community
- Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin
- Lac Vieux Desert Band of Lake Superior Chippewa Indians
- Mille Lacs Band of Ojibwe Indians
- Minnesota Chippewa Tribe
- White Earth Band of Ojibwe

FEMA was notified that there was a new Tribal Historic Preservation Officer for the Fond du Lac Band of Lake Superior Chippewa and on May 19, 2022, resent the notification letter to them. The letter sent to each tribe provided details about the project location and proposed activity and requested comments from each tribal government within 30 days of the date of the letter. FEMA received no responses from tribal nations. Correspondence with tribal nations is provided in **Appendix I**.

Alternative 1 – No Action

The No Action alternative would have no effect on known archaeological or Indian religious sites as no construction or ground disturbance activities would occur.

Action Alternative 2 – Proposed Action

The Proposed Action would have no effect on known archaeological or Indian religious sites. If any human or archaeological remains are encountered during project construction, work will stop immediately and FEMA and SHPO will be notified.

3.7 Comparison of Alternatives

Table 3-6 presents the comparison of alternatives for the proposed project. Please see **Section 6** for mitigation measures and permits.

Table 3-6 Comparison of Alternatives

Geology, Soils, and Topography

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • Long-term impacts from continued erosion. • Negligible impacts to topography 	<ul style="list-style-type: none"> • Minor short-term negative impacts from road removal and new road construction. • Minor short-term impacts on soil topography during construction. • No impact on bedrock. • Long-term reduction in erosion along the shoreline due to the new road's higher elevation and increased setback from the shoreline. • No farmland to be converted to non-agricultural use. 	<ul style="list-style-type: none"> • See Subsection 6.2.1.

Water Resources and Water Quality

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • Minor long-term impacts from sedimentation, soil erosion, and pollutants from stormwater runoff. • No impact on groundwater. 	<ul style="list-style-type: none"> • Minor short-term impact on water quality during construction caused by excavators and other heavy equipment for fill and excavation. 	<ul style="list-style-type: none"> • See Subsection 6.2.2.

Coastal Zone Management

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • Long-term impacts from continued erosion 	<ul style="list-style-type: none"> • Long-term benefit of preserving vehicular access to park and trail systems within Coastal Zone. 	<ul style="list-style-type: none"> • See Subsection 6.2.2.

Floodplain Management

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> Minor long-term impacts from continued erosion 	<ul style="list-style-type: none"> Minor short-term impacts from disturbance of sediments during the abandonment of the existing roadway. Minor long-term benefits from the reduction in damages and road closures caused by flooding. 	<ul style="list-style-type: none"> See Subsection 6.2.2.

Air Quality

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> Minor short and long-term impacts from decreased traffic if permanent road closure was required due to damages. 	<ul style="list-style-type: none"> Minor short-term impacts from construction equipment emissions and exposed soils. Negligible long-term impact. 	<ul style="list-style-type: none"> See Subsection 6.2.3.

Terrestrial and Aquatic Environment

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> Minor long-term adverse impacts from continued, naturally occurring erosion of the shoreline, resulting in soil disturbance and surface runoff. 	<ul style="list-style-type: none"> Minor short-term impacts while the existing Brighton Beach Road is being demolished and the relocated road is being constructed resulting in soil disturbance and removal of vegetation. Minor long-term impacts from the removal of trees and vegetation located near the new alignment. Minor long-term benefits from the reseeded of the relocated roadway corridor. 	<ul style="list-style-type: none"> None

Wetlands

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> No project-related short or long-term impacts. 	<ul style="list-style-type: none"> Minor short-term impacts to the shore of Lake Superior from the disturbed soils associated with the removal of the existing roadway and its relocation. 	<ul style="list-style-type: none"> Replacement or credits as required by the LGU and Wetland TEP.

	<ul style="list-style-type: none"> • Impact of up to 12,000 square feet of wetlands (0.275 acres). 	
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Threatened and Endangered Species

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • No project-related impact. Existing erosion from the existing road alignment would continue. 	<ul style="list-style-type: none"> • May effect, not likely to adversely affect the Northern Long-Eared Bat, Tricolored Bat, Canada Lynx, Gray Wolf, Piping Plover, and Red Knot. 	<ul style="list-style-type: none"> • See Subsection 6.2.6.

Migratory Birds

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • No direct short- or long-term impacts. 	<ul style="list-style-type: none"> • Minor short-term impacts from construction activities. • Minor long-term impacts on trees and vegetation that may serve as migratory bird habitat. The trees removed would not be replaced. 	<ul style="list-style-type: none"> • See Subsection 6.2.5.

Invasive Species

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • Minor long-term adverse impacts as invasive plant species would persist in open, disturbed areas as the existing roadway continues to deteriorate. 	<ul style="list-style-type: none"> • Minor short-term impact from the potential spread of invasive plant species to or from the project area as both cuttings and attached to construction equipment and vehicles. • Minor short-term impact of potential for invasive plant species becoming established in disturbed areas. 	<ul style="list-style-type: none"> • See Subsection 6.2.6.

Hazardous Materials

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • No impact. 	<ul style="list-style-type: none"> • Minor short-term impact from construction equipment used for the project will have small quantities of gasoline and fuel, but no releases are anticipated. 	<ul style="list-style-type: none"> • See Subsection 6.2.7.

Zoning and Land Use

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • No improvement to resiliency. • Barriers to open space will remain. • Lack of parks and open space will remain. 	<ul style="list-style-type: none"> • Improves resiliency to flooding. • Removes barriers to accessing parks and open space. • Improves delivery of parks and open space services. 	<ul style="list-style-type: none"> • None

Noise

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • Minor short- or long-term benefit of reduced ambient noise if continued erosion causes closure of Brighton Beach Road. 	<ul style="list-style-type: none"> • Minor short-term impacts associated with construction. 	<ul style="list-style-type: none"> • See Subsection 6.2.8.

Public Services and Utilities

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • Minor short-term impacts to public services resources. • Long-term impacts on public services if erosion continues. 	<ul style="list-style-type: none"> • Minor short-term impact on public services during the construction. • Minor long-term benefits from the removal of the threat of erosion that could impact services. 	<ul style="list-style-type: none"> • None

Traffic and Circulation

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> • Minor short- and major long-term impacts on traffic and circulation as the shoreline continues to erode and cause damage to the existing roadway. 	<ul style="list-style-type: none"> • Minor short-term impact from the operation of construction vehicles and equipment to and from the site. • Major and minor long-term benefits from the reduction in road closures and separation of conflicting uses. 	<ul style="list-style-type: none"> • None

Environmental Justice

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> Negligible effect. 	<ul style="list-style-type: none"> Negligible effect, not disproportionate or adverse. 	<ul style="list-style-type: none"> None

Safety and Security

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> The long-term minor impact from hazardous conditions and damages at Brighton Beach Road. 	<ul style="list-style-type: none"> Negligible short-term impact as long as all construction safety measures are followed. Long-term improvement due to the reduction of natural hazards through road realignment. 	<ul style="list-style-type: none"> See Subsection 6.2.9.

Historic Structures

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> No effect. 	<ul style="list-style-type: none"> No effect. 	<ul style="list-style-type: none"> None

Archaeological Resources

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> No effect. 	<ul style="list-style-type: none"> No effect. 	<ul style="list-style-type: none"> See Subsection 6.2.10.

Tribal and Religious Sites

No Action Impacts	Relocation of Brighton Beach Road Impacts	Mitigation
<ul style="list-style-type: none"> No Effect 	<ul style="list-style-type: none"> No Effect 	<ul style="list-style-type: none"> None

4 Cumulative Impacts

This section evaluates the potential cumulative impacts associated with the implementation of the Proposed Action. Cumulative impacts are defined in CEQ regulations for implementing NEPA (40 C.F.R. § 1508.7) as:

“The impacts of a proposed action when combined with impacts of past, present, or reasonably foreseeable future actions undertaken by any agency or person.”

CEQ regulations require an assessment of cumulative effects during the decision-making process for federal projects. Cumulative impacts can result from individually minor but collectively significant actions.

The Proposed Action is an effort to mitigate erosion and storm damage caused by Lake Superior. There are no other known proposed projects within one mile of the project area led by St. Louis County, MnDOT or the City of Duluth that may cause cumulative impacts.

5 Public Participation

This EA is available for agency and public review and comment for a period of 30 days. The public information process includes a public notice with information about the Proposed Action in the *Duluth News Tribune*. This EA is available on FEMA's website at

<https://www.fema.gov/emergency-managers/practitioners/environmental-historic/region/5>.

The EA is also available on the City of Duluth website at <https://duluthmn.gov/>.

A hard copy of this EA is available for review at:

Duluth City Hall
411 West 1st Street
Duluth, MN 55802

This EA reflects the evaluation and assessment of the federal government, the decision-maker for the federal action; however, FEMA will take into consideration any substantive comments received during the public review period to inform the final decision regarding grant approval and project implementation. The public is invited to submit written comments by emailing fema-r5-environmental@fema.dhs.gov or via mail to:

Duane Castaldi, Regional Environmental Officer
Attn: City of Duluth Brighton Beach Road Reconstruction Project EA Comments
FEMA Region 5
536 South Clark Street, 6th Floor
Chicago, IL 60605

The City of Duluth did receive one public comment in support of the proposed project. During the public comment period, FEMA did receive a response from the EPA. FEMA reviewed the comments and found that addressing the comments would make for a stronger more easily understood NEPA document. The comments were all incorporated into the Final EA. None of the comments changed any decisions or determinations within the original draft EA.

5.1 Subrecipient Outreach

The City of Duluth Prepared a Mini-Master Plan for the project area in August 2019. The master planning process included public engagement component consisting of an online survey / comment period and a public open house. The online survey was conducted between May 28 and June 7, 2019, and 24 responses were received. Additional written comments were also received during this period. The public open house was held at the project location on June 3, 2019, from 5:00 PM to 7:00 PM. The draft plan was posted for comment from June 13- June 26, 2019.

The top three suggestions from the public participation process were to separate walking areas from driving areas, to construct permanent restroom facilities, and to limit traffic to one-way.

Other design suggestions included moving the road away from the lake and restoring the shoreland, as well as adding additional parking and turning the area into a pedestrian park.

Furthermore, a virtual public meeting discussing pre-design concepts was conducted October 7, 2021. Please see **Appendix I** for a description of the public engagement process and the results from the online survey/written comments.

6 Mitigation Measures and Permits

6.1 Permits

The MPCA requires the NPDES/SDS permit for construction projects that disturb more than one acre of soil. The proposed project is anticipated to exceed this threshold for the removal of the old roadway and realignment of Brighton Beach Road. A local, state, and federal joint permit for work within water and wetlands will also be required. No other permits are required at this time.

Table 6-1 summarizes the necessary permits to implement the Proposed Action and their status.

Table 6-1 Permit Summary

Issuing Agency	Resource	Permit Title	Applicable Regulation / Law	Status
MPCA	Soils (Erosion)	NPDES/SDS	Minn. R. 7090.2040	Not complete. To be obtained by construction contractor following project award and prior to commencing construction.
City of Duluth Planning Department; USACE; BWSR, and DNR	Water and Wetlands	Joint Permit	Federal Clean Water Act, Wetland Conservation Act, and local ordinances	Not complete. To be obtained by construction contractor following project award and prior to commencing construction.

6.2 Project Conditions

The subrecipient is responsible for compliance with federal, state, and local laws and regulations, including obtaining any necessary permits prior to beginning construction activities, and adhering to any conditions laid out in these permits. Any substantive change to the scope of work will require re-evaluation by FEMA for compliance with NEPA and any other laws or EOs. Failure to comply with FEMA grant conditions may jeopardize federal funding.

6.2.1 General Project Conditions

1. The subrecipient is responsible for obtaining and complying with all required local, state, and federal permits and approvals.
2. If deviations from the proposed scope of work result in substantial design changes, the need for additional ground disturbance, additional removal of vegetation, or any other unanticipated changes to the physical environment, the subrecipient must contact FEMA so that the revised project scope can be evaluated for compliance with NEPA and other applicable environmental laws.

6.2.2 Water Resources, Water Quality, Wetlands, Coastal Zones, and Soils

3. Prior to beginning work, the subrecipient will coordinate with the MPCA to determine permitting needs under the National Pollutant Discharge Elimination System (NPDES) permit program, and to develop a Stormwater Pollution Prevention Plan (SWPPP) identifying BMPs to be followed during construction.
4. A local, state, and federal joint permit application for water and wetland project will be submitted to the regulatory agencies having jurisdiction.

6.2.3 Air Quality

5. To reduce the emission of criteria pollutants, construction equipment engine idling will be minimized to the extent practicable, and engines will be kept properly maintained. The Subrecipient will implement EPA recommendations for mitigation described in Appendix G to the extent practicable.
6. Open construction areas will be minimized and watered as needed to minimize particulates such as fugitive dust.
7. Hauling routes shall be established and designed to minimize the effect of short-term emissions on homes, schools, daycare centers, and playgrounds.

6.2.4 Threatened and Endangered Species

8. Required Avoidance and Minimization Measures (AMMs) - Northern long-eared bat
 - a. General AMM 1: Ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable AMMs. Notify contractor(s) during the pre-construction meeting. Bat sightings (including sick, injured, and/or dead bats) on the project must be reported to OES wildlife ecologist (651-366-3605).
 - b. Tree Removal AMM 2: Restrict all tree clearing activities to when Northern Long-Eared Bat are not likely to be present. Winter tree clearing required - tree clearing allowed November 1 to March 31, inclusive.
 - c. Tree Removal AMM 3: Tree removal must be limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).
 - d. Tree Removal AMM 4: Tree removal must not remove documented Northern Long-Eared Bat roosts, or trees within 0.25 miles of roosts; or documented foraging habitat any time of the year.
9. Additional Conservation Measures
 - a. If used, erosion control blanket should be limited to 'bio-netting' or 'natural netting' types, and specifically not products containing plastic mesh netting or other plastic components. These are Category 3N or 4N in the 2016 & 2018 MnDOT Standards Specifications for Construction. Be aware that hydro-mulch

products may contain small plastic fibers to aid in its matrix strength. These loose fibers could potentially re-suspend and make their way into Public Waters impacting protected aquatic species (e.g., mussels, fishes).

- b. Revegetation of disturbed soils must follow D1 Vegetation Establishment Recommendations and use native mixes in areas that are not proposed for mowed turf grass. Include mowing and weed spraying as indicated in the District Vegetation Establishment Recommendations.

6.2.5 Migratory Birds

10. Vegetation removal should be avoided during the migratory bird nesting season (approximately May to October) to the extent practicable.

6.2.6 Invasive Species

11. Graded areas will be revegetated with native grasses and forbs, or native seed mixes.
12. All equipment will be cleaned (including but not limited to vehicles, clothing, and gear) at a site prior to moving to another site. All soil, aggregate material, mulch, vegetation, seeds, animals, etc. need to be removed using a hand tool, brush, compressed air, pressure washer, or otherwise.
13. If equipment is not cleaned before arriving to the work site, then clean the equipment in the parking or staging area, ensuring no material is deposited at the new site. Material cleaned from equipment should be disposed of legally.

6.2.7 Hazardous Materials

14. If hazardous source materials are encountered during former road removal or construction activities for the proposed action, contingency plans will be prepared that detail the procedures that the contractors will follow to identify, manage, and dispose of contaminated materials, in accordance with all local, state, and federal regulations. These specifications sections should include, but are not limited to, procedures that address Safety, Health, and Emergency Response Procedures; Environmental Protection Procedures; Contaminated Soil Excavation; Transportation and Disposal of Contaminated Material; and Contaminated Dewatering and Drainage.
15. MPCA will be notified if contaminated material is encountered.

6.2.8 Noise

16. Construction activities to take place during the less noise-sensitive daylight hours.

6.2.9 Safety and Security

17. To minimize risks to safety and human health, construction activities will be performed using qualified personnel trained to use the required equipment properly.
18. The construction site will be secured from public access.

19. All construction activities will be conducted in accordance with the standards specified in the Occupational Safety and Health Administration (OSHA) regulations.
20. All conditions of the project Health and Safety Plan will be adhered to.

6.2.10 Archeological, Tribal, and Religious Sites

21. The subrecipient will monitor ground disturbance during the construction phase. Should human skeletal remains or historic or archaeological materials be discovered during construction, all ground-disturbing activities on the project site shall cease and the subrecipient will notify the coroner's office (in the case of human remains), the recipient (Minnesota HSEM), and FEMA. FEMA will notify the SHPO and the Office of the State Archaeologist.
22. All borrow or fill material must come from pre-existing stockpiles, material reclaimed from maintained roadside ditches (provided the designed width or depth of the ditch is not increased), or commercially procured material from a source existing prior to the event. For any FEMA-funded project requiring the use of a non-commercial source or a commercial source that was not permitted to operate prior to the event (e.g., a new pit, agricultural fields, road ROWs, etc.) in whole or in part, regardless of cost, the City of Duluth must notify FEMA and HSEM prior to extracting material. FEMA must review the source for compliance with all applicable federal environmental planning and historic preservation laws and executive orders prior to a subrecipient or their contractor commencing borrow extraction. Consultation and regulatory permitting may be required. Non-compliance with this requirement may jeopardize receipt of federal funding. Documentation of borrow sources utilized is required at closeout.

7 Consultations and References

The following agencies were consulted during the preparation of this EA:

7.1 Federal, State, and Local Agencies

- Minnesota Department of Natural Resources (MNDNR), Regional Environmental Assessment Ecologist
- Minnesota State Historic Preservation Office (SHPO)
- U.S. Fish and Wildlife Service, Minnesota-Wisconsin Ecological Services Field Office
- U.S. Environmental Protection Agency Region V, NEPA Implementation Section
- Minnesota Pollution Control Agency (MPCA)
- Natural Resources Conservation Service (NRCS)
- U.S. Army Corps of Engineers, St. Paul District
- Minnesota Board of Water and Soil Resources (BWSR)

7.2 Tribal Nations

- Bad River Band of Lake Superior Tribe of Chippewa Indians
- Bois Forte Band of Chippewa Indians
- Fond du Lac Band of Lake Superior Chippewa
- Fort Peck Assiniboine and Sioux Tribes
- Grand Portage Band of Lake Superior Chippewa
- Keweenaw Bay Indian Community
- Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin
- Lac Vieux Desert Band of Lake Superior Chippewa Indians
- Mille Lacs Band of Ojibwe Indians
- Minnesota Chippewa Tribe
- White Earth Band of Ojibwe

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8 List of Preparers

Table 8-1 Federal Emergency Management Agency Preparers

PA Project Lead: Roger Ammons, Program Delivery Manager,

Project Monitor: Duane Castaldi, Regional Environmental Officer (REO)

Technical Monitor: Leslie Schroeder, Environmental Protection Specialist

Technical Editor: Nicholas Dorochoff, Environmental Protection Specialist

Endangered Species Specialist, Aubri Urbanek, Environmental Protection Specialist

Table 8-2 MSA Professional Services, Inc. Preparers

NEPA Documentation: Jeff Thelen, Environmental Planner

NEPA Documentation: Erica Klingfu, Environmental Scientist

Project Manager: Mark Davidson, Senior Hydrogeologist

9 Appendices

FEMA has worked to ensure that this EA document is accessible to persons with disabilities, in compliance with Section 508 of the Rehabilitation Act of 1973. Regarding the EA's Appendices, which are provided in a separate document, this EA has reported what was done and how those results affect the decision that will be made based on the totality of the EA findings. In case any of these appendices poses a challenge to be read electronically by persons with disabilities, each appendix is briefly described and summarized below, rather than being simply listed.

Appendix A: Construction Plans

This appendix contains a one-page drawing of the proposed park road in relation to the existing road and trail. In place bituminous pavement and the EAW Permit Area are also identified on this sheet. A set of construction plans from the Minnesota Department of Transportation City of Duluth Department of Public Works and Utilities Engineering Division is also included. The plans provide general construction notes, earthwork quantities, and typical sections for the proposed road relocation.

Appendix B: NEPAssist Report

This appendix contains a report from the NEPAssist tool found on the U.S. Environmental Protection Agency's website, <https://www.epa.gov/nepa/nepassist>. The report was generated on September 8, 2022 from the web-based application, which provides an immediate screening of environmental assessment indicators for a user-defined area of interest. The report identified that this project is within one mile of the following: an impaired stream, an impaired waterbody, a waterbody, a stream, a water discharger (NPDES), a hazardous waste (RCRA) facility, a school, a historic property on the National Register of Historic Places, a land cession boundary, and the service area of a mitigation or conservation bank. The report also indicates that information regarding an NWI wetland can be found online.

Appendix C: Water Resources

This appendix contains the firmette map of the project location. There are two maps from the MN Department of Natural Resources Lake & Flood Elevations Online showing the estimated 1% water surface elevations in relation to the project area. A wetland assessment with preliminary wetland impact maps which was completed in conjunction with FHWA Project SP-118-090-024 is included. A letter from FEMA to the MN Department of Natural Resources Coastal Zone Management Section dated June 30, 2022 describes the project and provides maps of the project area. The letter concludes that the project, if completed as proposed, will be consistent with Minnesota's approved coastal management program.

Appendix D: Geology, Soils, and Topography

This appendix contains a map of the project area identifying soil types from the National Resources Conservation Service's Web Soil Survey. Soil types in the project area include Cuttre-Eutrudepts; Miskoaki-Rock outcrop complex; Barto, stony-Greysolon-Rock outcrop complex; and Urban land-Amnicon-Rock outcrop complex.

Appendix E: Air Quality

This appendix contains a generated report from the U.S. Environmental Protection Agency and provides information on Minnesota nonattainment/maintenance status for each county by year for all criteria pollutants. For St. Louis County, part of the county is considered to have moderate carbon monoxide levels.

Appendix F: Threatened, Endangered Species, and Migratory Birds

This appendix contains the Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Section 7 Informal Consultation between FEMA and the U.S. Fish and Wildlife Service. The Programmatic Biological Opinion is dated August 3, 2022 and addressed to Karie Roach, FEMA Region 5 Environmental Protection Specialist. The Section 7 Informal Consultation is dated August 2, 2022 and is addressed to Whom It May Concern. Both letters describe the Action Area, the Proposed Action, justification for the action, and the anticipated effects and proposed mitigation regarding the Northern Long Eared Bat. This appendix also includes letters from Minnesota Department of Transportation Office of Environmental Services Threatened & Endangered Species Letter and Minnesota Department of Natural Resources Natural Heritage and Non-Game Research Program Letter.

Appendix G: Environmental Justice & Hazardous Materials

This appendix contains the EJScreen Report from the U.S. Environmental Protection Agency for a 0.25-mile ring around the project area. This appendix also contains the EPA air quality recommendations.

Appendix H: Historic Structures & Archaeological Resources

This appendix contains a 58-page letter dated August 9, 2022. It was signed by Duane Castaldi Regional Environmental Officer, FEMA Region 5. It was addressed to Sarah Beimers, Environmental Review Program Manager, Minnesota State Historic Preservation Office, in Saint Paul, Minnesota. The letter discusses a Finding of No Historic Properties Affected for the project. It describes the Undertaking, the Area of Potential Effect (APE), Identification and Evaluation of Resources, a Phase I Archaeological Reconnaissance Survey, previous correspondence with the SHPO regarding this project area in conjunction with a Lakewalk Trail Extension project undertaken by the Minnesota Department of Transportation, and Determination of Effect. Its Conclusion requests SHPO concurrence with the finding. SHPO provided its concurrence with the finding of No Historic Properties Affected on August 25, 2022.

Appendix I: Tribal Coordination and Religious Sites

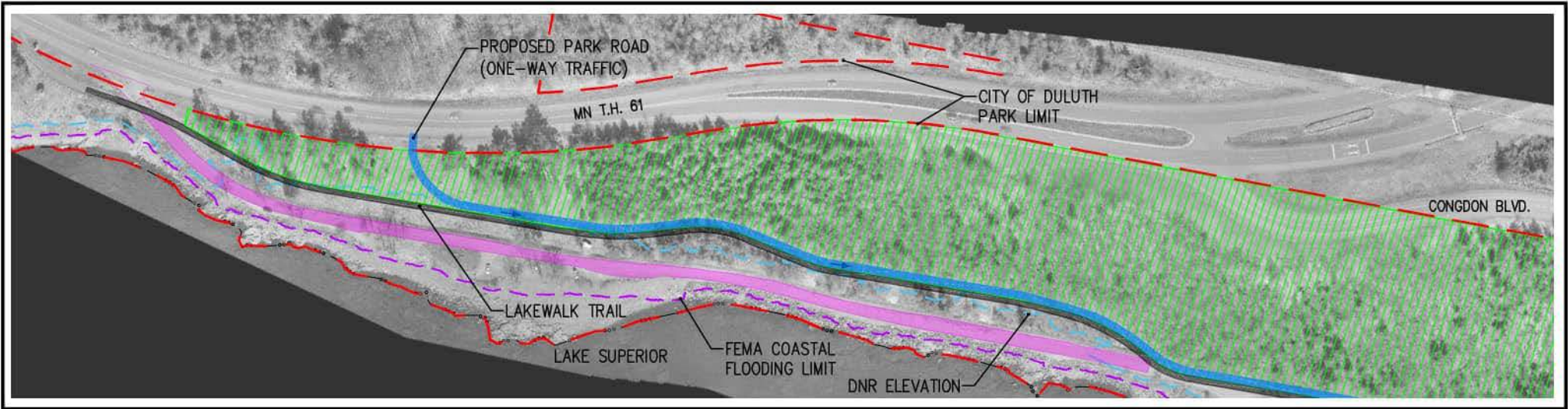
This 4-page letter is one of twelve tribal consultation letters that was sent by FEMA to Native American Tribes with a known interest in the Duluth, Minnesota area. It was signed by Duane Castaldi, Regional Environmental Officer, FEMA Region 5 in Chicago, IL. This example was addressed to Edith Leoso, Tribal Historic Preservation Officer of the Bad River Band of Lake Superior Tribe of Chippewa in Odanah, Wisconsin. It describes the Undertaking and requests input from the Tribe regarding the Undertaking.

Appendix J: Public Engagement

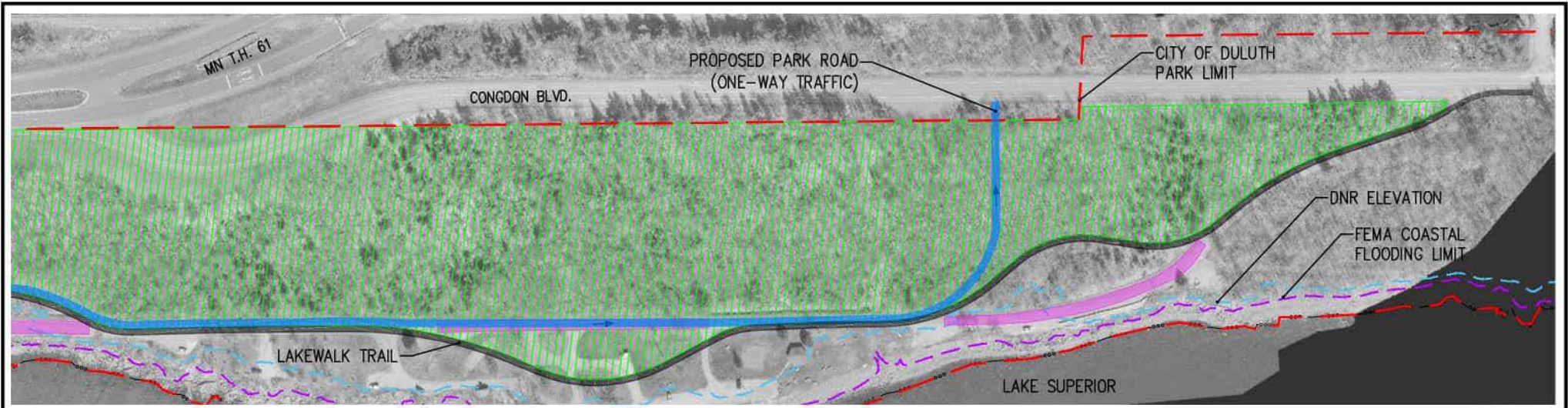
This appendix contains excerpts from the Brighton Beach (Kitchi Gammi Park) Revised 2019 Mini-Master Plan prepared by Duluth Parks and Recreation dated August 19, 2019. It discusses the planning process and includes the responses from the Open House that took place on June 3, 2019 and the online survey open between May 28 to June 7, 2019.

APPENDIX A

Construction Plans



MAP SCALE 1" = 250'



PROPOSED PARK ROAD - (KITCHI GAMI PARK)

- PROPOSED PARK ROAD
- LAKEWALK TRAIL
- INPLACE BITUMINOUS PAVEMENT
- EAW PERMIT AREA

- LEGEND**
- PARK BOUNDARY
 - DNR ELEVATION (10' ABOVE OHWL 603.1)
 - FEMA COASTAL FLOODING LIMIT
 - TRAFFIC FLOW ARROW

**MINNESOTA DEPARTMENT OF TRANSPORTATION
CITY OF DULUTH
DEPARTMENT OF PUBLIC WORKS AND UTILITIES
ENGINEERING DIVISION**

CONSTRUCTION PLANS FOR:GRADING, AGGREGATE BASE, BITUMINOUS SURFACING, DRAINAGE.....

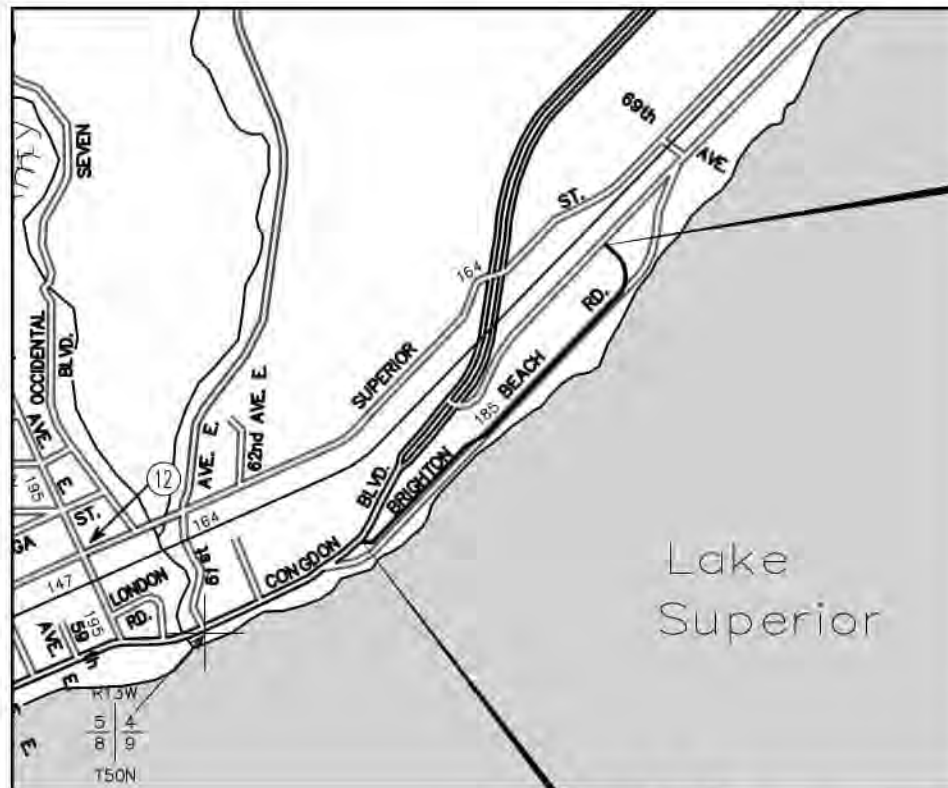
LOCATED ON T.H. 61 - 0.41 MILES NE OF 60TH AVE. E. TO MSAS 185 (CONGDON BLVD.) 925 FEET SW OF 69TH AVE. E.....

STATE PROJ. NO. SAP 118-600-002
 GROSS LENGTH XXXXX FEET XXXX MILES
 BRIDGES-LENGTH FEET MILES
 EXCEPTIONS-LENGTH FEET MILES
 NET LENGTH XXXXX FEET XXXXX MILES

A POINT APPROX. 988' EAST AND
479' NORTH OF THE S.W. CORNER
OF SEC. 4, T 50 N, R 13 W

TO

A POINT APPROX. 3654' EAST AND
3562' NORTH OF THE S.W. CORNER
OF SEC. 4, T 50 N, R 13 W



END
SAP 118-600-002
CITY PROJ. NO. 1940
STA. 122+22.13

BEGIN
SAP 118-600-002
CITY PROJ. NO. 1940
STA XXX+XX.XX

DESIGN DESIGNATION
STATE AID PROJECT NO. 118-600-002
 R-VALUE 1.0
 ADT (CURRENT YEAR) 2020 = N/A
 ADT (FUTURE YEAR) 2040 = 8240
 D (DIRECTIONAL DISTR.) = 80/20
 T (HEAVY COMMERCIAL) = 1%
 DESIGN SPEED 30 MPH
 BASED ON STOPPING SIGHT DISTANCE
 HEIGHT OF EYE 3.5' HEIGHT OF OBJECT 2.0'

TRAFFIC CONTROL NOTE
 ALL TRAFFIC CONTROL DEVICES AND SIGNING SHALL CONFORM
 AND BE INSTALLED IN ACCORDANCE WITH THE CURRENT
 "MINNESOTA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES"
 (MnMUTCD), INCLUDING THE LATEST FIELD MANUAL FOR
 TEMPORARY TRAFFIC CONTROL ZONE LAYOUTS.

THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY LEVEL D.
 THIS QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES
 OF CI/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE
 COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA".

WARNING:
 LOCATION OF UNDERGROUND UTILITIES TO BE VERIFIED BY
 CONTRACTOR. CALL BEFORE DIGGING. GOPHER STATE ONE CALL
 1-800-252-1166 REQUIRED BY LAW

PLAN 40'
 INDEX MAP 1500'
 SWPPP PLAN XX'



MINN PROJECT NO (XXX)																							
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PATRICK F. LOOMIS PROJECT ENGINEER (TYPED OR PRINTED NAME)																							
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STATE AID PROJECT NUMBER - SAP 118-600-002		CITY PROJECT NUMBER 1940																					
		SHEET NO. 1 OF XX																					

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PLAN LEGEND

RIGHT OF WAY LINE	-----
DITCH CENTERLINE	-----
FENCE LINE	-----
RETAINING WALL	~~~~~
GRAVEL LINE	-----
GUARD RAIL	-----
RAILROAD TRACK	
TREE LINE	~~~~~
STREAM FLOW LINE	-----
WETLAND LIMIT	WET WET WET
LAKESHORE	-----
EX SANITARY SEWER	-----
PR SANITARY SEWER	-----
AB SANITARY SEWER	---AB-SSWR---AB-SSWR---
EX FORCE MAIN	-----FM-----
PR FORCE MAIN	-----FM-----
AB FORCE MAIN	---AB-FM---AB-FM---
EX STORM SEWER	-----
PR STORM SEWER	-----
AB STORM SEWER	---AB-STRM---AB-STRM---
EX WATER MAIN	-----
PR WATER MAIN	-----
AB WATER MAIN	---AB-WTR---AB-WTR---
EX GAS MAIN	-----GAS-----
PR GAS MAIN	-----GAS-----
AB GAS MAIN	-----
EX STEAM LINE	-----STEAM-----STEAM-----
PR STEAM LINE	-----STEAM-----STEAM-----
AB STEAM LINE	-----STEAM-----STEAM-----
UG TV CABLE	-----TV-BUR-----
OH TV CABLE	-----TV-----TV-----
AB TV CABLE	---AB-CATV---AB-CATV---
UG ELECTRIC LINE	-----AB-ELEC---AB-ELEC---
OH ELECTRIC LINE	-----E-OH---E-OH---
AB ELECTRIC	---AB-ELEC---AB-ELEC---
UG FIBER OPTIC CABLE	-----FO-BUR-----
OH FIBER OPTIC CABLE	-----FO-----
AB FIBER OPTIC CABLE	---AB-F/O---AB-F/O---
UG TELEPHONE	-----E-BUR---E-BUR---
OH TELEPHONE	-----E-OH---E-OH---
AB TELEPHONE	---T-BUR---T-BUR---

GENERAL CONSTRUCTION NOTES

SURVEYS AND RIGHT OF WAY

THE CONTRACTOR SHALL PRESERVE ALL LAND AND PROPERTY CORNERS, VERTICAL & HORIZONTAL CONTROLS, SURVEY AND RIGHT OF WAY MONUMENTS. THE RIGHT OF WAY SHOWN IN THIS PLAN GIVES A GRAPHICAL LOCATION WITH RESPECT TO THE PLAN ALIGNMENTS. FOR EXACT RIGHT OF WAY LIMITS, SEE MAP ON FILE WITH THE CITY OF DULUTH.

DRAINAGE

PIPE ELEVATIONS, OFFSETS, AND COORDINATES AS SHOWN IN THE PLAN, ARE TO THE CENTER OF THE APRONS. ALL CONCRETE PIPE AND APRONS SHALL BE TIED. (INCIDENTAL)

GRADING NOTES:

EXCAVATION LIMIT LINES AS SHOWN ON THE TYPICAL SECTIONS, CROSS SECTIONS, AND DETAILS IN THIS PLAN ARE FOR THE COMPUTATION OF PAY QUANTITIES. TEMPORARY AND INTERMEDIATE EXCAVATION LIMITS AND SLOPES ARE TO BE DETERMINED BY THE CONTRACTOR DURING CONSTRUCTION, DEPENDENT UPON SOIL PROPERTIES AND SAFETY FACTORS. ADDITIONAL EXCAVATION AND BACKFILL BEYOND THE LIMITS SHOWN ON PLAN FOR SOIL AND SAFETY ISSUES SHALL BE CONSIDERED THE CONTRACTORS RESPONSIBILITY WITH NO DIRECT PAYMENT MADE.

THE CONTRACTORS ACTIVITIES ARE NOT TO EXCEED CONSTRUCTION LIMITS IN THE WETLAND AREAS. THIS INCLUDES EQUIPMENT, WORKING, PLACING OR STOCKPILING MATERIALS OR IMPACTING THE WETLANDS IN ANY WAY.

ALL MATERIAL NOT USED ON THIS PROJECT SHALL BECOME THE PROPERTY OF THE CONTRACTOR AND DISPOSED OF OFF THE ROW IN ACCORDANCE WITH SPEC 2104.

UNIQUE FEATURES

THE PROJECT SITE CONTAINS NUMEROUS NATURAL FEATURES KNOWN AS VERNAL POOLS. THESE SMALL WATER-FILLED DEPRESSIONS ARE CONSIDERED CRITICAL TO THE SHORELINE HABITAT. VERNAL POOLS ARE CONSIDERED TO BE WETLANDS AND SHALL BE PROTECTED AS WETLANDS AT ALL TIMES DURING CONSTRUCTION. VERNAL POOL PROTECTION SHOULD BE ADDRESSED IN THE CONTRACTORS STORMWATER PROTECTION PLAN.

EROSION CONTROL

THE CONTRACTOR HAS THE OPTION OF USING THE WOOD CHIPS FROM THE CLEARING OPERATIONS IN PLACE OF BIO ROLLS FOR DITCH CHECKS AS PART OF THEIR TEMPORARY EROSION CONTROL MEASURE. THE CONTRACTOR SHOULD COMMUNICATE THE USE OF WOOD CHIPS AS PART OF THEIR EROSION CONTROL SCHEDULE.

ABBREVIATIONS USED IN THIS PLAN

ABBREVIATIONS USED IN THIS PLAN

AB = ABANDONED REM = REMOVE
 EX = EXISTING OR IN-PLACE SDG = SPECIAL DITCH GRADE
 PR = PROPOSED
 UG = UNDERGROUND
 OH = OVERHEAD
 PL = PLACE

PLAN SYMBOLS

EX SANITARY MANHOLE	(SAN)
EX SANITARY CLEANOUT	(X)
EX STORM MANHOLE	(STRM)
EX STORM CATCHBASIN	(Hatched Box)
EX WATER MANHOLE	(W)
EX WATER VALVE	(WV)
EX WATER HYDRANT	(Hydrant)
EX. WATER SHUTOFF	(Shutoff)
EX. WATER & GAS MH	(W&G)
EX. GAS MANHOLE	(GAS)
EX. GAS VALVE	(GV)
EX. GAS SHUTOFF	(Shutoff)
EX. STEAM MANHOLE	(STEAM)
EX. TELEPHONE MANHOLE	(T)
EX. ELECTRIC MANHOLE	(E)
EX. UTILITY POLE	(UP)
EX. LIGHT POLE	(LP)
EX. ELECTRIC VAULT	(EV)
EX. GUY ANCHOR	(GA)
EX. ELECTRIC TRANSFORMER	(ET)
EX. STREET LIGHT	(SL)
EX. SIGNAL W/STREET LIGHT	(SSL)
EX. HAND HOLE	(H.H.)
EX. TELEPHONE PEDESTAL	(TP)
EX. WELL	(W)
EX. SIGN	(S)
EX. DECIDUOUS TREE	(DT)
EX. CONIFEROUS TREE	(CT)
EX. PARKING METER	(PM)
BENCHMARK	(BM)
CONTROL POINT	(CP)
FOUND CI MONUMENT	(FOM)
SOIL BORING	(SB) SB#: ?? ELEV: ??

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____

TYPE NAME

DATE: #####

LIC. NO: ###



CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

Brighton Beach Road

CITY PROJECT NO.: 1940

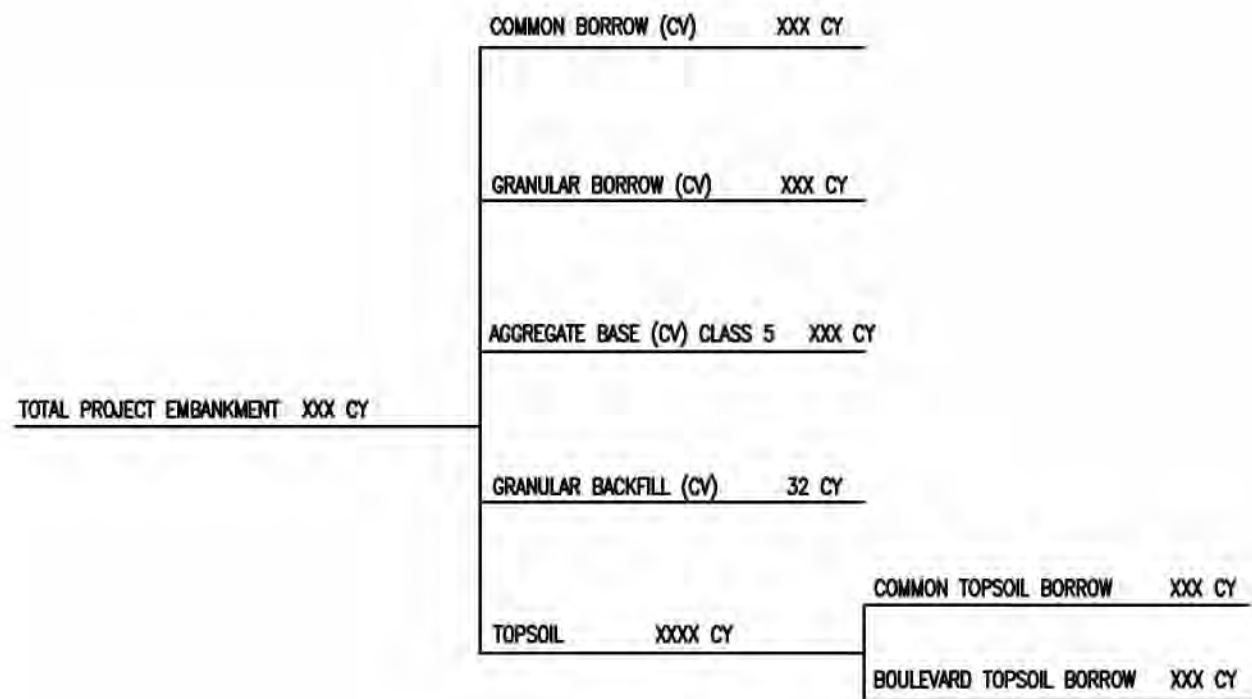
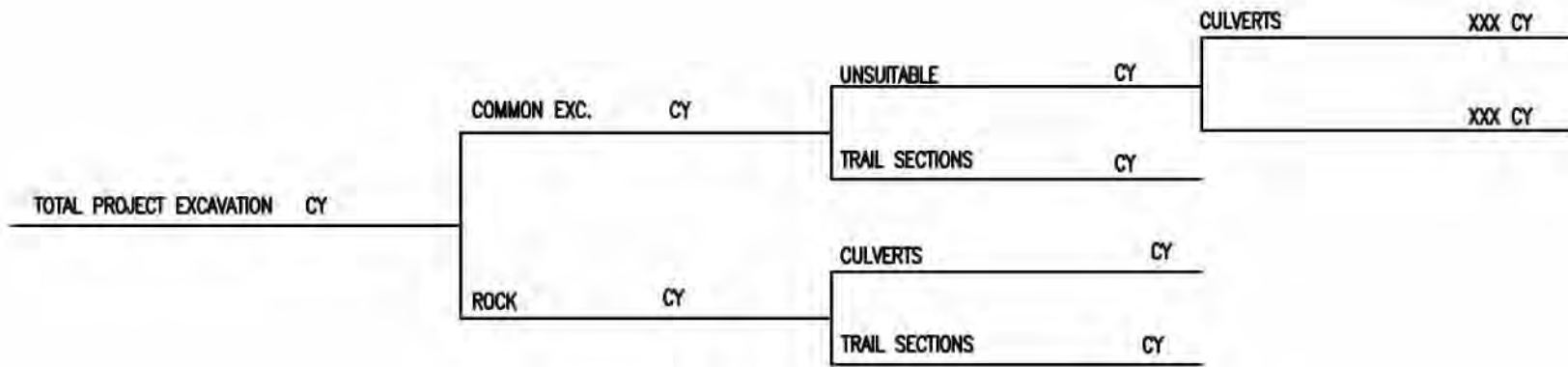
STATE AID PROJECT NO.: SAP 069-600-045

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1940_JTB - LGND - NOTES

SHEET NO. ---- OF ##

EARTHWORK BALANCES



EARTHWORK NOTES:

THIS PROJECT REQUIRES XXXX CY OF COMMON EMBANKMENT MATERIAL.

- ① ALL EXCAVATED MATERIALS FROM STATION XX+XX TO XX+XX (WOODED AREA).
 - ② DOES NOT INCLUDE REMOVAL AND SALVAGE OF INPLACE DECORATIVE ROCKS.
 - ③ THIS PROJECT REQUIRES XXXX CY OF IMPORTED TOPSOIL DURING CONSTRUCTION, IF THE ENGINEER DETERMINES THAT THERE IS MATERIAL SUITABLE FOR TOPSOIL ONSITE THEN STRIPING, STOCKPILING AND PLACEMENT OF MATERIAL WILL BE PAID FOR AS COMMON TOPSOIL BORROW (CY). CONSTRUCTION SLOPES MUST BE COVERED IN 4" OF MATERIAL MEETING COMMON TOPSOIL BORROW SPECIFICATION. "A" HORIZON SOILS PER MnDOT GRADING AND BASE MANUAL MAY BE CONSIDERED TOPSOIL IF APPROVED BY ENGINEER.
- CONTRACTOR SHALL REMOVE ALL STICKS AND ROCKS EXCEEDING 3" IN ANY DIMENSION AT THE TIME OF FINAL TOPSOIL PLACEMENT AND/OR AFTER LOOSENING THE SOIL PRIOR TO SEEDING OR BOTH.

10:01 AM

8/16/2022

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I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DAILY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____

TYPE NAME

DATE: #####

LIC. NO: ###



CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

Brighton Beach Road

CITY PROJECT NO.: 1908

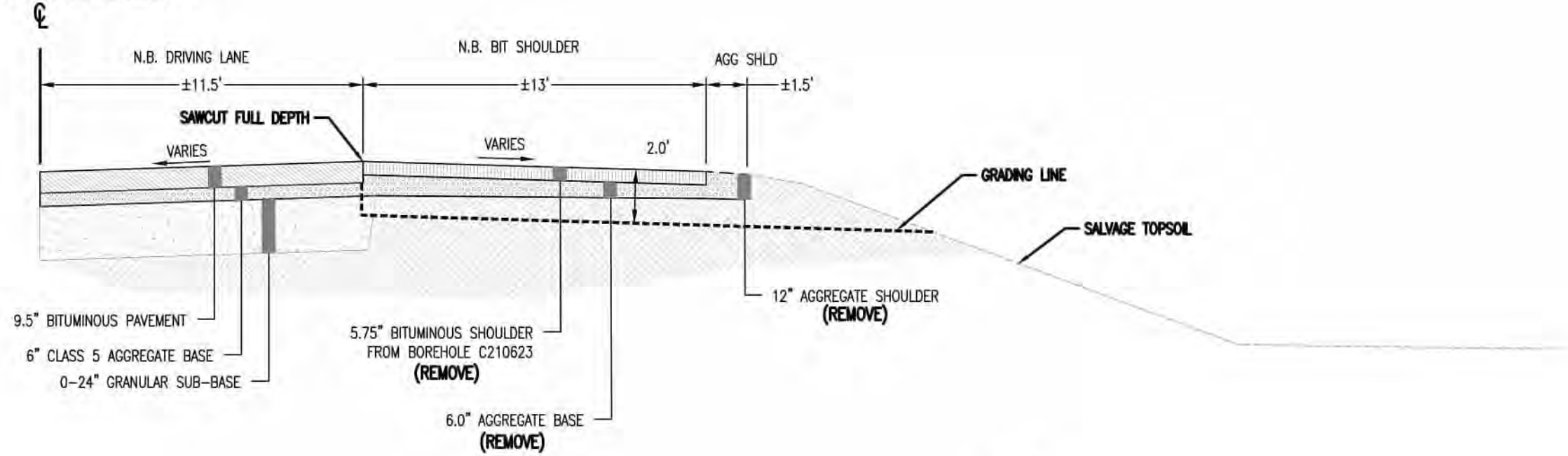
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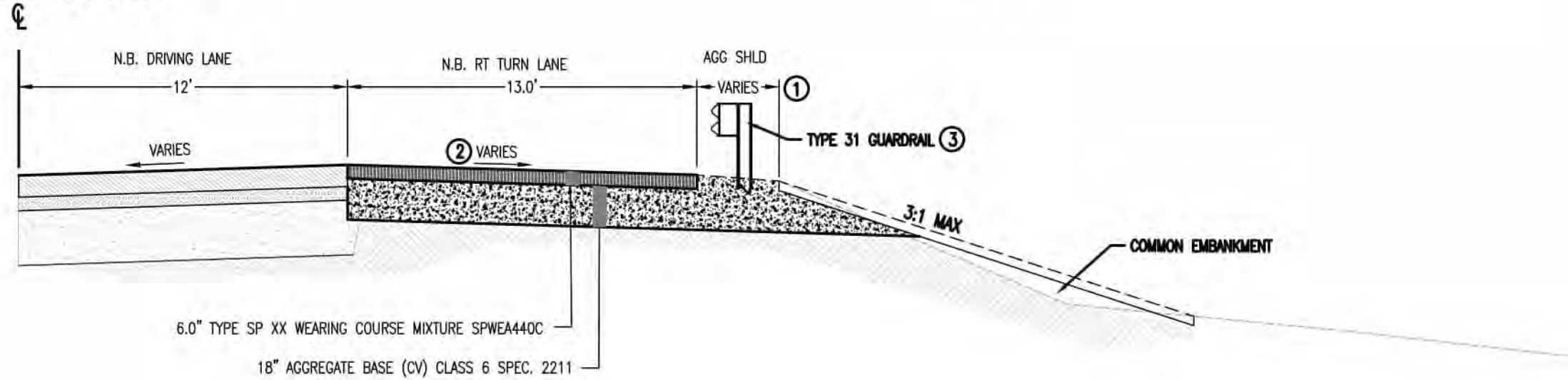


NOTES:

T.H. 61 INPLACE CROSS-SLOPES AND LANE WIDTHS WERE DERIVED FROM FIELD SURVEY DATA, COLLECTED FALL 2018.

- ① IN AREAS WITHOUT GUARDRAIL THE AGGREGATE SHOULDER WIDTH SHALL BE 1.5'.

PROPOSED RT TURN LANE
NB T.H. 61
APPLIES: STA. 114+43.5 TO 117+25.0



I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____

PATRICK F. LOOMIS
TYPE NAME

DATE: 03/25/2022

LIC. NO: 49099



CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

BRIGHTON BEACH ROAD

CITY PROJECT NO.: 1490

STATE AID PROJECT NO.: 118-600-002

DRAWN BY: DJK

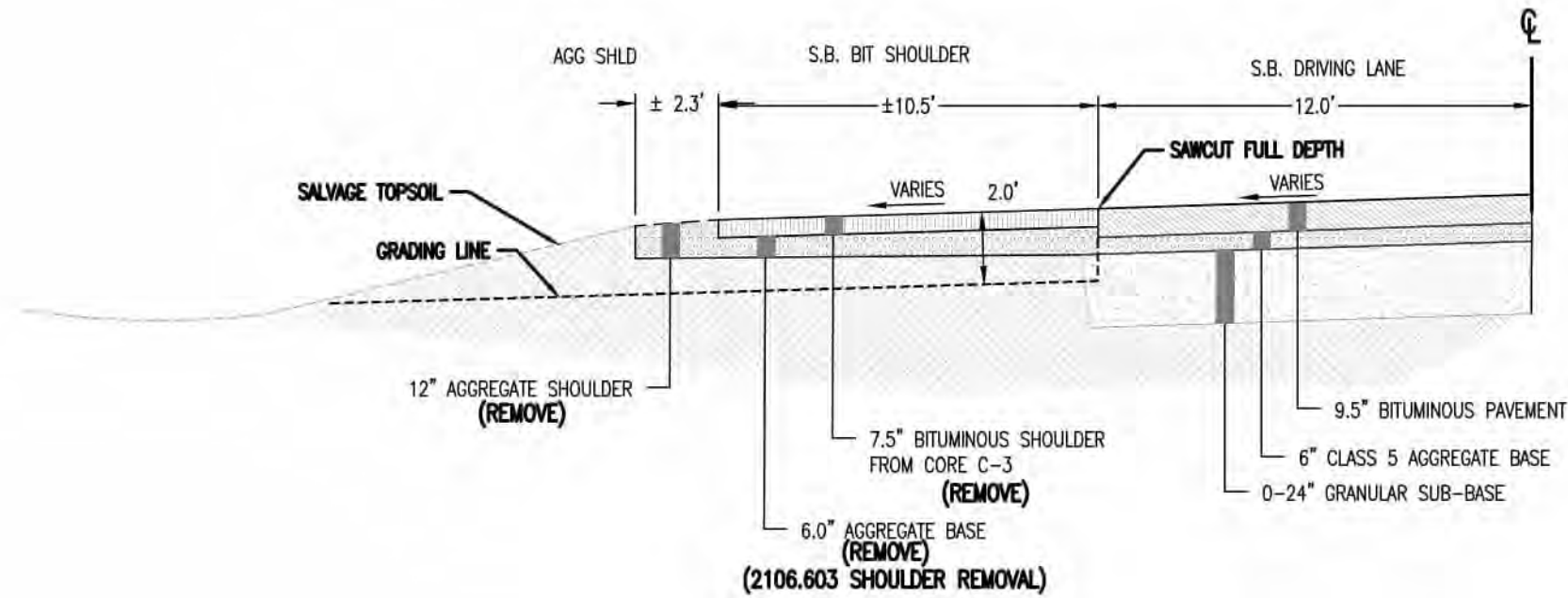
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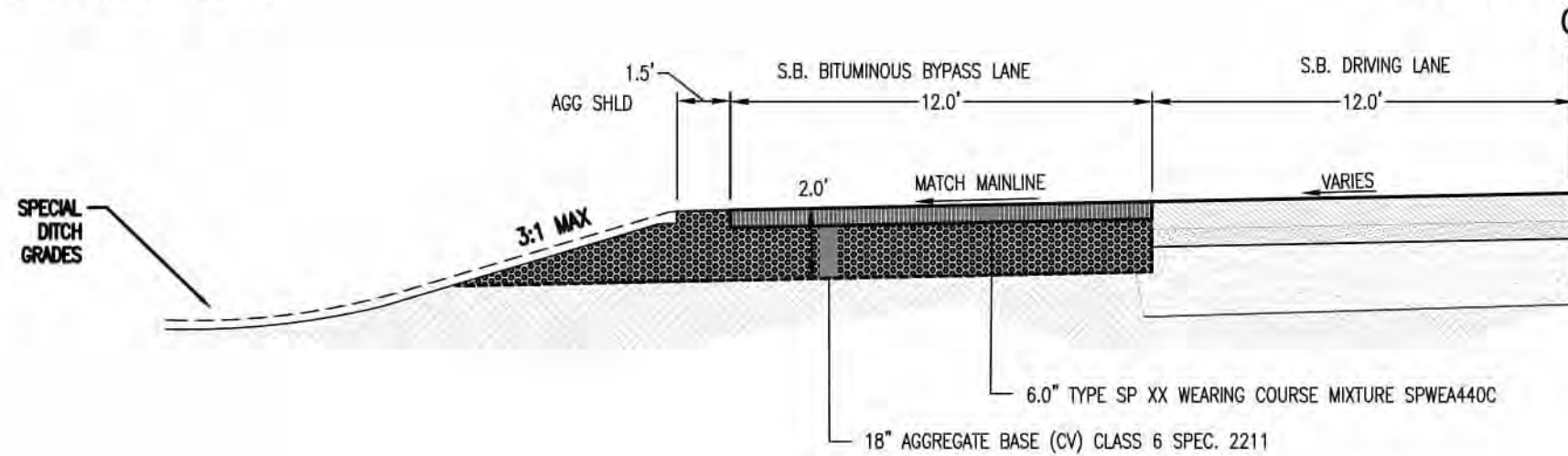
INPLACE
SB T.H. 61
APPLIES: STA. 114+90.0 TO 118+73.0



NOTES:

T.H. 61 INPLACE CROSS-SLOPES AND LANE WIDTHS WERE DERIVED FROM FIELD SURVEY DATA, COLLECTED FALL 2018

PROPOSED BYPASS LANE
SB T.H. 61
APPLIES: STA. 114+90.0 TO 118+73.0



I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____

PATRICK F. LOOMIS
TYPE NAME

DATE: 03/25/2022

LIC. NO: 49099



CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

BRIGHTON BEACH ROAD

CITY PROJECT NO.: 1490

STATE AID PROJECT NO.: 118-600-002

DRAWN BY: DJK

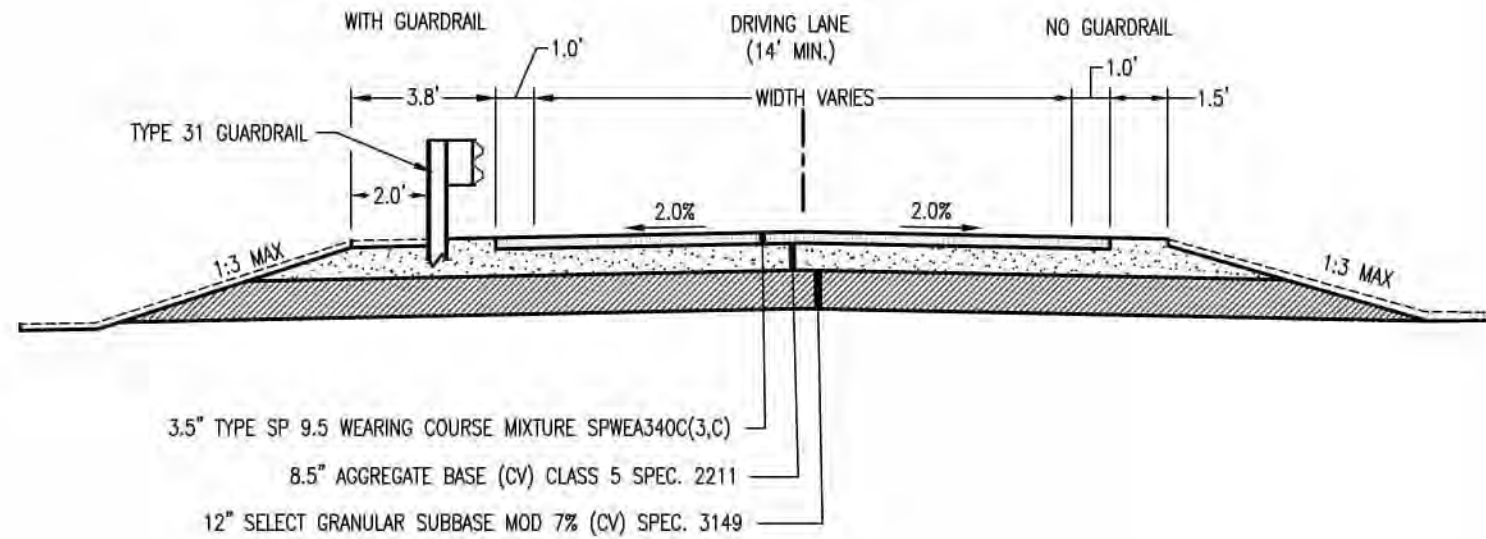
TH61 BYPASS TYPICAL SECTIONS

SHEET NO. 31 OF XXX

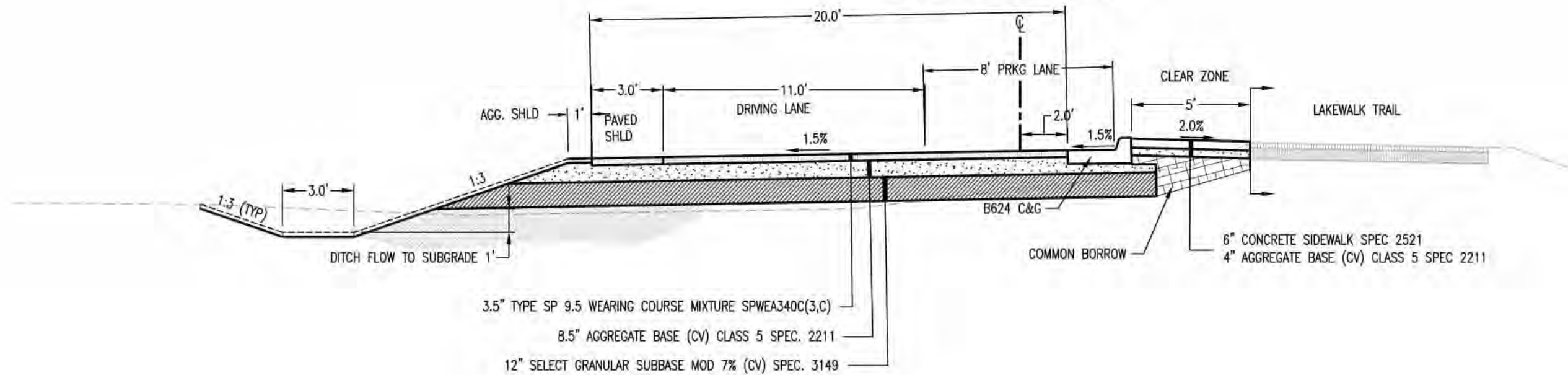
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TYPICAL SECTION PARK ENTRANCE APPLIES: STA. 20+22.75 TO 24+39.0



TYPICAL SECTION PARK ROAD w/ PARKING APPLIES: STA. 20+22.75 TO 24+39.0



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SIGNATURE: _____

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CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

BRIGHTON BEACH ROAD

CITY PROJECT NO.: 1490

STATE AID PROJECT NO.: 118-600-002

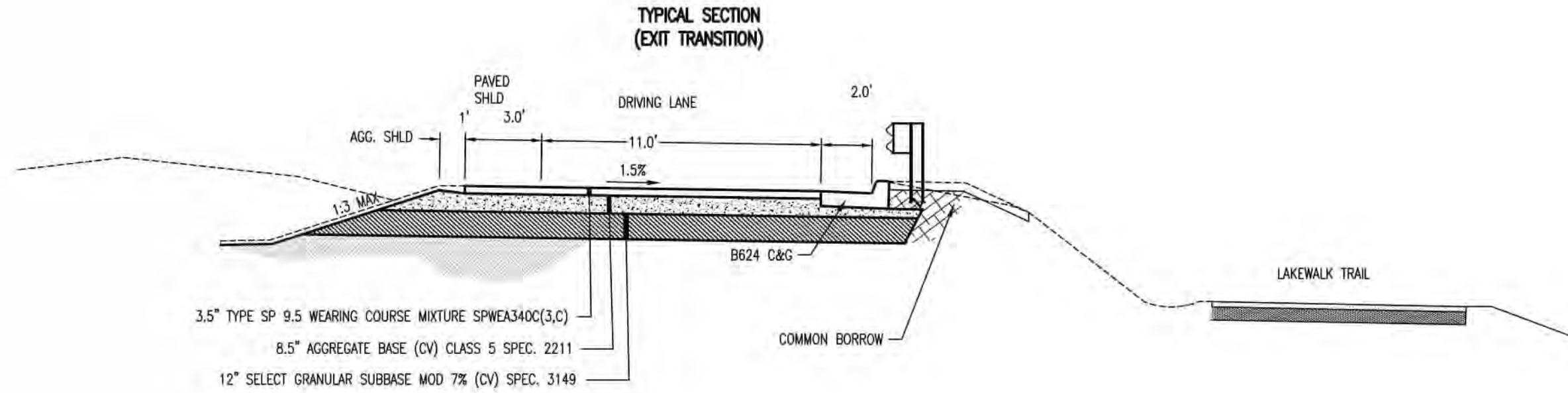
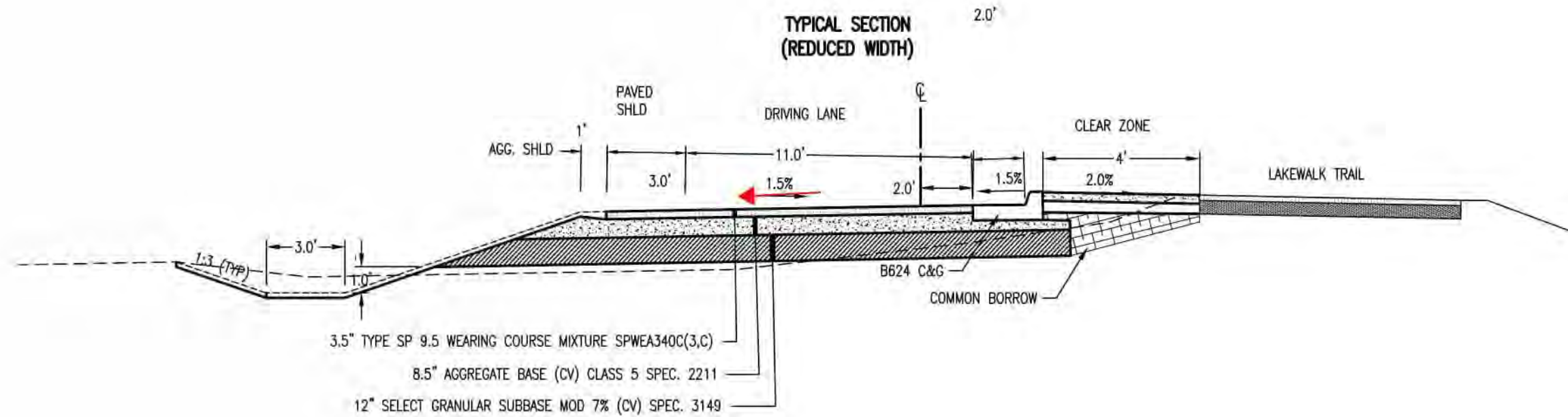
DRAWN BY: DJK

TYPICAL SECTIONS

SHEET NO. 32 OF XXX

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I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____

PATRICK F. LOOMIS
TYPE NAME

DATE: 03/25/2022

LIC. NO: 49099

 CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

BRIGHTON BEACH ROAD

CITY PROJECT NO.: 1490

STATE AID PROJECT NO.: 118-600-002

DRAWN BY: DJK

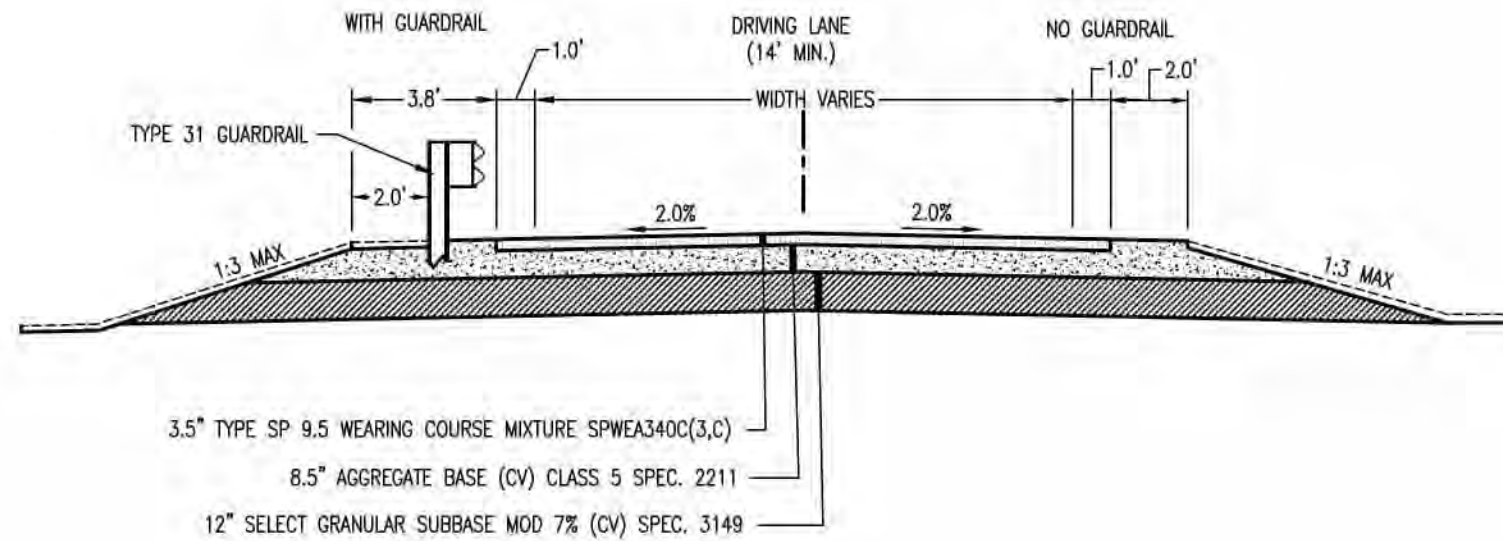
TYPICAL SECTIONS

SHEET NO. 33 OF XXX

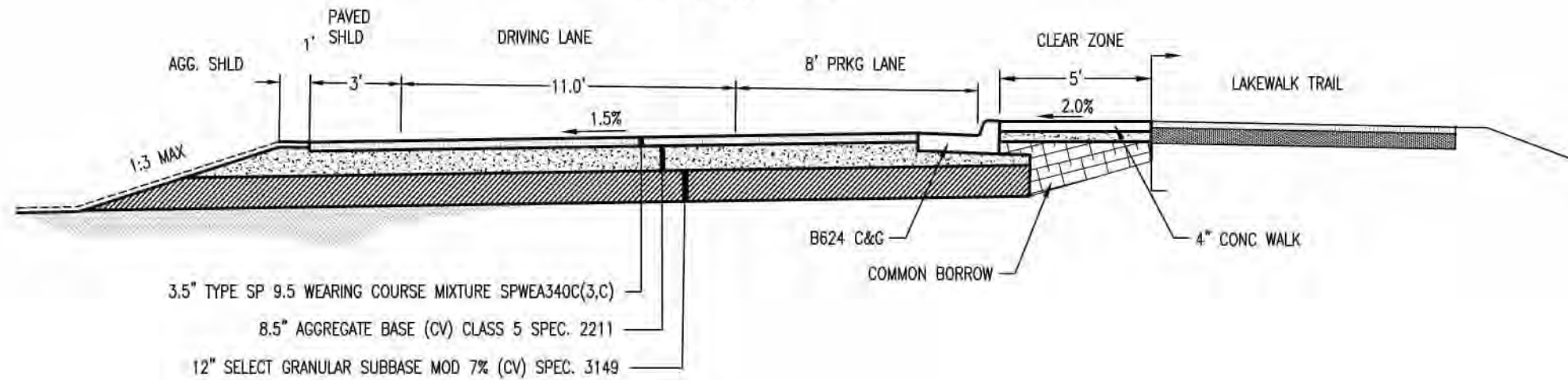
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**TYPICAL SECTION
PARK ENTRANCE**



**TYPICAL SECTION
PARK ROAD w/ PARKING**



I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____

PATRICK F. LOOMIS
TYPE NAME

DATE: 03/25/2022

LIC. NO: 49099



CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

BRIGHTON BEACH ROAD

CITY PROJECT NO.: 1490

STATE AID PROJECT NO.: 118-600-002

DRAWN BY: DJK

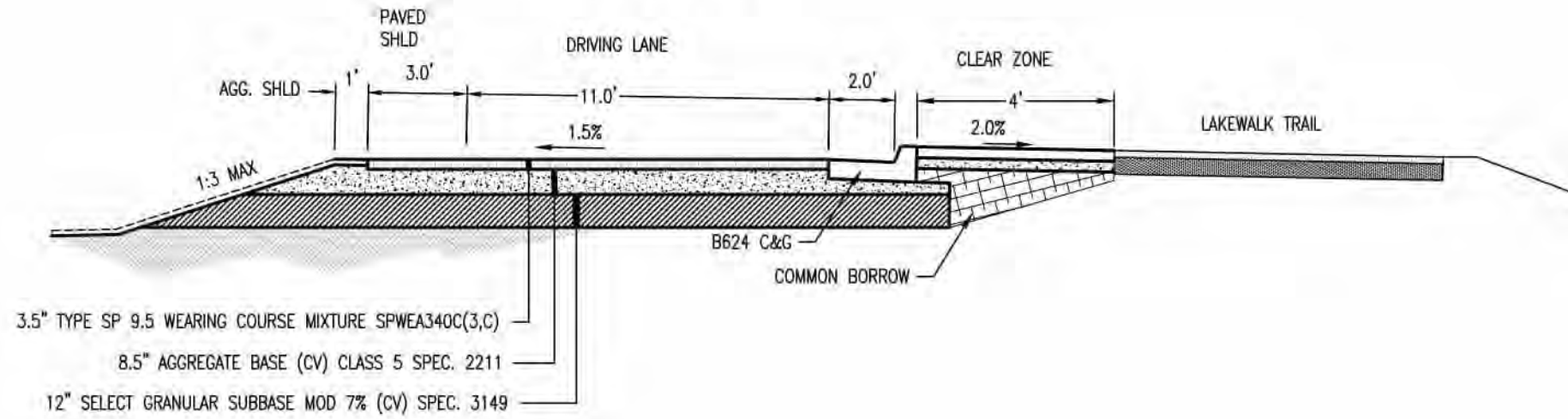
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SHEET NO. 34 OF XXX

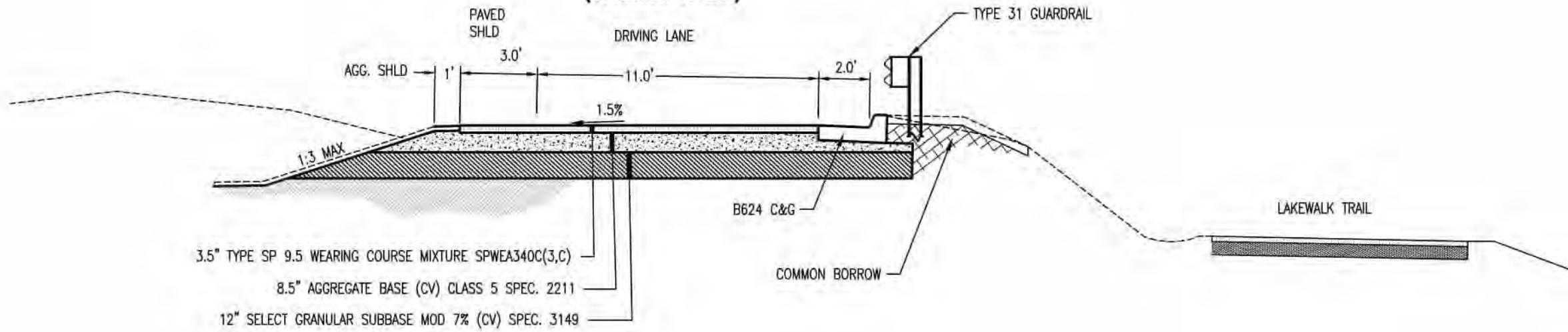
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TYPICAL SECTION (REDUCED WIDTH)



TYPICAL SECTION (TRANSITION TO EXIT)



I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____

PATRICK F. LOOMIS
TYPE NAME

DATE: 03/25/2022

LIC. NO: 49099



CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

BRIGHTON BEACH ROAD

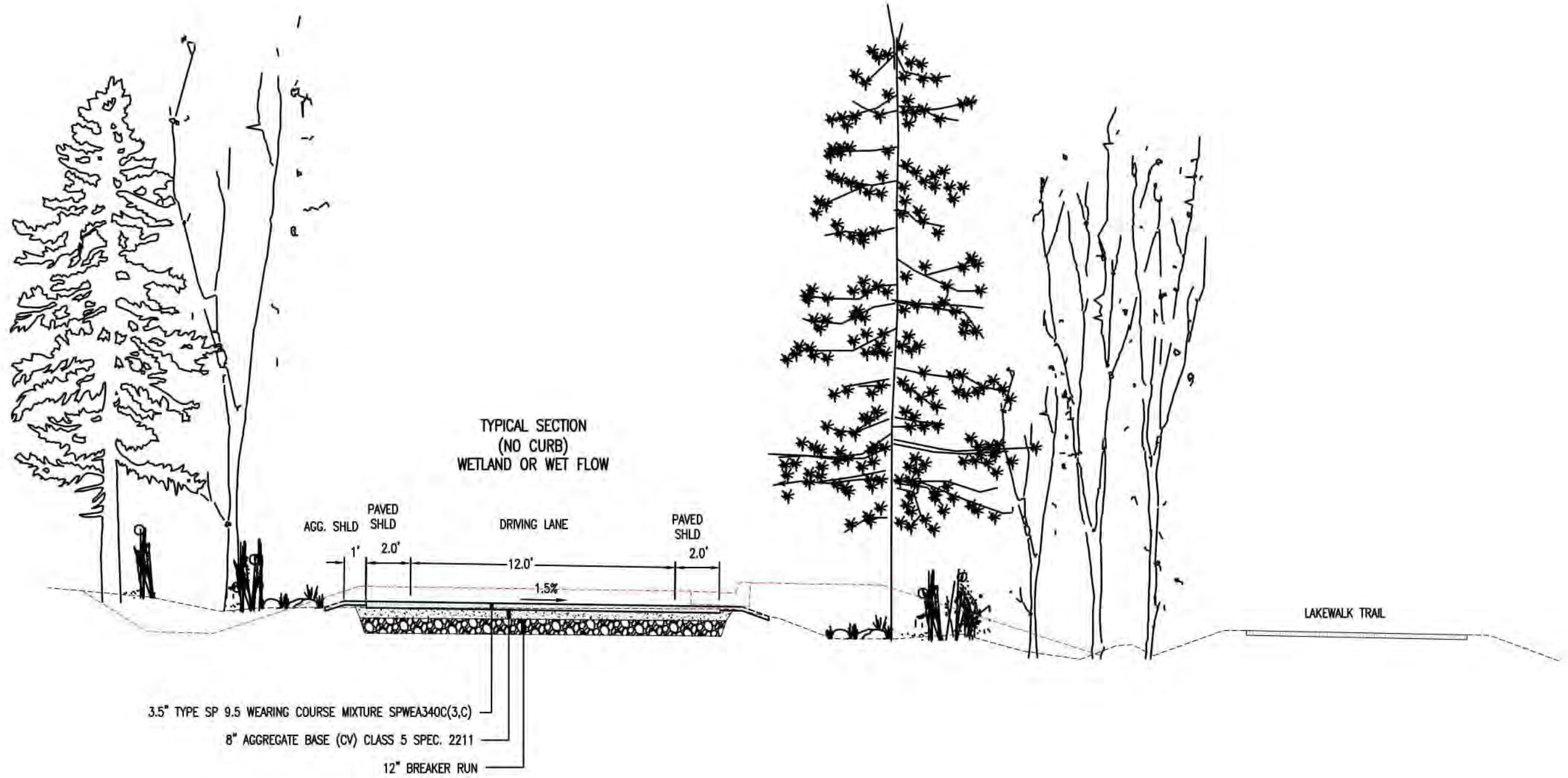
CITY PROJECT NO.: 1490

STATE AID PROJECT NO.: 118-600-002

DRAWN BY: DJK

TYPICAL SECTIONS

SHEET NO. 35 OF XXX



I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____

PATRICK F. LOOMIS
TYPE NAME

DATE: 03/25/2022

LIC. NO: 49099



CITY OF DULUTH
ENGINEERING DIVISION
411 W. 1ST ST. STE. 211
DULUTH, MN 55802

BRIGHTON BEACH ROAD

CITY PROJECT NO.: 1490

STATE AID PROJECT NO.: 118-600-002

DRAWN BY: DJK

TYPICAL SECTIONS

SHEET NO. 36 OF XXX

APPENDIX B

NEPAssist Report

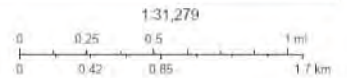
NEPAssist Report

Brighton Beach



September 8, 2022

● Brighton Beach



Excl. HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

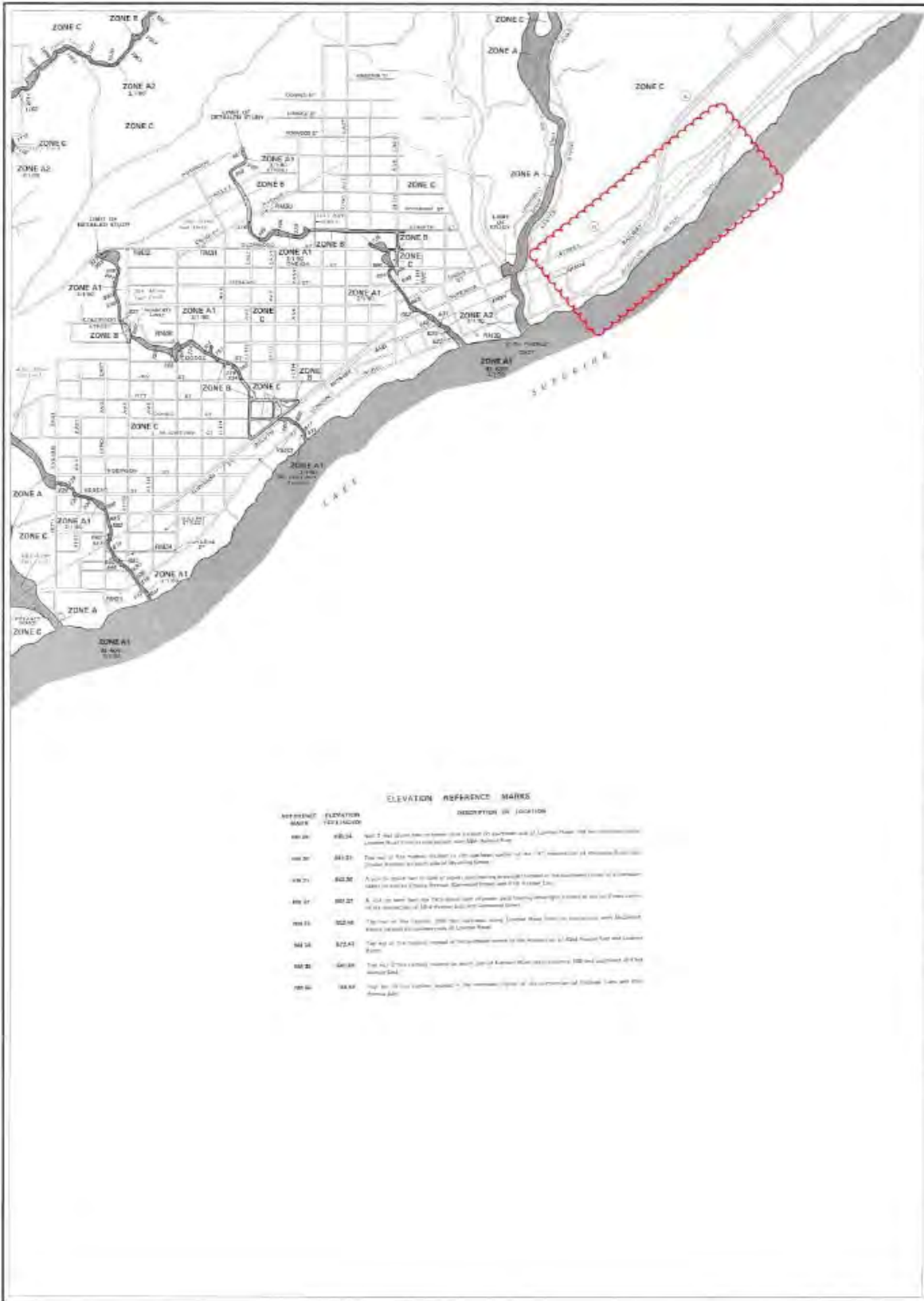
Project Location	46.841571,-91.996445
Within 1 mile of an Ozone 8-hr (1997 standard) Non-Attainment/Maintenance Area?	no
Within 1 mile of an Ozone 8-hr (2008 standard) Non-Attainment/Maintenance Area?	no
Within 1 mile of a Lead (2008 standard) Non-Attainment/Maintenance Area?	no
Within 1 mile of a SO2 1-hr (2010 standard) Non-Attainment/Maintenance Area?	no
Within 1 mile of a PM2.5 24hr (2006 standard) Non-Attainment/Maintenance Area?	no
Within 1 mile of a PM2.5 Annual (1997 standard) Non-Attainment/Maintenance Area?	no
Within 1 mile of a PM2.5 Annual (2012 standard) Non-Attainment/Maintenance Area?	no
Within 1 mile of a PM10 (1987 standard) Non-Attainment/Maintenance Area?	no
Within 1 mile of a Federal Land?	no
Within 1 mile of an impaired stream?	yes
Within 1 mile of an impaired waterbody?	yes
Within 1 mile of a waterbody?	yes
Within 1 mile of a stream?	yes
Within 1 mile of an NWI wetland?	Available Online
Within 1 mile of a Brownfields site?	no
Within 1 mile of a Superfund site?	no
Within 1 mile of a Toxic Release Inventory (TRI) site?	no
Within 1 mile of a water discharger (NPDES)?	yes
Within 1 mile of a hazardous waste (RCRA) facility?	yes
Within 1 mile of an air emission facility?	no

Within 1 mile of a school?	yes
Within 1 mile of an airport?	no
Within 1 mile of a hospital?	no
Within 1 mile of a designated sole source aquifer?	no
Within 1 mile of a historic property on the National Register of Historic Places?	yes
Within 1 mile of a Toxic Substances Control Act (TSCA) site?	no
Within 1 mile of a Land Cession Boundary?	yes
Within 1 mile of a tribal area (lower 48 states)?	no
Within 1 mile of the service area of a mitigation or conservation bank?	yes
Within 1 mile of the service area of an In-Lieu-Fee Program?	no

Created on: 9/8/2022 10:15:56 AM

APPENDIX C

Water Resources



KEY TO MAP

Water Flood Hazard	ZONE B
High Flood Hazard	ZONE A1
Low Flood Hazard	ZONE C
Very Low Flood Hazard	ZONE A2
Very High Flood Hazard	ZONE B1
Very Low Flood Hazard	ZONE C1
Very High Flood Hazard	ZONE B2
Very Low Flood Hazard	ZONE C2
Very High Flood Hazard	ZONE B3
Very Low Flood Hazard	ZONE C3
Very High Flood Hazard	ZONE B4
Very Low Flood Hazard	ZONE C4
Very High Flood Hazard	ZONE B5
Very Low Flood Hazard	ZONE C5
Very High Flood Hazard	ZONE B6
Very Low Flood Hazard	ZONE C6
Very High Flood Hazard	ZONE B7
Very Low Flood Hazard	ZONE C7
Very High Flood Hazard	ZONE B8
Very Low Flood Hazard	ZONE C8
Very High Flood Hazard	ZONE B9
Very Low Flood Hazard	ZONE C9
Very High Flood Hazard	ZONE B10
Very Low Flood Hazard	ZONE C10

EXPLANATION OF ZONE DESIGNATIONS

ZONE A - Areas of moderate flood hazard, including areas subject to flooding from the St. Louis River, Duluth Harbor, and other water bodies, and areas subject to flooding from the St. Louis River, Duluth Harbor, and other water bodies, and areas subject to flooding from the St. Louis River, Duluth Harbor, and other water bodies.

ZONE B - Areas of high flood hazard, including areas subject to flooding from the St. Louis River, Duluth Harbor, and other water bodies, and areas subject to flooding from the St. Louis River, Duluth Harbor, and other water bodies, and areas subject to flooding from the St. Louis River, Duluth Harbor, and other water bodies.

ZONE C - Areas of low flood hazard, including areas subject to flooding from the St. Louis River, Duluth Harbor, and other water bodies, and areas subject to flooding from the St. Louis River, Duluth Harbor, and other water bodies, and areas subject to flooding from the St. Louis River, Duluth Harbor, and other water bodies.

NOTES TO USER

This map is for informational purposes only. It is not intended to be used as a basis for any insurance policy. The user should consult with their insurance agent for more information. This map is not intended to be used as a basis for any insurance policy. The user should consult with their insurance agent for more information.

DATE OF REVISION
 11/15/2010

PREPARED BY
 FEDERAL EMERGENCY MANAGEMENT AGENCY

APPROXIMATE SCALE
 1" = 1 MILE

ELEVATION REFERENCE MARKS

MARK	ELEVATION (FEET)	DESCRIPTION OR LOCATION
100-01	48.24	Top of 1st floor of building at 100-01 (see map for location).
100-02	48.25	Top of 1st floor of building at 100-02 (see map for location).
100-03	48.26	Top of 1st floor of building at 100-03 (see map for location).
100-04	48.27	Top of 1st floor of building at 100-04 (see map for location).
100-05	48.28	Top of 1st floor of building at 100-05 (see map for location).
100-06	48.29	Top of 1st floor of building at 100-06 (see map for location).
100-07	48.30	Top of 1st floor of building at 100-07 (see map for location).
100-08	48.31	Top of 1st floor of building at 100-08 (see map for location).
100-09	48.32	Top of 1st floor of building at 100-09 (see map for location).
100-10	48.33	Top of 1st floor of building at 100-10 (see map for location).

NATIONAL FLOOD INSURANCE PROGRAM

FIRM FLOOD INSURANCE RATE MAP

CITY OF DULUTH, MINNESOTA
ST. LOUIS COUNTY

PANEL 30 OF 45

COMMUNITY PANEL NUMBER
 270421 0630 C

MAP REVISED
 APRIL 2, 1982

Federal Emergency Management Agency



City, MNDNR, Esri Community Maps Contributors, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, NOAA

Date: Wed Sep 14 2022 09:52:16

Comments:

Sources:
 -MNDNR contours from MnTOPO
 -FEMA National Flood Hazard Layer
 See LFED FAQ for data source details:
http://files.intranet.dnr.state.mn.us/user_files/3687/feo-faq.pdf

Disclaimer: The State of Minnesota, Department of Natural Resources, Ecological and Water Resources Division assumes no responsibility for and disclaims all liability for any typographical or other errors on this site. The DNR may make changes to the lake floodplain elevations at any time and without notice.

Datums for LiDAR contours:
 Vertical NAV88 | Horizontal NAD83

Estimated 1% Water Surface Elevations

National Flood Hazard Layer (NFHL)

- 1% Annual Chance Flood Hazard (100 Year Floodplain)
- Floodway
- Zone D (Area of Undetermined Flood Hazard)
- 0.2% Annual Chance Flood Hazard (500 Year Floodplain)
- Area with Reduced Flood Risk Due to Levee

Minnesota Public Waters Delineations

- Public Water Watercourse
- Public Ditch/Altered Natural Watercourse
- Public Waters Basins

WETLAND ASSESSMENT & TWO PART FINDING

County: St. Louis County
 Watershed: Lake Superior - South

State Aid Manual Chapter 5.1, VI.J.

WETLAND ASSESSMENT

WETLAND ASSESSMENT								
	ID #1	ID #2	ID #3	ID #4	ID #5	ID #6	ID #7	ID #8
Classification (Type of wetland)	Type 2 & 7 (fringe)	Type 6	Type 7	Type 7	Type 7	Type 6	Type 2 (ditch)	Type 7
Approx. Basin Size, acres	1,696 sf	404 sf	4,920 sf	7,413 sf	22,186 sf	22,732 sf	1,693 sf	9,080 sf
Anticipated Encroachment Size, acres	980 sf	228 sf	1,187 sf	2,104 sf	905 sf	1,342 sf	684 sf	348 sf
Type of Impact: fill, excavation, drain	Fill	Fill	Fill	Fill	Fill	Fill	Fill	Fill
% Encroachment to Basin Size	57.0%	56.0%	24.0%	28.0	0.4%	0.6%	4.0%	0.4%
Protected wetland? Y/N	N	N	N	N	N	N	N	N
Connection to other wetlands? Y/N	Y	Y	N	Y	Y	Y	Y	N
Impacts to public water supply? Y/N	N	N	N	N	N	N	N	N
Water Quality impacts? ----recharge/discharge (Y) ----water pollution (N) ----flooding (Y) ----sedimentation (Y) ----erosion (N)	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
Impacts to fish/wildlife & habitat?	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
Impacts to recreational, cultural, or scientific uses?	N	N	N	N	N	N	N	N

AVOIDANCE ALTERNATIVES

1. No Build Alternative: The only avoidance alternative for no impacts would be a “no build” option. Brighton Beach is a heavily used park and completing the separated trail through the park to complete the Lakewalk Trail is high priority for the City. The new trail will separate vehicles from pedestrians and bikers through the park and keep bikers off Highway 61. The existing road is in poor condition, constructed too close to the lake and damaged by storm events almost annually. The new trail will use as much of the existing road corridor as possible to minimize impacts to wetlands and other wooded areas. Because of these conditions, the “no build” alternative did not meet the project’s purpose or need.

2. Alternative #1: The first route looked at was an inland trail alignment that kept the trail corridor north of the existing road into the wooded hillside. The majority of wetland bodies that exist on site consist of narrow riverine channel ways that drain from Highway 61 and Congdon Boulevard toward Lake Superior to the south. With this alternative trail alignment, wetland impacts increased. The trail crossed the same number of channels but since the route was a little flatter this caused the wetland impact areas to be wider. In addition, this alternative does not meet one of the project goals of minimizing mature vegetation removal between the existing roadway and Trunk Highway 61 Expressway.
3. Alternative #2: The selected trail alignment was chosen because it utilizes as much of the existing road corridor as possible, while also allowing for minimal tree, wildlife, and habitat disturbances. In addition, it disturbs less wetlands than Alternative #1. Because of these reasons, Alternative #2 is the preferred option.

AVOIDANCE ALTERNATIVES			
Anticipated Encroachment per Alternative, acres			
	No Build Alternative	Alternative #1	Alternative #2 (preferred)
Wetland ID #1	0	980 sf	980 sf
Wetland ID #2	0	228 sf	228 sf
Wetland ID #3	0	1,872 sf	1,187 sf
Wetland ID #4	0	2,104 sf	2,104 sf
Wetland ID #5	0	905 sf	905 sf
Wetland ID #6	0	2,635 sf	1,342 sf
Wetland ID #7	0	705 sf	684 sf
Wetland ID #7B	0	1,231 sf	0
Wetland ID #8	0	2,344 sf	348 sf
Total, acres	0 square ft (0 acres)	13,004 square feet (0.299 acres)	7,778 square feet (0.179 acres)

MINIMIZATION MEASURES

Wetland impacts were minimized to the best extent practical, and include alignment shifts to cross at narrow areas, limiting the overall construction limits and providing steep side slopes at the wetland crossings. Silt fence and other erosion control measures will also be placed along the toe of slopes to prevent sedimentation entering adjacent wetlands and other downstream areas. Prior to construction, the limits of the wetlands will be staked and the contractor will be instructed to not to disturb areas beyond the planned construction limits.

WETLAND IMPACTS

WETLAND IMPACTS (Preferred Alternative)										
	Anticipated Encroachment per Type of Wetland, acres									
	1	1L	2	3	4	5	6	7		8
ID #1			735 sf					245 sf		
ID #2							228 sf			
ID #3								1,187 sf		
ID #4								2,104 sf		
ID #5								905 sf		
ID #6							1,342 sf			
ID #7			684 sf							
ID #8								348 sf		
Total			1,419 sf				1,570 sf	4,789 sf		7,778 square feet (0.179 acres)

COMPENSATION (REPLACEMENT/ENHANCEMENTS)

The wetlands located on this site are administered by the Wetland Conservation Act (WCA) and are regulated by the Local Government Unit (LGU). The LGU for this site is the City of Duluth Planning Department. The US Army Corps of Engineers (COE), the Minnesota Department of Natural Resources (DNR), and the Minnesota Board of Soil and Water Resources (BWSR) may also have jurisdiction over these wetlands.

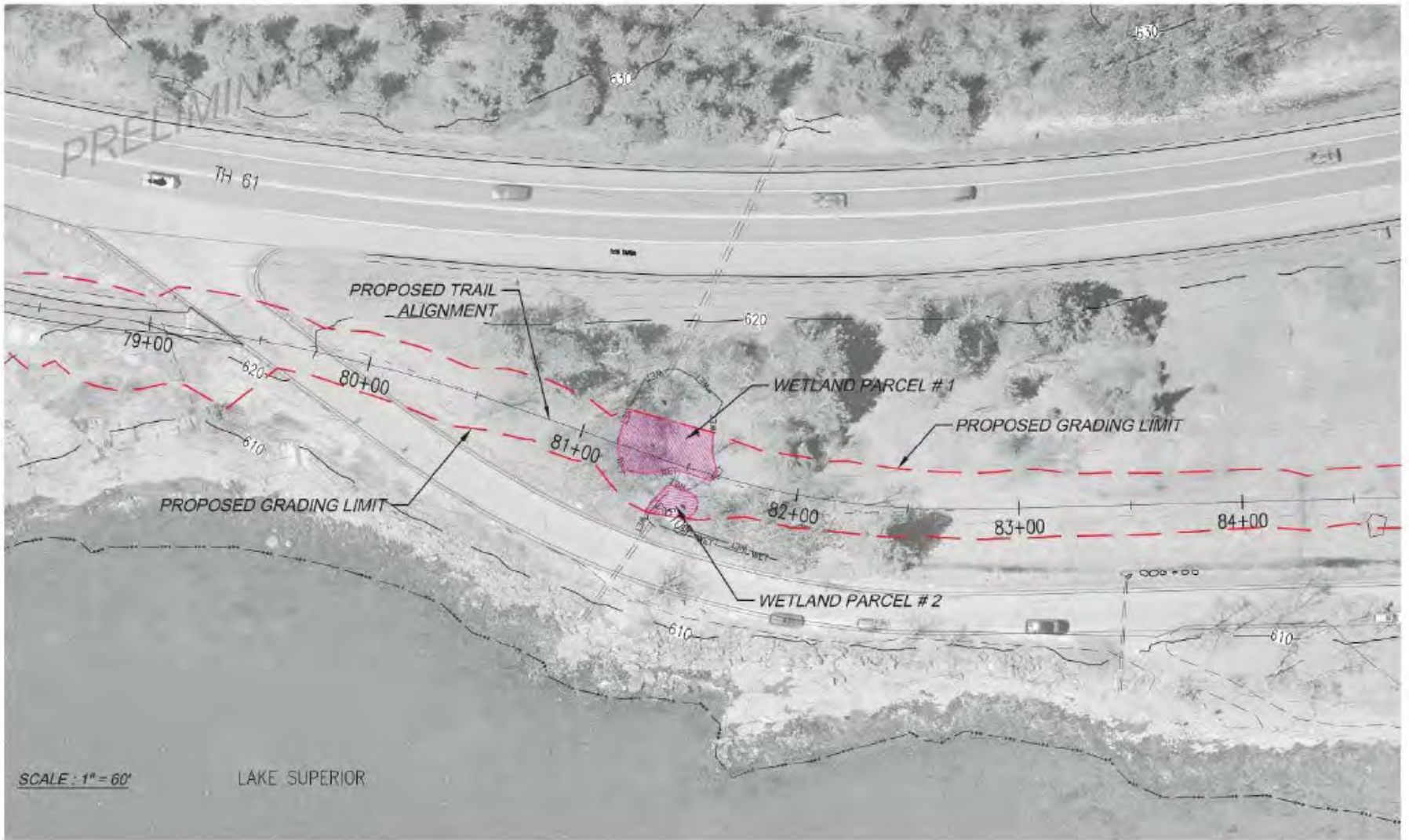
This project will impact approximately 7,778 SF (0.179 Ac) of onsite wetlands. A local, state, and federal joint permit application for water and wetland projects will be submitted to the regulatory agencies having jurisdiction for approval of these wetland impacts. Because the wetland impacts are to Types 2, 6 & 7, and are under 10,000 SF, Part 2: Replacement Plan of the permit application will not be required for the project.

CONCLUSION

Based upon the above factors and considerations, it is determined that there is no practicable alternative to the proposed construction in the identified wetlands, and the proposed action includes all practicable measures to minimize harm to the wetlands.

ATTACHMENTS

LAKEWALK TRAIL EXTENSION – (BRIGHTON BEACH) PRELIMINARY WETLAND IMPACTS
PARCELS 1-8 EXHIBITS

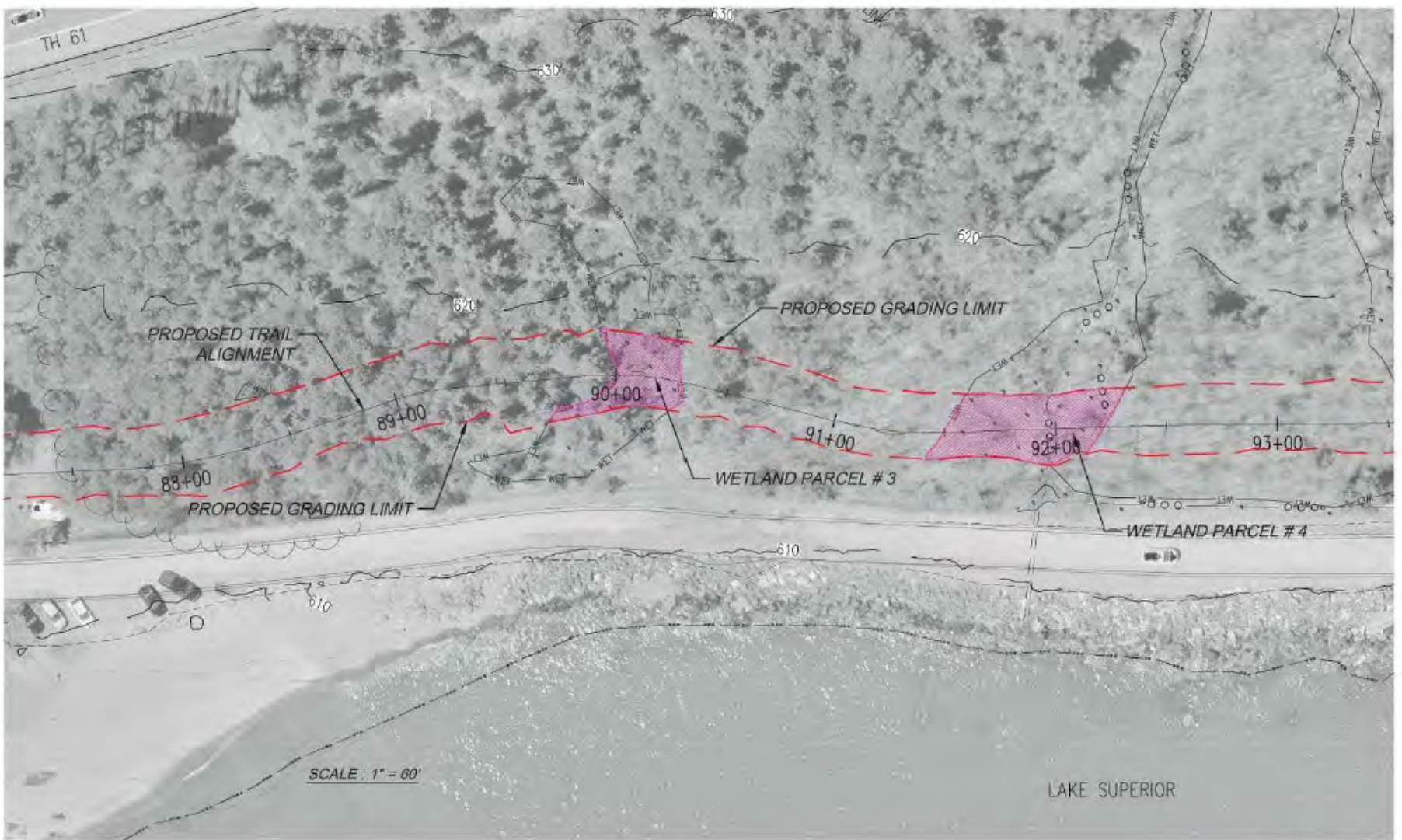


 IMPACTED AREA



LAKEWALK TRAIL EXTENSION - (BRIGHTON BEACH)
 PRELIMINARY WETLAND IMPACTS
 PARCELS (1 & 2)



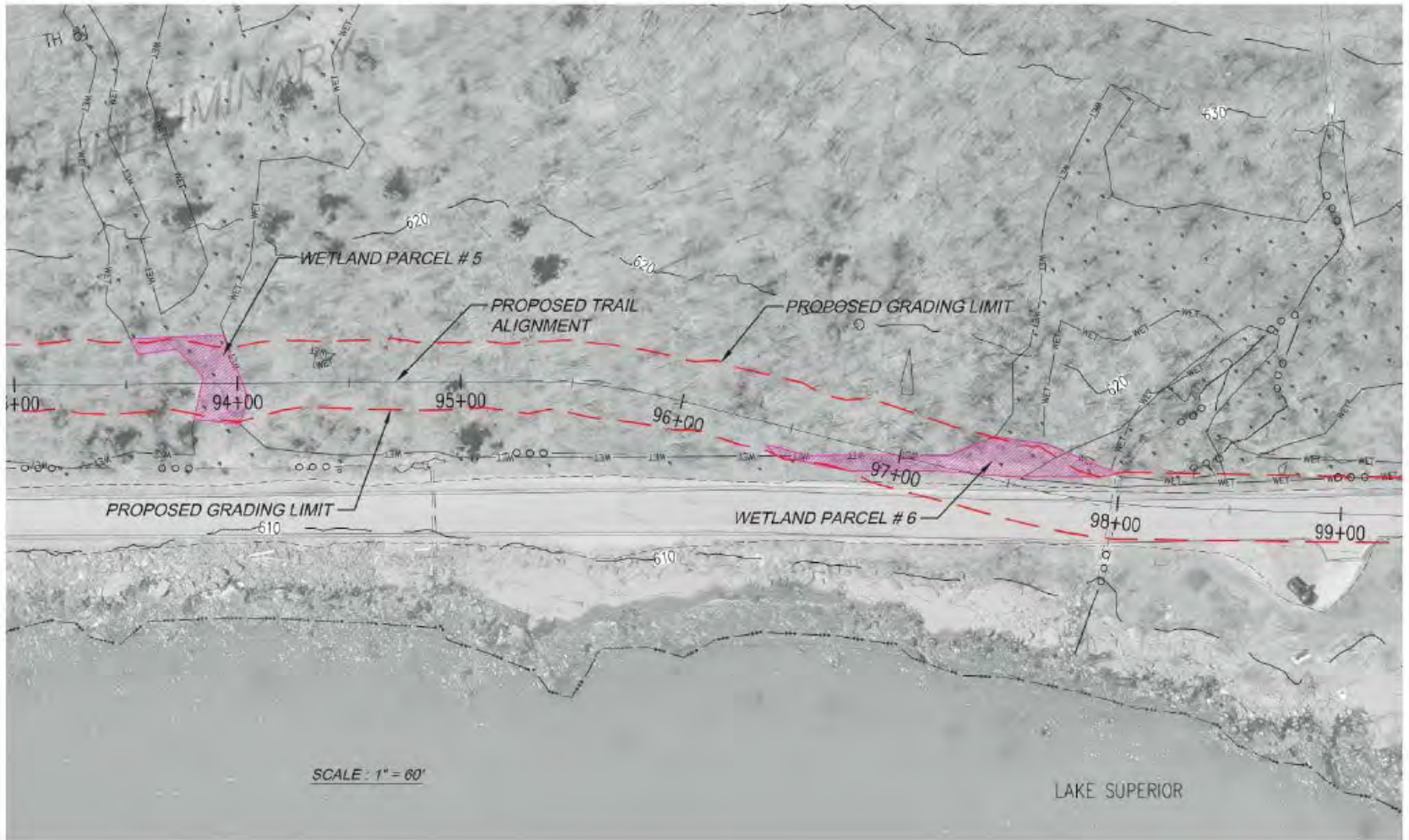



 IMPACTED AREA



LAKEWALK TRAIL EXTENSION - (BRIGHTON BEACH)
 PRELIMINARY WETLAND IMPACTS
 PARCELS (3 & 4)



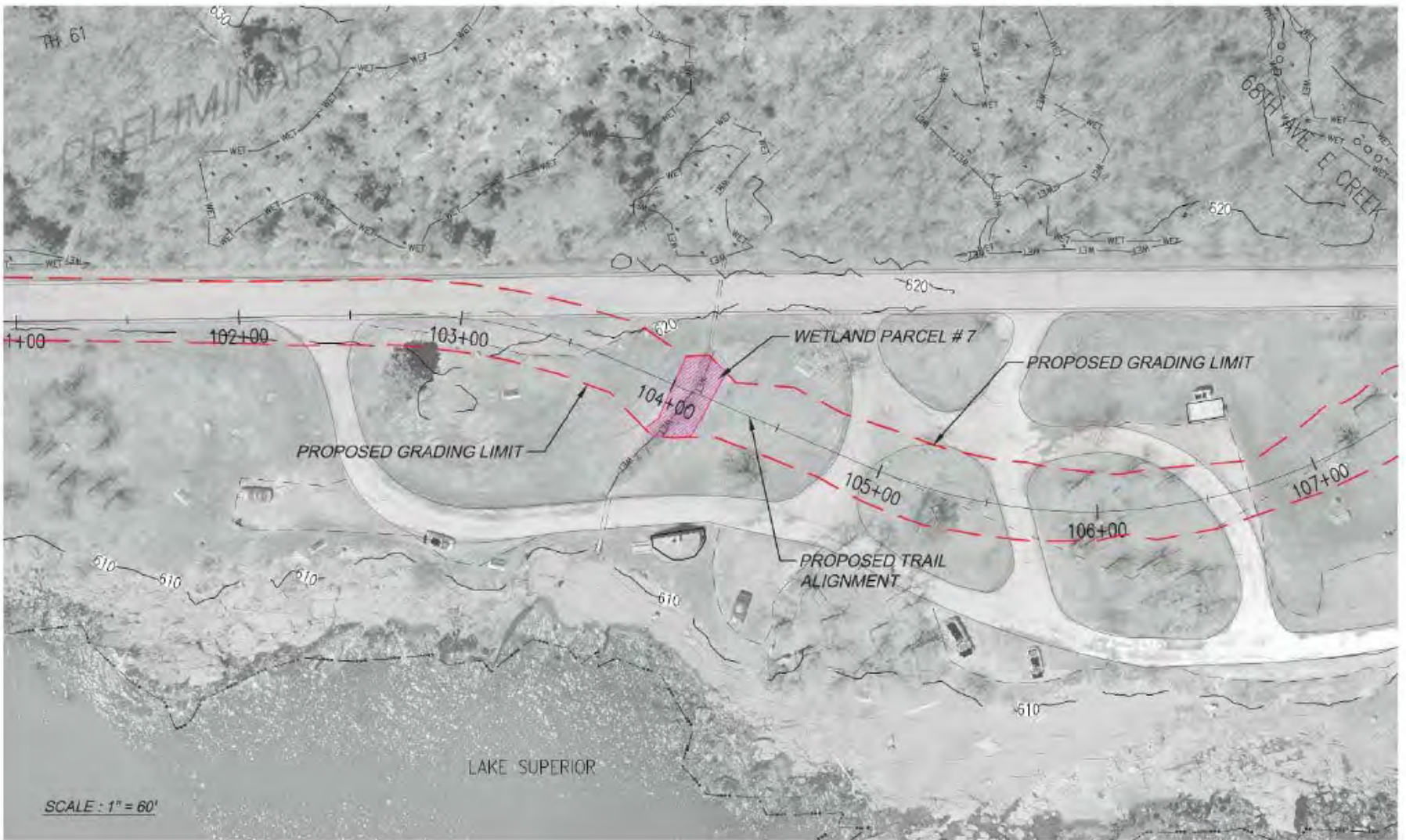


 IMPACTED AREA



LAKEWALK TRAIL EXTENSION - (BRIGHTON BEACH)
 PRELIMINARY WETLAND IMPACTS
 PARCELS (5 & 6)



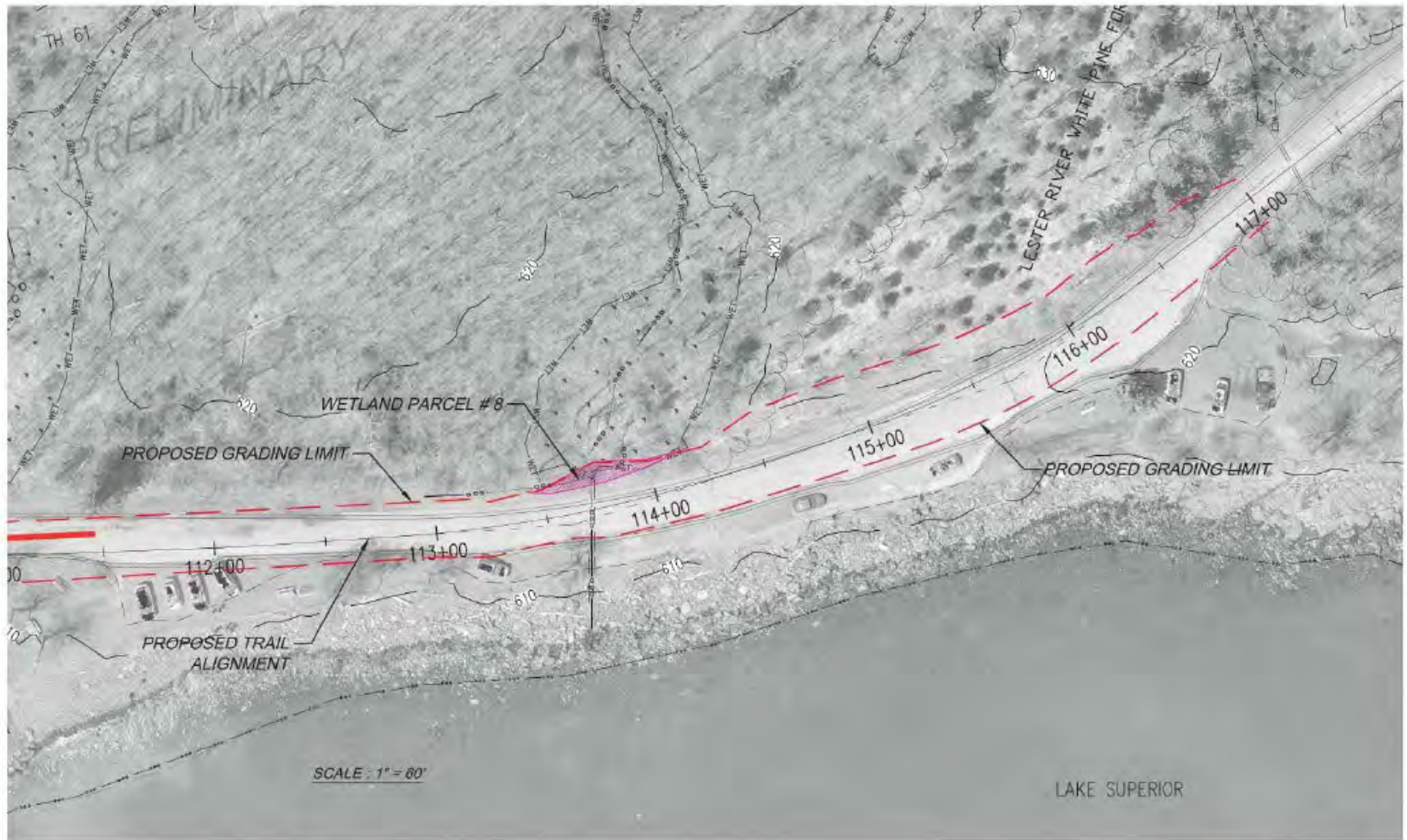



 IMPACTED AREA

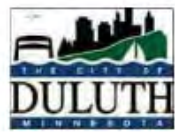


LAKEWALK TRAIL EXTENSION - (BRIGHTON BEACH)
 PRELIMINARY WETLAND IMPACTS
 PARCEL (7)





 IMPACTED AREA



LAKEWALK TRAIL EXTENSION - (BRIGHTON BEACH)
 PRELIMINARY WETLAND IMPACTS
 PARCEL (8)



From: [FEMA-R5-Environmental](#)
To: cliff.bentley@state.mn.us
Subject: FEMA CZMA Consistency Determination - Brighton Beach Road - St. Louis County, Duluth, MN
Date: Thursday, June 30, 2022 1:10:00 PM
Attachments: [image001.png](#)
[CZMA Consistency Determination Brighton Beach Duluth.pdf](#)

Good Afternoon,

Please see the attached CZMA Consistency Determination for the above mentioned project.

Thank you,

Environmental Planning and Historic Preservation | Mitigation Division | FEMA Region 5
Office: 312-408-5549 | Email: fema-r5-environmental@fema.dhs.gov

Federal Emergency Management Agency
fema.gov





FEMA

June 30, 2022

**—CZMA Consistency Determination—
Brighton Beach Road Relocation
Kitchi Gammi Park**

**City of Duluth, St. Louis County, MN
PN 95035 PW 0008/ DR 4414**

46.838049, -92.001752 to 46.846512, -91.990690/ S4 T50N R13W

**Description of
Undertaking and Source
of Federal Funding:**

The Proposed Action includes the relocation of approximately 3,250 linear feet of the existing 4,400 feet of Brighton Beach Road that provides access to Lake Superior and Brighton Beach (Kitchi Gammi) Park. The road construction will relocate a severely degraded roadway above the wave impact line. The relocation of the roadway will provide an average of approximately 160 feet of separation from the edge of the shoreline, and it is anticipated that this separation will be adequate to protect the roadway from shoreline encroachment for at least twenty years. In addition, between three and eight feet of vertical separation will be maintained from the MNDNR ten-foot wave zone of the shoreline. As such, no stabilization work, seeding or other stabilization efforts on the eroded area of the shoreline are proposed with this project.

The existing entrances on the southwest and northwest sides of the park will also be relocated further north and south along Highway 61, respectively, due to the reduced road length. To improve safety, the entire road will be converted to a one-way with traffic exiting the park on the northeast end to Scenic North Shore Drive (Congdon Boulevard), eliminating traffic entering Highway 61 from the south end of the park. Parallel parking will be placed on one side of the road as well as curb and gutter to provide additional access to the park and limit any automobile impacts to the road surface. The road configuration will also separate pedestrian and non-motorized vehicle users on the shared-use path with its associated crossings from automobile traffic on the road. The reconfigured road will provide more accessible and safer means to visit the park and its associated attractions.

The relocated roadway would be located on property already owned by the City of Duluth, and no additional parcels would need to be acquired.

The scope of work for the roadway relocation includes:

- Relocate Brighton Beach Road an average of 120 feet northwesterly and inland from the wave impact line (approximately 160 feet from the shoreline itself). The road will be designed with 11-foot minimum driving lanes with 2-foot minimum shoulders per State Aid Standards.

-
- Relocate the park road entrance from Minnesota Trunk Highway 61 approximately 450 feet to the north.
 - Relocate park road outlet to Congdon Boulevard approximately 750 feet to the south.
 - Grade the roadbed to elevate the road up to eight additional feet with shoulders matching the slope of the surrounding area. The raised roadbed would be approximately 22 feet wide and surfaced with aggregate.
 - Install 20-foot-wide and four-inch-deep asphalt surfacing over the prepared aggregate roadbed.
 - Construct curb and gutter separator at portions of the roadway which run adjacent to the existing multi-use trail.
 - Grade as required to construct the roadway and associated road ditches, importing or exporting fill as needed.
 - Remove existing asphalt driving surface and establish turf in the existing roadway areas.
 - Follow best management practices (BMPs) for erosion and sedimentation control during construction, in accordance with the Minnesota Pollution Control Agency (MPCA) construction stormwater National Pollution Discharge Elimination System (NPDES) general permit.
 - Reestablish appropriate vegetation adjacent to the roadway to provide erosion prevention, in accordance with the construction stormwater NPDES permit.

As the locations listed above lie within the Coastal Zone Management Area and the proposed SOW is not strictly repairing to pre-disaster condition, this package is being submitted for review.

State Permitting Requirements:

As a condition of the grant award, the subrecipient will be responsible for any USACE or state permitting that may be required for this project. FEMA anticipates that state permitting will be required.

Steps Taken to Identify Project's Consistency with the State Coastal Management Program:

A review of the scope of the captioned project makes clear that the federally-funded action is consistent to the maximum extent practicable with federally approved enforceable policies of Minnesota's Coastal Management Program relating to private and public coastal uses and resources.

FEMA's Finding:

FEMA finds this project, if completed as proposed, will be consistent with Minnesota's approved coastal management program and will be conducted in a manner consistent with such program.

Minnesota Department of Natural Resources Please direct the response regarding this consistency review to:
Response:

Duane Castaldi, Regional Environmental Officer
FEMA Region 5
fema-r5-environmental@fema.dhs.gov

Undertaking location marked in red.
USGS Map "Lakewood, MN", 1:24000, enlarged to show detail



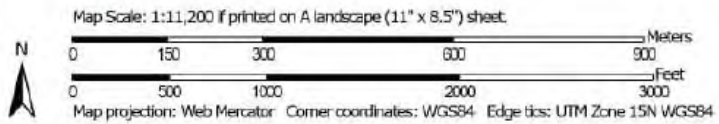
APPENDIX D

Geology, Soils, and Topography

Soil Map—St. Louis County, Minnesota, Duluth Part
(Brighton Beach EA)







































Soil Map may not be valid at this scale.



Soil Map—St. Louis County, Minnesota, Duluth Part
(Brighton Beach EA)

MAP LEGEND

Area of Interest (AOI)		 Spoil Area
 Area of Interest (AOI)		 Stony Spot
Soils		 Very Stony Spot
 Soil Map Unit Polygons		 Wet Spot
 Soil Map Unit Lines		 Other
 Soil Map Unit Points		 Special Line Features
Special Point Features		Water Features
 Blowout		 Streams and Canals
 Borrow Pit		Transportation
 Cley Spot		 Rails
 Closed Depression		 Interstate Highways
 Gravel Pit		 US Routes
 Gravelly Spot		 Major Roads
 Landfill		 Local Roads
 Lava Flow		Background
 Marsh or swamp		 Aerial Photography
 Mine or Quarry		
 Miscellaneous Water		
 Perennial Water		
 Rock Outcrop		
 Saline Spot		
 Sandy Spot		
 Severely Eroded Spot		
 Sinkhole		
 Slide or Slip		
 Sodic Spot		

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG.3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: St. Louis County, Minnesota, Duluth Part
Survey Area Data: Version 19, Sep 10, 2021

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: May 18, 2021—Jul 8, 2021

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
E4B	Cutire-Eutrudepts, complex, 0 to 8 percent slopes	16.3	19.6%
E11E	Miskoaki-Rock outcrop complex, 18 to 70 percent slopes	8.6	10.3%
E14B	Barlo, stony-Greysolon-Rock outcrop complex, 0 to 8 percent slopes	32.0	38.4%
E14D	Barlo, stony-Greysolon-Rock outcrop complex, 0 to 18 percent slopes	23.1	27.8%
E25D	Urban land-Arnicon-Rock outcrop complex, 0 to 18 percent slopes	0.3	0.3%
Totals for Area of Interest		83.2	100.0%

APPENDIX E

Air Quality



You are here: EPA Home > Green Book > >National Area and County-Level Multi-Pollutant Information >Minnesota Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants

Minnesota Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants

Data is current as of August 31, 2022

Listed by County, NAAQS, Area. The 8-hour Ozone (1997) standard was revoked on April 6, 2015 and the 1-hour Ozone (1979) standard was revoked on June 15, 2005.

* The 1997 Primary Annual PM-2.5 NAAQS (level of 15 µg/m³) is revoked in attainment and maintenance areas for that NAAQS. For additional information see the PM-2.5 NAAQS SIP Requirements Final Rule, effective October 24, 2016. (81 FR 58009)

Change the State:

MINNESOTA

Important Notes

Download National Dataset: [dbf](#) | [xls](#) | [Data dictionary \(PDF\)](#)

County	NAAQS	Area Name	Nonattainment in Year	Redesignation to Maintenance	Classification	Whole or Part County	Population (2010)	State/County FIPS Codes
MINNESOTA								
Anoka County	Carbon Monoxide (1971)	Minneapolis-St. Paul, MN	92939495969798	11/29/1999	Moderate <= 12.7ppm	Whole	330,844	27/003
Anoka County	Sulfur Dioxide (1971)	Minneapolis-St. Paul, MN	9293949596	07/14/1997		Whole	330,844	27/003
Carver County	Carbon Monoxide (1971)	Minneapolis-St. Paul, MN	92939495969798	11/29/1999	Moderate <= 12.7ppm	Part	77,969	27/019
Carver County	Sulfur Dioxide (1971)	Minneapolis-St. Paul, MN	9293949596	07/14/1997		Whole	91,042	27/019
Dakota County	Carbon Monoxide (1971)	Minneapolis-St. Paul, MN	92939495969798	11/29/1999	Moderate <= 12.7ppm	Part	380,675	27/037
Dakota County	Lead (1978)	Dakota County, MN	9293	12/19/1994		Part	318,833	27/037
Dakota County	Lead (2008)	Eagan, MN	10111213141516171819202122	//		Part	8,997	27/037
Dakota County	Sulfur Dioxide (1971)	Minneapolis-St. Paul, MN	9293949596	07/14/1997		Whole	398,552	27/037
Hennepin County	Carbon Monoxide (1971)	Minneapolis-St. Paul, MN	92939495969798	11/29/1999	Moderate <= 12.7ppm	Whole	1,152,425	27/053

County	NAAQS	Area Name	Nonattainment in Year	Redesignation to Maintenance	Classification	Whole or Part County	Population (2010)	State/County FIPS Codes
Hennepin County	Sulfur Dioxide (1971)	Minneapolis-St. Paul, MN	9293949596	07/14/1997		Whole	1,152,425	27/053
Olmsted County	PM-10 (1987)	Olmsted County, MN	929394	07/31/1995	Moderate	Part	96,199	27/109
Olmsted County	Sulfur Dioxide (1971)	Olmsted County; City of Rochester, MN	929394959697989900	05/08/2001		Part	106,769	27/109
Ramsey County	Carbon Monoxide (1971)	Minneapolis-St. Paul, MN	92939495969798	11/29/1999	Moderate <= 12.7ppm	Whole	508,640	27/123
Ramsey County	PM-10 (1987)	Ramsey County, MN	92939495969798990001	09/24/2002	Moderate	Part	284,783	27/123
Ramsey County	Sulfur Dioxide (1971)	Minneapolis-St. Paul, MN	9293949596	07/14/1997		Whole	508,640	27/123
Scott County	Carbon Monoxide (1971)	Minneapolis-St. Paul, MN	92939495969798	11/29/1999	Moderate <= 12.7ppm	Part	119,772	27/139
Scott County	Sulfur Dioxide (1971)	Minneapolis-St. Paul, MN	9293949596	07/14/1997		Whole	129,928	27/139
St. Louis County	Carbon Monoxide (1971)	Duluth, MN	9293	06/13/1994	Moderate <= 12.7ppm	Part	85,857	27/137
Washington County	Carbon Monoxide (1971)	Minneapolis-St. Paul, MN	92939495969798	11/29/1999	Moderate <= 12.7ppm	Part	236,399	27/163
Washington County	Sulfur Dioxide (1971)	Minneapolis-St. Paul, MN	9293949596	07/14/1997		Whole	238,136	27/163
Wright County	Carbon Monoxide (1971)	Minneapolis-St. Paul, MN	92939495969798	11/29/1999	Moderate <= 12.7ppm	Part	113,454	27/171

Important Notes

Discover.

Connect.

Ask.

Follow.

2022-08-31

U.S. Environmental Protection Agency
Construction Emission Control Checklist

Consider measures that apply to the proposed project from the following list.

Mobile and Stationary Source Diesel Controls

Purchase or solicit bids that require the use of vehicles that are equipped with zero-emission technologies or the most advanced emission control systems available. Commit to the best available emissions control technologies for project equipment in order to meet the following standards.

- On-Highway Vehicles: On-highway vehicles should meet, or exceed, the EPA exhaust emissions standards for model year 2010 and newer heavy-duty, on-highway compression-ignition engines (e.g., long-haul trucks, refuse haulers, shuttle buses, etc.).⁶
- Non-road Vehicles and Equipment: Non-road vehicles and equipment should meet, or exceed, the EPA Tier 4 exhaust emissions standards for heavy-duty, non-road compression-ignition engines (e.g., construction equipment, non-road trucks, etc.).⁷
- Locomotives: Locomotives servicing infrastructure sites should meet, or exceed, the U.S. EPA Tier 4 exhaust emissions standards for line-haul and switch locomotive engines where possible.⁸
- Marine Vessels: Marine vessels hauling materials for infrastructure projects should meet, or exceed, the latest U.S. EPA exhaust emissions standards for marine compression-ignition engines (e.g., Tier 4 for Category 1 & 2 vessels, and Tier 3 for Category 3 vessels).⁹
- Low Emission Equipment Exemptions: The equipment specifications outlined above should be met unless: 1) a piece of specialized equipment is not available for purchase or lease within the United States; or 2) the relevant project contractor has been awarded funds to retrofit existing equipment, or purchase/lease new equipment, but the funds are not yet available.

Consider requiring the following best practices through the construction contracting or oversight process:

- Establish and enforce a clear anti-idling policy for the construction site.
- Use onsite renewable electricity generation and/or grid-based electricity rather than diesel-powered generators or other equipment.
- Use electric starting aids such as block heaters with older vehicles to warm the engine.
- Regularly maintain diesel engines to keep exhaust emissions low. Follow the manufacturer's recommended maintenance schedule and procedures. Smoke color can signal the need for maintenance (e.g., blue/black smoke indicates that an engine requires servicing or tuning).
- Retrofit engines with an exhaust filtration device to capture diesel particulate matter before it enters the construction site.

⁶ <http://www.epa.gov/otaq/standards/heavy-duty/hdci-exhaust.htm>

⁷ <http://www.epa.gov/otaq/standards/nonroad/nonroadci.htm>

⁸ <http://www.epa.gov/otaq/standards/nonroad/locomotives.htm>

⁹ <http://www.epa.gov/otaq/standards/nonroad/marineci.htm>

- Repower older vehicles and/or equipment with diesel- or alternatively fueled engines certified to meet newer, more stringent emissions standards (e.g., plug-in hybrid-electric vehicles, battery-electric vehicles, fuel cell electric vehicles, advanced technology locomotives, etc.).

Fugitive Dust Source Controls

- Stabilize open storage piles and disturbed areas by covering and/or applying water or chemical/organic dust palliative, where appropriate. This applies to both inactive and active sites, during workdays, weekends, holidays, and windy conditions.
- Install wind fencing and phase grading operations where appropriate, and operate water trucks for stabilization of surfaces under windy conditions.
- When hauling material and operating non-earthmoving equipment, prevent spillage and limit speeds to 15 miles per hour (mph). Limit speed of earth-moving equipment to 10 mph.

Occupational Health

- Reduce exposure through work practices and training, such as turning off engines when vehicles are stopped for more than a few minutes, training diesel-equipment operators to perform routine inspection, and maintaining filtration devices.
- Position the exhaust pipe so that diesel fumes are directed away from the operator and nearby workers, reducing the fume concentration to which personnel are exposed.
- Use enclosed, climate-controlled cabs pressurized and equipped with high-efficiency particulate air (HEPA) filters to reduce the operators' exposure to diesel fumes. Pressurization ensures that air moves from inside to outside. HEPA filters ensure that any incoming air is filtered first.

APPENDIX F

Threatened, Endangered Species, and Migratory Birds



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Minnesota-Wisconsin Ecological Services Field Office
3815 American Blvd East
Bloomington, MN 55425-1659
Phone: (952) 858-0793 Fax: (952) 646-2873



In Reply Refer To:
Project Code: 2022-0070339
Project Name: Brighton Beach Road Relocation

March 24, 2023

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

This response has been generated by the Information, Planning, and Conservation (IPaC) system to provide information on natural resources that could be affected by your project. The U.S. Fish and Wildlife Service (Service) provides this response under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), the Migratory Bird Treaty Act (16 U.S.C. 703-712), and the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

Threatened and Endangered Species

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and may be affected by your proposed project. The species list fulfills the requirement for obtaining a Technical Assistance Letter from the U.S. Fish and Wildlife Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. The Service recommends that verification be completed by visiting the ECOS IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS IPaC system by completing the same process used to receive the enclosed list.

Consultation Technical Assistance

Please refer to our [Section 7 website](#) for guidance and technical assistance, including [step-by-step instructions](#) for making effects determinations for each species that might be present and for specific guidance on the following types of projects: projects in developed areas, HUD, CDBG, EDA, USDA Rural Development projects, pipelines, buried utilities, telecommunications, and requests for a Conditional Letter of Map Revision (CLOMR) from FEMA.

We recommend running the project (if it qualifies) through our **Minnesota-Wisconsin Federal Endangered Species Determination Key (Minnesota-Wisconsin ("D-key"))**. A [demonstration video](#) showing how-to access and use the determination key is available. Please note that the Minnesota-Wisconsin D-key is the third option of 3 available d-keys. D-keys are tools to help Federal agencies and other project proponents determine if their proposed action has the potential to adversely affect federally listed species and designated critical habitat. The Minnesota-Wisconsin D-key includes a structured set of questions that assists a project proponent in determining whether a proposed project qualifies for a certain predetermined consultation outcome for all federally listed species found in Minnesota and Wisconsin (except for the northern long-eared bat- see below), which includes determinations of "no effect" or "may affect, not likely to adversely affect." In each case, the Service has compiled and analyzed the best available information on the species' biology and the impacts of certain activities to support these determinations.

If your completed d-key output letter shows a "No Effect" (NE) determination for all listed species, print your IPaC output letter for your files to document your compliance with the Endangered Species Act.

For Federal projects with a "Not Likely to Adversely Affect" (NLAA) determination, our concurrence becomes valid if you do not hear otherwise from us after a 30-day review period, as indicated in your letter.

If your d-key output letter indicates additional coordination with the Minnesota-Wisconsin Ecological Services Field Office is necessary (i.e., you get a "May Affect" determination), you will be provided additional guidance on contacting the Service to continue ESA coordination outside of the key; ESA compliance cannot be concluded using the key for "May Affect" determinations unless otherwise indicated in your output letter.

Note: Once you obtain your official species list, you are not required to continue in IPaC with d-keys, although in most cases these tools should expedite your review. If you choose to make an effects determination on your own, you may do so. If the project is a Federal Action, you may want to review our section 7 step-by-step instructions before making your determinations.

Using the IPaC Official Species List to Make No Effect and May Affect Determinations for Listed Species

1. If IPaC returns a result of "There are no listed species found within the vicinity of the project," then project proponents can conclude the proposed activities will have **no effect** on any federally listed species under Service jurisdiction. Concurrence from the Service is not required for **no effect** determinations. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records.
 2. If IPaC returns one or more federally listed, proposed, or candidate species as potentially present in the action area of the proposed project – other than bats (see below) – then project proponents must determine if proposed activities will have **no effect** on or **may affect** those species. For assistance in determining if suitable habitat for listed, candidate, or proposed species occurs within your project area or if species may be affected by project activities, you can obtain [Life History Information for Listed and Candidate Species](#) on our office website. If no impacts will occur to a species on the IPaC species list (e.g., there is no habitat present in the project area), the appropriate determination is **no effect**. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records.
-

3. Should you determine that project activities **may affect** any federally listed, please contact our office for further coordination. Letters with requests for consultation or correspondence about your project should include the Consultation Tracking Number in the header. Electronic submission is preferred.

Northern Long-Eared Bats

Northern long-eared bats occur throughout Minnesota and Wisconsin and the information below may help in determining if your project may affect these species.

This species hibernates in caves or mines only during the winter. In Minnesota and Wisconsin, the hibernation season is considered to be November 1 to March 31. During the active season (April 1 to October 31) they roost in forest and woodland habitats. Suitable summer habitat for northern long-eared bats consists of a wide variety of forested/wooded habitats where they roost, forage, and travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roosts (i.e., live trees and/or snags ≥ 3 inches dbh for northern long-eared bat that have exfoliating bark, cracks, crevices, and/or hollows), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. Individual trees may be considered suitable habitat when they exhibit the characteristics of a potential roost tree and are located within 1,000 feet (305 meters) of forested/wooded habitat. Northern long-eared bats have also been observed roosting in human-made structures, such as buildings, barns, bridges, and bat houses; therefore, these structures should also be considered potential summer habitat and evaluated for use by bats. If your project will impact caves or mines or will involve clearing forest or woodland habitat containing suitable roosting habitat, northern long-eared bats could be affected.

Examples of unsuitable habitat include:

- Individual trees that are greater than 1,000 feet from forested or wooded areas,
- Trees found in highly developed urban areas (e.g., street trees, downtown areas),
- A pure stand of less than 3-inch dbh trees that are not mixed with larger trees, and
- A monoculture stand of shrubby vegetation with no potential roost trees.

If IPaC returns a result that northern long-eared bats are potentially present in the action area of the proposed project, project proponents can conclude the proposed activities **may affect** this species **IF** one or more of the following activities are proposed:

- Clearing or disturbing suitable roosting habitat, as defined above, at any time of year,
- Any activity in or near the entrance to a cave or mine,
- Mining, deep excavation, or underground work within 0.25 miles of a cave or mine,
- Construction of one or more wind turbines, or
- Demolition or reconstruction of human-made structures that are known to be used by bats based on observations of roosting bats, bats emerging at dusk, or guano deposits or stains.

If none of the above activities are proposed, project proponents can conclude the proposed activities will have **no effect** on the northern long-eared bat. Concurrence from the Service is not required for **No**

Effect determinations. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records.

If any of the above activities are proposed, and the northern long-eared bat appears on the user's species list, the federal project user will be directed to either the northern long-eared bat 4(d) D-key or the Federal Highways Administration, Federal Railways Administration, and Federal Transit Administration Indiana bat/Northern long-eared bat D-key, depending on the type of project and federal agency involvement. Similar to the Minnesota-Wisconsin D-key, these d-keys help to determine if prohibited take might occur and, if not, will generate an automated verification letter. The 4(d) D-key streamlines consultation under the 2016 range-wide programmatic biological opinion for the 4(d) rule.

Please note: On November 30, 2022, the Service published a proposal final rule to reclassify the northern long-eared bat as endangered under the Endangered Species Act. On January 26, 2023, the Service published a 60-day extension for the final reclassification rule in the Federal Register, moving the effective listing date from January 30, 2023, to March 31, 2023. This extension will provide stakeholders and the public time to preview interim guidance and consultation tools before the rule becomes effective. When available, the tools will be available on the Service's northern long-eared bat website (<https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis>). Once the final rule goes into effect on March 31, 2023, the 4(d) D-key will no longer be available (4(d) rules are not available for federally endangered species) and will be replaced with a new Range-wide NLEB D-key (range-wide d-key). For projects not completed by March 31, 2023, that were previously reviewed under the 4(d) d-key, there may be a need for reinitiation of consultation. For these ongoing projects previously reviewed under the 4(d) d-key that may result in incidental take of the northern long-eared bat, we recommend you review your project using the new range-wide d-key once available. If your project does not comply with the range-wide d-key, it may be eligible for use of the Interim (formal) Consultation framework (framework). The framework is intended to facilitate the transition from the 4(d) rule to typical Section 7 consultation procedures for federally endangered species and will be available only until spring 2024. Again, when available, these tools (new range-wide d-key and framework) will be available on the Service's [northern long-eared bat website](#).

Whooping Crane

Whooping crane is designated as a non-essential experimental population in Wisconsin and consultation under Section 7(a)(2) of the Endangered Species Act is only required if project activities will occur within a National Wildlife Refuge or National Park. If project activities are proposed on lands outside of a National Wildlife Refuge or National Park, then you are not required to consult. For additional information on this designation and consultation requirements, please review "[Establishment of a Nonessential Experimental Population of Whooping Cranes in the Eastern United States](#)."

Other Trust Resources and Activities

Bald and Golden Eagles - Although the bald eagle has been removed from the endangered species list, this species and the golden eagle are protected by the Bald and Golden Eagle Act and the Migratory Bird Treaty Act. Should bald or golden eagles occur within or near the project area please contact our office for further coordination. For communication and wind energy projects, please refer to additional guidelines below.

Migratory Birds - The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically

authorized by the Service. The Service has the responsibility under the MBTA to proactively prevent the mortality of migratory birds whenever possible and we encourage implementation of [recommendations that minimize potential impacts to migratory birds](#). Such measures include clearing forested habitat outside the nesting season (generally March 1 to August 31) or conducting nest surveys prior to clearing to avoid injury to eggs or nestlings.

Communication Towers - Construction of new communications towers (including radio, television, cellular, and microwave) creates a potentially significant impact on migratory birds, especially some 350 species of night-migrating birds. However, the Service has developed [voluntary guidelines for minimizing impacts](#).

Transmission Lines - Migratory birds, especially large species with long wingspans, heavy bodies, and poor maneuverability can also collide with power lines. In addition, mortality can occur when birds, particularly hawks, eagles, kites, falcons, and owls, attempt to perch on uninsulated or unguarded power poles. To minimize these risks, please refer to [guidelines](#) developed by the Avian Power Line Interaction Committee and the Service. Implementation of these measures is especially important along sections of lines adjacent to wetlands or other areas that support large numbers of raptors and migratory birds.

Wind Energy - To minimize impacts to migratory birds and bats, wind energy projects should follow the Service's [Wind Energy Guidelines](#). In addition, please refer to the Service's [Eagle Conservation Plan Guidance](#), which provides guidance for conserving bald and golden eagles in the course of siting, constructing, and operating wind energy facilities.

State Department of Natural Resources Coordination

While it is not required for your Federal section 7 consultation, please note that additional state endangered or threatened species may also have the potential to be impacted. Please contact the Minnesota or Wisconsin Department of Natural Resources for information on state listed species that may be present in your proposed project area.

Minnesota

[Minnesota Department of Natural Resources - Endangered Resources Review Homepage](#)

Email: Review.NHIS@state.mn.us

Wisconsin

[Wisconsin Department of Natural Resources - Endangered Resources Review Homepage](#)

Email: DNREReview@wi.gov

We appreciate your concern for threatened and endangered species. Please feel free to contact our office with questions or for additional information.

Attachment(s):

- Official Species List
 - USFWS National Wildlife Refuges and Fish Hatcheries
 - Migratory Birds
 - Wetlands
-

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Minnesota-Wisconsin Ecological Services Field Office
3815 American Blvd East
Bloomington, MN 55425-1659
(952) 858-0793

PROJECT SUMMARY

Project Code: 2022-0070339

Project Name: Brighton Beach Road Relocation

Project Type: Disaster-related Grants

Project Description: The project includes the relocation of approximately 3,250 linear feet of the existing 4,400 feet of Brighton Beach Road that provides access to Lake Superior and Brighton Beach (Kitchi Gammi) Park. The road construction will relocate a severely degraded roadway above the wave impact line. The relocation of the roadway will provide an average of approximately 160 feet of separation from the edge of the shoreline, and it is anticipated that this separation will be adequate to protect the roadway from shoreline encroachment for at least twenty years. In addition, between three and eight feet of vertical separation will be maintained from the MNDNR ten-foot wave zone of the shoreline. As such, no stabilization work, seeding or other stabilization efforts on the eroded area of the shoreline are proposed with this project.

The existing entrances on the southwest and northwest sides of the park will also be relocated further north and south along Highway 61, respectively, due to the reduced road length. To improve safety, the entire road will be converted to a one-way with traffic exiting the park on the northeast end to Scenic North Shore Drive (Congdon Boulevard), eliminating traffic entering Highway 61 from the south end of the park. Parallel parking will be placed on one side of the road as well as curb and gutter to provide additional access to the park and limit any automobile impacts to the road surface. The road configuration will also separate pedestrian and non-motorized vehicle users on the shared-use path with its associated crossings from automobile traffic on the road. The reconfigured road will provide more accessible and safer means to visit the park and its associated attractions.

The relocated roadway would be located on property already owned by the City of Duluth, and no additional parcels would need to be acquired.

The scope of work for the roadway relocation includes:

- Relocate Brighton Beach Road an average of 120 feet northwesterly and inland from the wave impact line (approximately 160 feet from the shoreline itself). The road will be designed with 11-foot minimum driving lanes with 2-foot minimum shoulders per State Aid Standards.
 - Relocate the park road entrance from Minnesota Trunk Highway 61 approximately 450 feet to the north.
 - Relocate park road outlet to Congdon Boulevard approximately 750 feet to the south.
 - Grade the roadbed to elevate the road up to eight additional feet with shoulders matching the slope of the surrounding area. The raised roadbed would be approximately 22 feet wide and surfaced with aggregate.
 - Install 20-foot-wide and four-inch-deep asphalt surfacing over the
-

prepared aggregate roadbed.

- Construct curb and gutter separator at portions of the roadway which run adjacent to the existing multi-use trail.
- Grade as required to construct the roadway and associated road ditches, importing or exporting fill as needed.
- Remove existing asphalt driving surface and establish turf in the existing roadway areas.
- Follow best management practices (BMPs) for erosion and sedimentation control during construction, in accordance with the Minnesota Pollution Control Agency (MPCA) construction stormwater National Pollution Discharge Elimination System (NPDES) general permit.
- Reestablish appropriate vegetation adjacent to the roadway to provide erosion prevention, in accordance with the construction stormwater NPDES permit.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@46.84178465,-91.99637640502573,14z>



Counties: St. Louis County, Minnesota

ENDANGERED SPECIES ACT SPECIES

There is a total of 7 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Canada Lynx <i>Lynx canadensis</i> Population: Wherever Found in Contiguous U.S. There is final critical habitat for this species. Your location overlaps the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/3652	Threatened
Gray Wolf <i>Canis lupus</i> Population: MN There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/4488	Threatened
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened
Tricolored Bat <i>Perimyotis subflavus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10515	Proposed Endangered

BIRDS

NAME	STATUS
Piping Plover <i>Charadrius melodus</i> Population: [Great Lakes watershed DPS] - Great Lakes, watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI and Canada (Ont.) There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Endangered
Red Knot <i>Calidris canutus rufa</i> There is proposed critical habitat for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRITICAL HABITATS

There is 1 critical habitat wholly or partially within your project area under this office's jurisdiction.

NAME	STATUS
Canada Lynx <i>Lynx canadensis</i> https://ecos.fws.gov/ecp/species/3652#crithab	Final

USFWS NATIONAL WILDLIFE REFUGE LANDS AND FISH HATCHERIES

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

MIGRATORY BIRDS

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

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1. The [Migratory Birds Treaty Act](#) of 1918.
 2. The [Bald and Golden Eagle Protection Act](#) of 1940.
 3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern \(BCC\)](#) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Bald Eagle <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.	Breeds Dec 1 to Aug 31
Black-billed Cuckoo <i>Coccyzus erythrophthalmus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9399	Breeds May 15 to Oct 10

NAME	BREEDING SEASON
Bobolink <i>Dolichonyx oryzivorus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 20 to Jul 31
Canada Warbler <i>Cardellina canadensis</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 20 to Aug 10
Chimney Swift <i>Chaetura pelagica</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds Mar 15 to Aug 25
Common Tern <i>Sterna hirundo hirundo</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA	Breeds May 1 to Aug 31
Connecticut Warbler <i>Oporornis agilis</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds Jun 15 to Aug 10
Eastern Whip-poor-will <i>Antrostomus vociferus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 1 to Aug 20
Evening Grosbeak <i>Coccothraustes vespertinus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 15 to Aug 10
Golden Eagle <i>Aquila chrysaetos</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/1680	Breeds Jan 1 to Aug 31
Golden-winged Warbler <i>Vermivora chrysoptera</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/8745	Breeds May 1 to Jul 20
Lesser Yellowlegs <i>Tringa flavipes</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9679	Breeds elsewhere
Long-eared Owl <i>asio otus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3631	Breeds Mar 1 to Jul 15

NAME	BREEDING SEASON
Olive-sided Flycatcher <i>Contopus cooperi</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3914	Breeds May 20 to Aug 31
Wood Thrush <i>Hylocichla mustelina</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 10 to Aug 31

PROBABILITY OF PRESENCE SUMMARY

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

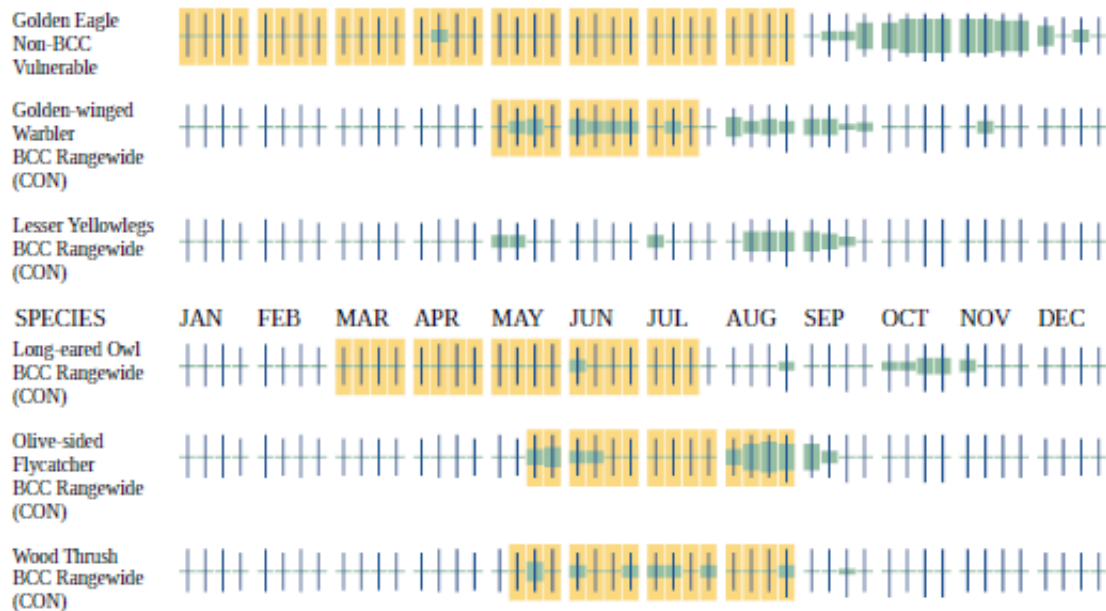
Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.



Additional information can be found using the following links:

- Birds of Conservation Concern <https://www.fws.gov/program/migratory-birds/species>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>
- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>

MIGRATORY BIRDS FAQ

Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go to the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering or migrating in my area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may query your location using the [RAIL Tool](#) and look at the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern \(BCC\)](#) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
 2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
 3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).
-

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

WETLANDS

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

LAKE

- [L2USA](#)
- [L1UBH](#)

IPAC USER CONTACT INFORMATION

Agency: Federal Emergency Management Agency

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Minnesota-Wisconsin Ecological Services Field Office
3815 American Blvd East
Bloomington, MN 55425-1659
Phone: (952) 858-0793 Fax: (952) 646-2873



In Reply Refer To:
Project code: 2022-0070339
Project Name: Brighton Beach Road Relocation

March 30, 2023

Federal Nexus: yes
Federal Action Agency (if applicable): Federal Emergency Management Agency

Subject: Federal agency coordination under the Endangered Species Act, Section 7 for 'Brighton Beach Road Relocation'

Dear Aubri Urbanek:

This letter records your determination using the Information for Planning and Consultation (IPaC) system provided to the U.S. Fish and Wildlife Service (Service) on March 30, 2023, for 'Brighton Beach Road Relocation' (here forward, Project). This project has been assigned Project Code 2022-0070339 and all future correspondence should clearly reference this number. **Please carefully review this letter. Your Endangered Species Act (Act) requirements may not be complete.**

Ensuring Accurate Determinations When Using IPaC

The Service developed the IPaC system and associated species' determination keys in accordance with the Endangered Species Act of 1973 (ESA; 87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) and based on a standing analysis. All information submitted by the Project proponent into the IPaC must accurately represent the full scope and details of the Project. Failure to accurately represent or implement the Project as detailed in IPaC or the Northern Long-eared Bat Rangewide Determination Key (DKey), invalidates this letter.

Determination for the Northern Long-Eared Bat

Based upon your IPaC submission and a standing analysis completed by the Service, your project has reached the determination of “May Affect, Not Likely to Adversely Affect” the northern long-eared bat. Unless the Service advises you within 15 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that consultation on the Action is complete and no further action is necessary unless either of the following occurs:

- new information reveals effects of the action that may affect the northern long-eared bat in a manner or to an extent not previously considered; or,
- the identified action is subsequently modified in a manner that causes an effect to the northern long-eared bat that was not considered when completing the determination key.

15-Day Review Period

As indicated above, the Service will notify you within 15 calendar days if we determine that this proposed Action does not meet the criteria for a “may affect, not likely to adversely affect” (NLAA) determination for the northern long-eared bat. If we do not notify you within that timeframe, you may proceed with the Action under the terms of the NLAA concurrence provided here. This verification period allows the identified Ecological Services Field Office to apply local knowledge to evaluation of the Action, as we may identify a small subset of actions having impacts that we did not anticipate when developing the key. In such cases, the identified Ecological Services Field Office may request additional information to verify the effects determination reached through the Northern Long-eared Bat DKey.

Other Species and Critical Habitat that May be Present in the Action Area

The IPaC-assisted determination for the northern long-eared bat does not apply to the following ESA-protected species and/or critical habitat that also may occur in your Action area:

- Canada Lynx *Lynx canadensis* Threatened
- Gray Wolf *Canis lupus* Threatened
- Monarch Butterfly *Danaus plexippus* Candidate
- Piping Plover *Charadrius melodus* Endangered
- Red Knot *Calidris canutus rufa* Threatened
- Tricolored Bat *Perimyotis subflavus* Proposed Endangered

Critical Habitats:

- Canada Lynx *Lynx canadensis* Threatened

You may coordinate with our Office to determine whether the Action may affect the species and/or critical habitat listed above. Note that reinitiation of consultation would be necessary if a new species is listed or critical habitat designated that may be affected by the identified action before it is complete.

If you have any questions regarding this letter or need further assistance, please contact the Minnesota-Wisconsin Ecological Services Field Office and reference Project Code 2022-0070339 associated with this Project.

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

Brighton Beach Road Relocation

2. Description

The following description was provided for the project 'Brighton Beach Road Relocation':

The project includes the relocation of approximately 3,250 linear feet of the existing 4,400 feet of Brighton Beach Road that provides access to Lake Superior and Brighton Beach (Kitchi Gammi) Park. The road construction will relocate a severely degraded roadway above the wave impact line. The relocation of the roadway will provide an average of approximately 160 feet of separation from the edge of the shoreline, and it is anticipated that this separation will be adequate to protect the roadway from shoreline encroachment for at least twenty years. In addition, between three and eight feet of vertical separation will be maintained from the MNDNR ten-foot wave zone of the shoreline. As such, no stabilization work, seeding or other stabilization efforts on the eroded area of the shoreline are proposed with this project.

The existing entrances on the southwest and northwest sides of the park will also be relocated further north and south along Highway 61, respectively, due to the reduced road length. To improve safety, the entire road will be converted to a one-way with traffic exiting the park on the northeast end to Scenic North Shore Drive (Congdon Boulevard), eliminating traffic entering Highway 61 from the south end of the park. Parallel parking will be placed on one side of the road as well as curb and gutter to provide additional access to the park and limit any automobile impacts to the road surface. The road configuration will also separate pedestrian and non-motorized vehicle users on the shared-use path with its associated crossings from automobile traffic on the road. The reconfigured road will provide more accessible and safer means to visit the park and its associated attractions. The relocated roadway would be located on property already owned by the City of Duluth, and no additional parcels would need to be acquired.

The scope of work for the roadway relocation includes:

- Relocate Brighton Beach Road an average of 120 feet northwesterly and inland from the wave impact line (approximately 160 feet from the shoreline itself). The road will be designed with 11-foot minimum driving lanes with 2-foot minimum shoulders per State Aid Standards.
 - Relocate the park road entrance from Minnesota Trunk Highway 61 approximately 450 feet to the north.
 - Relocate park road outlet to Congdon Boulevard approximately 750 feet to the south.
 - Grade the roadbed to elevate the road up to eight additional feet with shoulders matching the slope of the surrounding area. The raised roadbed would be approximately 22 feet wide and surfaced with aggregate.
-

- Install 20-foot-wide and four-inch-deep asphalt surfacing over the prepared aggregate roadbed.
- Construct curb and gutter separator at portions of the roadway which run adjacent to the existing multi-use trail.
- Grade as required to construct the roadway and associated road ditches, importing or exporting fill as needed.
- Remove existing asphalt driving surface and establish turf in the existing roadway areas.
- Follow best management practices (BMPs) for erosion and sedimentation control during construction, in accordance with the Minnesota Pollution Control Agency (MPCA) construction stormwater National Pollution Discharge Elimination System (NPDES) general permit.
- Reestablish appropriate vegetation adjacent to the roadway to provide erosion prevention, in accordance with the construction stormwater NPDES permit.

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@46.84178465,-91.99637640502573,14z>



DETERMINATION KEY RESULT

Based on the answers provided, the proposed Action is consistent with a determination of “may affect, but not likely to adversely affect” for the Endangered northern long-eared bat (*Myotis septentrionalis*).

QUALIFICATION INTERVIEW

1. Does the proposed project include, or is it reasonably certain to cause, intentional take of the northern long-eared bat or any other listed species?

Note: Intentional take is defined as take that is the intended result of a project. Intentional take could refer to research, direct species management, surveys, and/or studies that include intentional handling/encountering, harassment, collection, or capturing of any individual of a federally listed threatened, endangered or proposed species?

No

2. Do you have post-white nose syndrome occurrence data that indicates that northern long-eared bats (NLEB) present in the action area? Bat occurrence data may include identification of NLEBs in hibernacula, capture of NLEBs, tracking of NLEBs to roost trees, or confirmed acoustic detections.

No

3. Does any component of the action involve construction or operation of wind turbines?

Note: For federal actions, answer ‘yes’ if the construction or operation of wind power facilities is either (1) part of the federal action or (2) would not occur but for a federal agency action (federal permit, funding, etc.).

No

4. Is the proposed action authorized, permitted, licensed, funded, or being carried out by a Federal agency in whole or in part?

Yes

5. Is the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), or Federal Transit Administration (FTA) funding or authorizing the proposed action, in whole or in part?

No

6. Are you an employee of the federal action agency or have you been officially designated in writing by the agency as its designated non-federal representative for the purposes of Endangered Species Act Section 7 informal consultation per 50 CFR § 402.08?

Note: This key may be used for federal actions and for non-federal actions to facilitate section 7 consultation and to help determine whether an incidental take permit may be needed, respectively. This question is for information purposes only.

Yes

7. Is the lead federal action agency the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC)? Is the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC) funding or authorizing the proposed action, in whole or in part?

No

8. Have you determined that your proposed action will have no effect on the northern long-eared bat? Remember to consider the [effects of any activities](#) that would not occur but for the proposed action.

If you think that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, answer "No" below and continue through the key. If you have determined that the northern long-eared bat does not occur in your project's action area and/or that your project will have no effects whatsoever on the species despite the potential for it to occur in the action area, you may make a "no effect" determination for the northern long-eared bat.

Note: Federal agencies (or their designated non-federal representatives) must consult with USFWS on federal agency actions that may affect listed species [50 CFR 402.14(a)]. Consultation is not required for actions that will not affect listed species or critical habitat. Therefore, this determination key will not provide a consistency or verification letter for actions that will not affect listed species. If you believe that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, please answer "No" and continue through the key. Remember that this key addresses only effects to the northern long-eared bat. Consultation with USFWS would be required if your action may affect another listed species or critical habitat. The definition of [Effects of the Action](#) can be found here: <https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions>

No

9. Does the action area contain any caves (or associated sinkholes, fissures, or other karst features), mines, rocky outcroppings, or tunnels that could provide habitat for hibernating northern long-eared bats?

No

10. Does the action area contain or occur within 0.5 miles of (1) talus or (2) anthropogenic or naturally formed rock crevices in rocky outcrops, rock faces or cliffs?

No

11. Is suitable summer habitat for the northern long-eared bat present within 1000 feet of project activities?
(If unsure, answer "Yes.")

Note: If there are trees within the action area that are of a sufficient size to be potential roosts for bats (i.e., live trees and/or snags ≥ 3 inches (12.7 centimeter) dbh), answer "Yes". If unsure, additional information defining suitable summer habitat for the northern long-eared bat can be found at: <https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions>

Yes

12. Will the action cause effects to a bridge?

No

13. Will the action result in effects to a culvert or tunnel?

No

14. Does the action include the intentional exclusion of northern long-eared bats from a building or structure?

Note: Exclusion is conducted to deny bats' entry or reentry into a building. To be effective and to avoid harming bats, it should be done according to established standards. If your action includes bat exclusion and you are unsure whether northern long-eared bats are present, answer "Yes." Answer "No" if there are no signs of bat use in the building/structure. If unsure, contact your local U.S. Fish and Wildlife Services Ecological Services Field Office to help assess whether northern long-eared bats may be present. Contact a Nuisance Wildlife Control Operator (NWCO) for help in how to exclude bats from a structure safely without causing harm to the bats (to find a NWCO certified in bat standards, search the Internet using the search term "National Wildlife Control Operators Association bats"). Also see the White-Nose Syndrome Response Team's guide for bat control in structures

No

15. Does the action involve removal, modification, or maintenance of a human-made structure (barn, house, or other building) **known or suspected to contain roosting bats**?

No

16. Will the action cause construction of one or more new roads open to the public?

For federal actions, answer 'yes' when the construction or operation of these facilities is either (1) part of the federal action or (2) would not occur but for an action taken by a federal agency (federal permit, funding, etc.).

Yes

17. Will any new road go through any area of contiguous forest that is greater than or equal to 10 acres in total extent?

Note: "Contiguous forest" of 10 acres or more may include areas where multiple forest patches are separated by less than 1,000 feet of non-forest if the forested patches, added together, comprise at least 10 acres.

Yes

18. For every 1,000 feet of new road that crosses between contiguous forest patches, will there be at least one place where bats could cross the road corridor by flying less than 33 feet (10 meters) between trees whose tops are at least 66 feet (20 meters) higher than the road surface?

Yes

19. Will the proposed action involve the creation of a new water-borne contaminant source (e.g., leachate pond pits containing chemicals that are not NSF/ANSI 60 compliant)?

No

20. Will the proposed action involve the creation of a new point source discharge from a facility other than a water treatment plant or storm water system?
No
21. Will the action include drilling or blasting?
No
22. Will the action involve military training (e.g., smoke operations, obscurant operations, exploding munitions, artillery fire, range use, helicopter or fixed wing aircraft use)?
No
23. Will the proposed action involve the use of herbicides or pesticides other than herbicides (e.g., fungicides, insecticides, or rodenticides)?
No
24. Will the action include or cause activities that are reasonably certain to cause chronic nighttime noise in suitable summer habitat for the northern long-eared bat? Chronic noise is noise that is continuous or occurs repeatedly again and again for a long time.

Note: Additional information defining suitable summer habitat for the northern long-eared bat can be found at: <https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions>

No

25. Does the action include, or is it reasonably certain to cause, the use of artificial lighting within 1000 feet of suitable northern long-eared bat roosting habitat?

Note: Additional information defining suitable roosting habitat for the northern long-eared bat can be found at: <https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions>

No

26. Will the action include tree cutting or other means of knocking down or bringing down trees, tree topping, or tree trimming?
Yes
27. Has a presence/probable absence summer bat survey targeting the northern long-eared bat following the Service's [Range-wide Indiana Bat and Northern Long-Eared Bat Survey Guidelines](#) been conducted within the project area? If unsure, answer "No."
No

28. Does the action include emergency cutting or trimming of hazard trees in order to remove an imminent threat to human safety or property? See hazard tree note at the bottom of the key for text that will be added to response letters

Note: A "hazard tree" is a tree that is an immediate threat to lives, public health and safety, or improved property and has a diameter breast height of six inches or greater.

No

29. Are any of the trees proposed for cutting or other means of knocking down, bringing down, topping, or trimming suitable for northern long-eared bat roosting (i.e., live trees and/or snags ≥ 3 inches dbh that have exfoliating bark, cracks, crevices, and/or cavities)?

Yes

30. [Semantic] Does your project intersect a known sensitive area for the northern long-eared bat?

Note: The map queried for this question contains proprietary information and cannot be displayed. If you need additional information, please contact your [state agency or USFWS field office](#)

Automatically answered

No

31. Will all tree cutting/trimming or other knocking or bringing down of trees be restricted to the inactive season for the northern long-eared bat?

Note: Inactive Season dates for summer habitat outside of staging and swarming areas can be found here: <https://www.fws.gov/media/inactive-season-dates-swarming-and-staging-areas>.

Yes

32. Will the action cause trees to be cut, knocked down, or otherwise brought down across an area greater than 10 acres?

No

33. Will the action cause trees to be cut, knocked down, or otherwise brought down in a way that would fragment a forested connection (e.g., tree line) between two or more forest patches of at least 5 acres?

The forest patches may consist of entirely contiguous forest or multiple forested areas that are separated by less than 1000' of non-forested area. A project will fragment a forested connection if it creates an unforested gap of greater than 1000'.

Yes

PROJECT QUESTIONNAIRE

Enter the extent of the action area (in acres) from which trees will be removed - round up to the nearest tenth of an acre. For this question, include the entire area where tree removal will take place, even if some live or dead trees will be left standing.

4.3

In what extent of the area (in acres) will trees be cut, knocked down, or trimmed during the inactive (hibernation) season for northern long-eared bat? Note: Inactive Season dates for spring staging/fall swarming areas can be found here: <https://www.fws.gov/media/inactive-season-dates-swarming-and-staging-areas>

4.3

In what extent of the area (in acres) will trees be cut, knocked down, or trimmed during the active (non-hibernation) season for northern long-eared bat? Note: Inactive Season dates for spring staging/fall swarming areas can be found here: <https://www.fws.gov/media/inactive-season-dates-swarming-and-staging-areas>

0

Will all potential northern long-eared bat (NLEB) roost trees (trees ≥ 3 inches diameter at breast height, dbh) be cut, knocked, or brought down from any portion of the action area greater than or equal to 0.1 acre? If all NLEB roost trees will be removed from multiple areas, select 'Yes' if the cumulative extent of those areas meets or exceeds 0.1 acre.

Yes

Enter the extent of the action area (in acres) from which all potential NLEB roost trees will be removed. If all NLEB roost trees will be removed from multiple areas, entire the total extent of those areas. Round up to the nearest tenth of an acre.

4.3

For the area from which all potential northern long-eared bat (NLEB) roost trees will be removed, on how many acres (round to the nearest tenth of an acre) will trees be allowed to regrow? Enter '0' if the entire area from which all potential NLEB roost trees are removed will be developed or otherwise converted to non-forest for the foreseeable future.

4.3

Will any snags (standing dead trees) ≥ 3 inches dbh be left standing in the area(s) in which all northern long-eared bat roost trees will be cut, knocked down, or otherwise brought down?

Yes

Will all project activities be completed by April 1, 2024?

Yes

IPAC USER CONTACT INFORMATION

Agency: Federal Emergency Management Agency

Name: Aubri Urbanek

Address: 536 S Clark St

City: Chicago

State: IL

Zip: 60605

Email: aubri.urbanek@fema.dhs.gov

Phone: 2563438450



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Minnesota-Wisconsin Ecological Services Field Office

3815 American Blvd East

Bloomington, MN 55425-1659

Phone: (952) 858-0793 Fax: (952) 646-2873



In Reply Refer To:
Project code: 2022-0070339
Project Name: Brighton Beach Road Relocation

March 24, 2023

Subject: Verification letter for 'Brighton Beach Road Relocation' for specified threatened and endangered species that may occur in your proposed project location consistent with the Minnesota-Wisconsin Endangered Species Determination Key (Minnesota-Wisconsin DKey).

Dear Aubri Urbanek:

The U.S. Fish and Wildlife Service (Service) received on **March 24, 2023** your effect determination(s) for the 'Brighton Beach Road Relocation' (Action) using the Minnesota-Wisconsin DKey within the Information for Planning and Consultation (IPaC) system. You have submitted this key to satisfy requirements under Section 7(a)(2). The Service developed this system in accordance of with the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C 1531 et seq.).

Based on your answers and the assistance of the Service's Minnesota-Wisconsin DKey, you made the following effect determination(s) for the proposed Action:

Species	Listing Status	Determination
Canada Lynx (<i>Lynx canadensis</i>)	Threatened	NLAA
Gray Wolf (<i>Canis lupus</i>)	Threatened	NLAA
Monarch Butterfly (<i>Danaus plexippus</i>)	Candidate	No effect
Piping Plover (<i>Charadrius melodus</i>)	Endangered	NLAA
Red Knot (<i>Calidris canutus rufa</i>)	Threatened	NLAA
Tricolored Bat (<i>Perimyotis subflavus</i>)	Proposed Endangered	NLAA
Critical Habitat	Listing Status	Determination
Canada Lynx (<i>Lynx canadensis</i>)	Final	NLAA

Determination Information

The Service will notify you within 30 calendar days if we determine that this proposed Action does not meet the criteria for a "may affect, not likely to adversely affect" (NLAA) determination

for Federally listed species in Minnesota and Wisconsin. If we do not notify you within that timeframe, you may proceed with the Action under the terms of the NLAA concurrence provided here. This verification period allows the Minnesota-Wisconsin Ecological Services Field Office to apply local knowledge to evaluation of the Action, as we may identify a small subset of actions having impacts that were unanticipated. In such instances, the Minnesota-Wisconsin Ecological Services Field Office may request additional information to verify the effects determination reached through the Minnesota-Wisconsin DKey.

Additional Information

Sufficient project details: Please provide sufficient project details on your project homepage in IPaC (Define Project, Project Description) to support your conclusions. Failure to disclose important aspects of your project that would influence the outcome of your effects determinations may negate your determinations and invalidate this letter. If you have site-specific information that leads you to believe a different determination is more appropriate for your project than what the Dkey concludes, you can and should proceed based on the best available information.

Future project changes: The Service recommends that you contact the Minnesota-Wisconsin Ecological Services Field Office or re-evaluate the project in IPaC if: 1) the scope or location of the proposed Action is changed; 2) new information reveals that the action may affect listed species or designated critical habitat in a manner or to an extent not previously considered; 3) the Action is modified in a manner that causes effects to listed species or designated critical habitat; or 4) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation with the Service should take place before project changes are final or resources committed.

Species-specific information

Bald and Golden Eagles: Bald eagles, golden eagles, and their nests are protected under the Bald and Golden Eagle Protection Act (54 Stat. 250, as amended, 16 U.S.C. 668a-d) (Eagle Act). The Eagle Act prohibits, except when authorized by an Eagle Act permit, the “taking” of bald and golden eagles and defines “take” as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.” The Eagle Act’s implementing regulations define disturb as “... to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”

If you observe a bald eagle nest in the vicinity of your proposed project, you should follow the National Bald Eagle Management Guidelines (May 2007). For more information on eagles and conducting activities in the vicinity of an eagle nest, please visit our regional eagle website or contact Margaret at Margaret_Rheude@fws.gov. **If the Action may affect bald or golden eagles, additional coordination with the Service under the Eagle Act may be required.**

The following species and/or critical habitats may also occur in your project area and **are not** covered by this conclusion:

- Northern Long-eared Bat *Myotis septentrionalis* Threatened
-

Coordination with the Service is not complete if additional coordination is advised above for any species.

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

Brighton Beach Road Relocation

2. Description

The following description was provided for the project 'Brighton Beach Road Relocation':

The project includes the relocation of approximately 3,250 linear feet of the existing 4,400 feet of Brighton Beach Road that provides access to Lake Superior and Brighton Beach (Kitchi Gammi) Park. The road construction will relocate a severely degraded roadway above the wave impact line. The relocation of the roadway will provide an average of approximately 160 feet of separation from the edge of the shoreline, and it is anticipated that this separation will be adequate to protect the roadway from shoreline encroachment for at least twenty years. In addition, between three and eight feet of vertical separation will be maintained from the MNDNR ten-foot wave zone of the shoreline. As such, no stabilization work, seeding or other stabilization efforts on the eroded area of the shoreline are proposed with this project.

The existing entrances on the southwest and northwest sides of the park will also be relocated further north and south along Highway 61, respectively, due to the reduced road length. To improve safety, the entire road will be converted to a one-way with traffic exiting the park on the northeast end to Scenic North Shore Drive (Congdon Boulevard), eliminating traffic entering Highway 61 from the south end of the park. Parallel parking will be placed on one side of the road as well as curb and gutter to provide additional access to the park and limit any automobile impacts to the road surface. The road configuration will also separate pedestrian and non-motorized vehicle users on the shared-use path with its associated crossings from automobile traffic on the road. The reconfigured road will provide more accessible and safer means to visit the park and its associated attractions. The relocated roadway would be located on property already owned by the City of Duluth, and no additional parcels would need to be acquired.

The scope of work for the roadway relocation includes:

- Relocate Brighton Beach Road an average of 120 feet northwesterly and inland from the wave impact line (approximately 160 feet from the shoreline itself). The road will be designed with 11-foot minimum driving lanes with 2-foot minimum shoulders per State Aid Standards.
 - Relocate the park road entrance from Minnesota Trunk Highway 61 approximately 450 feet to the north.
 - Relocate park road outlet to Congdon Boulevard approximately 750 feet to the south.
 - Grade the roadbed to elevate the road up to eight additional feet with shoulders matching the slope of the surrounding area. The raised roadbed would be approximately 22 feet wide and surfaced with aggregate.
-

- Install 20-foot-wide and four-inch-deep asphalt surfacing over the prepared aggregate roadbed.
- Construct curb and gutter separator at portions of the roadway which run adjacent to the existing multi-use trail.
- Grade as required to construct the roadway and associated road ditches, importing or exporting fill as needed.
- Remove existing asphalt driving surface and establish turf in the existing roadway areas.
- Follow best management practices (BMPs) for erosion and sedimentation control during construction, in accordance with the Minnesota Pollution Control Agency (MPCA) construction stormwater National Pollution Discharge Elimination System (NPDES) general permit.
- Reestablish appropriate vegetation adjacent to the roadway to provide erosion prevention, in accordance with the construction stormwater NPDES permit.

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@46.84178465,-91.99637640502573,14z>



QUALIFICATION INTERVIEW

1. This determination key is intended to assist the user in evaluating the effects of their actions on Federally listed species in Minnesota and Wisconsin. It does not cover other prohibited activities under the Endangered Species Act (e.g., for wildlife: import/export, Interstate or foreign commerce, possession of illegally taken wildlife, etc.; for plants: import/export, reduce to possession, malicious destruction on Federal lands, commercial sale, etc.) or other statutes. Additionally, this key DOES NOT cover wind development, purposeful take (e.g., for research or surveys), communication towers that have guy wires or are over 450 feet in height, aerial or other large-scale application of any chemical (such as insecticide or herbicide), and approval of long-term permits or plans (e.g., FERC licenses, HCP's).

Click **YES** to acknowledge that you must consider other prohibitions of the ESA or other statutes outside of this determination key.

Yes

2. Is the action the approval of a long-term (i.e., in effect greater than 10 years) permit, plan, or other action?

No

3. Is the action being funded, authorized, or carried out by a Federal agency?

Yes

4. Are you the Federal agency or designated non-federal representative?

Yes

5. Does the action involve the installation or operation of wind turbines?

No

6. Does the action involve purposeful take of a listed animal?

No

7. Does the action involve a new communications tower?

No

8. Does the activity involve aerial or other large-scale application of ANY chemical, including pesticides (insecticide, herbicide, fungicide, rodenticide, etc)?

No

9. Does the action occur near a bald eagle nest?

Note: Contact the Minnesota or Wisconsin Department of Natural Resources for an up-to-date list of known bald eagle nests.

No

10. Will your action permanently affect local hydrology?

No

11. Will your action temporarily affect local hydrology?

No

12. Will your project have any direct impacts to a stream or river (e.g., Horizontal Directional Drilling (HDD), hydrostatic testing, stream/road crossings, new stormwater outfall discharge, dams, other in-stream work, etc.)?

No

13. Does your project have the potential to impact the riparian zone or indirectly impact a stream/river (e.g., cut and fill; horizontal directional drilling; construction; vegetation removal; pesticide or fertilizer application; discharge; runoff of sediment or pollutants; increase in erosion, etc.)?

Note: Consider all potential effects of the action, including those that may happen later in time and outside and downstream of the immediate area involved in the action.

Endangered Species Act regulation defines "effects of the action" to include all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action. (50 CFR 402.02).

No

14. Will your action disturb the ground or existing vegetation?

Note: This includes any off-road vehicle access, soil compaction (enough to collapse a rodent burrow), digging, seismic survey, directional drilling, heavy equipment, grading, trenching, placement of fill, pesticide application (herbicide, fungicide), vegetation management (including removal or maintenance using equipment or prescribed fire), cultivation, development, etc.

Yes

15. Will your action include spraying insecticides?

No

16. Does your action area occur entirely within an already developed area?

Note: Already developed areas are already paved, covered by existing structures, manicured lawns, industrial sites, or cultivated cropland, AND do not contain trees that could be roosting habitat. Be aware that listed species may occur in areas with natural, or semi-natural, vegetation immediately adjacent to existing utilities (e.g. roadways, railways) or within utility rights-of-way such as overhead transmission line corridors, and can utilize suitable trees, bridges, or culverts for roosting even in urban dominated landscapes (so these are not considered "already developed areas" for the purposes of this question). If unsure, select NO..

No

17. Will the action occur in suitable piping plover habitat?

No

18. Will the action occur during the piping plover migration season (April 1 through May 1 in spring OR August 15 through September 15 in the fall)?

Yes

19. Will the action occur during the red knot migration windows (May 15-June 15 or July 1-September 30?)

Yes

20. Will the action modify beaches, dunes, mudflats, peat banks, sandbars, shoals, or other red knot habitats?

For example, the following actions may modify red knot habitat: groins, jetties, sea walls, revetments, bulkheads, rip-rap, beach nourishment, nearshore dredging, dredge spoil disposal, sand mining/borrowing, beach bulldozing, sandbagging, sand fencing, vegetation planting/alteration/removal, deliberate or possible introduction of non-native vegetation, beach raking/mechanized grooming, boardwalks, aquaculture development.

No

21. Will the action result in increased human disturbance or predation?

For example, is the action likely to indirectly increase access or use of red knot habitats by humans and/or predators at times of year that the birds are typically present (e.g., commercial/residential development, beach access structures, boardwalks, pavilions, bridges/roads/ferries/trails, marinas, posts or other avian predator perches, structures or habitat features likely to encourage predator nesting/denning, trash cans or other predator attractants, feral cat colonies, policy changes likely to increase human use).

No

22. Is there any potential for this action to harm Canada lynx directly (e.g., mammal trapping, poison bait, broadcasting disease control agents for wild animals, capturing animals for research projects, or regular human activity that may exclude lynx from forested habitat including blasting or explosives)?

No

23. Is your action associated with the U.S. Forest Service?

No

24. Is there any potential for this action to harm Canada lynx indirectly (e.g., increased traffic volume and speed that may result in vehicle strikes, regular human activity that may disturb or exclude lynx from forested habitat, blasting or explosives)?

No

25. Will the action result in changes to Canada lynx or snowshoe hare habitat quality, quantity, or availability that is greater than 10 acres?

E.g., thinning and/or other timber management and logging practices; residential and commercial development; road, railroad and utility corridors development; mining activities; prescribed fire; trail development; winter activities that compact snow such as winter road use, snowmobiling, cross country skiing, and dog sledding.

No

26. Does the action area intersect with a known gray wolf denning or rendezvous area?

No

27. Is there any potential for the action to harm wolves directly (e.g., mammal trapping, poison bait), or indirectly (e.g., increasing vehicle use that may result in vehicle strikes, exposure to potential human persecution)?

No

28. [Hidden Semantic] Does the action area intersect the monarch butterfly species list area?

Automatically answered

Yes

29. Under the ESA, monarchs remain warranted but precluded by listing actions of higher priority. The monarch is a candidate for listing at this time. The Endangered Species Act does not establish protections or consultation requirements for candidate species. Some Federal and State agencies may have policy requirements to consider candidate species in planning. We encourage implementing measures that will remove or reduce threats to these species and possibly make listing unnecessary.

If your project will have no effect on monarch butterflies (for example, if your project won't affect their habitat or individuals), then you can make a "no effect" determination for this project.

Are you making a "no effect" determination for monarch?

Yes

30. [Hidden semantic] Does the action intersect the Tricolored bat species list area?

Automatically answered

Yes

31. The tricolored bat was proposed for listing as endangered on September 13, 2022. During winter, tricolored bats hibernate in caves, abandoned mines, and abandoned tunnels ranging from small to large in size. During spring, summer and fall months, they roost primarily among leaf clusters of live or recently dead deciduous/hardwood trees.

What effect determination do you want to make for the tricolored bat (Only make a "may affect" determination if you think the project is likely to jeopardize the continued existence of the species)?

2. "May affect – not likely to adversely affect"

IPAC USER CONTACT INFORMATION

Agency: Federal Emergency Management Agency

Name: Aubri Urbanek

Address: 536 S Clark St

City: Chicago

State: IL

Zip: 60605

Email: aubri.urbanek@fema.dhs.gov

Phone: 2563438450

October 17, 2019

U.S. Fish and Wildlife Service
Ecological Services Field Office
4101 American Boulevard East
Bloomington, MN 55425

S.P. 118-090-024

Duluth, St. Louis County, Minnesota

Notification of Determination – May affect, not likely to adversely affect – Northern long-eared bat (*Myotis septentrionalis*)

No Effect Determination – Canada lynx (*Lynx canadensis*) and designated Critical Habitat

No Effect Determination – Gray wolf (*Canis lupus*)

No Effect Determination – Piping plover (*Charadrius melodus*)

No Effect Determination – Rufa red knot (*Calidris canutus rufa*)

Project Description: This project proposes to construct an approximately 4400' extension to the Lakewalk trail in Duluth, Minnesota from TH 61/Brighton Beach Road through Brighton Beach to Congdon Boulevard. Associated activities include replacing, upgrading, or extending multiple existing culverts and drainage features along the proposed extension, as well as some minor grading for drainage. Less than one acre of tree removal is proposed, with removal to occur during the winter (November 1 – March 31, inclusive). No bridge work is proposed.



Action Area identified for the proposed project.

Conservation Measures:

Required Avoidance and Minimization Measures (AMMs) - Northern long-eared bat:

- **General AMM 1:** Ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable AMMs. *Notify contractor(s) during the pre-construction meeting. Bat sightings (including sick, injured, and/or dead bats) on the project must be reported to OES wildlife ecologist (651-366-3605).*
- **Tree Removal AMM 2:** Restrict all tree clearing activities to when NLEB are not likely to be present. *Winter tree clearing required – tree clearing allowed November 1 to March 31, inclusive.*
- **Tree Removal AMM 3:** Tree removal must be limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).
- **Tree Removal AMM 4:** Tree removal must not remove documented NLEB roosts, or trees within 0.25 miles of roosts; or documented foraging habitat any time of the year.

Additional Conservation Measures:

- If used, erosion control blanket should be limited to 'bio-netting' or 'natural netting' types, and specifically not products containing plastic mesh netting or other plastic components. These are Category 3N or 4N in the 2016 & 2018 MnDOT Standards Specifications for Construction. Be aware that hydro-mulch products may contain small plastic fibers to aid in its matrix strength. These loose fibers could potentially re-suspend and make their way into Public Waters impacting protected aquatic species (e.g., mussels, fishes).
- Revegetation of disturbed soils must follow D1 Vegetation Establishment Recommendations (<http://www.dot.state.mn.us/environment/erosion/vegetation.html>), and use native mixes in areas that are not proposed for mowed turf grass. Include mowing and weed spraying as indicated in the District Vegetation Establishment Recommendations. For additional information, visit: <http://www.dot.state.mn.us/environment/erosion/vegetation.html>.

Species List for the Project Action Area

A list of federally threatened, endangered, proposed and candidate species, and designated and proposed critical habitat that overlaps with the action area, was requested via the Information for Planning and Consultation (IPaC) web application maintained by the U.S. Fish and Wildlife Service (requested October 2019). Based on this list, the project is within the range of the following:

Species	Status	Habitat
<u>Northern long-eared bat</u> <i>Myotis septentrionalis</i>	Threatened	Hibernates in caves and mines - swarming in surrounding wooded areas in autumn. Roosts and forages in upland forests during spring and summer.
<u>Canada lynx</u> <i>Lynx canadensis</i>	Threatened & Critical Habitat	Northern forest
<u>Gray wolf</u> <i>Canis lupus</i>	Threatened	Northern forest
<u>Piping plover</u> <i>Charadrius melodus</i>	Endangered	Sandy beaches, islands
<u>Rufa red knot</u> <i>Calidris canutus rufa</i>	Threatened	Coastal areas along Lake Superior

MnDOT consults the Minnesota Department of Natural Resources Natural Heritage Information System (Copyright 2019 State of Minnesota, Department of Natural Resources), and other resources as available, to determine if proposed projects may affect listed species.

Endangered Species Act – Section 7 Consultation

Section 7 of Endangered Species Act of 1973, as amended (Act), requires each Federal agency to review any action that it funds, authorizes or carries out to determine whether it may affect threatened, endangered, proposed species or listed critical habitat. Federal agencies (or their designated representatives) must consult with the U.S. Fish and Wildlife Service (Service) if any such effects may occur as a result of their actions. Consultation with the Service is not necessary if the proposed action will not directly or indirectly affect listed species or critical habitat. If a federal agency finds that an action will have no effect on listed species or critical habitat, it should maintain a written record of that finding that includes the supporting rationale.

Notice of Determination

Northern long-eared bat – May affect, not likely to adversely affect

No documented NLEB hibernacula and/or roost trees are documented within the project Action Area (https://files.dnr.state.mn.us/eco/ereview/minnesota_nleb_township_list_and_map.pdf).

This project review relies on the USFWS Programmatic Biological Opinion for FHWA, FRA, FTA Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C 1531 et seq.). The review was completed using the U.S. Fish and Wildlife Service's Information for Planning and Consultation (IPaC) system (Consultation Code: 03E19000-2020-I-0014). The U.S. Fish and Wildlife Service's concurrence verification letter is attached (Attachment 1).

No Effect Determinations

No Effect Determination – Canada lynx (*Lynx canadensis*) and designated Critical Habitat

No Effect Determination – Gray wolf (*Canis lupus*)

No Effect Determination – Piping plover (*Charadrius melodus*)

No Effect Determination – Rufa red knot (*Calidris canutus rufa*)

Canada lynx and designated Critical Habitat – *No effect determination.*

Tree clearing is limited to less than one acre immediately adjacent to existing roads. Suitable habitat is not anticipated to be impacted by the proposed project. Critical Habitat is not expected to be destroyed or adversely modified. **Therefore, MnDOT on behalf of the FHWA has made a determination of no effect for this species.**

Gray wolf – *No effect determination.*

No documented occurrences for this species exist within the Action Area. Tree clearing is limited to less than one acre immediately adjacent to existing roads. Suitable habitat is not anticipated to be impacted by the proposed project. **Therefore, MnDOT on behalf of the FHWA has made a determination of no effect for this species.**

Piping plover and rufa red knot – *No effect determination.*

No documented occurrences for this species exist within the Action Area. Suitable habitat is not anticipated to be impacted by the proposed project. **Therefore, MnDOT on behalf of the FHWA has made a determination of no effect for this species.**

Please contact me if there are questions or concerns.

Thank you,



Digitally signed by Christopher E Smith

Date: 2019.10.17 16:52:33 -05'00'

Christopher E. Smith, M.Sc., C.W.B.®

Wildlife Ecologist | Protected Species Program Coordinator

Minnesota Department of Transportation

Office of Environmental Stewardship

395 John Ireland Blvd., M.S. 620

St. Paul, Minnesota 55155

O: 651-366-3605

Target Species

Based on 949 complete checklists

208 species observed in **Brighton Beach** ([hotspot/L269195](#)), that you need for your **Brighton Beach Life List**

1. American Crow	52.70% frequency
2. Black-capped Chickadee	46.27%
3. Ring-billed Gull	39.54%
4. Herring Gull	27.83%
5. Common Goldeneye	21.72%
6. Mallard	20.98%
7. Red-breasted Merganser	19.61%
8. Bald Eagle	17.18%
9. Song Sparrow	12.33%
10. American Robin	10.65%
11. Double-crested Cormorant	10.23%
12. Common Loon	10.02%
13. Common Merganser	9.49%
14. Yellow-rumped Warbler	8.54%
15. Common Raven	8.33%
16. Canada Goose	8.23%
17. Dark-eyed Junco	7.91%
18. Red-necked Grebe	7.59%
19. White-throated Sparrow	7.49%
20. Downy Woodpecker	7.17%
21. Cedar Waxwing	7.07%
22. Horned Grebe	6.75%

23.	Red-eyed Vireo	6.75%
24.	King Eider	6.65%
25.	Northern Flicker	6.43%
26.	Blue Jay	6.01%
27.	Long-tailed Duck	5.59%
28.	American Redstart	5.59%
29.	American Goldfinch	5.58%
30.	Hairy Woodpecker	5.06%
31.	Palm Warbler	4.96%
32.	Rock Pigeon	4.64%
33.	Golden-crowned Kinglet	4.43%
34.	Common Yellowthroat	4.43%
35.	American Black Duck	4.32%
36.	Red-breasted Nuthatch	4.32%
37.	Nashville Warbler	3.90%
38.	Ruby-crowned Kinglet	3.79%
39.	Merlin	3.59%
40.	Brown Creeper	3.58%
41.	Pileated Woodpecker	3.48%
42.	White-crowned Sparrow	3.37%
43.	Pine Siskin	3.06%
44.	Tennessee Warbler	3.06%
45.	Common Grackle	3.06%
46.	Black-and-white Warbler	3.06%
47.	Purple Finch	3.06%
48.	Ovenbird	3.06%
49.	Magnolia Warbler	2.95%

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50.	Veery	2.95%
51.	Swainson's Thrush	2.95%
52.	Turkey Vulture	2.85%
53.	Sharp-shinned Hawk	2.85%
54.	Chipping Sparrow	2.85%
55.	Chestnut-sided Warbler	2.74%
56.	Rose-breasted Grosbeak	2.74%
57.	Least Flycatcher	2.74%
58.	Common Redpoll	2.74%
59.	Eastern Phoebe	2.64%
60.	American Kestrel	2.53%
61.	Blackpoll Warbler	2.53%
62.	Black-throated Green Warbler	2.43%
63.	Red-winged Blackbird	2.42%
64.	Ruby-throated Hummingbird	2.32%
65.	Cape May Warbler	2.21%
66.	Yellow Warbler	2.11%
67.	American Pipit	2.11%
68.	Yellow-bellied Sapsucker	2.01%
69.	Blue-headed Vireo	2.01%
70.	Snow Bunting	2.00%
71.	Northern Waterthrush	2.00%
72.	Northern Parula	2.00%
73.	Savannah Sparrow	1.90%
74.	Lapland Longspur	1.90%
75.	Belted Kingfisher	1.79%
76.	Philadelphia Vireo	1.79%

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77.	Bufflehead	1.79%
78.	Wilson's Warbler	1.79%
79.	Rusty Blackbird	1.69%
80.	Hermit Thrush	1.58%
81.	Orange-crowned Warbler	1.48%
82.	Broad-winged Hawk	1.48%
83.	Gray-cheeked Thrush	1.48%
84.	Northern Harrier	1.48%
85.	American Tree Sparrow	1.48%
86.	Bay-breasted Warbler	1.48%
87.	Bobolink	1.37%
88.	Osprey	1.37%
89.	White-breasted Nuthatch	1.37%
90.	European Starling	1.27%
91.	Red-tailed Hawk	1.26%
92.	Eastern Kingbird	1.26%
93.	Gray Catbird	1.26%
94.	Peregrine Falcon	1.16%
95.	Blackburnian Warbler	1.16%
96.	Lincoln's Sparrow	1.16%
97.	Mourning Warbler	1.16%
98.	Boreal Owl	1.06%
99.	Canada Warbler	1.05%
100.	Green-winged Teal	1.05%
101.	Cliff Swallow	1.05%
102.	Clay-colored Sparrow	1.05%
103.	Fox Sparrow	0.9505%

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104.	Common Nighthawk	0.9494%
105.	Horned Lark	0.9494%
106.	Northern Pintail	0.9484%
107.	Scarlet Tanager	0.9484%
108.	Rough-legged Hawk	0.8440%
109.	Yellow-bellied Flycatcher	0.8430%
110.	Hooded Merganser	0.7387%
111.	Tree Swallow	0.7387%
112.	House Wren	0.7387%
113.	White-winged Crossbill	0.7387%
114.	Harris's Sparrow	0.7387%
115.	Blue-winged Teal	0.7376%
116.	Alder Flycatcher	0.7376%
117.	Spotted Sandpiper	0.6354%
118.	Northern Shrike	0.6344%
119.	Lesser Yellowlegs	0.6333%
120.	American Wigeon	0.6322%
121.	Mourning Dove	0.6322%
122.	Solitary Sandpiper	0.5269%
123.	Bonaparte's Gull	0.5269%
124.	Swamp Sparrow	0.5269%
125.	Chimney Swift	0.4236%
126.	Killdeer	0.4236%
127.	Red-throated Loon	0.4225%
128.	Barn Swallow	0.4225%
129.	Wood Duck	0.4215%
130.	Harlequin Duck	0.4215%

[Go to top](#)

131.	Sandhill Crane	0.4215%
132.	Wilson's Snipe	0.4215%
133.	Great Blue Heron	0.4215%
134.	Red-headed Woodpecker	0.4215%
135.	Red-bellied Woodpecker	0.4215%
136.	Black-backed Woodpecker	0.4215%
137.	Olive-sided Flycatcher	0.4215%
138.	Winter Wren	0.4215%
139.	Bohemian Waxwing	0.4215%
140.	Evening Grosbeak	0.4215%
141.	Red Crossbill	0.4215%
142.	Golden-winged Warbler	0.4215%
143.	Northern Cardinal	0.4215%
144.	Red-necked Phalarope	0.3182%
145.	Greater Yellowlegs	0.3172%
146.	Common Tern	0.3172%
147.	Snowy Owl	0.3172%
148.	Northern Shoveler	0.3161%
149.	Pied-billed Grebe	0.3161%
150.	American Coot	0.3161%
151.	American Golden-Plover	0.3161%
152.	Least Sandpiper	0.3161%
153.	Iceland Gull	0.3161%
154.	Great Crested Flycatcher	0.3161%
155.	Baltimore Oriole	0.3161%
156.	Pacific Loon	0.2150%
157.	Redhead	0.2118%

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158.	White-winged Scoter	0.2118%
159.	Glaucous Gull	0.2118%
160.	American White Pelican	0.2118%
161.	Cooper's Hawk	0.2118%
162.	House Finch	0.2118%
163.	Gadwall	0.2107%
164.	Ring-necked Duck	0.2107%
165.	Greater Scaup	0.2107%
166.	Lesser Scaup	0.2107%
167.	Black Scoter	0.2107%
168.	Ruffed Grouse	0.2107%
169.	Eared Grebe	0.2107%
170.	Black-billed Cuckoo	0.2107%
171.	Black-bellied Plover	0.2107%
172.	Semipalmated Plover	0.2107%
173.	Red Knot	0.2107%
174.	Parasitic Jaeger	0.2107%
175.	Great Black-backed Gull	0.2107%
176.	Boreal Chickadee	0.2107%
177.	Eastern Bluebird	0.2107%
178.	Pine Warbler	0.2107%
179.	Northern Saw-whet Owl	0.1075%
180.	Trumpeter Swan	0.1064%
181.	Barrow's Goldeneye	0.1064%
182.	House Sparrow	0.1064%
183.	Brown-headed Cowbird	0.1064%
184.	Cackling Goose	0.1054%

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185.	Eurasian Wigeon	0.1054%
186.	Surf Scoter	0.1054%
187.	Piping Plover	0.1054%
188.	Sanderling	0.1054%
189.	Semipalmated Sandpiper	0.1054%
190.	American Woodcock	0.1054%
191.	Golden Eagle	0.1054%
192.	Swainson's Hawk	0.1054%
193.	Eastern Wood-Pewee	0.1054%
194.	Western Kingbird	0.1054%
195.	Warbling Vireo	0.1054%
196.	Canada Jay	0.1054%
197.	Bank Swallow	0.1054%
198.	Brown Thrasher	0.1054%
199.	Wood Thrush	0.1054%
200.	Yellow-headed Blackbird	0.1054%
201.	Connecticut Warbler	0.1054%
202.	Dickcissel	0.1054%
203.	Snow Goose	0.0010%
204.	Yellow-billed Loon	0.0010%
205.	Green Heron	0.0010%
206.	Purple Martin	0.0010%
207.	Vesper Sparrow	0.0010%
208.	Indigo Bunting	0.0010%

APPENDIX G

Environmental Justice and Hazardous Materials

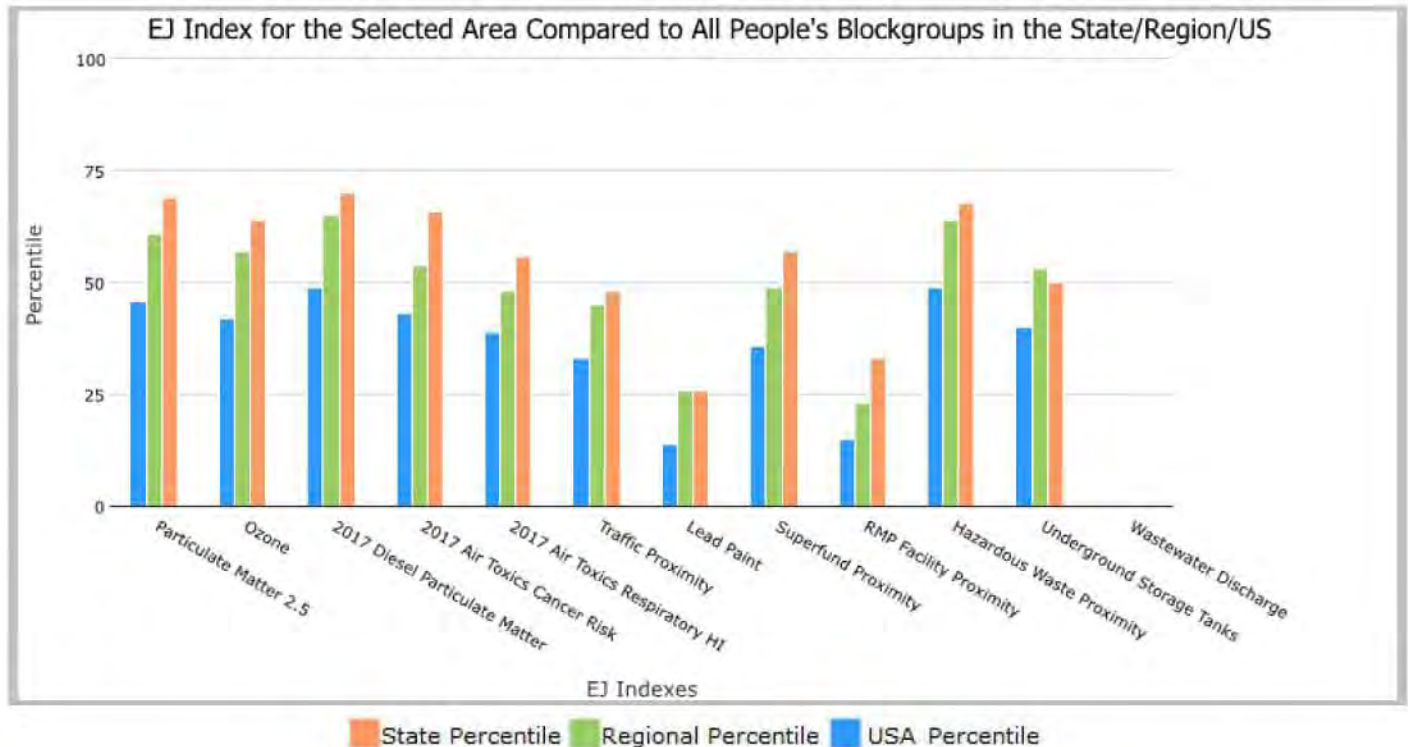
0.25 miles Ring around the Area, MINNESOTA, EPA Region 5

Approximate Population: 66

Input Area (sq. miles): 0.63

Project Area

Selected Variables	State Percentile	EPA Region Percentile	USA Percentile
Environmental Justice Indexes			
EJ Index for Particulate Matter 2.5	69	61	46
EJ Index for Ozone	64	57	42
EJ Index for 2017 Diesel Particulate Matter*	70	65	49
EJ Index for 2017 Air Toxics Cancer Risk*	66	54	43
EJ Index for 2017 Air Toxics Respiratory HI*	56	48	39
EJ Index for Traffic Proximity	48	45	33
EJ Index for Lead Paint	26	26	14
EJ Index for Superfund Proximity	57	49	36
EJ Index for RMP Facility Proximity	33	23	15
EJ Index for Hazardous Waste Proximity	68	64	49
EJ Index for Underground Storage Tanks	50	53	40
EJ Index for Wastewater Discharge	N/A	N/A	N/A



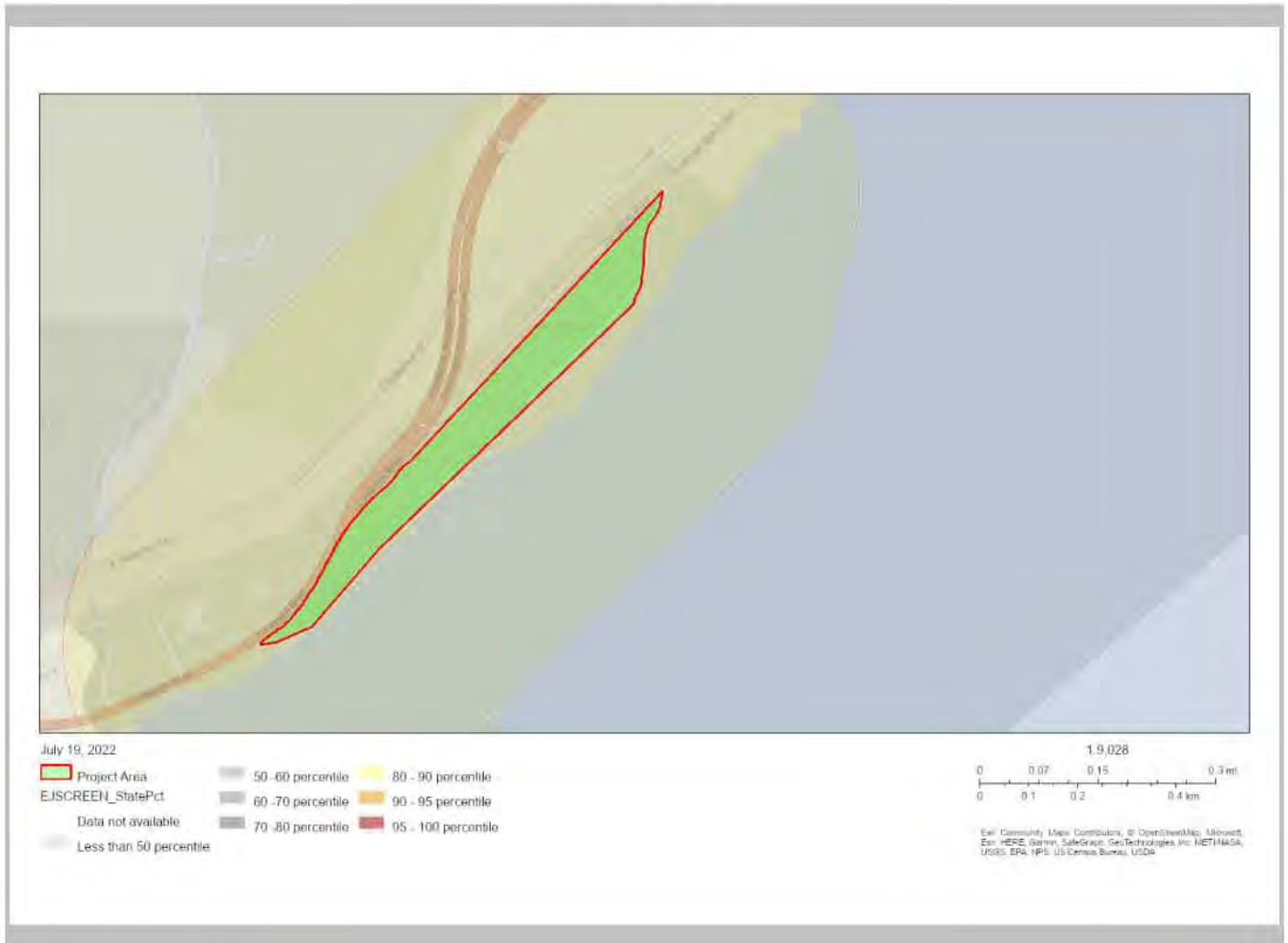
This report shows the values for environmental and demographic indicators and EJSCREEN indexes. It shows environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and also shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. For example, if a given location is at the 95th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in the location being analyzed. The years for which the data are available, and the methods used, vary across these indicators. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports.

0.25 miles Ring around the Area, MINNESOTA, EPA Region 5

Approximate Population: 66

Input Area (sq. miles): 0.63

Project Area



Sites reporting to EPA	
Superfund NPL	0
Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)	0

EJScreen Report (Version 2.0)



0.25 miles Ring around the Area, MINNESOTA, EPA Region 5

Approximate Population: 66

Input Area (sq. miles): 0.63

Project Area

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Pollution and Sources							
Particulate Matter 2.5 ($\mu\text{g}/\text{m}^3$)	5.46	7.54	2	8.96	0	8.74	1
Ozone (ppb)	35	37.8	8	43.5	1	42.6	12
2017 Diesel Particulate Matter* ($\mu\text{g}/\text{m}^3$)	0.0735	0.218	9	0.279	<50th	0.295	<50th
2017 Air Toxics Cancer Risk* (lifetime risk per million)	20	24	56	24	60-70th	29	<50th
2017 Air Toxics Respiratory HI*	0.3	0.29	71	0.3	70-80th	0.36	<50th
Traffic Proximity (daily traffic count/distance to road)	120	470	49	610	35	710	37
Lead Paint (% Pre-1960 Housing)	0.48	0.31	75	0.37	66	0.28	76
Superfund Proximity (site count/km distance)	0.047	0.18	37	0.13	39	0.13	40
RMP Facility Proximity (facility count/km distance)	0.84	0.77	66	0.83	67	0.75	71
Hazardous Waste Proximity (facility count/km distance)	0.077	1.5	21	1.8	11	2.2	12
Underground Storage Tanks (count/km ²)	0.14	1.8	39	4.8	25	3.9	25
Wastewater Discharge (toxicity-weighted concentration/m distance)	N/A	0.034	N/A	9	N/A	12	N/A
Socioeconomic Indicators							
Demographic Index	15%	22%	44	28%	33	36%	20
People of Color	10%	20%	43	26%	39	40%	21
Low Income	20%	24%	50	29%	39	31%	36
Unemployment Rate	2%	4%	38	5%	30	5%	26
Linguistically Isolated	0%	2%	55	2%	59	5%	45
Less Than High School Education	3%	7%	33	10%	23	12%	19
Under Age 5	8%	6%	76	6%	78	6%	76
Over Age 64	9%	15%	22	16%	19	16%	23

*Diesel particulate matter, air toxics cancer risk, and air toxics respiratory hazard index are from the EPA's 2017 Air Toxics Data Update, which is the Agency's ongoing, comprehensive evaluation of air toxics in the United States. This effort aims to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that the air toxics data presented here provide broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. Cancer risks and hazard indices from the Air Toxics Data Update are reported to one significant figure and any additional significant figures here are due to rounding. More information on the Air Toxics Data Update can be found at: <https://www.epa.gov/haps/air-toxics-data-update>.

For additional information, see: www.epa.gov/environmentaljustice

EJScreen is a screening tool for pre-decisional use only. It can help identify areas that may warrant additional consideration, analysis, or outreach. It does not provide a basis for decision-making, but it may help identify potential areas of EJ concern. Users should keep in mind that screening tools are subject to substantial uncertainty in their demographic and environmental data, particularly when looking at small geographic areas. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJScreen documentation for discussion of these issues before using reports. This screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location. EJScreen outputs should be supplemented with additional information and local knowledge before taking any action to address potential EJ concerns.

EJScreen Report (Version 2.0)



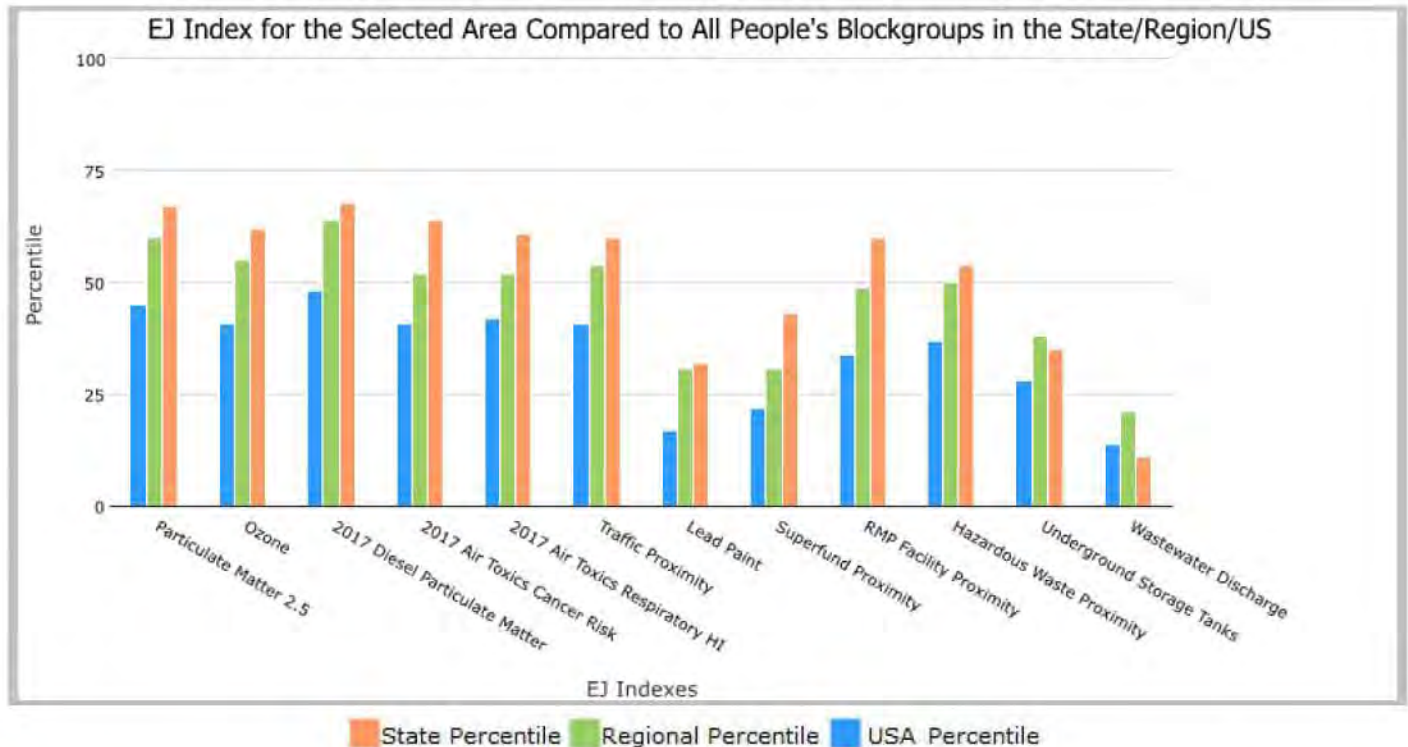
County: St. Louis, MINNESOTA, EPA Region 5

Approximate Population: 199,759

Input Area (sq. miles): 6859.47

St. Louis County, MN (The study area contains 1 blockgroup(s) with zero population.)

Selected Variables	State Percentile	EPA Region Percentile	USA Percentile
Environmental Justice Indexes			
EJ Index for Particulate Matter 2.5	67	60	45
EJ Index for Ozone	62	55	41
EJ Index for 2017 Diesel Particulate Matter*	68	64	48
EJ Index for 2017 Air Toxics Cancer Risk*	64	52	41
EJ Index for 2017 Air Toxics Respiratory HI*	61	52	42
EJ Index for Traffic Proximity	60	54	41
EJ Index for Lead Paint	32	31	17
EJ Index for Superfund Proximity	43	31	22
EJ Index for RMP Facility Proximity	60	49	34
EJ Index for Hazardous Waste Proximity	54	50	37
EJ Index for Underground Storage Tanks	35	38	28
EJ Index for Wastewater Discharge	11	21	14



This report shows the values for environmental and demographic indicators and EJSCREEN indexes. It shows environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and also shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. For example, if a given location is at the 95th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in the location being analyzed. The years for which the data are available, and the methods used, vary across these indicators. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports.

EJScreen Report (Version 2.0)

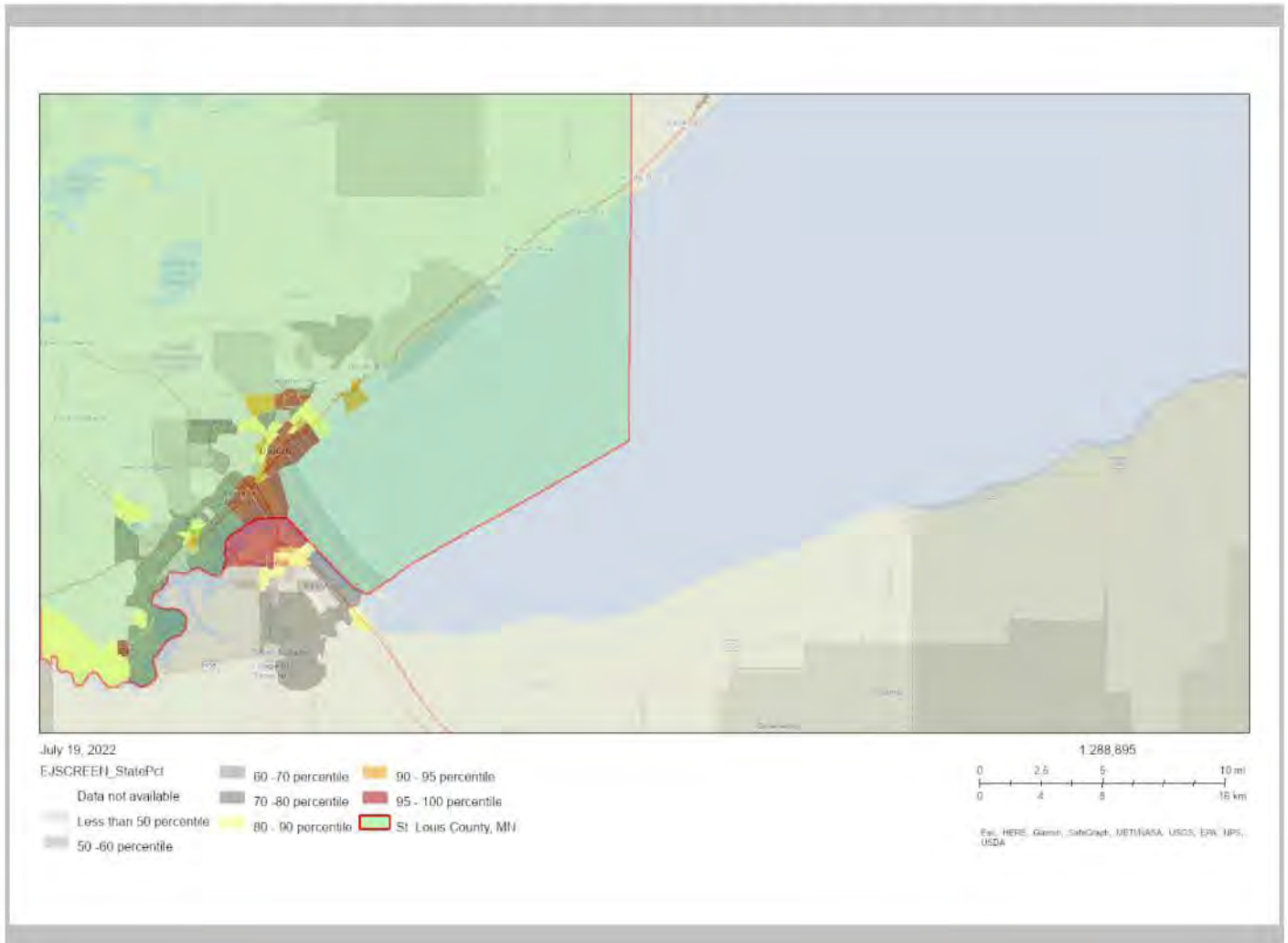


County: St. Louis, MINNESOTA, EPA Region 5

Approximate Population: 199,759

Input Area (sq. miles): 6859.47

St. Louis County, MN (The study area contains 1 blockgroup(s) with zero population.)



Sites reporting to EPA	
Superfund NPL	1
Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)	7

EJScreen Report (Version 2.0)

County: St. Louis, MINNESOTA, EPA Region 5

Approximate Population: 199,759

Input Area (sq. miles): 6859.47



St. Louis County, MN (The study area contains 1 blockgroup(s) with zero population.)

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Pollution and Sources							
Particulate Matter 2.5 ($\mu\text{g}/\text{m}^3$)	5.53	7.54	2	8.96	0	8.74	2
Ozone (ppb)	34.6	37.8	6	43.5	0	42.6	10
2017 Diesel Particulate Matter* ($\mu\text{g}/\text{m}^3$)	0.11	0.218	27	0.279	<50th	0.295	<50th
2017 Air Toxics Cancer Risk* (lifetime risk per million)	21	24	62	24	60-70th	29	<50th
2017 Air Toxics Respiratory HI*	0.25	0.29	54	0.3	50-60th	0.36	<50th
Traffic Proximity (daily traffic count/distance to road)	160	470	56	610	41	710	43
Lead Paint (% Pre-1960 Housing)	0.49	0.31	75	0.37	67	0.28	77
Superfund Proximity (site count/km distance)	0.086	0.18	51	0.13	64	0.13	61
RMP Facility Proximity (facility count/km distance)	0.3	0.77	41	0.83	45	0.75	49
Hazardous Waste Proximity (facility count/km distance)	0.39	1.5	43	1.8	35	2.2	40
Underground Storage Tanks (count/km ²)	2	1.8	74	4.8	56	3.9	59
Wastewater Discharge (toxicity-weighted concentration/m distance)	0.15	0.034	96	9	85	12	86
Socioeconomic Indicators							
Demographic Index	20%	22%	61	28%	48	36%	31
People of Color	9%	20%	37	26%	35	40%	18
Low Income	31%	24%	72	29%	60	31%	55
Unemployment Rate	4%	4%	71	5%	56	5%	51
Linguistically Isolated	0%	2%	57	2%	60	5%	46
Less Than High School Education	6%	7%	53	10%	40	12%	33
Under Age 5	5%	6%	37	6%	44	6%	43
Over Age 64	19%	15%	70	16%	68	16%	70

*Diesel particulate matter, air toxics cancer risk, and air toxics respiratory hazard index are from the EPA's 2017 Air Toxics Data Update, which is the Agency's ongoing, comprehensive evaluation of air toxics in the United States. This effort aims to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that the air toxics data presented here provide broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. Cancer risks and hazard indices from the Air Toxics Data Update are reported to one significant figure and any additional significant figures here are due to rounding. More information on the Air Toxics Data Update can be found at: <https://www.epa.gov/haps/air-toxics-data-update>.

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Location: User-specified polygonal location
 Ring (buffer): 0.25-miles radius
 Description: Project Area

Summary of ACS Estimates		2015 - 2019
Population		66
Population Density (per sq. mile)		348
People of Color Population		7
% People of Color Population		10%
Households		24
Housing Units		25
Housing Units Built Before 1950		3
Per Capita Income		35,344
Land Area (sq. miles) (Source: SF1)		0.19
% Land Area		72%
Water Area (sq. miles) (Source: SF1)		0.08
% Water Area		28%

	2015 - 2019 ACS Estimates	Percent	MOE (±)
Population by Race			
Total	66	100%	177
Population Reporting One Race	64	96%	221
White	62	94%	165
Black	1	1%	13
American Indian	1	1%	12
Asian	1	1%	13
Pacific Islander	0	0%	9
Some Other Race	0	0%	9
Population Reporting Two or More Races	2	4%	34
Total Hispanic Population	3	4%	59
Total Non-Hispanic Population	64		
White Alone	59	90%	157
Black Alone	1	1%	13
American Indian Alone	1	1%	12
Non-Hispanic Asian Alone	1	1%	13
Pacific Islander Alone	0	0%	9
Other Race Alone	0	0%	9
Two or More Races Alone	2	4%	34
Population by Sex			
Male	37	56%	113
Female	29	44%	85
Population by Age			
Age 0-4	6	8%	62
Age 0-17	12	17%	75
Age 18+	55	83%	112
Age 65+	6	9%	38

Data Note: Detail may not sum to totals due to rounding. Hispanic population can be of any race.

N/A means not available. **Source:** U.S. Census Bureau, American Community Survey (ACS) 2015 - 2019



Location: User-specified polygonal location
 Ring (buffer): 0.25-miles radius
 Description: Project Area

	2015 - 2019 ACS Estimates	Percent	MOE (±)
Population 25+ by Educational Attainment			
Total	50	100%	123
Less than 9th Grade	0	0%	9
9th - 12th Grade, No Diploma	2	3%	22
High School Graduate	13	25%	53
Some College, No Degree	11	22%	66
Associate Degree	5	10%	36
Bachelor's Degree or more	20	39%	60
Population Age 5+ Years by Ability to Speak English			
Total	61	100%	157
Speak only English	60	99%	142
Non-English at Home ¹⁺²⁺³⁺⁴	1	1%	16
¹ Speak English "very well"	0	0%	9
² Speak English "well"	1	1%	16
³ Speak English "not well"	0	0%	9
⁴ Speak English "not at all"	0	0%	9
³⁺⁴ Speak English "less than well"	0	0%	9
²⁺³⁺⁴ Speak English "less than very well"	1	1%	16
Linguistically Isolated Households*			
Total	0	0%	9
Speak Spanish	0	0%	9
Speak Other Indo-European Languages	0	0%	9
Speak Asian-Pacific Island Languages	0	0%	9
Speak Other Languages	0	0%	9
Households by Household Income			
Household Income Base	24	100%	54
< \$15,000	3	13%	36
\$15,000 - \$25,000	1	4%	16
\$25,000 - \$50,000	5	20%	34
\$50,000 - \$75,000	1	6%	17
\$75,000 +	14	57%	52
Occupied Housing Units by Tenure			
Total	24	100%	54
Owner Occupied	22	90%	52
Renter Occupied	2	10%	26
Employed Population Age 16+ Years			
Total	57	100%	149
In Labor Force	41	72%	123
Civilian Unemployed in Labor Force	1	2%	13
Not In Labor Force	16	28%	79

Data Note: Detail may not sum to totals due to rounding. Hispanic population can be of anyrace.

N/A means not available. **Source:** U.S. Census Bureau, American Community Survey (ACS)

*Households in which no one 14 and over speaks English "very well" or speaks English only.



Location: User-specified polygonal location

Ring (buffer): 0.25-miles radius

Description: Project Area

	2015 - 2019 ACS Estimates	Percent	MOE (±)
Population by Language Spoken at Home*			
Total (persons age 5 and above)	N/A	N/A	N/A
English	N/A	N/A	N/A
Spanish	N/A	N/A	N/A
French	N/A	N/A	N/A
French Creole	N/A	N/A	N/A
Italian	N/A	N/A	N/A
Portuguese	N/A	N/A	N/A
German	N/A	N/A	N/A
Yiddish	N/A	N/A	N/A
Other West Germanic	N/A	N/A	N/A
Scandinavian	N/A	N/A	N/A
Greek	N/A	N/A	N/A
Russian	N/A	N/A	N/A
Polish	N/A	N/A	N/A
Serbo-Croatian	N/A	N/A	N/A
Other Slavic	N/A	N/A	N/A
Armenian	N/A	N/A	N/A
Persian	N/A	N/A	N/A
Gujarathi	N/A	N/A	N/A
Hindi	N/A	N/A	N/A
Urdu	N/A	N/A	N/A
Other Indic	N/A	N/A	N/A
Other Indo-European	N/A	N/A	N/A
Chinese	N/A	N/A	N/A
Japanese	N/A	N/A	N/A
Korean	N/A	N/A	N/A
Mon-Khmer, Cambodian	N/A	N/A	N/A
Hmong	N/A	N/A	N/A
Thai	N/A	N/A	N/A
Laotian	N/A	N/A	N/A
Vietnamese	N/A	N/A	N/A
Other Asian	N/A	N/A	N/A
Tagalog	N/A	N/A	N/A
Other Pacific Island	N/A	N/A	N/A
Navajo	N/A	N/A	N/A
Other Native American	N/A	N/A	N/A
Hungarian	N/A	N/A	N/A
Arabic	N/A	N/A	N/A
Hebrew	N/A	N/A	N/A
African	N/A	N/A	N/A
Other and non-specified	N/A	N/A	N/A
Total Non-English	N/A	N/A	N/A

Data Note: Detail may not sum to totals due to rounding. Hispanic population can be of any race.

N/A means not available. **Source:** U.S. Census Bureau, American Community Survey (ACS) 2015 - 2019.

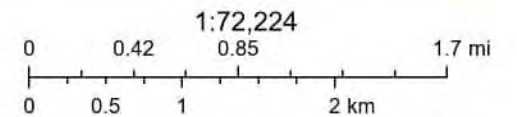
*Population by Language Spoken at Home is available at the census tract summary level and up.

Brighton Beach EJScreen



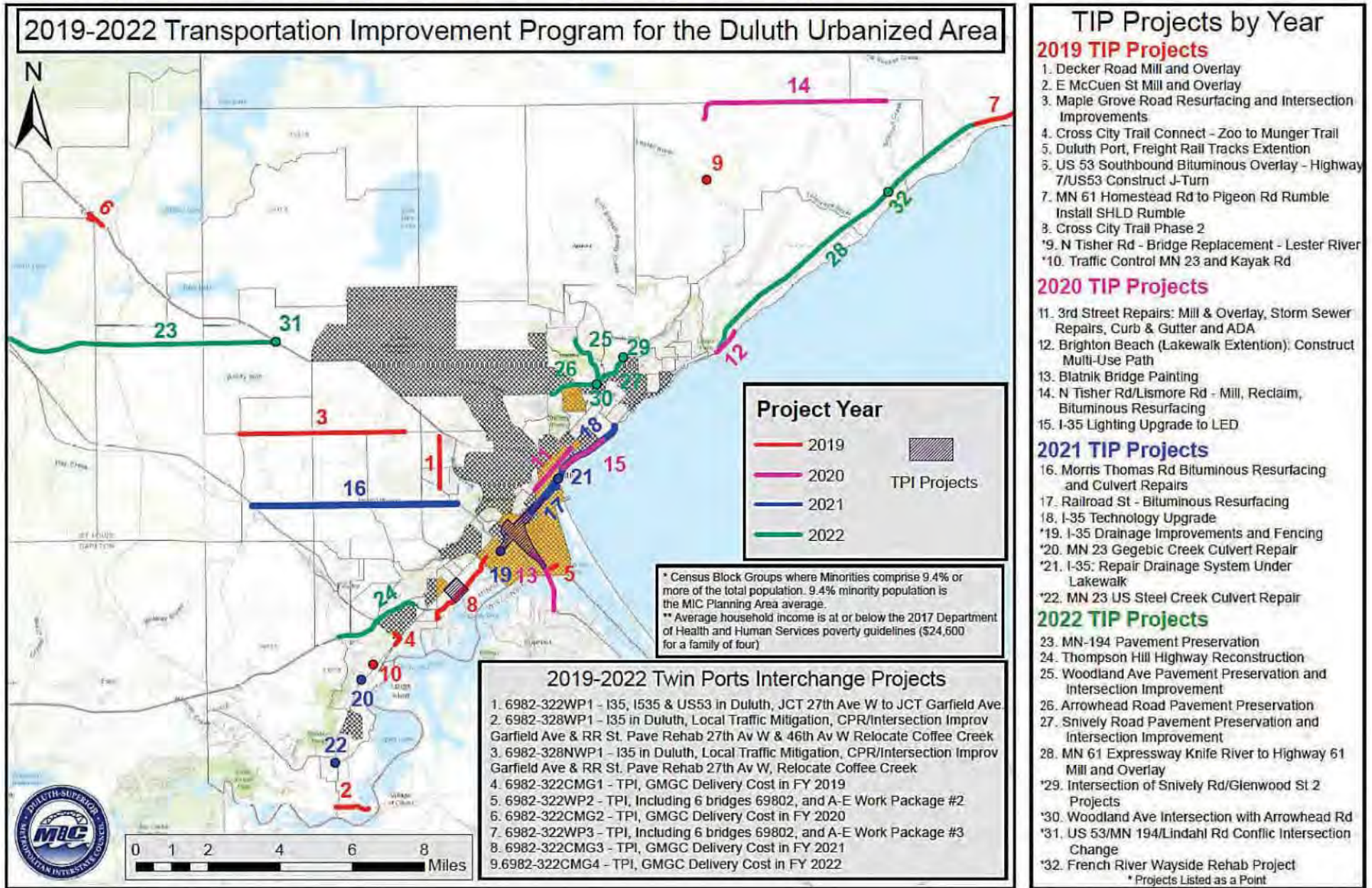
9/12/2022

- Brighton Beach
- Air pollution
- Toxic Substances Control Act
- Superfund
- Hazardous waste
- Water dischargers
- Brownfields



EPA OMS, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/
NASA, USGS, EPA, NPS, USDA

Map 3: Project Locations and Concentrations of Minority and Low-Income Populations



APPENDIX H

Historic Structures and Archaeological Resources

From: [Beimers, Sarah \(ADM\)](#)
To: [Castaldi, Duane](#)
Cc: [Roach, Karie](#)
Subject: SHPO Comment Letter: 2022-2227 Brighton Beach Road Relocation, Brighton Beach (Kitchi Gammi) Park, Duluth, Saint Louis County
Date: Thursday, August 25, 2022 3:48:43 PM
Attachments: [2022-2227.pdf](#)

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Please select the Phish Alert Report button on the top right of your screen to report this email if it is unsolicited or suspicious in nature.

Duane,

Thank you for the opportunity to review the above-referenced undertaking.

Attached is our August 25, 2022 concurrence with your agency's No Historic Properties Affected finding.

Please contact me if you have any questions.

Sarah

Sarah Beimers (she/her) | Environmental Review Program Manager

State Historic Preservation Office

Minnesota Department of Administration

50 Sherburne Avenue, Suite 203

Saint Paul, Minnesota 55155

(651) 201-3290

sarah.beimers@state.mn.us

Please [subscribe to receive SHPO notices](#) for the most current updates regarding office hours, accessing research files, or changes in submitting materials to the SHPO.

To access historic resource information please visit our webpage on [Using SHPO's Files](#).

2022 - 2227

Brighton Beach Road/Kitchi
Gammi Park, Duluth,
Saint Louis County, MN
DR-4414-MN, PW 0008,
Project Number 95035
August 9, 2022
Page 2 of 2


++++++You may email this page to fema-r5-environmental@fema.dhs.gov ++++++

Re: Brighton Beach Road/Kitchi Gammi Park
Duluth, Saint Louis County, Minnesota, DR-4414-MN, PW 0008, Project Number 95035
Start 46.838049, -92.001752 End 46.846512, -91.990690/ T50N R13W S4

- Under the authority of the National Historic Preservation Act of 1966, as amended, the Minnesota State Historic Preservation Office **concurs** with FEMA's finding that the captioned undertaking will result in **no historic properties affected**.
- Under the authority of the National Historic Preservation Act of 1966, as amended, the Minnesota State Historic Preservation Office **objects** to FEMA's finding that the captioned undertaking will result in **no historic properties affected** for the reasons noted below:



Minnesota State Historic Preservation Office



Date

Comments:



FEMA

August 9, 2022

Sarah Beimers, Environmental Review Program Manager
Minnesota State Historic Preservation Office
Administration Building, Suite 203
50 Sherburne Avenue
Saint Paul, MN 55155

Re: Brighton Beach Road/Kitchi Gammi Park
Duluth, Saint Louis County, Minnesota, DR-4414-MN, PW 0008, Project Number 95035
Start 46.838049, -92.001752 End 46.846512, -91.990690/ T50N R13W S4

Dear Ms. Beimers:

Pursuant to the Section 106 of the National Historic Preservation Act, I am writing this letter to initiate and conclude consultation regarding the captioned Public Assistance Grant Program project.

In accordance with 36 CFR §800.11, I am enclosing documentation regarding this undertaking and its effect on historic properties. This documentation provides the justification for FEMA's finding of no historic properties affected; the purpose of this communication is to seek concurrence in that finding.

Due to workplace restrictions in response to COVID-19, we are using email to deliver this Section 106 consultation. We understand the impact COVID-19 has had on your operations and we did receive your March 27, 2020 tolling notification. We understand you may need more than 30 days and will wait for your reply. Because our reliance on digital communications must continue until our offices reopen, we would appreciate a response by email from your office. For your convenience, we have included a response area below. If you have questions, do not hesitate to contact Karie Roach of my staff at 312-408-5549 or at fema-r5-environmental@fema.dhs.gov.

Sincerely,

A handwritten signature in blue ink that reads "Duane Castaldi".

Duane Castaldi
Regional Environmental Officer
FEMA Region 5

enclosures

+++++++You may email this page to fema-r5-environmental@fema.dhs.gov +++++++

Re: Brighton Beach Road/Kitchi Gammi Park
Duluth, Saint Louis County, Minnesota, DR-4414-MN, PW 0008, Project Number 95035
Start 46.838049, -92.001752 End 46.846512, -91.990690/ T50N R13W S4

- Under the authority of the National Historic Preservation Act of 1966, as amended, the Minnesota State Historic Preservation Office **concur**s with FEMA's finding that the captioned undertaking will result in **no historic properties affected**.
- Under the authority of the National Historic Preservation Act of 1966, as amended, the Minnesota State Historic Preservation Office **object**s to FEMA's finding that the captioned undertaking will result in **no historic properties affected** for the reasons noted below:

Minnesota State Historic Preservation Office

Date

Comments:



FEMA

August 9, 2022

***Documentation Initiating and Concluding Section 106 Consultation
for a FEMA-Funded Undertaking***

Project Information:

Project ID: DR-4414-MN, PW 0008, Project Number 95035
Title: Brighton Beach Road/Kitchi Gammi Park
Address: Between the intersections of Brighton Beach Road with Minnesota Highway 61 and Congdon Boulevard
Location: Duluth, Saint Louis Co., MN
GPS: Start 46.838049, -92.001752 End 46.846512, -91.990690
PLSS: T50N R13W S4

Description of Undertaking and APE:

As a result of severe storms and flooding affecting areas of the State of Minnesota October 9-11, 2018, President Trump signed the 4414-DR-MN Disaster Declaration on November 27, 2018. Under this declaration, St. Louis County was made eligible for FEMA's Public Assistance (PA) Program funding. The disaster event resulted in damage and erosion at Kitchi Gammi Park along the Lake Superior shoreline, damaging Brighton Beach Road, lakeshore revetments, and culverts. The subrecipient, the City of Duluth, is seeking funding from FEMA for relocating Brighton Beach Road, converting portions of the existing road to a recreational trail, adding trail sections, repairing culverts, and repairing or replacing lakeshore revetments.

The Lake Superior lakefront from the Lester River northeastward is stony, with bedrock outcroppings. Brighton Beach Road enters Kitchi Gammi Park from London Road/Highway 61 just east of the United State Environmental Protection Agency Mid-Continent Ecology Facility and continues northeasterly through the park, roughly paralleling the lakeshore and bending northward to intersect with Congdon Boulevard at an acute angle (Figures 1 and 2).

The storm event resulting in the 4414-DR-MN declaration followed at least two other major storm events from 2017 and 2018. The high lake water levels and intense wave action damaged the roadways, the shoreline, existing shoreline rip-rap revetments, and sheet piling culvert outlets. The area has historically experienced such erosion issues in periods of high lake water levels.

The damage occurring from the 4414-DR-MN event was loss of a culvert and its associated roadway cover, loss of a large rip-rap shoreline revetment, and loss of asphalt roadway, including base and sub-base, and associated roadside shoulder revetments (Figures 3 and 4). The City has requested to use funding associated with the repair to these items, plus funding associated with another 4414-DR-MN project that will not take place, to fund an alternate project relocating Brighton Beach Road. This project appears

to follow the recommendations of a City mini-master plan to make the park more usable and resilient for future storm events and lake levels.

The City created a master plan for the park in 2012 and obtained a Federal Transportation Alternatives Grant to support extension of the Lakewalk Trail through the park. The City revisited that plan in 2019, obtaining public input and developing a new mini-master plan that envisions the relocation of Brighton Beach Road inland, removal of portions of the existing road, and reuse of other portions of the existing road as trailway. This plan also proposes the construction of toilet facilities and other amenities as well as relocation of benches, addition of kayak racks, landscape development, and daylighting of creeks and streams that currently outlet to the lake through culverts (Figures 16-24).

The proposed project includes the relocation of approximately 3,250 linear feet of the existing 4,400 feet of Brighton Beach Road that provides access to Lake Superior and Brighton Beach (Kitchi Gammi) Park. The road construction will relocate the severely degraded roadway above the wave impact line, providing approximately 160 feet of separation from the shoreline. It is anticipated that this separation will be adequate to protect the roadway from shoreline encroachment for at least twenty years. Placing the new roadway uphill from the shoreline will also maintain three to eight feet of vertical separation from the MNDNR ten-foot wave zone of the shoreline. As such, no stabilization work, seeding or other stabilization efforts on the eroded area of the shoreline are proposed as part of the FEMA-funded project.

The existing entrances on the southwest and northwest sides of the park will also be relocated further north and south along Highway 61, respectively, due to the reduced road length. To improve safety, the entire road will be converted to a one-way with traffic exiting the park on the northeast end to Scenic North Shore Drive (Congdon Boulevard), eliminating traffic entering Highway 61 from the south end of the park. Parallel parking will be placed on one side of the road as well as curb and gutter to provide additional access to the park and limit any automobile impacts to the ground surface. The road configuration will also separate pedestrian and non-motorized vehicle users on the shared-use path with its associated crossings from automobile traffic on the road. The reconfigured road will provide more accessible and safer means to visit the park and its associated attractions.

In addition to the work described above, the following items are included in scope:

- Relocate Brighton Beach Road an average of 120 feet northwesterly and inland from the wave impact line (approximately 160 feet from the shoreline itself). The road will be designed with 11-foot minimum driving lanes with 2-foot minimum shoulders per State Aid Standards.
- Relocate the park road entrance from Minnesota Trunk Highway 61 approximately 450 feet to the north.
- Relocate park road outlet to Congdon Boulevard approximately 750 feet to the south.
- Grade the roadbed to elevate the road up to eight additional feet with shoulders matching the slope of the surrounding area. The raised roadbed would be approximately 22 feet wide and surfaced with aggregate.

- Install 20-foot-wide and four-inch-deep asphalt surfacing over the prepared aggregate roadbed.
- Construct curb and gutter separator at portions of the roadway which run adjacent to the existing multi-use trail.
- Grade as required to construct the roadway and associated road ditches, importing or exporting fill as needed.
- Remove existing asphalt driving surface and establish turf in the existing roadway areas.
- Follow best management practices (BMPs) for erosion and sedimentation control during construction, in accordance with the Minnesota Pollution Control Agency (MPCA) construction stormwater National Pollution Discharge Elimination System (NPDES) general permit.
- Reestablish appropriate vegetation adjacent to the roadway to provide erosion prevention, in accordance with the construction stormwater NPDES permit.

The relocated roadway would be located on property already owned by the City of Duluth, and no additional parcels would need to be acquired.

Area of Potential Effects

In 2019 and 2020, the Minnesota Department of Transportation (MnDOT) undertook a Section 106 Review under its responsibilities under the Federal Highway Administration. This review delineated the entire Brighton Beach/Kitchi Gammi Park as the APE. This MnDOT APE encompassed the entire park to include the roadway relocation (the focus of this consultation) along with other items of work from the Mini-Master Plan.¹ That review and its findings are referenced in this consultation.

The Area of Potential Effects (APE) for the FEMA funded project under review here is the area of probable ground disturbance associated with the new roadway construction and the removal of the existing roadway. This area comprises less than half the area of Kitchi Gammi Park. The APE is noted on Figure 5.

Steps Taken to Identify Historic Properties and the Description of Historic Properties:

Archaeology

FEMA SOI qualified archaeologists reviewed the Office of the State Archaeologist (OSA) Portal and no known archaeological resources or surveys are within the APE or within one mile of the APE.

However, the applicant noted that an archaeological survey had been conducted and the MN SHPO provided the report. Specifically, the MnDOT and the City of Duluth authorized and sponsored a Phase I Archaeological Reconnaissance Survey of Kitchi Gammi Park Trail² and road relocation the APE. No archaeological sites were identified within the APE and survey methodology was appropriate to existing field conditions.

¹ MnDOT to MN-SHPO, March 18, 2020; RE: S. P. 118-090-024, Lakewalk Trail Extension, Duluth, St. Louis County

² Merjent, Inc. Mike Madson, Principal Investigator, OSA license No. 19-050. Kitchi Gammi Park Trail Phase I Archaeological Reconnaissance Survey, St. Louis County, Minnesota, State Project Number (SP): 118-090-024, Federal Project Number: STPF-TA 3920 (085). December 2019.

Merjent notes that outside of the APE a scatter of historic-period artifacts was noted approximately 125 feet east of Bike Trail station 118+50 (Figure 23). A site form was pending as of 2020; however the OSA Portal does not depict either the survey nor a site number. Irrespective, this site will be avoided by the proposed scope of work. MN SHPO concurred with the recommendations of the Merjent survey that no archaeological resources exist within the APE and that no further archaeological investigations were warranted.³

Given the APE, the absence of archaeological sites encountered during the Phase I Survey, this work is not likely to encounter archaeological artifacts or features within their original depositional contexts that yield information important to history or pre-history.

Brighton Beach/Kitchi Gammi Park

As the APE for this undertaking encompasses less than one-half the area of Kitchi Gammi Park (Figure 7), an assessment of the park as a whole for listing on the NRHP is outside the scope of this review. The following information regarding the park's development is provided as context for the assessment of individual resources within the APE which are assessed below.

Brighton Beach/Kitchi Gammi Park has been a popular recreational location since the 1800s, when the Lakeside and Lester Park neighborhoods were developed to the northeast of Duluth. Wealthy Duluth attorney and legislator Chester Congdon donated lands and money for roads and parks north of the city. Congdon introduced legislation allowing Duluth and other major Minnesota cities to condemn property for transportation purposes, and his gifts of land along the lakeshore formed the basis for much of Duluth's lakeshore park system. Built between 1923 and 1925, Congdon Boulevard is one of the roads Congdon gifted to the city at the same time that portions of Kitchi Gammi Park were being improved.

The City of Duluth, led by Mayor Samuel Snively, promoted the newly popular pastime of automobile tourism in the early 1920's. The city purchased two parcels in the area then known as Brighton Beach in September 1921 and created a tourist camp there. The city assembled additional parcels to enlarge the facility throughout the early 1920s.

Though outside of the APE for this undertaking, the Tourist Camp Site (SL-DUL-2328) played a role in the development of what was to become Kitchi Gammi Park. The Brighton Beach Tourist Camp started operations in 1922 with minimal amenities—travelers used tents—and by the late 1920's the facilities included potable water and a toilet and shower building. In the early 1930's, the City constructed eighteen cabins and the park operated until the late 1950s. In 1963, this site was razed, and a National Water Quality Laboratory was constructed. This site is now the United States Environmental Protection Agency Mid-Continent Ecology facility.

In the mid-1920's the Duluth Park Superintendent began calling the park Kitchi Gammi Park, a possible nod to the elite Duluth social club by that name. Brighton Beach Road parallels the lakeshore through Kitchi Gammi Park with scenic pull-offs. The road was graded and maintained with gravel beginning in the early 1920s (Figures 8 and 9).

³ SHPO Number: 2020-0917 SP 118-090-024 Lakewalk Trail Extension, Duluth, St. Louis County, April 16, 2020.

Duluth Parks Department and Works Progress Administration (WPA) projects took place throughout the park. One Parks Department project was the 1926 planting of spruce and pine trees throughout the property landward of Brighton Beach Road (Figure 10); even Mayor Samuel Snively participated in the tree planting. More trees were planted in 1931 along the north side of Brighton Beach Road. The Lester River White Pine Reforestation Project also planted trees in this area in 2007-2008. The city's master plan notes a portion of the park as having had a bridle path. The park continues as a popular outing location, with kayakers, hikers, birders, and rock collectors using the roadway and amenities of the park.

Brighton Beach Road provides views to Lake Superior interspersed with trees, with heavily wooded areas inland of the roadway along the southern end of Kitchi Gammi Park. A larger grassy area appears near the midpoint of the road's length, and benches are placed throughout the park (Figures 11 and 12).

Assessment of Individual Resources

The nearest properties listed on the National Register of Historic Places (NRHP) include the U. S. Fisheries Station complex on the southwest side of the mouth of the Lester River at 6008 London Road (NPS Reference #78003126) and the nearby Lester River Bridge, built in 1925, which carries London Road over the Lester River (NPS Reference #0200093). Neither of these structures are within the APE for this undertaking.

In 2011, Stark Preservation Planning, LLC, surveyed and inventoried Brighton Beach/Kitchi Gammi Park as part of a Skyline Parkway Historic District survey.⁴ Their report inventoried the following standing structures within the park and designated their status as a contributing or non-contributing element of a proposed Congdon North Shore Boulevard Segment of a Skyline Parkway Historic District.

The information regarding the resources listed below includes the MN SHPO survey number, proposed designations per the 2011 Stark Preservation Planning report, determinations of eligibility recorded in the 2020 MnDOT Lakewalk Trail extension study report, and SHPO response to the MnDOT findings. Resources outside the APE for this undertaking are included for completeness.

Outside the APE:

SL-DUL-2327 – Brighton Beach Historic Marker (46.836800, -92.005000), contributing per Stark report, located southwest of the EPA facility. This is a stone and metal plaque erected in 1972 to mark the eastern terminus of the Skyline Parkway.⁵ It is outside the APE for this undertaking and so is not evaluated here.

SL-DUL-2328 – Brighton Beach Tourist Camp (46.838536, -92.003275), contributing per Stark report, non-contributing per MnDOT with SHPO concurrence in 2020. As noted above, the Brighton Beach Tourist Camp was razed and the EPA facility constructed at that location. The entire Brighton Beach/Kitchi Gammi park property was at one time considered part of the tourist camp, but the original Tourist Camp site is outside the APE for this undertaking and so is not evaluated here.

⁴ <https://duluthmn.gov/media/7717/report-skyline-pkwy-inventory-12-19-11.pdf>

⁵ https://historicalmarkerproject.com/markers/HMTYL_the-skyline-parkway_Duluth-MN.html#prettyPhoto

Within the APE:

SL-DUL-3125 – Brighton Beach Gazebo (46.843478, -91.992610). The Gazebo (Figure 13) was not included in the Stark report, likely because it is of contemporary vernacular construction. Apparently less than 50 years of age, it is therefore not eligible for listing.

SL-DUL-3132 – Brighton Beach Fireplace Shelter (46.842332, -91.993962), contributing per Stark report, non-contributing per MnDOT with SHPO concurrence in 2020. The stone fireplace shelter presents the rustic stone appearance common in park construction of that period. Lakeward of the existing roadway, it is marked for preservation on the master plan as the “Bluestone Bunker.” The shelter (Figures 14 and 15) is a small stone-walled and slab-roofed shelter with a semicircular plan. The lakeward wall is curved, with small rectangular unglazed openings framing views of the lake. The shelter is accessed through the landward side, which has two unframed openings flanking a central stone fireplace. While an interesting example of 1930’s park and recreational architecture, it does not exhibit historic or architectural significance. The MnDOT review found this structure to lack significance or integrity, and the MN SHPO concurred in this finding. FEMA affirms the findings of the MnDOT and SHPO’s concurrence, that the shelter is non-contributing and therefore not eligible for listing.

No other standing structures exist within the APE for this undertaking.

Determination of Eligibility:

FEMA has determined that *no resources within the APE are eligible for listing on the National Register of Historic Places.*

Finding:

FEMA finds that this undertaking will result in *no historic properties affected.*

Figures:

Figure 1: Undertaking site marked in red.
National Map "Lakewood, MN 2019," graphic scale.

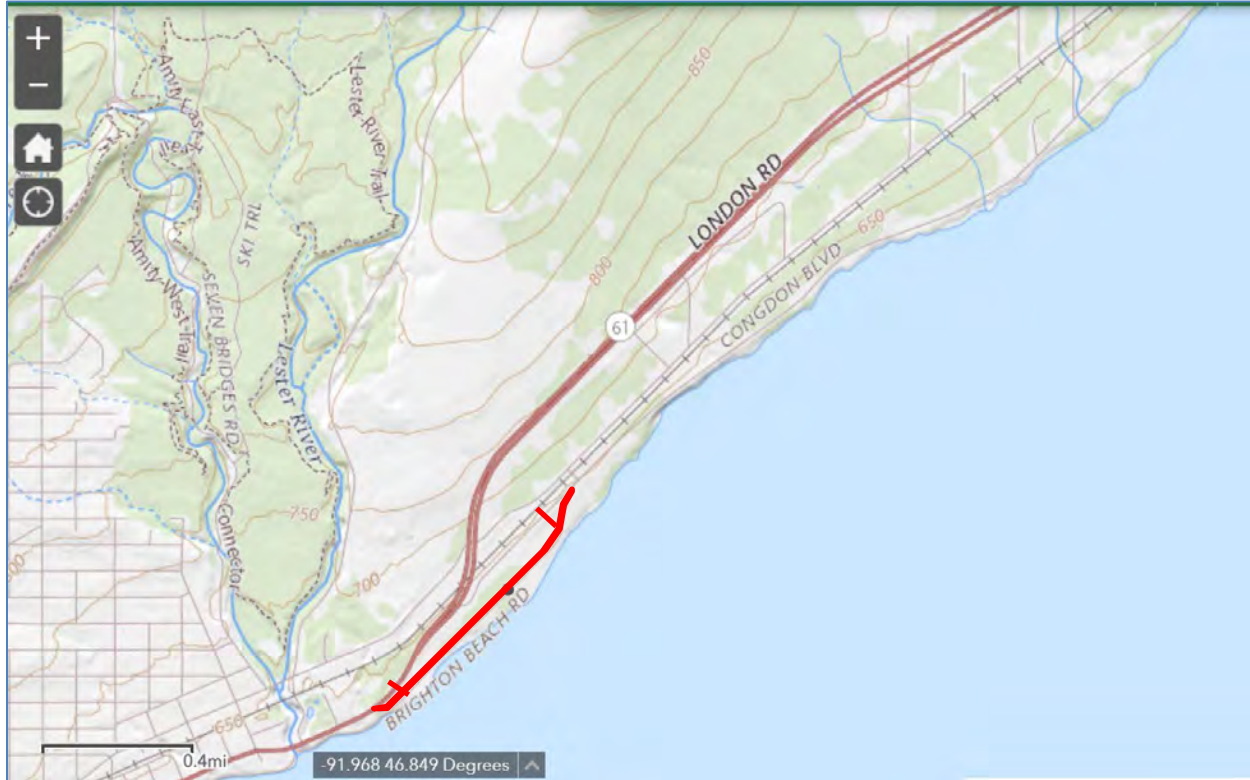


Figure 2: General Project Area marked in red, note northeast segment follows existing road.
USGS Map "Lakewood, MN," graphic scale.

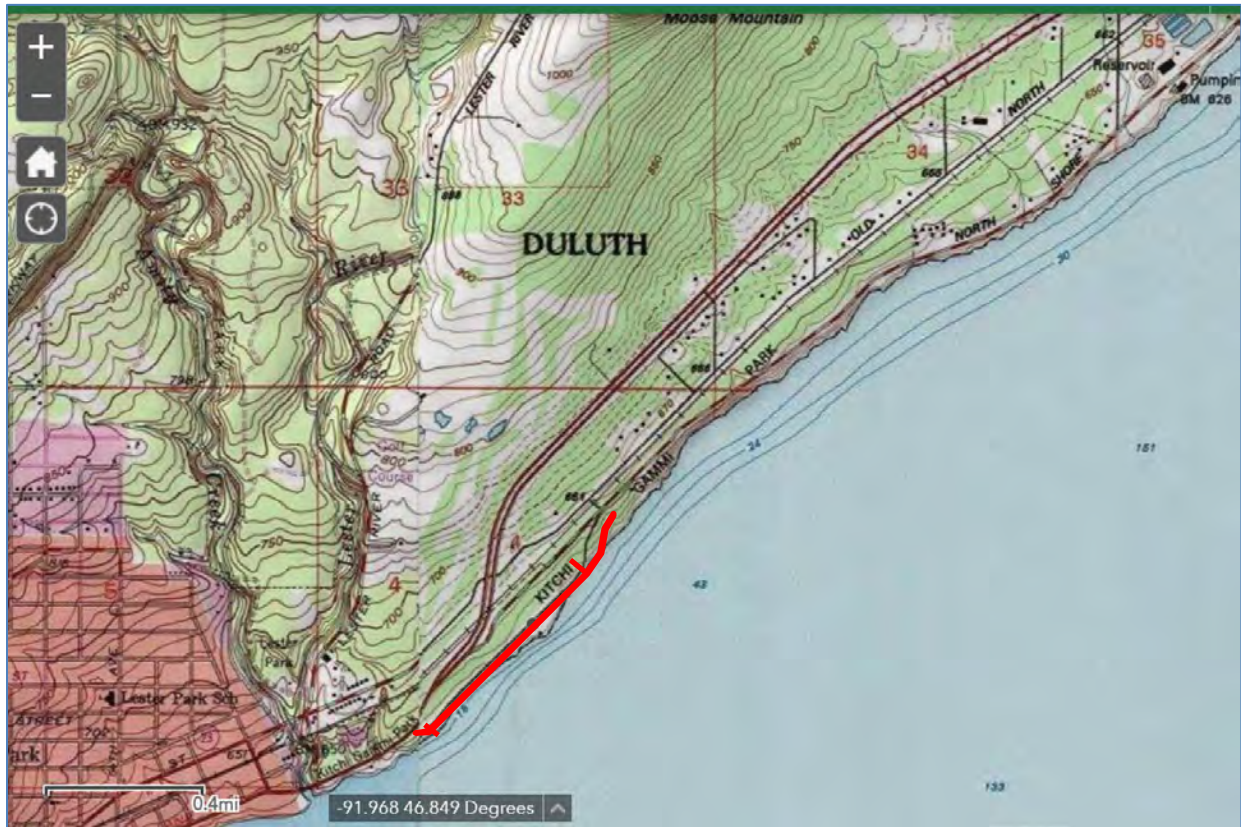


Figure 3: Photo documenting roadway and lakeshore damage.
FEMA photo, October 2018.



Figure 4: Photo documenting roadway and lakeshore damage.
FEMA photo, October 2018.



Figure 5: Aerial View of Brighton Beach Road and Kitchi Gammi Park. APE outlined in red and
archaeology segment for new road in blue.
GoogleEarth Aerial, 2016 data, graphic scale.

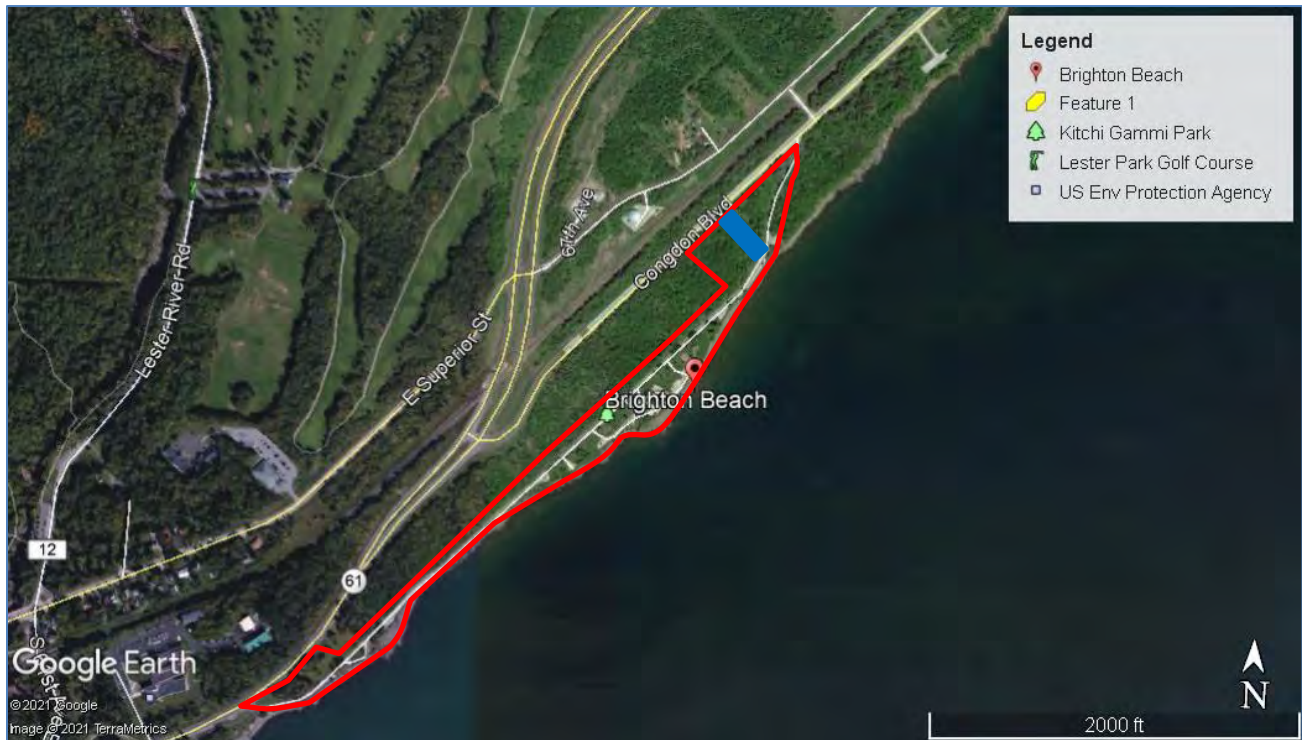


Figure 6: Station Numbers illustrating trail follows existing road at station 118+50 and avoids historic archaeological scatter.
Merjent Archaeology Map.

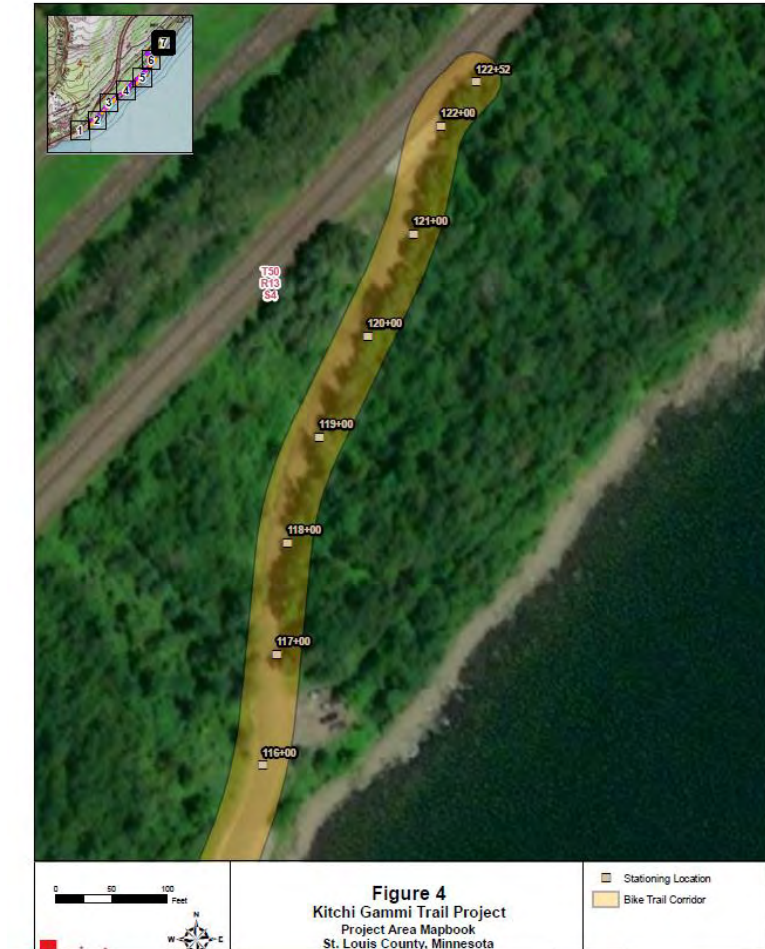


Figure 7: Park boundary in red; existing road alignment in yellow; proposed road alignment in black.
MnGeo WMS Services, 2019 imagery, from FEMA's Draft Environmental Assessment, p. 2..



Figure 8: Photo of a portion of Brighton Beach Road, 1929.
Minnesota Digital Library.



Figure 9: Photo of Brighton Beach Road graveling, 1933.
Minnesota Digital Library



Figure 10: Photo of tree planting, Kitchi Gammi Park, 1926.
Minnesota Digital Library.



Figure 11: Photo along lakeshore documenting typical conditions looking south.
Applicant photo.



Figure 12: Photo of Kitchi Gammi Park, looking west near play structure and parking.
Applicant photo.



Figure 13: Photo of Kitchi Gammi Park, looking north near picnic pavilion.
Applicant photo.



Figure 14: Photo of stone semi-circular fireplace shelter lakeward of Brighton Beach Road, looking southwest.

Google Earth StreetView image, August 2012.



Figure 15: Photo of stone semi-circular fireplace building lakeward of Brighton Beach Road, looking northeast.

Google Earth Streetview image, August 2012.



Figure 16: Preliminary proposed roadway realignment, view of western end of Kitchi Gammi Park and Brighton Beach Road. New roadway indicated in blue. Trail extension indicated in yellow.
Applicant plan.

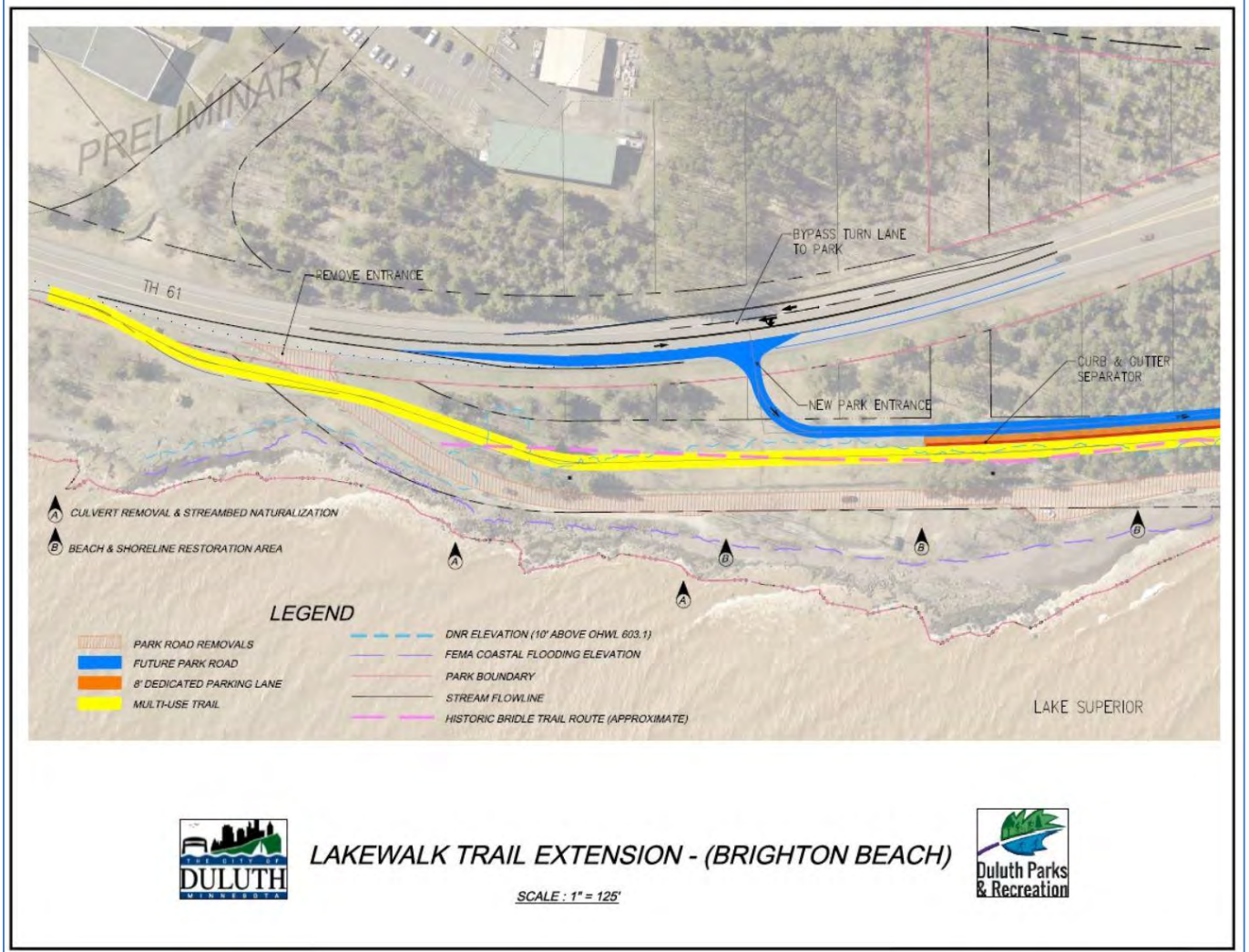


Figure 17: Preliminary proposed roadway realignment, view of Kitchi Gammi Park and Brighton Beach Road. New roadway indicated in blue. Trail extension indicated in yellow.
Applicant plan.

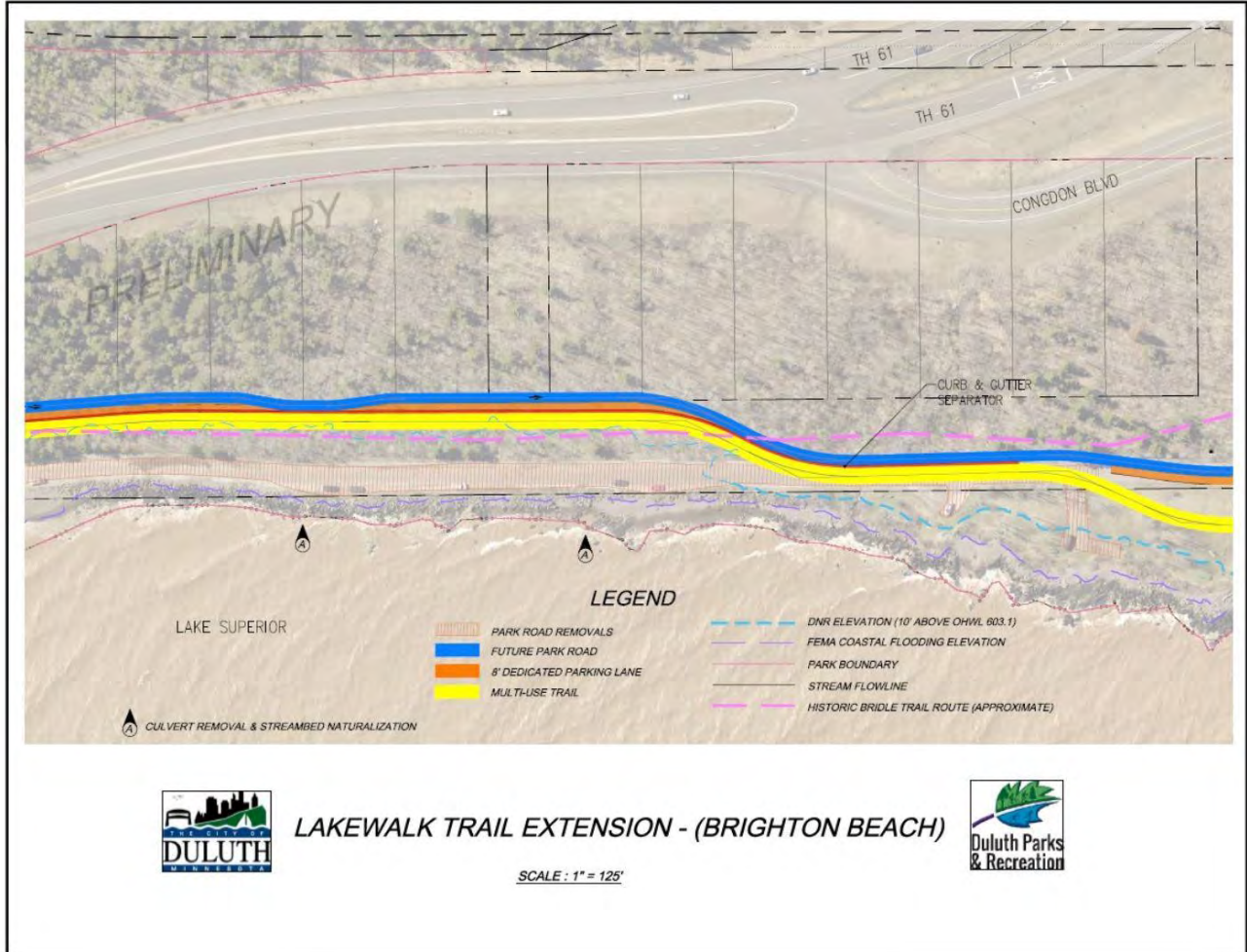


Figure 18: Preliminary proposed roadway realignment, view of Kitchi Gammi Park and Brighton Beach Road, showing new roadway connection to Congdon Boulevard. New roadway indicated in blue. Trail extension indicated in yellow. Parking areas indicated in orange. Applicant plan.

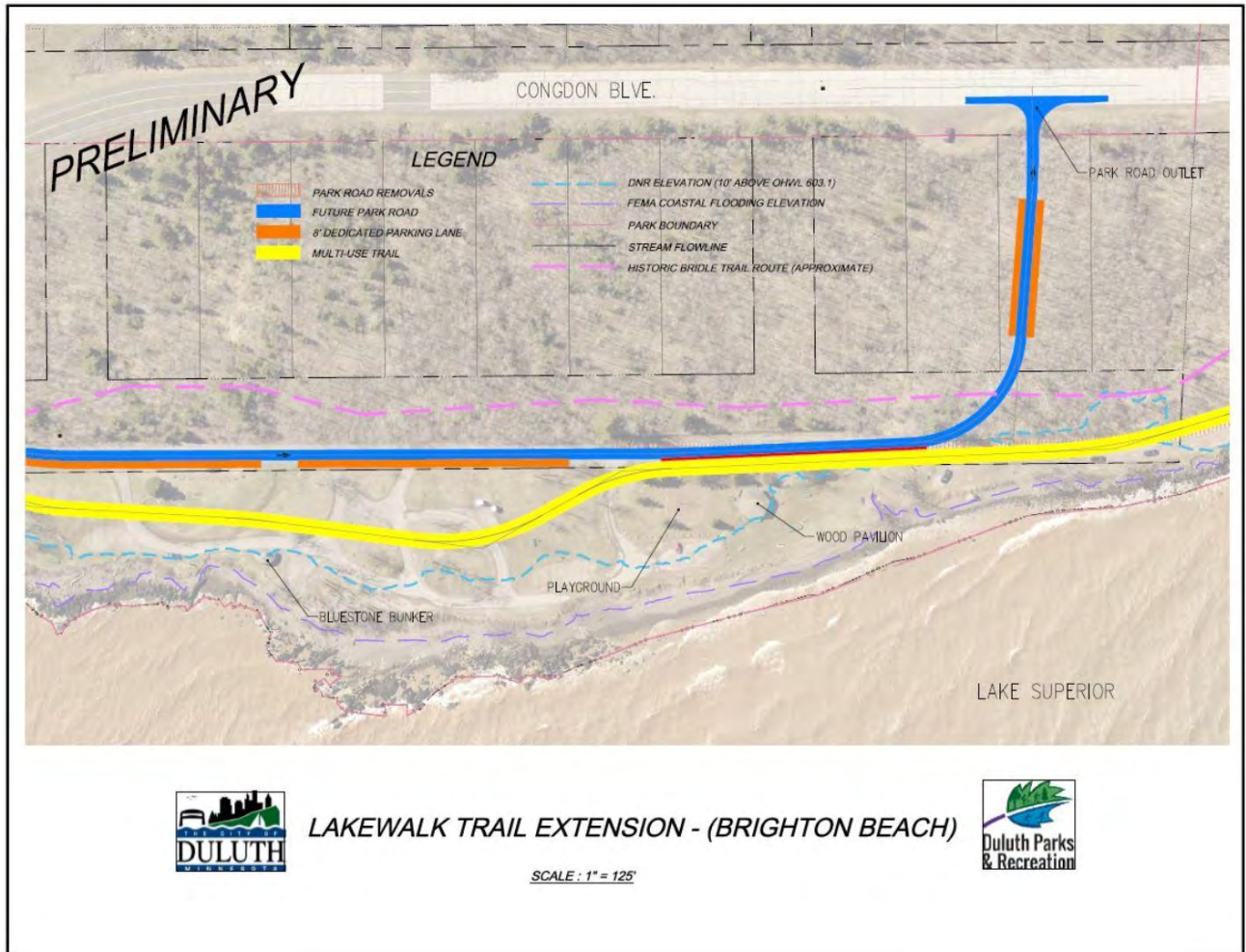


Figure 19: Preliminary proposed roadway realignment, view of eastern end of Kitchi Gammi Park and Brighton Beach Road, showing new roadway connection to Congdon Boulevard and end of trail extension. New roadway indicated in blue. Trail extension indicated in yellow. Parking areas indicated in orange.

Applicant plan.

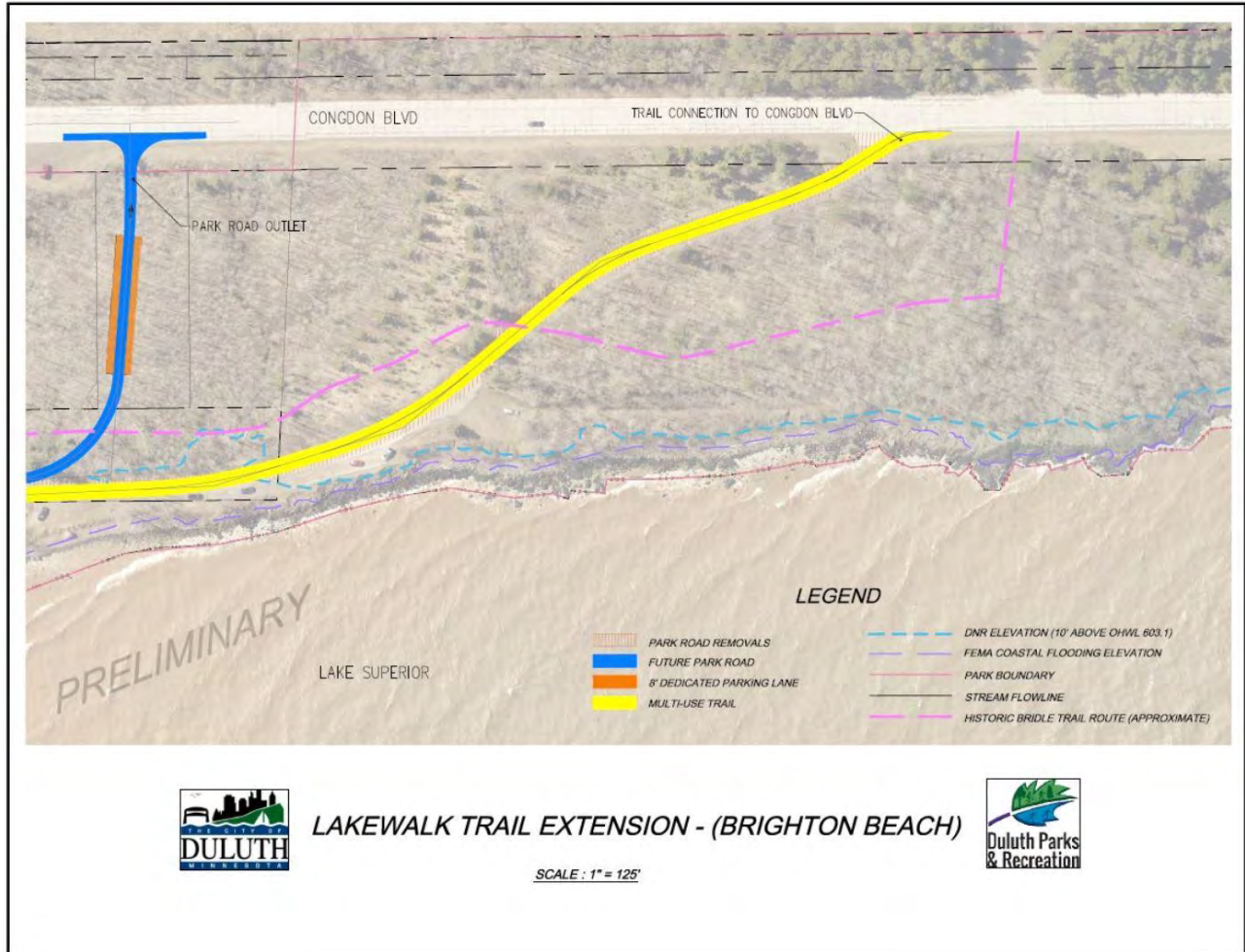


Figure 20: Preliminary proposed landscape and amenity plan, view of western end of Kitchi Gammi Park and Brighton Beach.
Applicant Plan.

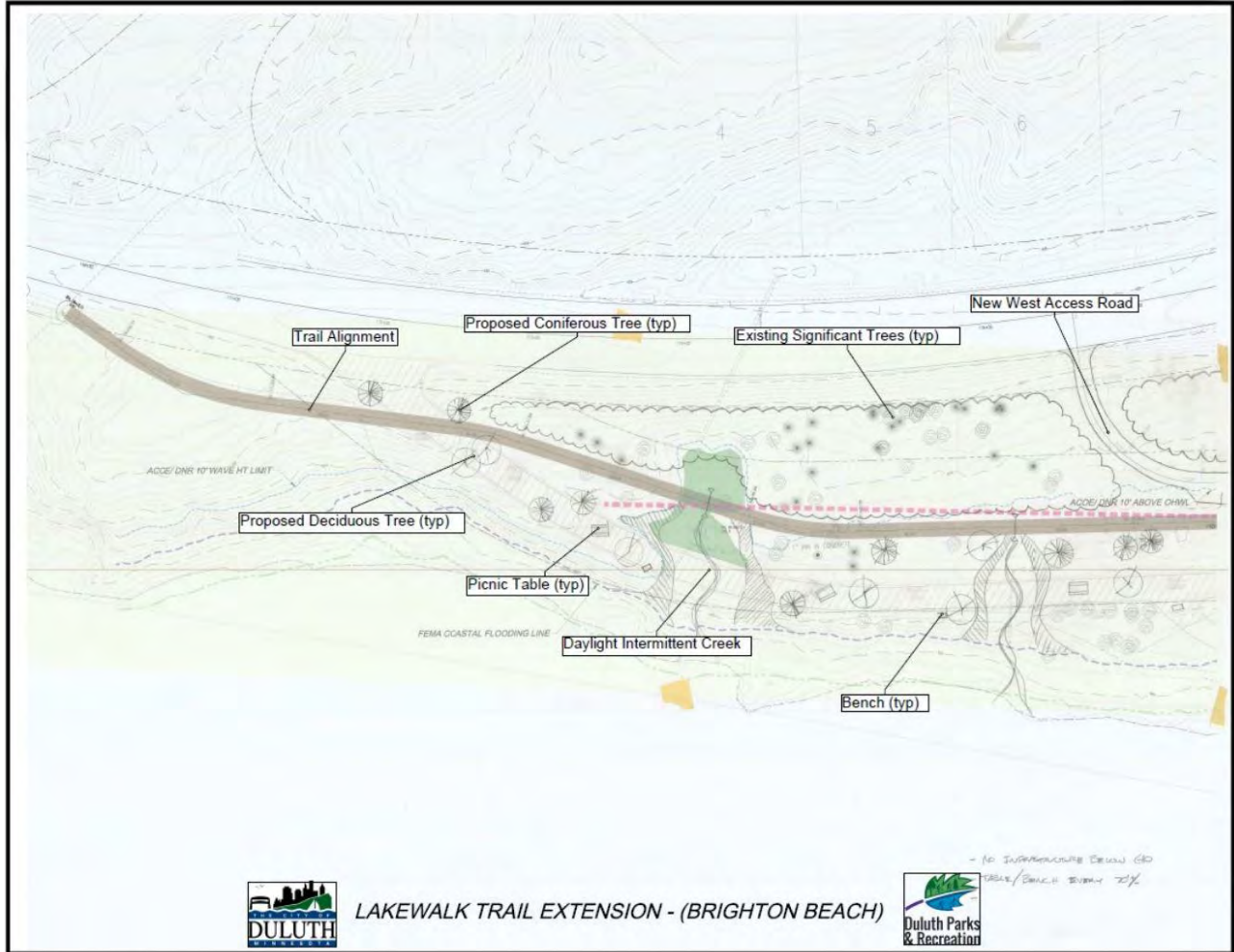


Figure 21: Preliminary proposed landscape and amenity plan, view of Kitchi Gammi Park and Brighton Beach, with new toilet house, parking, and other amenities.
Applicant Plan.

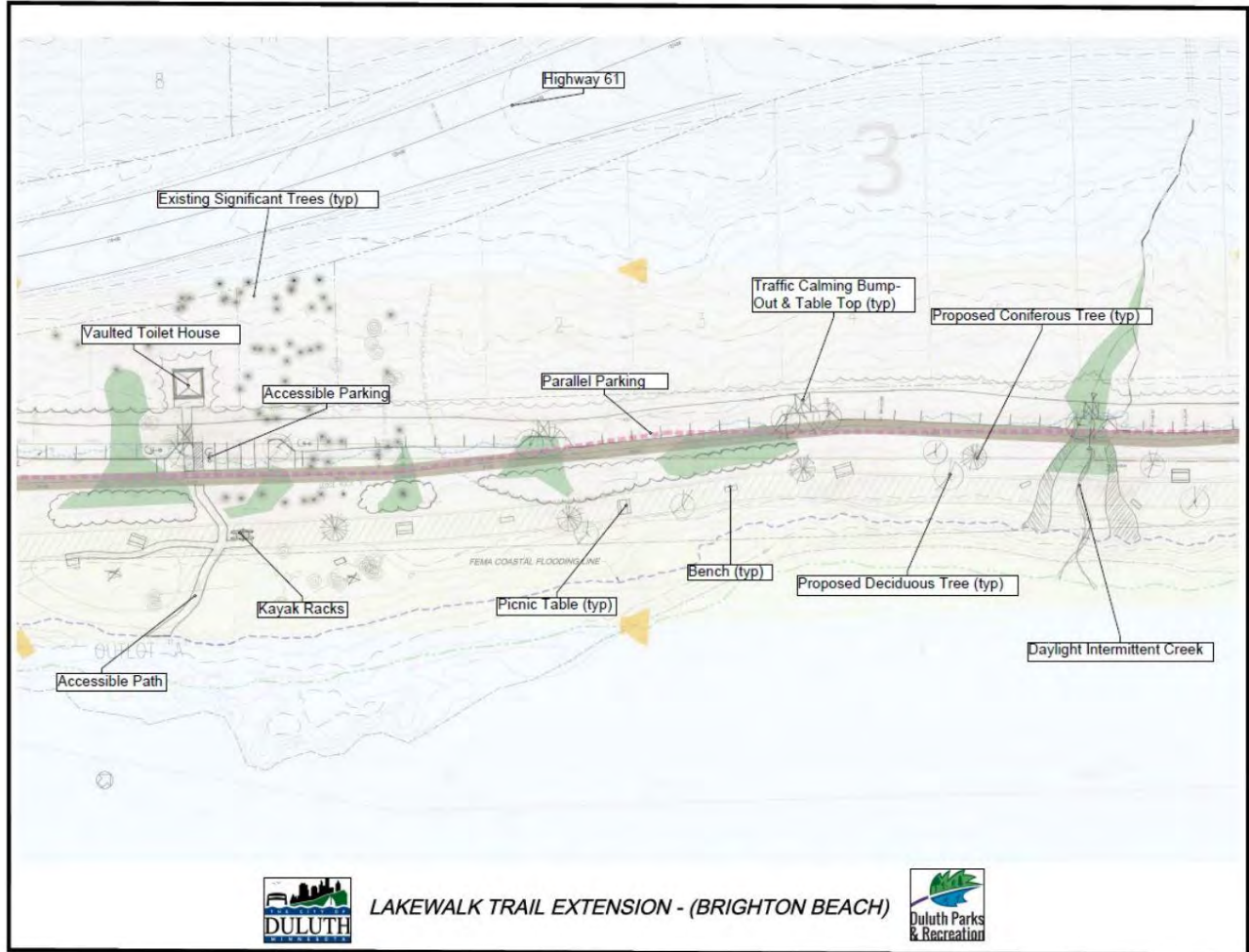


Figure 22: Preliminary proposed landscape and amenity plan, view of Kitchi Gammi Park and Brighton Beach, with new parking and other amenities.
Applicant Plan.

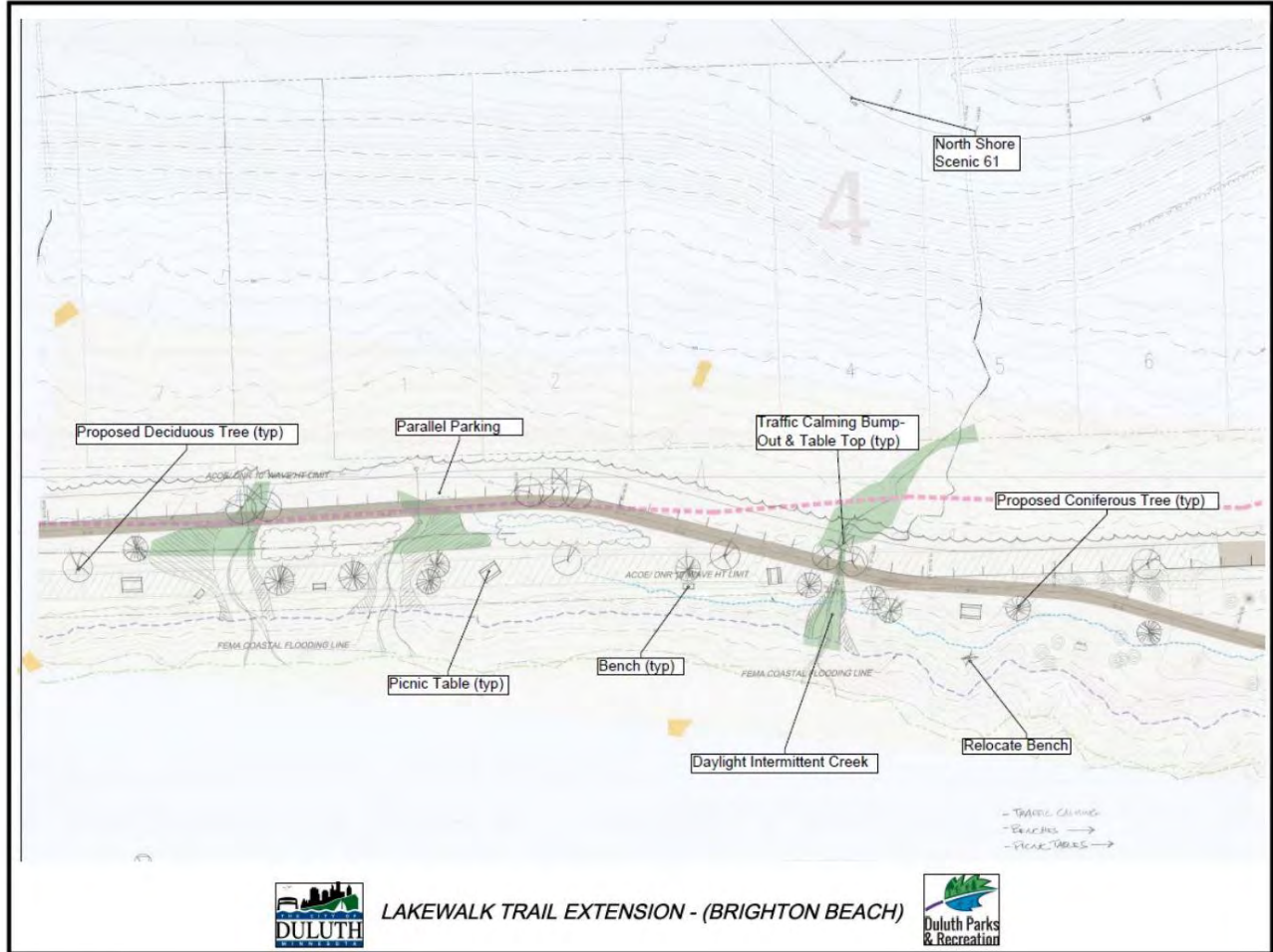


Figure 23: Preliminary proposed landscape and amenity plan, view of Kitchi Gammi Park and Brighton Beach, with new toilet house, parking, turnaround area, and other amenities.
Applicant Plan.

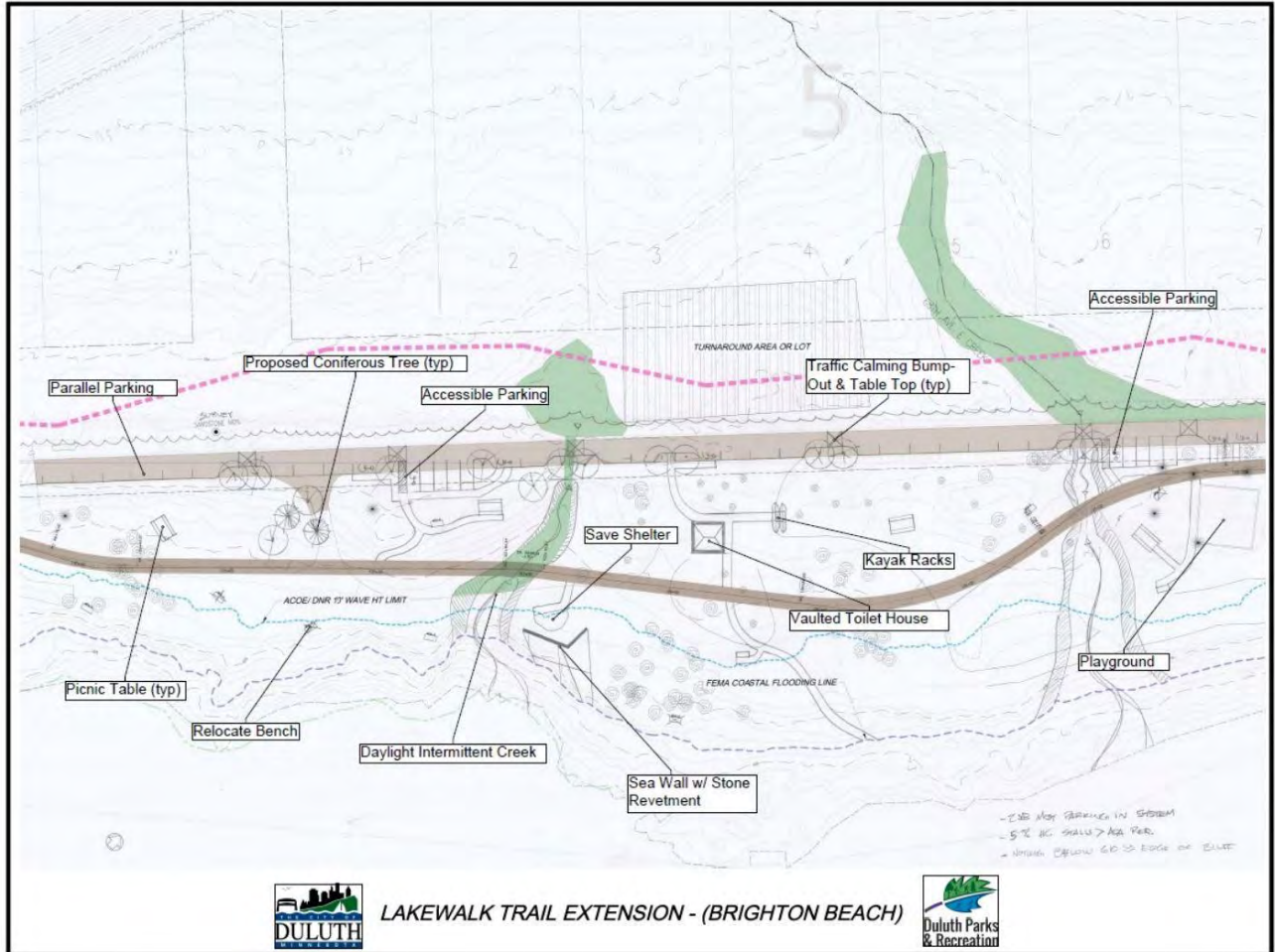
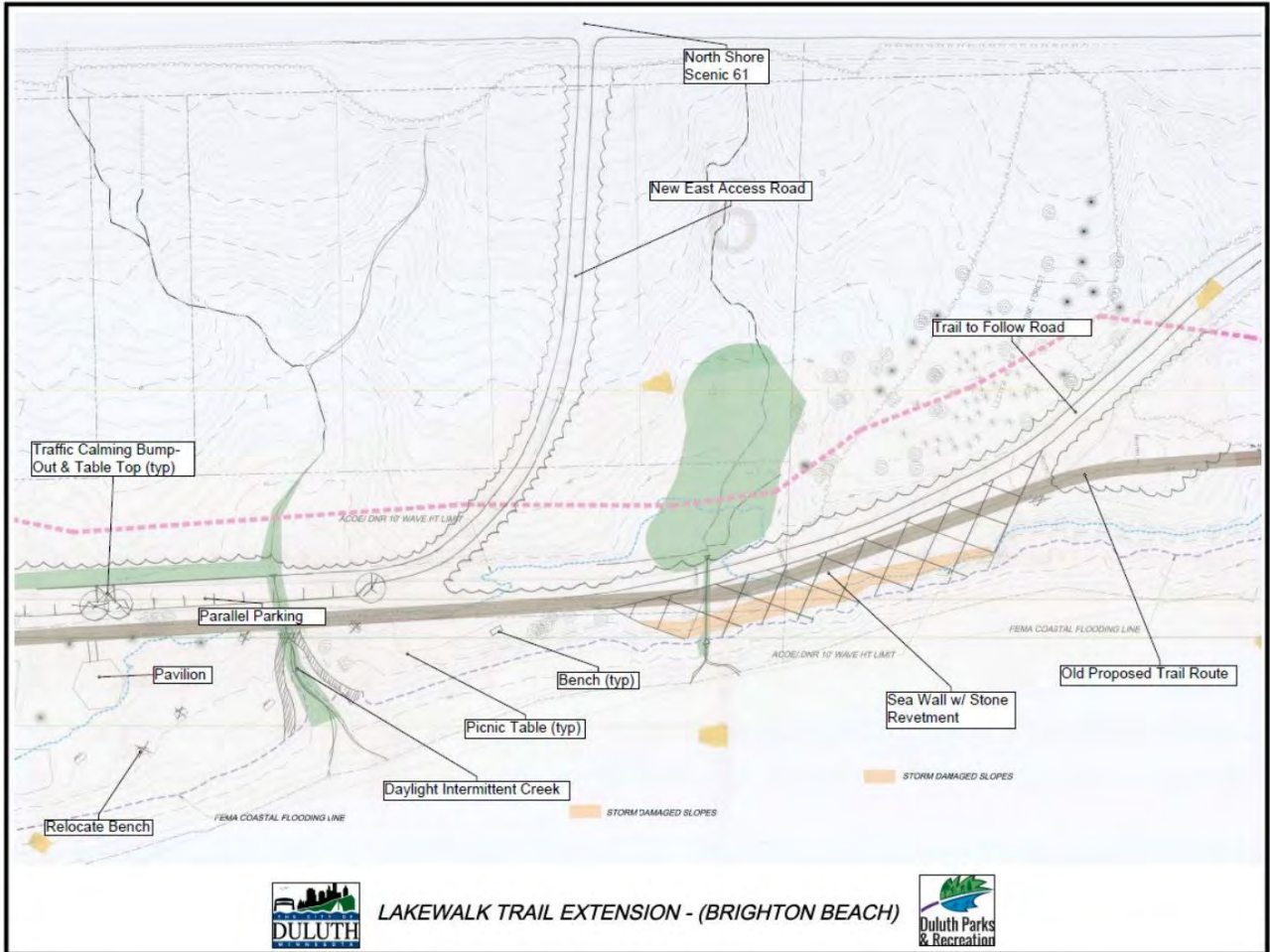


Figure 24: Preliminary proposed landscape and amenity plan, view of Kitchi Gammi Park and Brighton Beach, with new shoreline revetment, pavilion, parking, and other amenities.
Applicant Plan.



The following excerpts from the Phase I Archaeological Reconnaissance Survey provide an overview of the work completed and resulting recommendations.

A complete copy of the report is available by sending an email to fema-r5-environmental@fema.dhs.gov.

**KITCHI GAMMI PARK TRAIL
PHASE I ARCHAEOLOGICAL RECONNAISSANCE SURVEY
ST. LOUIS COUNTY, MINNESOTA**

**State Project Number (SP): 118-090-024
Federal Project Number: STPF-TA 3920(085)**

Authorized and Sponsored by:

Minnesota Department of Transportation
Cultural Resources Unit, Mail Stop 620
395 John Ireland Boulevard
St. Paul, MN 55155-1800
Renee Barnes (Historian)

City of Duluth
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Prepared by:

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December 2019

MANAGEMENT SUMMARY

The City of Duluth plans to construct a new bike trail and a new vehicle access road through Kitchi Gammi Park just northeast of the Lester River in Township 50 North, Range 13 West, Section 4, St. Louis County, Minnesota. The project will comply with M.S. 138 (Field Archaeology Act) and M.S. 307.08 (Private Cemeteries Act) during all Project phases with the assistance of the Minnesota Department of Transportation Cultural Resources Unit. In addition, the City of Duluth plans to utilize Federal Highway Administration funds to complete the Trail portion of the Project which requires compliance with Section 106 of the National Historic Preservation Act, as amended, and implementing regulations found in 35 CFR 800.

The City of Duluth and the Minnesota Department of Transportation contracted with Merjent, Inc. to perform a Phase 1 Archaeological Reconnaissance Survey within the project's Area of Potential Effect, which measures approximately 7.69 acres. Merjent archaeologist Michael Madson served as Principal Investigator and performed the field work with Merjent archaeologists Kevin Mieras and Sigmund Anteckki between October 28 and 30, 2019. Merjent performed pedestrian survey within the Area of Potential Effect and placed 44 shovel probes in areas deemed appropriate by the Principal Investigator at intervals of no greater than 15 meters. Merjent identified no archaeological resources. The effort to identify archaeological deposits in the Area of Potential Effect was appropriate to existing conditions. Merjent recommends that archaeological sites eligible for inclusion on the National Register of Historic Places are not likely to exist within the Area of Potential Effect and that no additional archaeological survey is necessary.

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Table 1. Overview of Surveyed Areas by Station

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Figure 2. Kitchi Gammi Trail Project, General Land Office Map, St. Louis County, Minnesota

Figure 3. Kitchi Gammi Trail Project, 1939 Aerial, St. Louis County, Minnesota

Figure 4. Kitchi Gammi Trail Project, Project Area Mapbook, St. Louis County, Minnesota

Photographs

Photograph 1. Manicured park area near Bike Trail Station 85+50 and Access Road Station 302+00, in the vicinity of Shovel Probe B8. View to southwest.

Photograph 2. Wooded stand near Bike Trail Station 88+00 and Access Road Station 304+50, in the vicinity of Shovel Probe B1. View to southwest.

INTRODUCTION

Merjent, Inc. (Merjent) was contracted by the City of Duluth (City) and the Minnesota Department of Transportation (MnDOT) to perform a Phase 1 Archaeological Reconnaissance Survey for a new bike trail and a new vehicle access road (Project) through Kitchi Gammi Park (Park) just northeast of the Lester River in Township 50 North, Range 13 West, Section 4, St. Louis County, Minnesota (Figure 1). Currently, the Duluth Lakewalk terminates at the western edge of the Park. Bikers are required to share the busy Brighton Beach Road with vehicles through the length of the Park, to meet up with Congdon Blvd, and then continue along the Congdon Blvd/North Shore Dr route to Two Harbors. This new Kitchi Gammi Trail (Trail) will utilize portions of the existing Brighton Beach Road as well as portions of the (currently) adjacent woods and manicured park grounds. The City also plans to remove Brighton Beach Road and to construct a new access road with terminals at Congdon Blvd (Access Road).

The Project APE for the project was determined as follows. The Trail will measure approximately 4,635 feet/1412 meters long. Merjent assumed a corridor width of 50 feet/15.24 meters, which would encompass an area of 5.36 acres. The Access Road will measure approximately 3,222 feet/982 meters long. Again, Merjent assumed a corridor width of 50 feet/15.24 meters, which would encompass an area of 3.74 acres. Approximately 1.41 acres exist in both the Trail and Access Road corridors; therefore, the aggregate survey corridor is approximately 7.69 acres. This effectively represents the Project Area of Potential Effect (Project APE).

Three regulatory conditions exist for the Project. Since the lands that may be utilized for the Project are owned by the City of Duluth (City), the City must comply with M.S. 138 (Field Archaeology Act) and M.S. 307.08 (Private Cemeteries Act) during all Project phases with the assistance of the MnDOT Cultural Resources Unit (CRU). In addition, the City plans to utilize Federal Highway Administration (FHWA) funds to complete the Trail portion of the Project which requires compliance with Section 106 of the National Historic Preservation Act, as amended, and implementing regulations found in 35 CFR 800.

Merjent archaeologist Michael Madson served as Principal Investigator and performed the field work with Merjent archaeologists Kevin Mieras and Sigmund Anteck. Merjent applied industry best practices and adhered to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 Code of Federal Regulations ["CFR"] 44716), the SHPO Manual for Archaeological Projects in Minnesota (Anfinson 2005), and OSA's State Archaeologist's Manual for Archaeological Projects in Minnesota (Anfinson 2011). Merjent placed 44 shovel probes within the Project APE and identified no archaeological resources.

METHODOLOGY

The general objective of a Phase 1 archaeological reconnaissance is to identify archaeological resources within the Project APE that are at least 45 years of age. Archaeological resource types considered for this investigation included both pre-contact and historic-period archaeological sites and earthworks that could provide information about human occupation. Such sites could be evident in artifacts or features on or below current ground surfaces. The focus of this investigation was to understand what sites have been identified in or near the Project APE (archival review), and if any unknown resources could be positively identified within the Project APE (field reconnaissance). If an archaeological site were to be identified in the Project APE during field reconnaissance, as much data would be collected to provide a basic understanding of the site's eligibility for inclusion on the National Register of Historic Places (NRHP).

Merjent's scope of work included two tasks: (1) archival review and (2) field reconnaissance. As noted below, the archival review included review of records on file at the Minnesota State Historic Preservation Office (SHPO) and the Minnesota Office of the State Archaeologist (OSA), which house archaeological site forms, report files, and cultural resource reference materials for the State of Minnesota.

Field reconnaissance generally consisted of standard Phase I methods as outlined by Anfinson (2005, 2011). Merjent archaeologists Michael Madson, Kevin Mieras, and Sigmund Anteckki executed the field reconnaissance between October 28 and 30, 2019. Archaeologists located the Project APE utilizing Geographic Information System (GIS) data in conjunction with a Trimble Geo7X series Global Positioning System (GPS) unit, supplemented with aerial photograph-based paper maps.

Mr. Madson assessed ground surface visibility to determine the proper survey techniques. In those areas where ground surface visibility was below 25% and where previous disturbance was not obvious, Merjent archaeologists placed shovel probes where slopes were less than 20 percent. In such areas shovel probes were placed at a maximum interval of 15 meters and were generally 30 to 40 centimeters in diameter and reached depths of 60 centimeters. Soils recovered from shovel probes were screened through ¼ inch hardware cloth mesh and returned.

Merjent archaeologists photographed areas within the Project APE and recorded ground surface and subsurface conditions on standard field forms. Field forms, photograph logs, and all archival materials are on file at Merjent's office in Minneapolis, Minnesota.

LITERATURE SEARCH

Merjent archaeologists conducted an archival review of the Project APE and the surrounding area within a 1-mile radius (literature search study area). The Project is within SHPO's Archaeological Sub-Region 9n (Lake Superior North). Sub-Region 9n is located along the Minnesota shore of Lake Superior running

from Duluth to the United State/Canada border just north of Grand Portage. In addition, the Project APE falls within the **HIGH** Layer of the Mn Model (Phase 3) Survey Implementation Model.

Mr. Madson conducted the literature search of OSA files on July 1 and December 17, 2019. Mr. Mieras reviewed SHPO survey report files on July 29 and December 17, 2019. Mr. Madson and Mr. Mieras reviewed additional archival resources, including 19th century maps and field notes, published by General Land Office (GLO), and historic aerial photographs.

No previous archaeological survey reports within the literature search study area are on file at SHPO. No previously identified archaeological sites or earthworks are within one mile of the Project APE. The nearest terrestrial archaeological site, the Hartley Root Cellar (21SL1102), is 4.5 miles west of the Project.

General Land Office Map and Historic Aerial Photograph Review

Merjent reviewed 19th-century GLO maps and notes on file with the Bureau of Land Management (BLM 2019a). The GLO map of Township 50 North, Range 13 West, Section 4 illustrates two examples of a structure and a clearing, one at each end of the Project APE (Figure 2). The GLO notes describe them each as “a House and 2 acres [of] clearing,” which were established sometime before June 1857 (the survey date indicated on the GLO map).

A review of the land patent on file with the BLM (BLM 2019b) for the northern structure and clearing shows that just over 160 acres were granted to Warren Ford as Bounty Land for his role as a Private in the Vermont Militia during the War of 1812. Mr. Ford held title to the acreage sometime between March 3, 1855 (when Bounty Land grants were first made available) and October 5, 1860, when title was sold to Henry Stowell. The land patent for southern structure and clearing shows that just over 116 acres were granted to Benjamin N. Harrison as Bounty Land for his role as a Private in the Illinois Militia during the Black Hawk War. Mr. Harrison held title to the acreage sometime between March 3, 1855 and October 5, 1860, when title was sold to Daniel W. Case.

Merjent reviewed aerial photographs taken between 1939 and 1989, on file with the OSA. The 1939 aerial photograph shows the early layout of Kitchi Gammi Park, which was an extension of the nearby Brighton Beach Tourist Camp (now the location of the Mid-Continent Ecology Division Laboratory), both of which were owned and operated by the City (Nelson and Dierckins 2017) (Figure 3). Kitchi Gammi Park, first constructed in the 1920s, has been maintained ever since. The Park infrastructure, in particular Brighton Beach Road, has been replaced repeatedly in response to Lake Superior shoreline erosion, most often associated with storm events. However, the alignment of Brighton Beach Road and the Park layout has not altered significantly since the 1920s.

The Lake Superior Shoreline and Project APE Soils

As noted by Miller (n.d.), the current shoreline along Lake Superior likely took shape around 2,000 years ago. The rapids of Sault Saint Marie, exposed by the lowering levels of Lake Michigan and Lake Huron, restricted flow out of Lake Superior and raised the level to its current elevation, approximately 600 feet above sea level. Miller (n.d.) also noted that the Lake Superior shoreline was possibly upwards of 500 feet above its current level immediately after the recession of the last glaciation as water filled the Lake Superior basin. Lake levels then gradually fell to a point approximately 250 feet lower than the current level, before the restriction at Sault Saint Marie.

Soils in the Project APE are generally ascribed to the Barto, stony-Greysolon-Rock outcrop complex, with possible slopes ranging from 0 to 18 percent (NRCS 2019). Merjent Archaeologists expected excavatable soils to be relatively shallow with depths not likely to exceed 15 inches or 40 centimeters.

Implications for Archaeological Potential

No previous archaeological reconnaissance survey has been documented in the Project APE or the literature review study area and no previously identified archaeological sites are within the Project APE. However, a brief review of the development of the Lake Superior shoreline and readily available early historic-period maps suggests that that the APE has potential to contain archaeological sites, namely:

- Pre-contact period archaeological sites from the Archaic Period, but more likely from the Woodland Period (sometime after around 2,000 years before present as the current lake level stabilized), and;
- Mid-19th (Bounty Land settlement) and 20th century (post World War I development of the Park and subsequent park use) archaeological sites.

RESULTS

The Phase I reconnaissance survey was completed by Merjent archaeologists Michael Madson, Kevin Mieras, and Sigmund Anteckki between October 28 and 30, 2019. A series of 44 shovel probes were excavated within areas not obviously disturbed or paved (Table 1 and Figure 4). Table 1 shows the field conditions of the surveyed Trail and Access Road corridors. Each corridor measured 50 feet wide with a 20-foot centerline offset. As illustrated on Figure 4, overlap along the corridors occurred in some areas. The aggregate survey area, or the combined total acreage of all survey areas discounting the overlap, was approximately 7.69 acres. As noted above, this effectively represents the Project APE.

Subsurface visibility within the entire survey area was less than 25 percent, necessitating shovel testing across a variety of field conditions ranging from open, grassy manicured green spaces (Photograph 1) to wooded stands of mixed pine and birch with bedrock exposures (Photograph 2).

Soils observed throughout the Project APE were consistent with the Barto, stony-Greysolon-Rock outcrop complex, i.e. silty loams overlaying clay with cobble inclusions, often with pooling water visible at 50 to 60 centimeters below the ground surface (cmbgs). In general, soil profiles consisted of:

- a thin silty loam topsoil (0 to 20/25 cmbgs, 10YR 3/2 [very dark grayish brown]), over;
- mottled clay (20/25 to 35/40 cmbgs, 5YR 4/4 [reddish brown]), over;
- clay (35/40 to 55/60 cmbgs, 5YR 4/6 [yellowish red]).

Modern cultural material examples (including but not limited to a wire fragment and condiment packets) were observed in the topsoil of excavated shovel probes, particularly within the open, manicured park grasses of the main recreational area between Bike Trail stations 101+50 and 109+00. Recovered modern materials were placed in backfilled shovel probes.

Merjent archaeologists observed no pre-contact or historic-period cultural materials within the Project APE.

SUMMARY AND RECOMMENDATIONS

Between October 28 and 30, 2019, Merjent conducted a Phase I Archaeological Survey within the Project APE. No archaeological sites were identified during the field investigations. The effort to identify archaeological deposits in the APE was appropriate to existing conditions. Merjent recommends that archaeological sites eligible for inclusion on the NRHP are not likely to exist within the Project APE and no additional archaeological survey is necessary.

While not reviewed for the purposes of this survey of the Project APE, it should be noted that a scatter of historic-period artifacts was noted on the surface approximately 125 feet/38 meters east of Bike Trail station 118+50. Since the Bike Trail will generally follow the centerline of the existing roadway at this location, and no vegetation clearing will be necessary (only removal of existing pavement), Merjent suggested that the historic-period artifact scatter would not be impacted by construction of the Project. This historic-period artifact scatter, possibly related to the location of the Ford/Stowell structure noted on the GLO, will be noted in a pending document and site form (Madson 2020).

While not expected, in the event archaeological materials are identified during Project construction activities, such activities should cease in the immediate area, and a professional archaeologist should be contacted to evaluate the identified materials. In the event of a confirmed archaeological site, steps should be taken to record and evaluate the site in consultation with MnDOT, the City, the OSA, and the Minnesota Indian Affairs Council (MIAC) and, if the site is determined by MnDOT to be eligible for inclusion on the NRHP, to determine and implement any procedures for treatment. Should human remains be identified, the procedures as outlined in Minnesota Statute Chapter 307, "Private Cemeteries," must be followed.

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REFERENCES CITED

Anfinson, Scott

2005 SHPO Manual for Archaeological Projects in Minnesota. Minnesota Historical Society. St. Paul, Minnesota.

2011 State Archaeologist's Manual for Archaeological Projects in Minnesota. Office of the State Archaeologist. St. Paul, Minnesota.

Bureau of Land Management

2019a General Land Office Plat and Field Notes. (Website: <https://glorerecords.blm.gov/default.aspx>, accessed June and December 2019)

2019b 1860s Federal Land Patents. (Website: <https://glorerecords.blm.gov/default.aspx>, accessed June and December 2019)

Madson, Michael

2020 Site form for Site KGP-H01. Pending submittal in 2020.

Miller, Jim

n.d. An Introduction to the Geology of the North Shore. (Website: <http://www.lakesuperiorstreams.org/understanding/geology.html>, accessed December 2019)

Nelson, Nancy S. and Tony Dierckins

2017 *Duluth's Historic Parks: Their First 160 Years*. Zenith City Press, Duluth, Minnesota

NRCS

2019 *Soil Survey of St. Louis County, Duluth Park*. (Website: <https://websoilsurvey.nrcs.usda.gov/app/>, accessed December 2019)

APPENDIX I

Tribal Coordination and Religious Sites



FEMA

March 9, 2022

Edith Leoso, Tribal Historic Preservation Officer
Bad River Band of Lake Superior Tribe of Chippewa Indians
P.O. Box 39
Odanah, Wisconsin 54861

Re: Brighton Beach Road/Kitchi Gammi Park, Duluth, Saint Louis County, MN
FEMA Project #95035, DR-4414-MN, PW 8
46.838049, -92.001752 to 46.846512, -91.990690 / T50N R13W S4

Dear Ms. Leoso:

The Federal Emergency Management Agency (FEMA) recognizes the special and unique legal relationship that exists between the federal government and federally recognized American Indian Tribes (Tribes). FEMA also recognizes that Tribes may attach religious and cultural significance to historic properties located on aboriginal, ancestral, or ceded lands that are not contiguous with reservation lands. For this reason, FEMA consults with Tribes regarding the possible effects of FEMA-funded undertakings on cultural properties of historic or traditional significance, sometimes referred to as Traditional Cultural Properties (TCPs). The purpose of this communication is to provide information regarding the captioned FEMA-funded project and to invite comment on whether the Bad River Band of Lake Superior Tribe of Chippewa Indians or other Tribes have interests in the areas potentially affected by this undertaking.

As a result of severe storms and flooding affecting areas of the State of Minnesota October 9-11, 2018, President Trump signed the 4414-DR-MN Disaster Declaration on November 27, 2018. Under this declaration, St. Louis County was made eligible for FEMA's Public Assistance (PA) Program funding. FEMA notified Tribes thought to have interests in the declared counties on February 22, 2019. FEMA invited comments on the potential impacts PA projects may have on lands traditionally used by or sacred to the Bad River Band of Lake Superior Tribe of Chippewa Indians and other Native American groups. No responses to this request for comment were received.

The disaster event resulted in damage and erosion at Kitchi Gammi Park along the Lake Superior shoreline, damaging Brighton Beach Road, lakeshore revetments, and culverts. The subrecipient, the City of Duluth, is seeking funding from FEMA for relocating Brighton Beach Road, converting portions of the existing road to a recreational trail, adding trail sections, repairing culverts, and repairing or replacing lakeshore revetments. The project location is noted on the enclosed map.

In accordance with the National Historic Preservation Act and other legislation, FEMA determined that this project constitutes a federally assisted undertaking requiring review under Section 106 of the National Historic Preservation Act of 1966, as amended. In accord with 36 CFR 800.2(c)(2)(ii), FEMA is providing this opportunity for the Bad River Band of Lake Superior Tribe of Chippewa Indians to identify concerns about historic properties that may be affected by this undertaking.

We invite your comments on the potential impacts this undertaking may have on lands traditionally used by or sacred to the Bad River Band of Lake Superior Tribe of Chippewa Indians or other Native American groups. We understand the sensitive nature of much of the information regarding TCPs and assure you in advance that any information you provide will be considered privileged and confidential. In order to safeguard TCPs of interest to Native Americans, we are contacting the following Tribes to request information regarding their interest in this undertaking.

- Bad River Band of Lake Superior Tribe of Chippewa Indians
- Bois Forte Band of Chippewa Indians
- Fond du Lac Band of Lake Superior Chippewa
- Fort Peck Assiniboine and Sioux Tribes
- Grand Portage Band of Lake Superior Chippewa
- Keweenaw Bay Indian Community
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
- Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin
- Lac Vieux Desert Band of Lake Superior Chippewa Indians
- Mille Lacs Band of Ojibwe Indians
- Minnesota Chippewa Tribe
- White Earth Band of Ojibwe

Receiving notice of your interest to join the consultation regarding this undertaking or notice of Tribes other than those listed above that may have an interest in this undertaking would improve FEMA's efforts to protect resources that may exist in the areas noted on the enclosures. A response form has been provided for your convenience.

We would appreciate a response by email from your office within thirty (30) days of your receipt of this documentation. If FEMA receives no response from your office within thirty (30) days, we will move forward with the project without comment from the Bad River Band of Lake Superior Tribe of Chippewa Indians. If you have any questions or comments, please do not hesitate to contact me at fema-r5-environmental@fema.dhs.gov or at 312-408-5549.

Sincerely,



Duane Castaldi
Regional Environmental Officer
FEMA Region V

Sent by email to thpo@badriver-nsn.gov

+++++++You may email this page to fema-r5-environmental@fema.dhs.gov +++++++

Re: Brighton Beach Road/Kitchi Gammi Park, Duluth, Saint Louis County, MN
FEMA Project #95035, DR-4414-MN, PW 8
46.838049, -92.001752 to 46.846512, -91.990690 / T50N R13W S4

- The Bad River Band of Lake Superior Tribe of Chippewa Indians has no interest in the area potentially affected by the captioned undertaking.
- The Bad River Band of Lake Superior Tribe of Chippewa Indians has an interest in the area potentially affected by the captioned undertaking. Contact information is provided below.
- The Tribal Nations noted below may have an interest in the area potentially affected by this undertaking.

Bad River Band of Lake Superior Tribe of
Chippewa Indians

Date

Undertaking location marked in red.
USGS Map "Lakewood, MN", 1:24000, enlarged to show detail



APPENDIX J

Public Engagement

BRIGHTON BEACH (KITCHI GAMMI PARK)

Revised 2019 Mini-Master Plan

Duluth, Minnesota

August 19, 2019



02. PLANNING PROCESS



>>Photo Credit: Lake Superior at Brighton Beach, Parks Staff



Community Engagement Timeline

City Interdepartmental Staff Meeting
 Representatives from City Engineering, Parks & Recreation, Property Facilities Management and Community Planning began meeting in December 2017 to address failing infrastructure and determine future action.

Existing Conditions Review
 Condition assessments were compiled from disaster storm reporting and staff field visits. Most data was compiled over the summer/fall of 2018 and spring of 2019.

Online Survey/Comment Period
 24 survey responses received between May 28—June 7, 2019. 7 additional written comments received.

Public Open House
 Hosted by City Staff at Brighton Beach, 25 community members attended this meeting on June 3, 2019 from 5 to 7 p.m.

Parks & Recreation Commission Informational Presentation
 Draft plan presented to Parks and Recreation Commissioners on June 12, 2019.

Public Comment
 Open during planning process through email, phone and website comment form. Draft plan posted for comment from June 13 to 26, 2019.

Plan Revisions: June 27—July 9, 2019
Parks & Recreation Commission Approval
 Final plan presented to Commissioners on July 10, 2019

Council Approval- August 19, 2019.

Open House & Public Survey

Open House
25 Attendees
June 3, 2019

Online Survey
24 Respondents
May 28 to June 7, 2019



>>Photo Credit: Public Open House June 3, 2019; Parks Staff

Duluth Parks & Recreation
Help us improve Brighton Beach!

How do you typically get to Brighton Beach?

WALK	BUS
DRIVE	TAXI/ RIDESHARE
BIKE	BOAT
OTHER	

What is your favorite season to visit Brighton Beach?

SPRING	SUMMER
FALL	WINTER

What is your favorite thing to do at Brighton Beach?

Walk ✓✓✓
 Observe Sun Bathers ✓
 Throw rocks into the water ✓✓
 Walk (kids) ✓
 Listen to the waves crash at the shore ✓✓✓
 Watch sandcastle makers ✓✓

Meet friends/sit by lake ✓
 Sit by the lake, pick meals w/ my kids ✓
 Walk every day ✓
 Walk in trails - spring flowers ✓
 Picnic ✓
 Enjoy ice forms ✓✓✓

Launch my canoe at Kagan ✓
 Sit by the lake, pick meals w/ my kids ✓
 Launch my canoe at Kagan ✓

Duluth Parks & Recreation
Help us improve Brighton Beach!

How could we make Brighton Beach even better?

Reclaim Remains ✓
 Minimal ✓
 Kiosk/Canoe Launch Area ✓
 Another Pavilion ✓
 Paths to Lake/Beach - more accessible ✓
 Separate walking from cars ✓
 Speed limits & CCTV to monitor criminal activity ✓
 1 way traffic ✓
 more disposal bins for dog waste & signs about picking it up ✓
 One entrance with roundabout entrance ✓
 Restore Shoreland after Mollie Road from front ✓
 More picnic tables ✓
 Nature Play for kiddos - 3 oaks?? ✓
 Dog park ✓

How old are you?

Under 15	15-18	19-29	30-43	44-64	65+
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What is your zip code?

55803 ✓
 55804 ✓✓✓
 55805 ✓✓✓
 55806 ✓✓✓
 55807 ✓✓✓
 55808 ✓✓✓
 55809 ✓✓✓

Open House & Public Survey Findings

"Brighton Beach is a true Duluth treasure!"

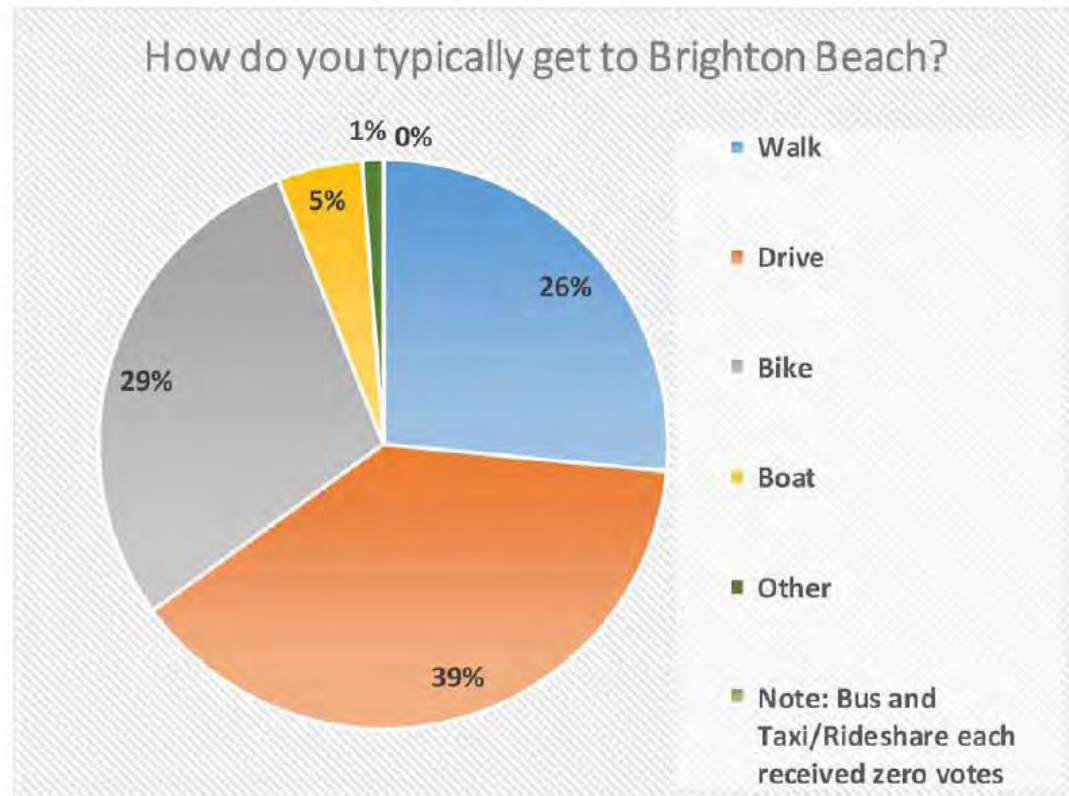
- online survey respondent

Top 5 Activities

1. Walk
2. Observe from beach / observe waves / observe storms
3. Sit by lake
4. Beachcomb / throw rocks into the water
5. Enjoy ice formations

Top 3 Suggestions

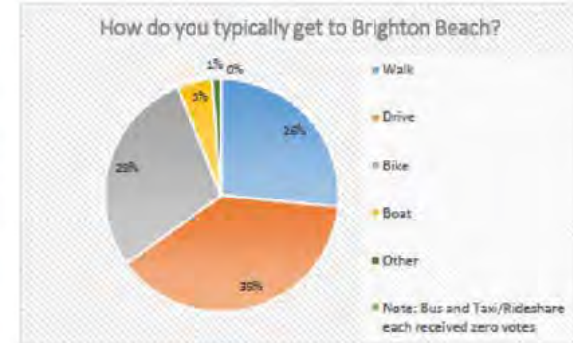
1. Separate walking areas from driving areas
2. Permanent restroom facilities
3. One-way traffic



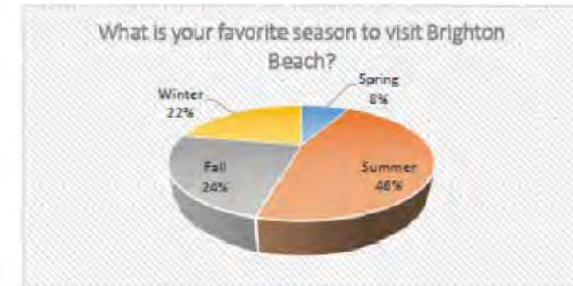
Detailed feedback summary available in Appendix A.

Brighton Beach feedback summary: online survey, public meeting, comment form, and emails

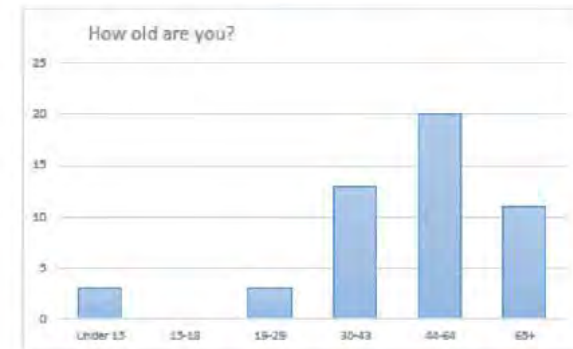
"How do you typically get to Brighton Beach?"	Total Responses	% Response
Walk	22	26.5060241
Drive	32	38.55421687
Bike	24	28.91566265
Boat	4	4.819277108
Other	1	1.204819277
Note: Bus and Taxi/Rideshare each received zero votes	0	0
Bus	0	0
Taxi/Rideshare	0	0



"What is your favorite season to visit Brighton Beach?"	Total Responses	% Response
Spring	5	7.936507937
Summer	29	46.03174603
Fall	15	23.80952381
Winter	14	22.22222222



"How old are you?"	Total Responses	% Response
Under 15	3	6
15-18	0	0
19-29	3	6
30-43	13	26
44-64	20	40
65+	11	22



"What is your zip code?"	Total Responses	% Response
55803	3	7.142857143
55804	33	78.57142857
55806	1	2.380952381
55807	1	2.380952381
55812	2	4.761904762
55616 (data consolidator's note: Two Harbors)	1	2.380952381
55733 (data consolidator's note: Esko area)	1	2.380952381

"What is your favorite thing to do at Brighton Beach?"	Total Responses
Walk	17
Observe from beach / observe waves / observe storms	15
Sit by lake	11
Beachcomb / throw rocks into the water	9
Enjoy the ice formations	7
Listen to the waves	6
Picnic	4
Wade or swim in the water	3
See the spring flowers	2
Run	2
Bike	2
Visit the art show	2
Meet friends	1
Launch canoe or kayak	1
Play on the beach	1
Photography	1
Drive through	1
Play on playground	1
Yoga by the lake	1

"How could we make Brighton Beach even better?"	Total Responses	
Permanent restroom facilities	7	theme: facility suggestions
Another picnic pavilion	2	
Canoe / kayak launch area	2	
More trash and dog waste disposal (& dog waste reminder signage)	3	
More picnic tables and grills	3	
Changing tables in restrooms	1	
Water fountain	1	
Bike racks	1	
Put in a dog park	1	
Improve playground	1	
Nature play for kids	1	theme: design suggestions
Separate walking areas from driving areas	12	
One-way traffic	7	
Move road away from lake and restore shoreland	5	
More parking	4	
Turn into a pedestrian park w/parking on either end	4	
Diagonal parking	3	
Improve accessibility of paths to lake/beach	2	
Widen road and designate a bike lane	2	
Improve road surface	2	
Include pull-off viewing areas (don't need to leave car)	1	
Parking time limit	1	
One entrance with roundabout and cul-de-sac	1	
Speed limits and CCTV to monitor crime/speeding	1	
Slower traffic	1	
Speed bumps	1	
Dedicate a bike/walking path that connects the Lakewalk to Congdon Blvd	1	
Move E end of road to the W of the forest and keep road away from eroding area	1	
No change / minimal change	3	theme: general
Keep green spaces	2	
Leash law / dog poop pick-up	2	
Keep the planted forest	1	
Cut the grass	1	

Online survey: "Do you have any other comments?"

We live in Lakeside and have loved family outings at Brighton Beach by bike and car for 20 years. Sad to see how the road has been so hard to keep up. Would like to see a more permanent solution to keeping it safe and nice for tourists as well as local visitors for years to come.

For the past 20 years I have walked Brighton beach about three times a week, regardless of weather. Each time I walk I notice how many people drive there to gaze out over the water and sky. I would like to see those that aren't very mobile to be able to continue to sit in their cars and enjoy the beauty. .it brings so many people peace.,thank you for your efforts.

Please never use the word "resiliency" ever again

Brighton Beach is a true Duluth treasure!

Attention to graffiti--I was SO mad when someone painted that rock (on the right side of the road on the turn before you continue up the road to the eastern entrance) bright green--I was hoping the city would sandblast it, or turn it over so it didn't show.

Brighton Beach just needs to be safer for pedestrians and bikers while also allowing for people to drive thru. Designated paths and speed bumps might help

Could vehicle traffic be eliminated altogether with parking areas off Scenic 61 and wide paved accessible trails leading to the lakeshore?

This is a great area for family fun. Thank you for keeping it great

Thank you for asking!

The lake has been eroding the road for years; removing would reduce, significantly, costs of continual repair.

keep the redesign simple, so as not to interfere with the natural beauty of the shoreline

Looking forward to the improvements!

Email: General comments

Brighton Beach Suggestions: I have a few and will list them in no particular order. You have probably heard it a million times so I will not suggest parking, even though it is very important. 1. Splash pad for kiddos 2. Dog friendly grounds (trashes, maybe a fence, water filling stations) 3. An ice rink set up 4. Disc golf baskets 5. A small fish cleaning facility because so many people ice fish out of it. 6. A community garden 7. Landscaping with flowers to attract bees 8. Prevention against invasive plant species 9. Areas for picnic tables

Brighton Beach Feedback: Please leave the natural beauty of this park. Fix the road first. Widening if capable would be wonderful but I don't see a need for bike paths if it takes away from the beauty of the natural park. An added, simple, play area for kids would be wonderful but comes after the core need of a better roadway.

I would love to see Brighton beach road a lot more wide with a bike/run/walk lane

Ideas for brighten beach. First off the road needs to be wide enough for two vehicles to safely pass each other, a sidewalk and bike lane would be nice if only old highway 61 had a bike lane. Also redoing the parking lots and more grassy areas that are nice and groomed. Update the playground. Last thing but I see people having fires there all the time and I myself love to have beach fires so maybe some outside fire pits for fires on the beach? Tourists would really love all this just saying! Thanks

The current draft provides ample parallel parking spaces, but no pull off areas where people can turn in, park, and look out over the lake through their front windshield. I live within walking distance and have walked Brighton Beach year round for the last 20 years and each time I do I see people pulled into a turn off, gazing out at the lake. Many never leave their car, often due to inclement weather or the inability to navigate the shoreline on foot, but nevertheless, they are able to take in the magnificence of Lake Superior in all her changing moods. Please don't deprive those people of that opportunity. Construct full on viewing sites. It would be a travesty if the existing spots were all taken away and not replaced with viable options.

Re: Brighton Beach Is a breakwall / breakwater structure feasible in order to prevent that specific area of the road from continual corrosion? Continuous repair after storms and the broken down road asphalt mixing into Lake Superior both seem like issues that need to be mitigated. A restroom because I've seen the portable toilets tipped over many times there. The chemicals used in portable toilets are not inert. Portable toilets waft downwind the smell of proprietary (secret) fragrance compounds like a glade plugin installed in our natural spaces. Biocides are built into the portable toilet liquid so wafting biocides in our wild spaces should also be mitigated. My ideas clearly depend upon budget. Thank you for your consideration.