

APPENDIX B

Agency Correspondence



Minnesota Department of Transportation

Office of Environmental Services
395 John Ireland Boulevard, MS 620
St. Paul, MN 55155-1899

Fax: 651/ 284-3754
Phone: 651/ 284-3750

March 15, 2007

Tony Sullins, Field Supervisor
U.S. Fish and Wildlife Service
Twin Cities Field Office
4101 East 80th Street
Bloomington, MN 55425

Re: Request for Concurrence for the Bald Eagle (*Haliaeetus leucocephalus*)
S.P. 8823-01, Interstate 94/Trunk Highway 10 Interregional Connection
New Construction
Sherburne and Wright Counties, Minnesota

Dear Mr. Sullins:

The Minnesota Department of Transportation (Mn/DOT) is requesting concurrence from the U.S. Fish and Wildlife Service (Service) regarding potential effects to federally-listed species and designated critical habitat as a result of the Interstate 94/Trunk Highway 10 Interregional Connection.

Project Description

The proposed action involves the construction of a four-lane freeway on approximately 4.5 miles of new alignment between Interstate 94 and Trunk Highway 10. Related activities include, modifying existing accesses, the construction of several roadway overpasses and the building of a new bridge over the Mississippi River. A detailed description of the proposed action can be found in the Final Environmental Impact Statement which has been circulated to your office.

Background

The U.S. Fish and Wildlife Service (Service) was involved with the proposed action during the early stages of the project development/environmental review processes but, since that time, the Service has not been an active participant. In 1997 in response to the Scoping Document/Draft Scoping Decision Document, the Service issued a determination of not likely to adversely affect, precluding the need for further action as required under section 7 of the Endangered Species Act of 1973, as amended. However, because of the approximate 10-year lapse since the original determination, it was decided that the consultation process needed to be reinitiated and the action reevaluated¹. Recently, Mn/DOT contacted Mr. Nick Rowse, of your office to assist in determining the appropriate consultation path.

¹ Due to a variety of reasons, it is likely that the construction of the Interstate 94/Trunk Highway 10 Interregional Connection will not take place for several years. Therefore, it is likely that the consultation process will again need to be reinitiated at a point closer to project letting.

Tony Sullins
March 15, 2007
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Listed Species/Critical Habitat within the Project Area

The County Distribution of Minnesota's Federally-Listed Threatened, Endangered, Proposed, and Candidate Species list provided by the Service, indicates that Sherburne and Wright Counties are within the distribution range of the bald eagle (*Haliaeetus leucocephalus*), a federally-listed threatened species. Critical Habitat has not been designated in either of the project counties.

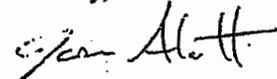
Known Occurrences

According to the information provided by the Natural Heritage Database (updated 11-28-06) maintained by the Minnesota Department of Natural Resources and the Service, there are records of bald eagle nests within the general vicinity of the proposed action. However, the closest known occurrence is approximately 3800 feet from the proposed alignment, well outside the Secondary (Buffer) Zone as described in the Bald Eagle Management Guidelines developed by the Service. Although though certain activities area still restricted, the Secondary Zone with a boundary ranging from 660 feet extending out to ¼ mile of the nest site, is considered the least critical of the defined zones (Primary Zone).

Determination

Mn/DOT in acting as the non-federal representative for the Federal Highway Administration, has determined that the proposed action may affect, but is not likely to adversely affect federally-listed species or designated critical habitat and are requesting concurrence that consultation with your office under section 7 of the Endangered Species Act is complete. If you require additional information, please contact me at (651) 366-3605.

Sincerely,



Jason Alcott
Natural Resource Specialist

cc: USFWS- N. Rowse
Mn/DOT- T. Humbert G. Larson file

Enclosure(s) Aerial Photograph of New Alignment and Nest Locations



IN REPLY REFER TO:
FWS/AFWE-TCFO

United States Department of the Interior



FISH AND WILDLIFE SERVICE

Twin Cities Field Office

4101 East 80th Street

Bloomington, Minnesota 55425-1665

APR 17 2007

Mr. Jason Alcott
Natural Resource Specialist
Office of Environmental Services
Minnesota Department of Transportation
395 John Ireland Boulevard, MS 620
St. Paul, Minnesota 55155-1899

Dear Mr. Alcott:

This is in response to your letter, dated March 15, 2006, requesting concurrence from our agency regarding potential effects to the federally threatened bald eagle (*Haliaeetus leucocephalus*) as a result of proposed new construction of the Interregional Connection (State Project 8823-01) between Interstate 94 in Wright County and Trunk Highway 10 in Sherburne County. The proposed action involves the construction of a four-lane freeway on approximately 4.5 miles of new alignment. Related activities include modifying existing accesses, the construction of several roadway overpasses and the building of a new bridge over the Mississippi River.

Minnesota Department of Transportation, acting as the non-federal representative for the Federal Highway Administration has determined that the project may affect, but is not likely to adversely affect federally-listed species or designated critical habitat. According to information found in the Natural Heritage Database and our records, no bald eagles are nesting in the vicinity of the project area. Because of the location and type of activity proposed, we concur that this project is not likely to adversely affect any federally listed or proposed threatened or endangered species or their critical habitat. This precludes the need for further action on this project as required under section 7 of the Endangered Species Act of 1973, as amended. However, if the project is modified or new information becomes available which indicates that listed species may be affected, consultation with this office should be reinitiated.

We appreciate the opportunity to comment and look forward to working with you in the future. If you have questions regarding our comments, please call Nick Rowse of my staff at (612) 725-3548, extension 210 or by email at nick_rowse@fws.gov.

Sincerely,

Tony Sullins
Field Supervisor

INFORMATION SHEET

**DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS**

DISTRICT OFFICE: Saint Paul District
 FILE NUMBER: MVP-2007-396-TJH
 PROJECT MANAGER: Tom Hingsberger

PROJECT REVIEW/DETERMINATION COMPLETED: In the office? Y N Date: 2/15/2007
 At the project site? Y N Date:

PROJECT LOCATION INFORMATION:

State: MN
 County: Sherburne
 Center coordinates of site by latitude & longitude: 45.4753285152658/-94.0315291382836
 Approximate size of site/property (including uplands) in acres: 80
 Name of waterway or watershed: Clearwater-Elk, MN

Type of Aquatic Resource 1:	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Ft	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	4			1					
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

1 Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors 1	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?					X
Is or would be used as habitat by other migratory birds that cross state lines?			X		
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?				X	

1 Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved:

FILE NUMBER: MVP-2007-396-TJH

ADDITIONAL INFORMATION SUPPORTING njd (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

Review of the 7.5 min. USGS topographic maps, 2003 FSA aerial photos, and NWI all indicate that the wetland basins referenced in the permit application as C-3 (0.9 acre), BC-1 (0.75 acre), BC-2 (4.25 acres), BC-3 (5.01 acres), and the Mitigation Basin (0.67 acre) located along the project alignment are isolated and have no connection to waters of the United States. The isolated wetlands that would be impacted by this linear project are located entirely within Sherburne County, Minnesota. The subject wetlands are isolated and are not adjacent to or part of a tributary system of navigable, interstate, or other waters of the United States. This determination concludes that an interstate or foreign commerce nexus is not present. The subject waterbodies are not waterbodies the use, degradation or destruction of which are likely to affect interstate or foreign commerce. The wetlands have not been used for recreational purposes. The waterbodies are not waters of the U.S. as defined at 33 CFR 328.3 and are not subject to Corps jurisdiction under Section 404 of the Clean Water Act.

The Mississippi River, wetlands adjacent to the Mississippi River, and wetlands that are adjacent to or part of the tributary system of the Mississippi River that are within the permit area of the I-94/TH-10 Interregional Connection Project are not included in this Determination of No Jurisdiction.



Minnesota Department of Transportation

Transportation Building
395 John Ireland Boulevard
Saint Paul, Minnesota 55155-1899

July 27, 2007

Mr. Dennis Gimmestad
State Historic Preservation Office
Minnesota Historical Society
345 Kellogg Blvd. W.
St. Paul, MN 55101-1906

Re: SP 8823-01 /Mississippi Regional Connector between I-94 and TH 10, vicinity of Clear Lake,
Sherburne County
SHPO NO. 2003-0477

Dear Mr. Gimmestad,

We are providing your office with this information pursuant to our FHWA-delegated responsibilities for compliance with Section 106 of the National Historic Preservation Act, as amended (36 CFR 800).

Since our last correspondence on February 13, 2006 and April 7, 2006 when we concurred in a finding of no historic properties on the preferred alignment C, a property owner in the NW 1/4 of the NW1/4 of Section 25, T34N and R30W requested that our office look into the possibility of a historic Red River Trail on her property. The preferred alignment has been mapped to pass through her property (see enclosed route on aerial). The owner had heard local stories that a Red River Trail went through the area and had identified some ruts with a center grassy mound on her property.

A literature review was conducted at the MHS Reference Library and the Sherburne County Historical Society. Gilman's *Red River Trails*, Singley's *Tracing Minnesota's Old Government Roads*, and National Register Multiple Property Documentation Forms (MPDF) for *Minnesota Red River Trails, Overland Staging Industry in Minnesota*, and *Minnesota Military Roads*, as well as two National Register listings for segments of the Red River Woods Trail: the Crow Wing section (CW-FRT-002) and the Goose Lake Swamp section (PE-PCR-001) were reviewed. Several historical maps were also consulted: the 1850 Government Land Office (GLO) Survey and original notes, the *1854 Map of the General Government Roads in the Territory of Minnesota*, the 1874 Andreas Atlas, the *1898 Survey of the Mississippi River by the Mississippi River Commission*, historic Clear Lake Township maps (1903 and 1914), and a 1939 aerial map. Also consulted were Sherburne County Auditor Road Records 1854-1950 (a record of changes to existing roads).

None of the maps consulted indicated a road through this property. The 1850 GLO indicates the route of the Ft. Gaines Road (Ft. Ripley Road) six miles west of this property (much of this route became TH 10). The original GLO survey notes (box 22, MHS reference) do not mention a road in the vicinity of the property, but identify a house in the nearby section 23 as being the only house in the township. In 1851-52, the U. S. Department of War surveyed a route that largely, but not exactly, followed the Red River Trail/Fort Gaines Road to just west of Big Lake where the surveyors diverged toward the river, now along present day County Road 8. "The military road followed the route of what may have been an even older Red River Trail close to "the wooded banks of the silent Mississippi" where County Road 8 now runs.

During the 1850s it linked many of the hopeful townsites that mushroomed along the stage road and at each possible steamboat landing." (Gilman p. 82 and 84). Singley writes that most of the diverted route west of Big Lake is now gone but that it is "... a pleasant surprise at the north line of Section 33 of T 34N R 29 W to find the old government road has become an improved Sherburne County Road, running northwest to the south end of Clear Lake (p. 31). It is this diverted section of the military-built road that passes by the property in question. This stretch of Military Road/County Road 8 clips the far NE corner of section 25 and is roughly $\frac{3}{4}$ miles due east or about $\frac{1}{2}$ mile due north of the property. After 1852, the Red River Carts used it as did the later stage trade (Gilman p. 81). This portion of the historic route of the Fort Ripley Military Road (SH-CLT-011, now County Road 8 was evaluated under the criteria of the Minnesota Military Roads MPDF in 1991 (Hess) and found to be not eligible because it is paved.

The proximity of the known historic route to the property prompted our field investigation. The area of woods we entered (see aerials) were a mix of mature and sapling trees. There was no clear opening or visual route discernable. The ruts on her property were scattered through the area we examined and did not seem to connect any linear or nearly linear "route". The ruts measured about 9 feet apart. For comparison, we looked at listed and recorded Red River Trail properties in the State Historic Preservation Office (SHPO) database. The National Register-listed Crow Wing segment of the trail (CW-FRT-002) was described as a 1.5 mile long segment with a 10' wide grassy mown pathway with short stretches of wagon or cart ruts visible. The parallel depressions were recorded as being about 5 feet apart. The Goose Lake Swamp segment (PE-PCR-001) is described as a 10 mile long segment made up of a 9' wide dirt track with a grassy crown, now used as a county road. Other inventoried, but not listed, segments are described as 7' wide with a crown (GR-ELK-005), 7' wide with crown and ruts (GR-ELK-006), a linear depression (AN-RMC-007), an 8' wide slight depression now used as a cattle path (BN-LAN-005), and a 10' wide path (CS-SLV-001).

Owing to the variation in the current condition (and description) of these routes it is prudent that the National Register eligibility criteria for Red River Trails outlined in the related MPDF state: "It must be possible to document that the site was used on a regular basis to carry long-distance trade between the Red River region and St. Paul." Without some kind of documentation, it is nearly impossible to build an argument for the original use of a road given there are no well-defined physical characteristics for a Red River Trail. Considering the variety of soils they traveled through, it is likely that they varied. The criteria also state that "...the trail should be clearly visible and differentiated from its surroundings. It should be possible to trace the route of a trail without tremendous difficulty... The site should evoke a sense of its past use... and should appear to lead somewhere. A six foot section of an ox cart trail does not strongly evoke a sense of the trails. As a general rule, a person standing at one end of a trail fragment should not be able to see the other end." (Section F page 2, MPDF). None of these criteria were apparent in the field visit.

The property owner guided us to another location where ruts follow a flat area at the river's edge in the adjacent section 26 (see enclosed aerials and topo). These ruts were discernable for about 1500' until they disappeared. The ruts, which were fairly consistent throughout, were 4.5 feet apart, center to center. The 1898 Mississippi River Commission map and the 1939 aerial as well as more recent topographic maps indicate the same cultivated field through time. The field (now a subdivision) ended in the trees where the road disappeared, pointing to its possible use as a field road.

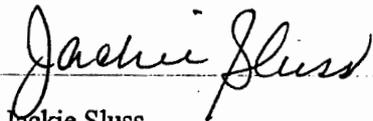
In summary, we could find no documentation of another road in this area except that Gilman points up that the Military Road (County Road 8) may have been built on "an earlier Red River Trail" (Gilman p. 82) which could leave remnants of the trail under County Road 8. The earliest plat map, the 1874 Andreas Atlas, though general, depicts the Military Road/County Road 8 clipping the same NE corner of Section 25 as mapped by the Department of War. The 1898 Mississippi River Commission map (enclosed) shows no

roads in the immediate property area except to the house in section 23 that is noted in the GLO. That road travels north along the east section line to meet the Military Road. The 1903 and 1914 plat maps (enclosed) indicate a continuity of roads to the present: two roads run north-south to connect County Road 8 to TH 10 and houses and farmsteads have clustered near those roads through time. The entire area, except where there are woods, has been cultivated for years. Only field roads access the river bottoms below County Road 8. In addition to the lack of written or mapped documentation, there is no physical evidence of a continuous road in this area other than County Road 8 which has been documented by Singley. It does seem likely that cart drivers may have wanted to divert from the road to hunt, gather wood, procure water or connect with river traffic and perhaps there would have been some "branch lines" to favorite stopping points along the trails. One such branch could have passed through Section 26 although it is about 1 mile due south from the Military Road. However, there would be no reason to take a train of carts into the woods to procure water, hunt or gather wood, but only to connect with river traffic.

In consideration of the above information it is the opinion that there are no additional eligible cultural resources within the area of potential for alternative C and that the finding of no historic properties is still appropriate.

If you have any additional questions regarding this project, please contact me at (651) 366-3624.

Sincerely,



Jackie Sluss
Historian, Cultural Resource Unit
Office of Environmental Services

cc: MnDOT C O file
CRU project file
Joseph Hudak, CRU
Terry Humbert, D-3
Cheryl Martin, FHWA
Janet Freeman



MINNESOTA HISTORICAL SOCIETY
State Historic Preservation Office

August 14, 2007

Ms. Jackie Sluss
Cultural Resources Unit
MN Dept. of Transportation
Transportation Building, MS 620
395 John Ireland Boulevard
St. Paul, MN 55155-1899

Re: S.P. 8823-01
Mississippi Regional Connector between I-94 and T.H. 10, vicinity of Clear Lake
Sherburne County
SHPO Number: 2003-0477

Dear Ms. Sluss:

As you know, we wrote you on 7 April 2006 regarding the above referenced project, concluding that no historic properties would be affected by the construction of alternative C.

You have now written us regarding some new information about a possible segment of a historic Red River Trail that is located within this project alternative. We appreciate your analysis and the supporting materials your submitted. Based on our review of the material, we concur with your determination that the features that have been identified do not meet National Register criteria as a historic transportation route. Therefore, the "no historic properties affected" review finding remains valid for this alternative.

Please contact us at 651-259-3455 with questions or concerns.

Sincerely,

Britta L. Bloomberg
Deputy State Historic Preservation Officer