

**December 14, 2020**

TO: INTERESTED PARTIES

RE: Ponds Behind Erie Pier Sediment Remediation

The Minnesota Pollution Control Agency (MPCA) has approved the Findings of Fact, Conclusions of Law, and Order for a Negative Declaration on the need for an Environmental Impact Statement on the Ponds Behind Erie Pier project. The Findings of Fact, Conclusions of Law, and Order document concludes that this project does not have the potential for significant environmental effects. The decision for a Negative Declaration completes the state environmental review process under the revised Environmental Quality Board rules, Minn. R. ch. 4410. Final governmental decisions on the granting of permits or approvals for the project may now be made.

These documents are available for review at the Minneapolis Public Library at 300 Nicollet Mall, Minneapolis (see the Minneapolis Public Library website at <https://mplslibrary.com/> for COVID-19 access information). These can also be viewed at the Duluth Public Library. MPCA offices are closed at this time; however, the document can be viewed on MPCA's website at <https://www.pca.state.mn.us/regulations/projects-under-mPCA-review>.

We want to express our appreciation for comments submitted on the Environmental Assessment Worksheet. Comments and responses to them have been incorporated into the Findings of Fact, Conclusions of Law, and Order and have been considered by MPCA staff during the permit process for the proposed project.

Sincerely,

*Dan R. Card, P.E.*

Dan R. Card, P.E.  
Supervisor, Environmental Review Unit  
St. Paul Office  
Resource Management and Assistance Division

DRC:bt

**STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY**

**IN THE MATTER OF THE DECISION  
ON THE NEED FOR AN ENVIRONMENTAL  
IMPACT STATEMENT FOR THE PROPOSED  
PONDS BEHIND ERIE PIER SEDIMENT REMEDIATION  
ST. LOUIS COUNTY, MINNESOTA**

**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER**

Pursuant to Minn. ch. 4410, the Minnesota Pollution Control Agency (MPCA) staff prepared and distributed an Environmental Assessment Worksheet (EAW) for the proposed sediment remediation of the Ponds Behind Erie Pier. Based on the MPCA staff environmental review, the EAW, comments and information received during the comment period, and other information in the record of the MPCA, the MPCA hereby makes the following Findings of Fact, Conclusions of Law, and Order (FOF).

**FINDINGS OF FACT**

**Parties**

1. The United States Environmental Protection Agency (EPA) (represented by the Great Lakes National Program Office) and the MPCA entered into the Great Lakes Legacy Act Project Agreement to conduct a remedial action for the Ponds Behind Erie Pier that includes dredging and capping any remaining contaminated sediment (Project).
2. The EPA and the MPCA have the authority and capability to perform the remedial action and intend to finance the Project.
3. The MPCA/EPA jointly are the Project proposers. The MPCA is also the Responsible Governmental Unit (RGU) and prepared the EAW for this Project. This FOF refers to the MPCA/EPA as the Project "Proposer" when the EAW discusses the MPCA/EPA in its role as Proposer. The EAW and this FOF uses "MPCA" when referring to the MPCA in its role as the agency responsible for the environmental review of this Project.
4. The Proposer has partnered with the U.S. Army Corp of Engineers (USACE) to provide construction oversight and quality assurance for the Project.

**Project Description**

5. The St. Louis River Area of Concern (SLRAOC) was listed as one of 43 Great Lakes Areas of Concern in 1987 by the International Joint Commission under the "Great Lakes Water Quality Annex I and Great Lakes Restoration Initiative Action Plan II priority – cleaning up a Great Lakes Areas of Concern" agreement between the United States and Canada.
6. Historical actions such as improper municipal and industrial waste disposal, and unchecked land use practices, including dredging and filling of aquatic habitat and damaging logging practices,

contributed to the complex set of issues facing the SLRAOC at the time it was listed within the Great Lakes Basin under the Great Lakes Water Quality Agreement (1987 Amendment).

7. The Project is conducted in accordance with the contaminated sediment management actions identified in the "St. Louis River System Remedial Action Plan" prepared by the MPCA and Wisconsin Department of Natural Resources 1992 (updated annually), and hereafter referred to as the RAP.
8. The Project site includes two backwater ponds surrounded by shallow marsh wetlands in the Duluth/Superior Harbor (Harbor), within the SLRAOC.
9. The Proposer and the USACE have conducted contaminated sediment studies in the Project site for more than 10 years.
10. Sediment characterization of the Project site from 2012-2018 identified sediment contaminated with cadmium, chromium, copper, lead, mercury, nickel, zinc, polycyclic aromatic hydrocarbons, polychlorinated biphenyls (PCBs), and dioxin/furans.
11. Contaminated sediment was generally identified throughout the Project site and into Shopper's Creek, and considered to present a high likelihood of significant effects to benthic invertebrates.
12. The Proposer estimates there are approximately 45,000 cubic yards of in-place<sup>1</sup> contaminated sediments within the remedial footprint of the Project site.
13. The mercury, PCB, and dioxins/furan concentrations found in the Project sediments are among the highest in the SLRAOC, making this a high priority site for remedial action.
14. As outlined in the EAW, the Proposer will hire a contractor (Contractor) to conduct the following remedial activities:
  - Project site preparation
  - Sediment dredging
  - Sediment dewatering
  - Discharge water treatment
  - Cover and rip rap
15. The Proposer anticipates Project construction to occur from May 1, 2021, to July 31, 2022.
16. The actual construction dates are dependent on completion of the environmental review process, and issuance of the following permits or approvals:
  - Minnesota Department of Natural Resources (DNR) Public Waters Work Permit
  - DNR Water Appropriation Permit
  - DNR Aquatic Plant Management Permit
  - DNR Lake Superior Coastal Zone federal consistency letter

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<sup>1</sup> In-place contaminated sediments are within the remedial footprint of the site as opposed to dredged sediments the USACE excavates from the federal navigational channel in the St. Louis River.

- MPCA National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Construction Stormwater General Permit, if required
- Clean Water Act (CWA) Section 401 Water Quality Certification
- USACE River and Harbors Appropriation Act of 1899, Section 10
- USACE CWA Section 404 Authorization
- City of Duluth Stormwater/Erosion Control Permit
- City of Duluth Filling/Grading Permit

### Procedural History

17. An EAW is a brief document designed to provide the basic facts necessary for the RGU to determine whether an Environmental Impact Statement (EIS) is required for a proposed project or to initiate the scoping process for an EIS (Minn. R. 4410.0200, subp. 24).
18. Minn. R. 4410.4300, subp. 27(A) requires a mandatory EAW because the Project will change or diminish the course, current, or cross-section of 1 acre or more of public water and states that the DNR or local governmental unit is the RGU.
19. However, Minn. R. 4410.0500, subp. 1, states that for any project listed in part 4410.4300 or 4410.4400, the government unit specified in those rules shall be the RGU, unless the Project is carried out by a state agency; in that case, the state agency is the RGU.
20. For this Project, the MPCA is in part the Proposer and RGU for environmental review, as it is carrying out the Project by implementing the RAP.
21. The MPCA notified the public about the Project as follows:
  - a. The Environmental Quality Board (EQB) published the notice of availability of the EAW for public comment in the *EQB Monitor* on October 19, 2020, as required by Minn. R. 4410.1500.
  - b. The EAW was available for review on the MPCA website at: [www.pca.state.mn.us/eaw](http://www.pca.state.mn.us/eaw).
  - c. On October 20, 2020, the MPCA provided a news release via GovDelivery.
22. During the 30-day comment period on the EAW, ending on November 18, 2020, the MPCA received two comment letters from private parties.
23. A list of the comment letters received during the 30-day comment period are included as Appendix A to these findings.
24. The MPCA prepared written responses to the comment letters received during the 30-day public comment period. These responses are also included as Appendix A to these findings.

### Criteria for Determining the Potential for Significant Environmental Effects

25. The MPCA shall base its decision on the need for an EIS on the information gathered during the EAW process and the comments received on the EAW (Minn. R. 4410.1700, subp. 3). The MPCA must order an EIS for projects that have the potential for significant environmental effects (Minn. R. 4410.1700, subp. 1). In deciding whether a project has the potential for significant environmental

effects, the MPCA must compare the impacts that may be reasonably expected to occur from the project with the criteria set forth in Minn. R. 4410.1700, subp. 7. These criteria are:

- A. Type, extent, and reversibility of environmental effects.
- B. Cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
- C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
- D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the proposer, including other EISs.

**The MPCA Findings with Respect to Each of These Criteria  
Are Set Forth Below**

**Type, Extent, and Reversibility of Environmental Effects**

26. The first criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is the “type, extent, and reversibility of environmental effects” in Minn. R. 4410.1700, subp. 7. A. The MPCA findings with respect to this criterion are set forth below.
27. The MPCA finds that the types of impacts that may reasonably be expected to occur from the Project include impacts to surface water quality.
28. With respect to the type, extent, and reversibility of impacts that are reasonably expected to occur from the Project, the MPCA makes the following findings.

Extent of surface water quality impacts

29. The Project is in the St. Louis Bay in the Harbor and identified as public water PWI 69-1291.
30. Lake Superior’s seiche effect influences the St. Louis Bay’s water levels and flow patterns as well as the flows of the St. Louis River.
31. Under Minn. R. 7050.0470, the MPCA designates the reach of the St. Louis River where the Project is located, as a Class 2Bg, 3C, 4A, 4B, 5, and 6 waterbody. As such, it is protected by the general water quality (WQ) standards defined at Minn. R. 7050.0210, the anti-degradation standards (Minn. R.

7050.0250 to 7050.0335), and by the applicable WQ standards governing each classification as identified in the EAW.

32. The MPCA lists the St. Louis River as impaired on the Draft 2020 Impaired Waters List. It is impaired for aquatic consumption due to the following contaminants: dichlorodiphenyltrichloroethane (DDT), dieldrin, dioxin (including 2,3,7, 8-tcdd), toxaphene, and mercury and PCBs in fish tissue and in the water column.
33. Direct impacts from the Project include:
  - Removal of all vegetation from the impacted area, including tree cutting
  - Invasive species control and removal
  - Removal or burial of the sediment surface
  - Re-seeding with Minnesota Board of Soil and Water Resources seed mixes consisting of native species and cover crops
  - Planting native species plant plugs
  - Establishment maintenance – to include a combination of herbicide application, weeding, mowing, watering, and re-planting for a period of 3 years
34. Direct effects may also include the Contractor placing biodegradable erosion control blankets in areas that have a high probability of erosion or are especially susceptible to sediment mobilization resulting from Project activities (e.g. banks of Shopper's Creek) and the placement of gravel or stone as substrate for equipment access to dredge areas. The Contractor will permanently install these materials and, therefore, these will remain after completion of the Project.
35. Direct effects from the Project actions will reduce the available habitat in the short term and temporarily increase turbidity within the ponds.
36. Following Project completion, native species plantings will provide similar habitat and structure as currently exists. This habitat will likely take years to fully develop and be subject to multiple temporary disturbances over a 3-year period due to establishment maintenance activities.
37. Prior to dredging, the Contractor will remove the trees, woody debris, and trash from the remedial area in Shopper's Creek. Once the creek is clear of debris, the Contractor will dredge surface sediments to a depth of 12 inches.
38. The Contractor will not place any residual cover or substrate in the creek after dredging. The Proposer and the DNR discussed this approach and agreed that there is little risk of residual contamination if 12 inches of surface sediments are removed, and it is better not to backfill any material to allow room for any future sedimentation.
39. Dredging in the ponds and Shopper's Creek will generate temporary turbidity impacts and resuspension of contaminated sediments.
40. Neither the eastern pond nor Shopper's Creek have direct connectivity to the St. Louis River, and the western pond connects to the river by a small bridge opening under the rail causeway.
41. The Contractor will install turbidity curtains and any other necessary best management practices (BMPs) to control movement of suspended sediments from within the Project out to the river. Once

the proper BMPs are in place, the Contractor will not monitor turbidity generated within the Project area. The Contractor will monitor turbidity outside of the Project area to ensure effectiveness of the BMPs.

42. The Contractor will dewater dredged sediment using Geotubes®.
43. The Contractor will process approximately 45,000 cubic yards of dredged sediments from the ponds in the dewatering area on the east side of the Project.
44. The dewatering pad area design includes a drainage layer over a geomembrane liner floor with containment berms to collect effluent water draining from the sediments.
45. The Contractor will also place the dredge screening tank, polymer injection unit, and water treatment units within the dewatering pad area.
46. The Contractor will position Geotubes® on the dewatering pad empty, and then fill the Geotubes® by inserting a dredge discharge pipe into ports on the tops of the Geotubes®.
47. Effluent water drains from the Geotubes® through pores in the fabric, dewateres the sediment, and reduces the volume of the contained materials.
48. The Contractor will treat the effluent water collected from the dewatering Geotubes®/pad in the temporary water treatment facility prior to discharge into the St. Louis River.
49. The Contractor will treat the water to WQ Standards and WQ Criteria set by the MPCA for all contaminants of concern.
50. The Contractor is responsible for all aspects of verifying design parameters, installation, operation, maintenance, and removing the collection, storage and treatment facility as required to discharge treated waters within the treatment limits required by local, state and federal agencies.
51. Overall, the Project will result in the deepening of both the west and east ponds. The Proposer has consulted with DNR hydrology and fisheries staff who have expressed their support for deepening of the ponds by removal of contaminated sediments that have deposited at the Project over time.
52. The Project design includes obtaining source material for the residual cover from the East Gate Basin Harbor Maintenance Dredge Area.
53. Dredging in the source area may create temporary and localized impacts such as short-term increases in turbidity in the water column due to sediment disturbance at the location where the material is dredged, and downstream from where the suspended sediments naturally flow.
54. The USACE will oversee the dredging in the source area using the same BMPs and procedures used for its regular annual Harbor operational maintenance dredging activities.
55. The Contractor will prevent or limit the introduction, establishment, and spread of invasive species when working on or entering into land under the control of the Proposer or during Project funded work.

56. All parties involved in the Project will prevent invasive species from entering into or spreading within the Project by cleaning equipment vehicles, gear, and/or clothing before arriving at the Project and after completion of the Project.
57. If the equipment, vehicles, gear, or clothing arrives at the Project with soil, aggregate material, mulch, vegetation (including seeds) or animals, the Contractor will clean these with furnished tools or equipment (brush/broom, compressed air or pressure washer) at the staging area.
58. The Contractor shall dispose of material from equipment and clothing at a location determined by the Contractor. The Contractor will secure any material leaving the Project in a sealed container, covered truck, or wrapped with a tarp, and legally dispose of it off site.
59. The Contractor will adequately decontaminate all equipment and clothing used for work in infested waters for invasive species (e.g., zebra mussels) prior to using it in non-infested waters. The Contractor will thoroughly decontaminate all equipment and clothing including, but not limited to waders, tracked vehicles, barges, boats, turbidity curtain, sheet pile, and pumps that contact any infested waters.
60. The USACE will hire a Contractor experienced with all state and federal regulations pertaining to navigation and vessel traffic within the waterways at the Project.
61. The Contractor will coordinate with the U.S. Coast Guard to issue a "NOTICE TO MARINERS" prior to its work activity at the Project. The Contractor is required to conduct its work in such a manner as to obstruct navigation as little as possible. In case the Contractor's barge obstructs a channel as to make it difficult or endanger the passage of vessels, the Contractor will promptly move the equipment on the approach of any vessel to such an extent as necessary to afford a practicable passage.
62. Upon completion of the work, the Contractor will promptly remove its equipment, including ranges, buoys, piles, and other marks placed by it under the contract in navigable waters or on shore.
63. Several MPCA WQ standards protect this waterbody's designated uses (see Section 11a.i. in the EAW). The Contractor will use BMPs to ensure the Project will meet WQ standards (total suspended solids of 15 mg/L and total mercury of 1.3 nanograms/liter (ng/L) outside to the maximum extent practicable. The BMPs also serve to help avoid and minimize the Project's potential to exacerbate the St. Louis River's existing CWA 303(d) listed impairments identified in Section 11a.i. of the EAW.
64. The MPCA finds that based on the Project design and BMPs, the Project does not present a risk to human health or the environment.
65. The MPCA finds that, for the reasons discussed above, it does not expect adverse effects on surface WQ resulting from the Contractor dredging sand or constructing the remedial cap.
66. The MPCA finds that the Project will not create long-term contaminant releases. The MPCA expects short-term exposures (e.g., increased turbidity in the water column) during construction activity. However, the Proposer will manage these exposures to prevent the potential for significant environmental effects.

67. With respect to the reversibility of surface WQ impacts that are reasonably expected to occur from this Project, the MPCA makes the following findings.

Reversibility of surface WQ impacts

68. The Section 404 CWA permit, the Section 10 Rivers and Harbors Appropriation Act Permit (RHA), and the Public Waters Work Permit include BMPs designed to prevent adverse effects on surface WQ due to dredging operations by minimizing the amount of sediment resulting from dredging.

69. The MPCA expects only short-term turbidity impacts to surface WQ within the Project area. The turbidity of surface WQ in the Project area returns to background concentrations typically within 2 weeks or less.

70. BMPs and dredging operations are adaptive by design in order to respond to mechanical malfunctions that may result in an exceedance in turbidity. The Proposer will modify the dredging operation and management to ensure that any impacts to surface WQ are temporary and not significant.

71. The MPCA expects that any adverse impacts that may occur will be short term in nature and therefore reversible, and the Proposer can modify operations to prevent any further impacts from occurring.

72. The MPCA finds that information presented in the EAW and other information in the environmental review record are adequate to assess potential impacts to surface WQ that are reasonably expected to occur from the Project. The Proposer has developed measures to prevent or mitigate these impacts.

73. The MPCA finds that the Project, as it is proposed, does not have the potential for significant adverse environmental effects based on the type, extent, and reversibility of impacts related to surface WQ that are reasonably expected to occur.

**Cumulative Potential Effects**

74. The second criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is the "cumulative potential effects." In making this determination, the MPCA must consider "whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effects; and the efforts of the proposer to minimize the contributions from the project." Minn. R. 4410.1700 subp.7.b. The MPCA findings with respect to this criterion are set forth below.

75. The EAW did not identify any related or anticipated future projects that may interact with this Project in such a way as to result in significant cumulative potential environmental effects.

76. The EAW addressed cumulative potential effects on surface WQ.

77. The EAW did not disclose that the Project has the potential to interact with other known or reasonably foreseeable projects in such a way as to result in significant cumulative potential effects on climate change.
78. The EAW did not disclose that the Project has the potential to interact with other projects in such a way as to result in significant cumulative potential effects on the floodway or the water column.

Cumulative potential effects on surface WQ

79. The Draft 2020 Impaired Waters List lists the St. Louis River as impaired for DDT, dieldrin, dioxin (including 2,3,7,8-tcdd), toxaphene, and mercury and PCBs in fish tissue and in the water column.
80. The Section 404 CWA Permit, Section 401 Water Quality Certification, the Section 10 RHA, and the Public Waters Work Permit required for the Project provide the framework and set the limitations for Project construction, such as listing BMPs required for dredging and in-water placement of dredged sand.
81. The MPCA does not anticipate the Project will contribute to any potential adverse effect on surface WQ since the certifications, permits and approvals address the potential negative effects of the Project on surface WQ,.
82. The placement of the dredged sand by the Proposer will result in a temporary increase in turbidity within the work area of the Project. However, the Proposer will use BMPs during dredged sand placement to ensure the Project complies with state and federal surface WQ regulations, and the Proposer will continue to implement sufficient BMPs to minimize the Project's short-term turbidity impacts. The MPCA does not expect the Project to contribute to long term adverse impacts from turbidity.
83. For these reasons, the MPCA does not expect the Project to contribute significantly to adverse cumulative potential effects on surface WQ. The MPCA finds that the Project does not have the potential for significant negative cumulative potential effects.
84. The MPCA finds that information presented in the EAW, public comments and MPCA follow-up evaluation, and other information in the environmental review record are adequate to assess potential impacts to surface WQ that are reasonably expected to occur from the Project. The Proposer has developed measures to prevent or mitigate these impacts.

**The Extent to Which the Environmental Effects Are Subject to Mitigation by Ongoing Public Regulatory Authority**

85. The third criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is "the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project." Minn. R. 4410.1700, subp. 7.C. The MPCA findings with respect to this criterion are set forth below.

86. The Proposer will obtain the following permits or approvals for the Project:

Unit of Government	Type of permits/approvals
MPCA	<ul style="list-style-type: none"> <li>NPDES/SDS Construction Stormwater General Permit</li> <li>CWA Section 401 Water Quality Certification</li> </ul>
DNR	<ul style="list-style-type: none"> <li>Public Waters Work Permit</li> <li>Water Appropriation Permit</li> <li>Aquatic Plant Management Permit</li> <li>Lake Superior Coastal Zone Federal Consistency Letter</li> </ul>
USACE	<ul style="list-style-type: none"> <li>RHA, Section 10 Permit</li> <li>CWA Section 404 Authorization Letter</li> </ul> <p><i>The USACE St. Paul District Regulatory Office has indicated that the Project may fall under USACE general nationwide permit actions, which it will decide upon application submittal.</i></p>
Minnesota State Historic Preservation Office (SHPO) and Tribal Nations	<ul style="list-style-type: none"> <li>Section 106 concurrence letter</li> </ul>
City of Duluth	<ul style="list-style-type: none"> <li>Stormwater/Erosion Control Permit</li> <li>Filling/Grading Permit****</li> </ul>

87. MPCA NPDES/SDS Construction Stormwater General Permit (CSW)

A CSW Permit is required when a project disturbs one acre or more of soil. As required by the CSW Permit, the Proposer must have a Stormwater Pollution Prevention Plan that will provide more detail as to the BMPs the Proposer will implement and address: phased construction; vehicle tracking of sediment; inspection of erosion control measures implemented; and timeframes in which the Proposer will implement erosion control measures. If the Proposer’s Contractor is going to disturb one acre or more of soil during material storage and dewatering activities, the Contractor will obtain a CSW Permit.

88. MPCA CWA Section 401 Water Quality Certification

The Proposer will obtain a 401 Water Quality Certification. Section 401 of the CWA requires any person who conducts an activity that may result in a discharge of a pollutant into waters of the United States, to obtain a certification from the State in which the discharge originates. The certification requires that the discharge comply with the applicable water quality standards. The 401 certification becomes a condition of federal permits including Coast Guard Section 10 permits, Federal Energy Regulatory Commission (FERC) permits and USACE Section 404 permits.

89. DNR Public Waters Work Permit

The Proposer will obtain a DNR Public Waters Work Permit. The DNR Public Waters Work Permit Program regulates activities that change or diminish the course, current or cross section of public waters within the state, by any means, including filling, excavating, or placing sand and aggregate in or on the beds of public waters.

90. DNR Water Appropriations Permit

The Proposer will obtain a water appropriation permit from the DNR to borrow water from the St. Louis River to facilitate the hydraulic pumping of the dredged sediments into the Geotubes®. The Contractor will treat the water and discharge it back into the St. Louis River. This will not involve impacts to any existing infrastructure or municipal water systems.

91. DNR Aquatic Plant Management Permit

The Proposer will obtain a DNR Aquatic Plant Management Permit. A permit is required for removal of aquatic plants. The Contractor will revegetate areas where plants are removed with a combination of seeds, plugs and live plantings per the Project Planting Plan included in the EAW.

92. Lake Superior Coastal Zone Federal Consistency Letter

The Proposer will obtain a Lake Superior Coastal Zone federal consistency letter. Federal consistency requires that all federal actions which are reasonably likely to affect any land or water use or natural resources of Minnesota's Lake Superior coastal area must be consistent with the enforceable policies of Minnesota's Lake Superior Coastal Program. The DNR conducts this review and issues a letter when its review is completed.

93. USACE RHA, Section 10 Permit

The Proposer will obtain a USACE Section 10 Permit. Section 10 of the RHA requires the USACE approval prior to any work in, over, or under navigable waters of the United States, or which affects the course, location, condition or capacity of such waters. Typical activities requiring Section 10 permits include the following: construction of intake structures, cable or pipeline crossings; work such as dredging or disposal of dredged sand; and excavation, filling, or other modifications to navigable waters of the United States.

94. USACE CWA Section 404 Authorization Letter

The Proposer will obtain an authorization letter from the USACE regarding the 404 Permit. The general permit requires the Proposer to follow specified procedures for excavation in wetlands and placement of excavated dredged sand into the waters of the United States or their associated wetlands. The USACE will send the Proposer a letter stating that the Project falls under a USACE general nationwide permit. It will say the Proposer can go ahead with the remedial construction as long as the Proposer follows the conditions included.

95. SHPO Section 106 Concurrence Letter

The Proposer will obtain a SHPO Section 106 concurrence letter. The SHPO reviews the information for a project to determine whether the project site is listed in the National or State Registers of Historic Places, and whether there are any known or suspected archaeological properties in the area affected by a project. The SHPO issues its determination letter under the Minnesota Historic Sites Act and the Minnesota Field Archaeology Act. The SHPO worked with the EPA's Great Lakes National Program Office regarding the identification of historic properties and assessment of effects that the Project may cause. The Fond du Lac Band of Lake Superior Chippewa, the Lac du Flambeau Band of Lake Superior Chippewa, and the 1854 Treaty Authority have all actively participated in Project discussions and provided feedback.

96. City of Duluth Stormwater/Erosion Control Permit

The Proposer will obtain an Erosion and Sediment Control Permit from the City of Duluth. The City of Duluth issues an Erosion and Sediment Control Permit for any project that disturbs more than 3,000 square feet or more. The Proposer and the Contractor conducting the work are responsible for all of the construction activities that occur on the Project. They agree to install and maintain all erosion and sediment control BMPs to ensure that sediment, soil, and debris does not leave the construction site. They are also responsible for the revegetation of the site after construction disturbance is complete.

97. City of Duluth Filling/Grading Permit

The Proposer will obtain a filling/grading permit from the City of Duluth. The permit precludes creating drainage patterns or routes that will adversely affect down gradient properties. The Proposer is required to fully restore all exposed soil with vegetation, mulch and/or a permanent non-erodible surface.

98. The above-listed permits, approvals and agreements include general and specific requirements for mitigation of environmental effects of the Project. The MPCA finds that the environmental effects of the Project are subject to mitigation by ongoing public regulatory authority.

**The Extent to Which Environmental Effects can be Anticipated and Controlled as a Result of Other Available Environmental Studies Undertaken by Public Agencies or the Project Proposer, Including Other EISs**

99. The fourth criterion that the MPCA must consider is “the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs,” Minn. R. 4410.1700, subp. 7. D. The MPCA findings with respect to this criterion are set forth below.

100. Although not exhaustive, the MPCA reviewed the following documents as part of the environmental impact analysis for the Project:

- Data presented in the EAW
- Permits and environmental review of similar projects

101. The MPCA also relies on information provided by the Proposer, persons commenting on the EAW, staff experience, and other available information obtained by staff.

102. The environmental effects of the Project have been addressed by the design and permit development processes, and by ensuring conformance with regional and local plans. There are no elements of the Project that pose the potential for significant environmental effects.

103. Based on the environmental review, previous environmental studies by public agencies or the Proposer, and staff expertise and experience on similar projects, the MPCA finds that the environmental effects of the Project that are reasonably expected to occur can be anticipated and controlled.

104. The MPCA adopts the rationale stated in the attached Response to Comments (Appendix A) as the basis for response to any issues not specifically addressed in these Findings.

### CONCLUSIONS OF LAW

105. The MPCA has jurisdiction in determining the need for an EIS for this Project. The EAW, the permit development process, and the evidence in the record are adequate to support a reasoned decision regarding the potential significant environmental effects that are reasonably expected to occur from this Project.
106. The MPCA identified areas for potential significant environmental effects. The Project design and permits ensure the Proposer will take appropriate mitigation measures to address significant effects. The MPCA expects the Project to comply with all environmental rules, regulations, and standards.
107. Based on a comparison of the impacts that are reasonably expected to occur from the Project with the criteria established in Minn. R. 4410.1700 subp. 7, the Project does not have the potential for significant environmental effects.
108. An EIS is not required for the proposed Project.
109. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

### ORDER

110. The Minnesota Pollution Control Agency determines that there are no potential significant environmental effects reasonably expected to occur from the Project and that there is no need for an Environmental Impact Statement.

### IT IS SO ORDERED

\_\_\_\_\_  
Laura Bishop, Commissioner  
Minnesota Pollution Control Agency

\_\_\_\_\_  
December 14, 2020  
Date

**Minnesota Pollution Control Agency**

**Ponds Behind Erie Pier  
Environmental Assessment Worksheet**

**LIST OF COMMENT LETTERS RECEIVED**

1. Fred Strand. Email received October 21, 2020.
2. Michael Casey, Chair, Friends of Western Duluth Parks & Trails. Email letter received November 18, 2020.

**From:** [fcstrand@gmail.com](mailto:fcstrand@gmail.com) <[fcstrand@gmail.com](mailto:fcstrand@gmail.com)>  
**Sent:** Wednesday, October 21, 2020 9:45 AM  
**To:** Jensen, Patrice (MPCA) <[patrice.jensen@state.mn.us](mailto:patrice.jensen@state.mn.us)>  
**Subject:** Ponds behind Erie Pier sediment cleanup project comments

**This message may be from an external email source.**

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I am very familiar with the St. Louis River Area of Concern and with Erie Pier.

The two backwater ponds at Erie Pier are very contaminated with legacy pollutants including polychlorinated biphenyls, mercury, dioxins/furans, polycyclic aromatic hydrocarbons, and heavy metals. The best remediation method is to remove the contaminated sediment, dewatering them and disposing of them at a permitted landfill. I support the proposal to do this.

The site also needs to be restored to help it return to a biologically productive area which will contribute to the biological sustainability of St. Louis River estuary. I support the proposal to restore the area with native vegetation and new surface sediment in the ponds which will create habitat for a large number and variety of insects, reptiles, amphibians fish and wildlife species.

Fred Strand

[fcstrand@gmail.com](mailto:fcstrand@gmail.com)



## Response to EAW for Erie Pier Ponds (EPP) Friends of Western Duluth Parks & Trails

November 18, 2020

The closing of the Cross City Trail (CCT) to all users for the entire time this project is underway will be a detriment to those that are already using it and those that would be using it to get from one side of Duluth to the other. The user count has been surprising to many. The Duluth-Superior Metropolitan Interstate Council (MIC) has provided counts for bicycles and pedestrians, see attached report from 9/19/20 - 10/18/20. This reflects the pent-up need for this trail, 50 years in the making. These numbers are also reflective that people are using it to get across the city.

The MNDOT Twin Ports Interchange project (TPI) will cause congestion in western Duluth for three years Duluth. This will close a portion of the CCT in the Lincoln Park business district. The City and MNDOT will be installing a protected bike lane as the detour for the needed closure of the trail keeping the network intact. This detour will help cut back on congestion by providing access for those that may take up bicycling to traverse the area.

Closing the CCT's River Route main segment from Recycle Way to 40<sup>th</sup> Ave W will prevent many of those potential users from getting out of their cars and use a bike during the TPI project. We can do better by looking at other means of safely using the trail while the EPP project is underway.

Reviewing the EAW it looks like the declared intention is to use the trail for project traffic, it appears that most of it will likely be to travel to the Verso end of the project.

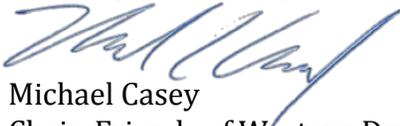
Some thoughts on alternate methods to provide safe use of the trail:

- One of the project goals could be to keep the trail open as much as possible. If it's a goal we can then work towards a solution besides closing the trail.
- It has been determined that an on-road detour is not practical by the City of Duluth. We disagree. A temporary protected bike lane utilizing pole-type vertical delineators could be applied on road from Recycle Way to 40<sup>th</sup> Ave W or another connection. This would not be a priority for winter use but Spring Through fall would be appropriate. This would not be ideal but it is doable. A good portion of the materials may be available from the MIC's protected bike lane trial on Michigan street a few years back.
- A temporary alternate route parallels to I-35 at the upper level that could be a natural surface trail. For example, using Oneota's off-ramp road was a two-lane from 40th Ave W to connect under the Bong Bridge elements to Oneota south of the Bong servicing the propane gas site connect to Recycle Way and then Ramsey St. There could be other possibilities as well.

- Detour indicators for trail users along with temporary on-road sharrows and temporary signage are particularly useful visual cues for drivers to look for cyclists in an area where they may no longer be accustomed to sharing the road to ensure a safe detour.
- Project traffic could be staged to take place in a defined time period to minimize their use of the trail. The intent to transfer the dredged materials hydraulically from the source to the dewatering site, therefore no heavy truck hauling anticipated on the trail route for long periods of time.
- Including these concerns and suggested methods in the construction specifications would assure that those bidding have an opportunity to provide their methods to keep the trail open as much as possible. They could include methods that have not been discussed or thought of by the current project team.
- While it is unclear how the dredge equipment will be serviced, one could assume that this could be done in such a way and timed to allow the trail to be open most of the day and for long periods of time.
- When traffic is present the trail could be closed by the use of gates or use of personal to warn those using the trail to wait for short periods of time similar to how road projects are handled when detours are not possible solutions.
- Notifications could be broadcast to the public about the temporary closures.
- Keep the trail available for use by the public either during certain times of the day, after a time when the servicing activities take place (earlier in the day), or if the servicing isn't done on a daily basis, on the off days.

We are supportive of the Erie Pier Ponds project as it will help make the user experience in this area richer. We are requesting that the project team work closely with the City **and** advocates to come up with a solution to help maintain the trail's need for most users.

Sincerely,



Michael Casey

Chair, Friends of Western Duluth Parks & Trails

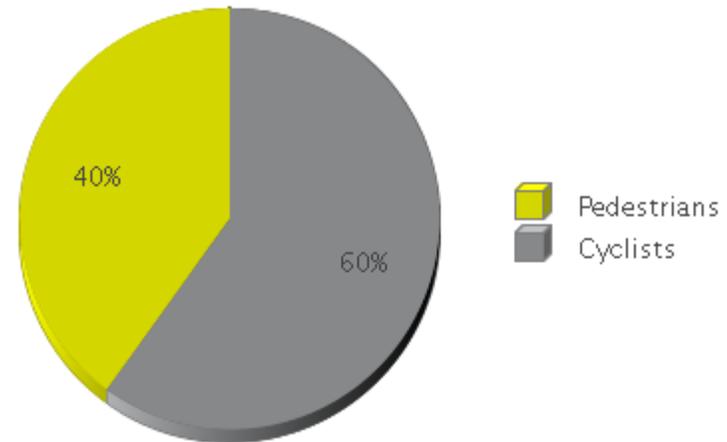
Attachment:

CCT Recycle Way Sept Oct 2020 Report.pdf

## Cross City Trail – at Recycle Way

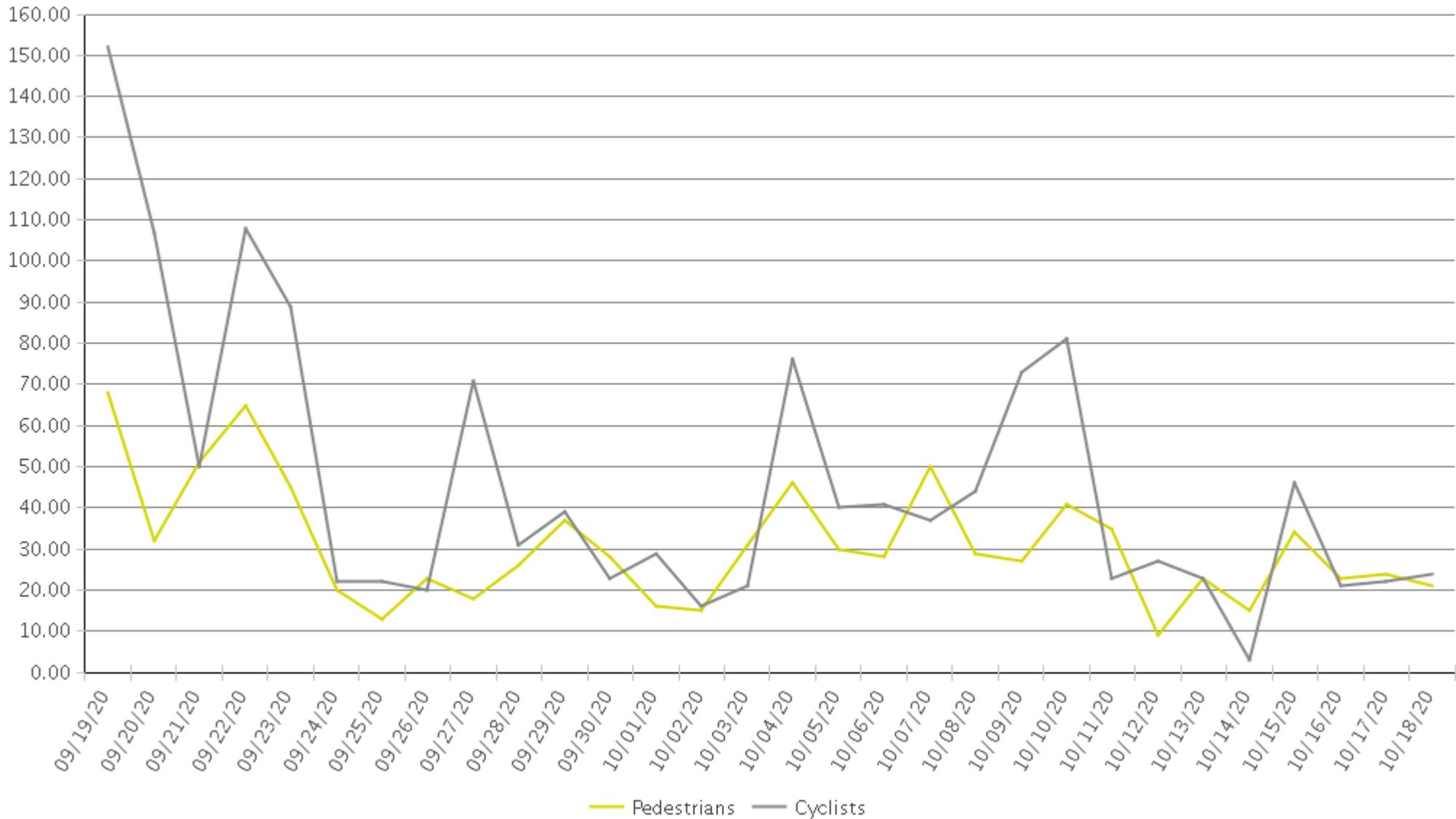
In/Out Directions:  
 Peds In = heading West  
 Peds Out = heading East  
 Bikes In = heading East  
 Bikes Out = heading West

	Total Traffic for the Analyzed Period	Daily Average	Busiest Day of the Week	Distribution	
				IN	OUT
Pedestrians	923	31	Tuesday	52	48
Cyclists	1,381	46	Sunday	49	51

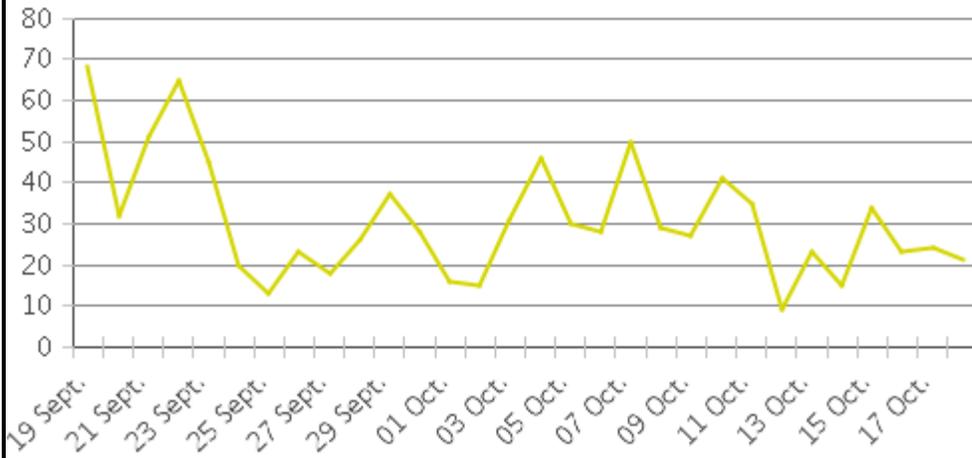


# MIC Mobile-MULTI

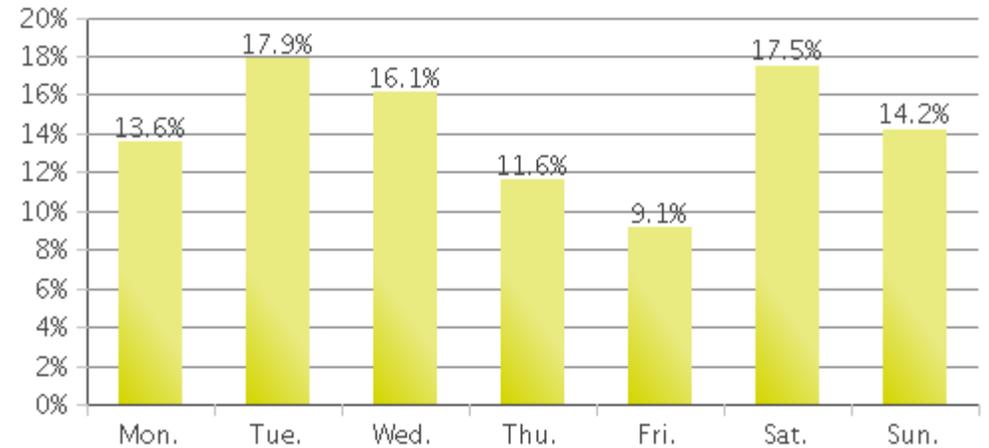
Period Analyzed: Saturday, September 19, 2020 to Sunday, October 18, 2020



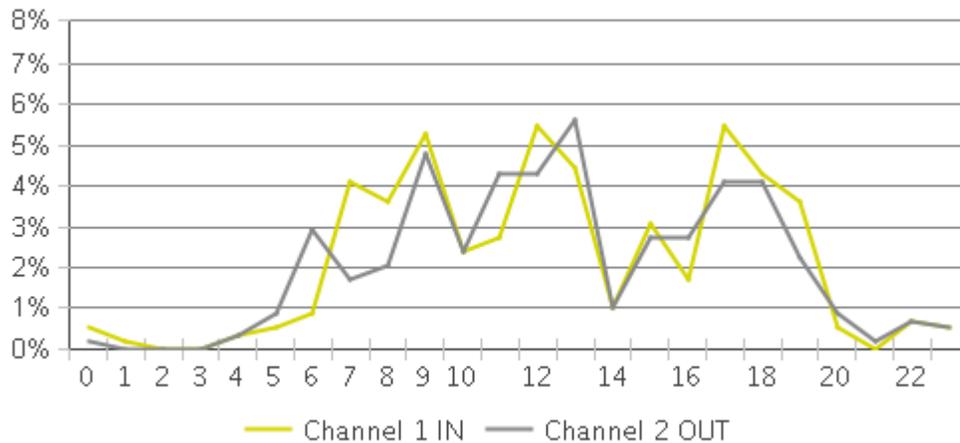
### Daily Data



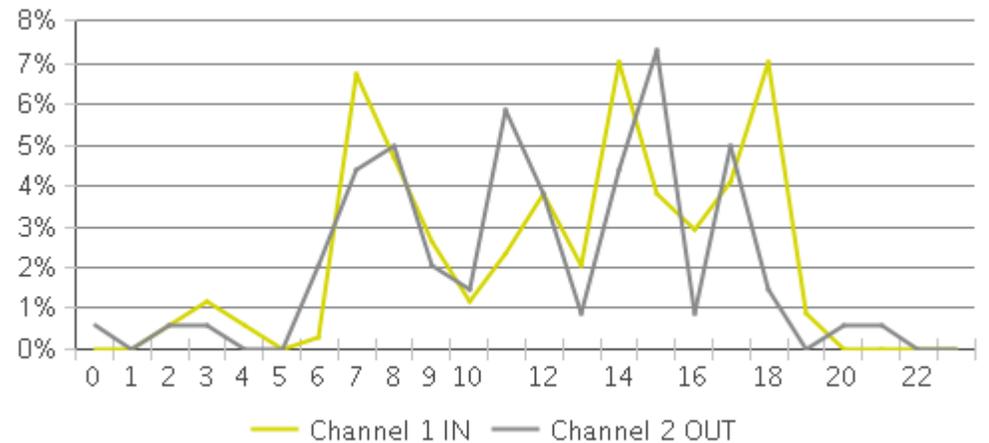
### Weekly Profile



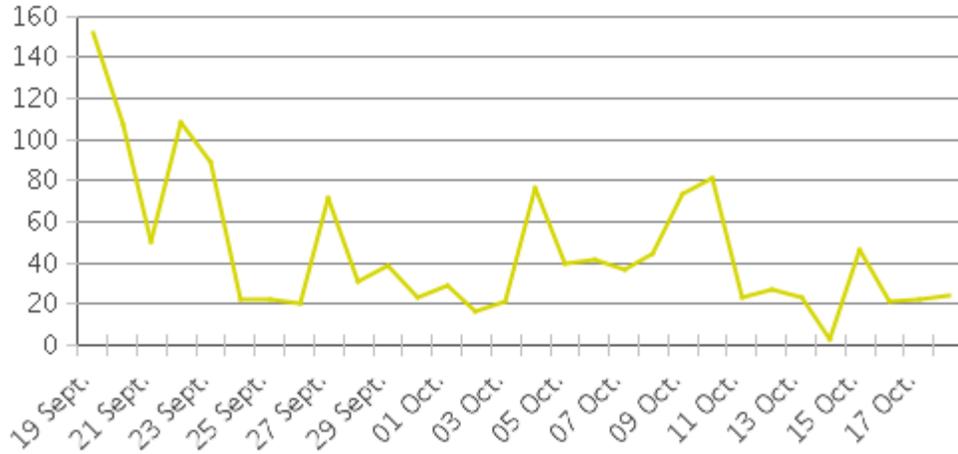
### Hourly Profile during Weekdays



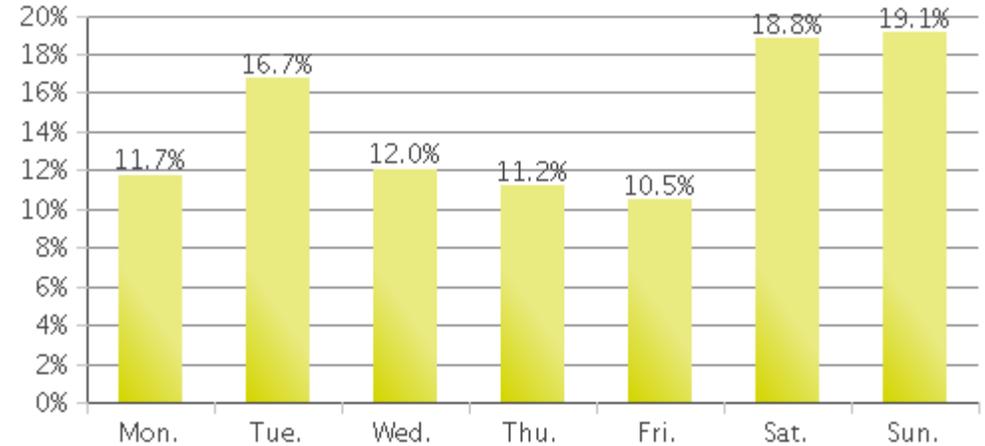
### Hourly Profile during the Weekend



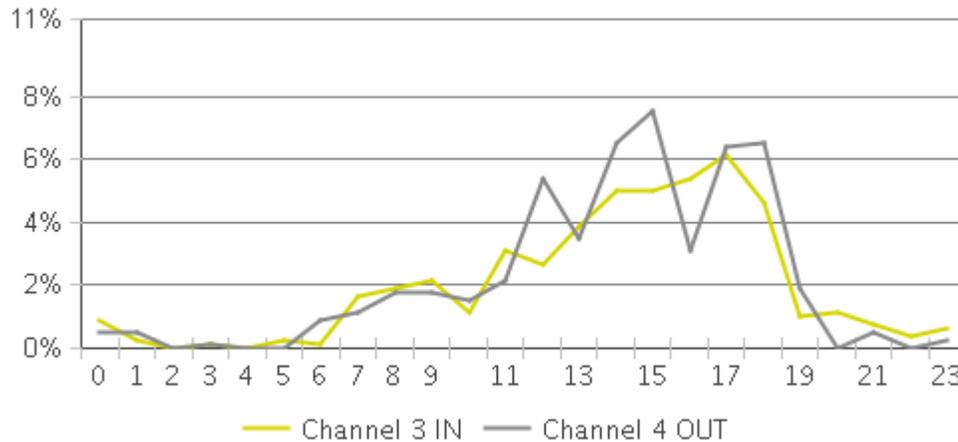
### Daily Data



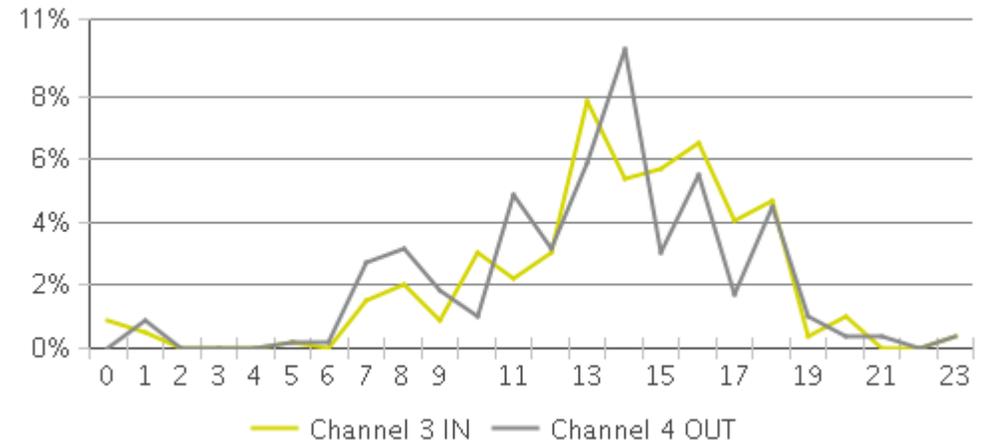
### Weekly Profile



### Hourly Profile during Weekdays



### Hourly Profile during the Weekend



**Minnesota Pollution Control Agency**

**Ponds Behind Erie Pier  
Environmental Assessment Worksheet (EAW)**

**RESPONSES TO COMMENTS ON THE EAW**

**1. Comments by Fred Strand. Email received October 20, 2020.**

**Comment 1-1:** I am very familiar with the St. Louis River Area of Concern and with Erie Pier.

**Response:** The comment is noted.

**Comment 1-2:** The two backwater ponds at Erie Pier are very contaminated with legacy pollutants including polychlorinated biphenyls, mercury, dioxins/furans, polycyclic aromatic hydrocarbons, and heavy metals. The best remediation method is to remove the contaminated sediment, dewatering them and disposing of them at a permitted landfill. I support the proposal to do this.

**Response:** The comment is noted.

**Comment 1-3:** The site also needs to be restored to help it return to a biologically productive area which will contribute to the biological sustainability of St. Louis River estuary. I support the proposal to restore the area with native vegetation and new surface sediment in the ponds which will create habitat for a large number and variety of insects, reptiles, amphibians, fish and wildlife species.

**Response:** The comment is noted.

**2. Comments by Michael Casey, Chair, Friends of Western Duluth Parks & Trails. Email/letter received November 18, 2020.**

**Comment 2-1:** The closing of the Cross City Trail (CCT) to all users for the entire time this Project is underway will be a detriment to those that are already using it and those that would be using it to get from one side of Duluth to the other.

**Response:** The Project's northern property limit is the abandoned rail line where the city of Duluth (City) constructed the new cross-city bike trail. In order to minimize impacts to wetlands during Project construction, the use of the trail is required for an access road between the dewatering and staging areas, the ponds, and Shopper's Creek. As a matter of public safety, it is necessary to temporarily close off access to the area while the Minnesota Pollution Control Agency (MPCA)/ U.S. Environmental Protection Agency (EPA's) contractor (Contractor) completes the work and the use of heavy equipment. See response 2-2 regarding returning the trail to use.

**Comment 2-2:** The user count has been surprising to many. The Duluth -Superior Metropolitan Interstate Council (MIC) has provided counts for bicycles and pedestrians, see attached report from 9/19/20 - 10/18/20. This reflects the pent-up need for this trail, 50 years in the making. These numbers are also reflective that people are using it to get across the city.

**Response:** The comment is noted. MPCA/EPA plans to complete the Project in July of 2022. At that time, the MPCA/EPA will ensure restoration of the trail and surrounding area. The City will determine when the trail will reopen for public use. The remedial cleanup and site restoration will improve the Project area overall for future users of the City trail.

**Comment 2-3:** The Minnesota Department of Transportation (MnDOT) Twin Ports Interchange Project (TPI) will cause congestion in western Duluth for three years. This will close a portion of the CCT in the Lincoln Park business district. The City and MnDOT will be installing a protected bike lane as the detour for the needed closure of the trail keeping the network intact. This detour will help cut back on congestion by providing access for those that may take up bicycling to traverse the area. Closing the CCT's River Route main segment from Recycle Way to 40th Avenue W will prevent many of those potential users from getting out of their cars and use a bike during the TPI Project. We can do better by looking at other means of safely using the trail while the EPP (Erie Pier Ponds) project is underway.

**Response:** MPCA/EPA, along with a full team of engineers and project managers (Project team), reviewed possible alternatives to using the bike trail; however, MPCA/EPA determined that not using the bike trail for the Project access would cause further adverse affects to wetlands in the Project area, thereby destroying sensitive ecosystems and habitats. The Project team also reviewed the potential for allowing pedestrian access to continue using the trail during remedial construction. MPCA/EPA determined that large equipment operation at the Project to complete the remedial construction presents a risk to public safety, and not allowing for pedestrian access. The narrow workspace between the active Burlington Northern Santa Fe rail line and I-35 presents many challenges for this Project. Additionally, the nature and extent of contamination at the Project site could present a potential risk to human health from direct contact. As the Contractor excavates contaminated sediments during remedial construction, it is important to temporarily limit public access to the Project site during construction.

**Comment 2-4:** One of the Project goals could be to keep the trail open as much as possible. If it's a goal, we can then work towards a solution besides closing the trail.

**Response:** The MPCA/EPA worked with the City to develop the Project in a way that would temporarily close the CCT for the shortest possible period. The CCT will remain open until Project construction begins in May 2021. The City will decide when to reopen the trail after the remedial construction is complete, currently scheduled for July 2022.

**Comment 2-5:** It has been determined that an on-road detour is not practical by the City of Duluth. We disagree. A temporary protected bike lane utilizing pole-type vertical delineators could be applied on the road from Recycle Way to 40th Avenue W or another connection. This would not be a priority for winter use but spring through fall would be appropriate. This would not be ideal but it is doable. A good portion of the materials may be available from the MIC's protected bike lane trail on Michigan Street a few years back.

**Response:** This comment is beyond the scope of the EAW. Please contact the City with questions about the proposed temporary CCT re-route.

**Comment 2-6:** A temporary alternate route parallels to I-35 at the upper level that could be a natural surface trail. For example, using Oneota's off-ramp road was a two-lane from 40th Avenue W to connect under the Bong Bridge elements to Oneota South of the Bong servicing the propane gas site connect to Recycle Way and then Ramsey Street. There could be other possibilities as well.

**Response:** This comment is beyond the scope of the EAW. Please contact the City with questions about the proposed temporary CCT re-route.

**Comment 2-7:** Detour indicators for trail users along with temporary on-road sharrows and temporary signage are particularly useful visual cues for drivers to look for cyclists in an area where they may no longer be accustomed to sharing the road to ensure a safe detour.

**Response:** The comment is noted; however, it is beyond the scope of the EAW.

**Comment 2-8:** Project traffic could be staged to take place in a defined time period to minimize their use of the trail. The intent to transfer the dredged materials hydraulically from the source to the dewatering site, therefore no heavy truck hauling anticipated on the trail route for long periods of time.

**Response:** The Contractor will use the trail on a routine basis throughout the Project, and expects damage to the trail by construction activities to the extent that it will not be suitable for public use. In areas where the trail is damaged, the Contractor will restore it to the current condition. Additionally, the nature of the construction activities and extent of contamination of the Project site are not suitable for public access during the Project.

**Comment 2-9:** Including these concerns and suggested methods in the construction specifications would assure that those bidding have an opportunity to provide their methods to keep the trail open as much as possible. They could include methods that have not been discussed or thought of by the current Project team.

**Response:** Refer to Response 2-8.

**Comment 2-10:** While it is unclear how the dredge equipment will be serviced, one could assume that this could be done in such a way and timed to allow the trail to be open most of the day and for long periods of time.

**Response:** Refer to Response 2-8.

**Comment 2-11:** When traffic is present, the trail could be closed by the use of gates or use of personnel to warn those using the trail to wait for short periods of time similar to how road projects are handled when detours are not possible solutions.

**Response:** Refer to Response 2-8.

**Comment 2-12:** Notifications could be broadcast to the public about the temporary closures.

**Response:** Refer to Response 2-8.

**Comment 2-13:** Keep the trail available for use by the public either during certain times of the day, after a time when the servicing activities take place (earlier in the day), or if the servicing isn't done on a daily basis, on the off days.

**Response:** Refer to Response 2-8.

**Comment 2-14:** We are supportive of the Erie Pier Ponds Project, as it will help make the user experience in this area richer.

**Response:** The comment is noted.

**Comment 2-15:** We are requesting that the Project team work closely with the City and advocates to come up with a solution to help maintain the trail's need for most users.

**Response:** While MPCA understands the needs and desires of the cycling community, the need for public safety is the driving factor in temporarily closing the trail for the duration of the Project.