



STAFF REPORT

DATE: October 15, 2019

TO: City Council
FROM: Ken Roberts, Planning Director
AGENDA ITEM: **EAW Request – Mountain Bike Trails - Sunfish Lake Park**
REVIEWED BY: Sarah Sonsalla – City Attorney

BACKGROUND:

The City received notice on October 7, 2019 that a petition had been submitted to the Minnesota Environmental Quality Board (EQB) requesting that an Environmental Assessment Worksheet (EAW) be prepared for the proposed mountain bike trails in Sunfish Lake Park. The EQB determined that the City of Lake Elmo is the appropriate governmental unit to decide the need for an EAW for this project. I have attached the EAW petition for your reference.

ISSUE BEFORE CITY COUNCIL:

Does the City Council want to order the preparation of an EAW for the proposed Mountain Bike Trail project in Sunfish Lake Park?

ANALYSIS:

An EAW is a “brief document which is designed to set out the basic facts necessary to determine whether and Environmental Impact Statement (EIS) is required for the proposed action.” The purpose of the EAW process is to disclose information about the potential environmental impacts of a project. **It is not a project approval process.** Please see the attached EAW fact sheet from Crow Wing County for more information about EAWs.

The State of Minnesota has several rules and standards for the preparation of EAWs and **EIS** (Environmental Impact Statement) for projects and land use activities in the State. These rules include which agency should decide the need for an EAW or other type of environmental review, the type of environmental review that may be needed for a project and the timing of governmental approvals for a project during the environmental review process. In this case, because the park is in the City of Lake Elmo and because the project would not impact any other jurisdiction, the EQB determined the City is the responsible governmental unit (RGU) to decide the need for an EAW.

Minnesota Rules Parts 4410.4300 – 4410.4600 set forth when an EAW is mandatory and when it is discretionary and also when a project is exempt from an EAW. The proposed mountain bike trail project for Sunfish Lake Park would include the construction of about four miles of single track (2-3 feet wide) trails in the park. In reviewing the State rules for EAW’s, City staff has determined that the proposed mountain bike trail project in Sunfish Lake Park does not meet the requirements in Minnesota Rules Part 4410.4300 for a mandatory EAW. The proposed project also is not exempt from an EAW pursuant to Minnesota Rules Part 4410.5600. The City Council therefore has the option to choose whether to prepare a discretionary EAW for this project pursuant to Minnesota Rules Part 4410.4500. The decision point is that because of the nature or location of the proposed project that it may have the potential for significant environmental effects.

The standard for making this decision is provided in Minnesota Rules Part 4410.1100, subpart 6. Subpart 6 states “the RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers and other persons or otherwise know to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. In considering the evidence, the RGU must take into account the factors listed in part 4410.1700, subpart 7.”

Minnesota Rules Section 4410.1700, subpart 7 states “in deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

- 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 environmental studies undertaken by public agencies or the project proposer, including other EIS’s.”

Discretionary EAW – Standards for Decision

The City Council must take into account the factors set forth above when considering the evidence provided by the petitioners in their request for an EAW. The submitted petition requesting the EAW alleges the following if the City allows the construction of the mountain bike trails in Sunfish Lake Park:

1. Negative effects on the fragile environment of this specific area.
2. Erosion concerns – soils are erodible throughout the terrain of the park. Trails in this area will inevitably erode, requiring ongoing maintenance as well as present possible hazards.
3. Habitat destruction and the changing nature of the park that the trails would present.
4. That habitat loss would be significant.
5. Wildlife and sensitive species would be lost.
6. Protected areas of the park would be forever changed.
7. Incompatible uses and promises made when the park was established – not all parks are appropriate for all uses.

The City’s Parks Commission has studied the possibility of adding mountain biking trails to Sunfish Lake Park several times over the last year. The Commission reviewed a preliminary bike trail map for the park on January 23, 2019. At that meeting the Commission directed staff to develop one trail in the park to present back to them and to the Minnesota Land Trust (the Minnesota Land Trust is the holder of a conservation easement over land in the park). Staff revised the trail plans and submitted them to the Minnesota Land Trust. The Minnesota Land Trust approved the revised trail plans.

The Parks Commission reviewed the latest trail plans and other information about the project at its May 20, 2019 meeting. I have attached the staff report for this meeting for your reference. In this report staff reviewed concerns and information about potential issues with the proposed mountain bike trail project including soils and erosion, threatened or endangered species, trail design and impact to other users.

The key points for the City Council to consider when reviewing the request for an EAW are noted in Minnesota Rules Part 4410.1100, subpart 6:

“[T]he RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers and other persons or otherwise know to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. In considering the evidence, the RGU must take into account the factors listed in part 4410.1700, subpart 7.”

As noted above, the petitioners cite several concerns and potential environmental issues with the mountain bike trails in Sunfish Lake Park. There is nothing in the petition or in the record from the City’s study and review of the proposed mountain bike trails in Sunfish Lake Park that demonstrates that the project would have the potential for significant environmental effects.

As I also noted above, Minnesota Rules Part 4410.1700, subpart 7 states “in deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

a. Type, extent and reversibility of environmental effects.

The City recognizes that adding mountain bike trails to Sunfish Lake Park will have some environmental effects with the minimal grading, tree removal, loss of habitat and trail construction. None of these activities will be significant and if needed, their minimal effects could be reversed with restoration if the City was to close the mountain bike trails.

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:

There is nothing in the design of the mountain bike trails or in the EAW petition showing any significant environmental effects from the construction of the mountain bike trails. In fact, the City has designed the proposed trails to minimize their potential environmental effects by taking into account the slopes and the waterbodies in the trail design. Single-track trails have minimal impact on the environment and their effects are on par with a hiking trail.

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

The City may need to mitigate the environmental effects of the trail as they are used - especially in regards to erosion. This is a responsibility the City acknowledges and accepts as part of this project.

d. The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, including other EIS’s.”

There are no other projects or environmental studies in this area of Lake Elmo at this time.

It is important to note that allegations of vague or generalized fears and concerns are not sufficient for the City to make a determination of the potential for significant environmental effects from a project as is required by the State rules. The possible significant environmental effects of a project must be studied and documented by the petitioners in order for the City to consider them as a possible factor in its decision-making about the need for an EAW. It also is important to note that the potential conflict between users of the park is not a criterion set by the State of Minnesota for determining the need for and EAW.

FISCAL IMPACT:

If the City ordered the preparation of an EAW for the Sunfish Lake Park Mountain Bike Trail project, staff estimates the cost of the EAW would range between \$5,000 and \$10,000.

STAFF RECOMMENDATION:

Staff recommends that the City Council deny the petition for the preparation of an EAW for the proposed mountain bike trails in Sunfish Lake Park. Suggested motion:

“Motion to deny the petition for the preparation of an EAW for the proposed mountain bike trails in Sunfish Lake Park and adopt Resolution 2019 – 078 that is a record of the City decision including findings of fact.”

ATTACHMENTS:

1. EAW Petition
2. Crow Wing County EAW Fact Sheet
3. May 20, 2019 City staff report
4. Resolution 2019 – 078