

**Cooperative Agreement for Riverway Mitigation  
Items are part of the St. Croix River Crossing Project**

**between**

**The Minnesota Department of Transportation**

**And**

**St. Croix County, Wisconsin**

This Agreement for Riverway Mitigation (Bluffland Protection) is between the Minnesota Department of Transportation, acting through its Commissioner of Transportation (Mn/DOT) and St. Croix County acting through its County Administrator.

**Recitals**

Whereas, Minnesota Statutes §174.03, subd 6, and Wisconsin Statutes § 66.0303 authorize the parties to enter into this Agreement; and

Whereas, Mn/DOT and the Wisconsin Department of Transportation (WisDOT) plan to construct a new crossing of the St. Croix River between the City of Oak Park Heights in Washington County, Minnesota and the Town of St. Joseph, in St. Croix County, Wisconsin, including construction in the cities of Stillwater and Bayport, Minnesota, as described in 2006 Supplemental Final Environmental Impact Statement (SFEIS); and

Whereas, the new river crossing has the potential to cause adverse environmental impacts on the natural, cultural, and historical resources of the St. Croix River, which is designated a National Wild and Scenic Riverway; and

Whereas, to avoid and minimize the environmental impacts to the Riverway, Mn/DOT, WisDOT, the Minnesota Department of Natural Resources, the Wisconsin Department of Natural Resources, the National Park Service, and the Federal Highway Administration (FHWA) entered into a Memorandum of Understanding (MOU) for the Implementation of Riverway Mitigation Items (Exhibit A).

Whereas, Exhibit A provides that the parties will implement certain measures to mitigate the adverse effects the new river crossing will have to the Riverway in St. Croix County, Wisconsin; and

Whereas, St. Croix County agrees to implement certain of the agreed-upon mitigation items, including land protection efforts to offset Riverway impacts in St. Croix County and Mn/DOT agrees to pay \$2.5 million to assist with such land protection efforts; and

Whereas, the parties are entering into this Agreement to facilitate the transfer of the agreed-upon sum, described in Exhibit A, from Mn/DOT to St. Croix County.

Now therefore, the parties agree as follows:

**Agreement**

**1. Payment**

**1.1** Upon issuance of the notice of contract approval to the contractor for the new St. Croix River Bridge, Mn/DOT will provide a lump sum payment of \$2.5 million to St. Croix County. St. Croix County will apply this money to land protection efforts to offset Riverway impacts within St. Croix County as set forth in the MOU, attached as Exhibit A.

**1.2** It is the goal of this Cooperative Agreement that all recipients of funds in this Agreement expend or commit all such funds within five years of receipt, subject to extension. Any extensions must be approved by all parties to

this agreement, or their successors in office. Mn/DOT will use its best efforts to obtain approval of an extension by FHWA. The receipt of any funds under this Agreement that are not expended or obligated to a specific proposal for a Mitigation Activity contained in this Agreement within five years after receipt, or by the expiration of any extensions under this section, will be immediately returned to Mn/DOT.

**2. Agreement between the Parties**

- 2.1 St. Croix County agrees to implement the mitigation items identified as St. Croix County's responsibilities in accordance with the relevant provisions of the MOU, attached as Exhibit A.
- 2.2 In addition to any monitoring and reporting requirements set forth in the MOU, St. Croix County will provide Mn/DOT with quarterly progress reports detailing the status of the Riverway Mitigation efforts. These quarterly reports will continue until all expenditures under this agreement are completed.

**3. Term of Agreement; Survival of Terms; Incorporation of Exhibits**

- 3.1 **Effective date:** This Agreement is effective on the date last signed by the parties hereto, including all necessary Mn/DOT, St. Croix County, and other officials of each state as required by their respective state laws (including Minnesota Statutes § 16C.05, subdivision 2).
- 3.2 **Expiration date:** This Agreement will expire five years from the date of disbursement of funds, or when all obligations have been satisfactorily fulfilled, whichever occurs first, unless terminated earlier as provided for under Section 9. If necessary, Section 2.2 will survive the expiration or termination of this Agreement.
- 3.3 **Exhibits:** Exhibit A is attached and incorporated into this Agreement.

**4 Authorized Representative**

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

**4.1 For Mn/DOT.** Mn/DOT's Authorized Representative is:

Mark Hagen, 1500 West County Road B2, Roseville, MN 55113, 651/234-7686, or his successor.

Mn/DOT's Mitigation Project Managers are:

Todd Clarkowski, 1500 West County Road B2, Roseville, MN 55113, 651/234-7714, or his successor, and  
Jon Solberg, 1500 West County Road B2, Roseville, MN 55113, 651/234-7792, or his successor.

**4.2 For St. Croix County.** St. Croix County's Authorized Representative is

Pete Kling, Planning & Zoning Director, 1101 Carmichael Road, Hudson, WI 54016, 715/386-4672, or his successor.

**5. Assignment, Amendments, Waiver, and Agreement Complete**

- 5.1 **Assignment.** Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 5.2 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 5.3 **Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.

**5.4 Agreement Complete.** This Agreement contains the results of all prior negotiations and agreements between Mn/DOT and St. Croix County. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

## **6. Liability**

Each party will be responsible for its own acts and omissions and the results thereof. The liability of Minnesota will be governed by Minnesota Statutes 3.736 and other applicable law. The liability of Wisconsin is governed by Wisconsin Statutes §§ 893.80 - 893.82; §895.46, and other applicable law. Nothing in this Agreement will be construed as a waiver by either party of its sovereign immunity or of any limitations of liability afforded to either party by its respective state law.

## **7. Mn/DOT Audits**

Under Minnesota Statutes § 16C.05, subd. 5, and to the extent permitted by Wisconsin law, the St. Croix County's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Mn/DOT's Auditor or the Minnesota Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

## **8. Wisconsin Public Records Law / Minnesota Government Data Practices Act**

Minnesota must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Minnesota under this Agreement. All data submitted to Mn/DOT by St. Croix County will be subject to this Act. Wisconsin must comply with the Wisconsin Public Records Law, Wisconsin Statutes. §§ 19.31 through 19.39, as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Wisconsin under this Agreement. All data submitted to St. Croix County by Mn/DOT will be subject to this Law.

## **9. Termination**

- 9.1** Termination may only be allowed by mutual agreement of the parties or for insufficient funding as set forth in 9.2 below.
- 9.2** Mn/DOT may immediately terminate this Agreement, anytime prior to the disbursement of funds, if it does not obtain funding from the Minnesota Legislature or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice. Mn/DOT has no obligation to pay for any services that are provided after notice and effective date of termination. Mn/DOT will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. Mn/DOT must provide St. Croix County notice of the lack of funding within a reasonable time of Mn/DOT's receiving that notice.

## **10. Force Majeure**

Neither party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

[The remainder of this page has been intentionally left blank]

**MN/DOT ENCUMBRANCE VERIFICATION**

Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

Signed: 

Date: will be  
FY 14 encumbrance

CFMS Contract No. \_\_\_\_\_

**MINNESOTA DEPARTMENT OF TRANSPORTATION**

Recommended for Approval by:

By: **ORIGINAL SIGNED BY**  
**Amr Jabr**  
**Assistant Division Director**  
\_\_\_\_\_  
(With delegated authority)

Title: \_\_\_\_\_

Date: 9/21/12

**COMMISSIONER OF ADMINISTRATION**

Approved By: 

Title: AD

Date: Sept 25, 2012

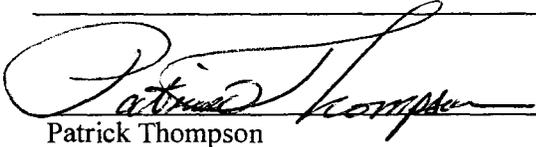
**ST. CROIX COUNTY**

The undersigned certify that they have lawfully executed this Agreement on behalf of St. Croix County as required by applicable charter provisions, resolutions or ordinances.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By:   
Patrick Thompson

Title: County Administrator  
\_\_\_\_\_

Date: 4-19-12

**St. Croix River Crossing Project**  
**Memorandum of Understanding**  
**For the Implementation of Riverway Mitigation Items**

**Between the National Park Service,  
The Minnesota Department of Natural Resources,  
The Wisconsin Department of Natural Resources,  
The Federal Highway Administration,  
The Minnesota Department of Transportation  
And the Wisconsin Department of Transportation**

1. The Federal Highway Administration (FHWA), the Minnesota Department of Transportation (Mn/DOT) and Wisconsin Department of Transportation (WisDOT) plan to construct a new crossing of the St. Croix River between the City of Oak Park Heights in Washington County, Minnesota and the Town of St. Joseph, in St. Croix County, Wisconsin, including construction in the cities of Stillwater and Bayport, as described in the 2006 Supplemental Final Environmental Impact Statement (SFEIS) for the St. Croix River Crossing Project; and
2. The impacts of the Project are described and discussed in Chapters 4 through 14 of the SFEIS. Riverway impacts are being avoided and minimized to the extent possible. Chapter 15 documents the adverse environmental impacts of the Preferred Alternative that cannot be avoided on the Lower St. Croix National Scenic Riverway and the mitigation package; and
3. The National Park Service draft 7(a) evaluation indicates that with appropriate mitigation, the Preferred Alternative would not have a direct and adverse effect on the scenic and recreational values for which the Lower St. Croix Riverway was included in the national Wild and Scenic Rivers System; and
4. Table 15-2 of the SFEIS provides a summary overview of the Preferred Alternative mitigation package and includes: mitigation dollar amounts to be provided by the transportation agencies; the agency or agencies responsible for implementation of the mitigation item; the schedule for implementation; and the contract or agreement necessary for execution of the mitigation item; and
5. For Mitigation Items 9b., f., g., i., and k. of this Memorandum of Understanding (MOU), the parties will negotiate and enter into specific agreements, in accordance with applicable laws, to outline the financial arrangements and administrative details to carry out the intentions expressed in this MOU.
6. For Mitigation Item 9b. only, for administrative efficiency, the source of all funds to be provided to the Wisconsin Department Natural Resources (WisDNR) and to St. Croix County, and distributed to the Town of St. Joseph will be from Mn/DOT Project appropriations.

7. An implementation graphic describing the Mitigation for Riverway Impacts is attached which also provides the additional implementation details for each of the items; and
8. The above agencies wish to enter into this MOU to further refine the implementation of each mitigation item; and
9. Mitigation Items: The following is further refinement of each of the Riverway Impacts mitigation items.

a. Removal of Xcel Barge Unloader Facility and Mooring Cells:

Mn/DOT will remove the barge unloading facility and mooring cells associated with the Xcel Energy King Plant from the St. Croix River, eliminating an existing man-made structure from the Riverway. The estimated cost of this mitigation item is \$1.1 million. Xcel Energy owns this facility. This mitigation item is to offset the visual impacts of a new river crossing by removing an existing man-made structure from the Riverway.

The facility consists of 18 mooring cells and four additional foundation cells that support a large coal barge off-loading facility that is no longer used. A conveyor system between the structure and the shoreline will also be removed. Steel sheeting from each of the mooring cells will be removed by either pulling the sheeting or cutting it off near the river bottom. The stone fill in each cell will be spread out near the cell location and would be left in-place as aquatic habitat. One pivot cell from the barge off-loading facility will remain. Any work in the river below elevation 682.5 will need to be reviewed by the U. S. Army Corps of Engineers pursuant to applicable regulations and permit requirements under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

Mn/DOT has also proposed to use the Xcel barge unloading facility and mooring cells as a barge docking facility during the Preferred Alternative river crossing construction. Temporary barge docking facilities will be placed in the river for use during construction of the Preferred Alternative. Reuse of the existing Xcel facility during river crossing construction will result in one fewer temporary barge docking facility that will need to be constructed.

This property has been evaluated as not eligible for listing in the National Register of Historic Places. MnSHPO concurs with this evaluation.

A Memorandum of Understanding (see attachment.) has been developed between Mn/DOT and Xcel Energy regarding the use of these facilities during river crossing construction and removal following construction of the river crossing. The St. Croix River is known to contain a large and diverse fresh water mussel community, including two federally listed endangered species (Higgins eye pearly mussel and winged mapleleaf). In addition, the Xcel barge unloading facility supports an active osprey (Minnesota listed species of special concern and Wisconsin listed threatened species) nesting platform. Prior to implementation, Mn/DOT shall also evaluate, in consultation with US Fish and Wildlife Service and Minnesota Department of Natural Resources, this mitigation item for potential mussel and osprey impacts and suitable protection measures.

1. Relocation and replacement of the osprey nest requires a permit from the Minnesota Department of Natural Resources.

2. The mooring cells gravel contents will be spread on the river bottom at an elevation which will allow potential barge access to the Pivot Cell from the downstream side. The gravel contents of the cells upstream from the Pivot Cell will remain at an elevation that will allow recreational boat traffic to safely pass.

b. Mitigation for damages to blufflands:

As part of the Project, Mn/DOT will provide funding in the amount of \$2.0 million to WisDNR and in the amount of \$2.5 million to St. Croix County for the protection of replacement lands to offset the impacts of a new crossing on the Wisconsin bluff. Protection could include the purchase of fee title, the purchase or transfer of development rights or the purchase of conservation easements from willing sellers of land located in St. Croix County, Wisconsin. Protected lands would be perpetually maintained for land and water conservation purposes, scenic protection and other compatible uses, including low-impact public recreation.

It is the intent of all parties to this agreement that WisDNR will use the \$2 million for its own land protection efforts within the Riverway Basin.

It is also the intent of all parties to this agreement that St. Croix County will use \$2 million for land protection efforts within the Riverway Basin that are of benefit to the Riverway and that St. Croix County will pay the remaining \$500,000 to the Town of St. Joseph for similar use. Prior to expending such funds for the protection of specific land parcels, St. Croix County and the Town of St. Joseph will consult with, and seek concurrence from, WisDNR on the targeted land parcel(s) and the proposed management of such land by St. Croix County or the Town of St. Joseph. All parties to this MOU recognize that the source of these mitigation funds is Mn/DOT Project appropriations and, therefore, St. Croix County and the Town of St. Joseph are eligible to use their respective portions to compete for matching Wisconsin Stewardship Local Assistance Grants administered by WisDNR. If St. Croix County or the Town of St. Joseph decide to partner with a non-profit conservation organization in purchasing land rights as described above, the partnering parties would be eligible to compete for other Stewardship match programs for which the local units of government themselves are not eligible. It is the recommendation of all parties of this MOU that St. Croix County and the Town of St. Joseph select projects that would be eligible for matching Wisconsin Stewardship funds in order to maximize the use of the funds provided under this paragraph. All such grant requests will be subject to WisDNR's standard, independent review process governing the Stewardship Program.

As stipulated in the Section 106 Amended MOA (Stipulation VIII), for any property purchased or protected under this mitigation item, WisDNR, St. Croix County and the Town of St. Joseph shall consult with the Wisconsin State Historic Preservation Officer (WisSHPO), the Minnesota State Historic Preservation Officer (MnSHPO) and other consulting parties, including Indian tribes, as appropriate, in accordance with 36 CFR §§ 800.3 - 800.5 to determine if historic properties in addition to those identified in Stipulation II.C.4 of the Section 106 MOA for this project will be affected. In addition, the WisDNR, St. Croix County and the Town of St. Joseph will confer with the WisSHPO on possible sites to acquire in order to provide protection for historic properties in conjunction with land and water conservation goals.

c. Bluffland Restoration:

The intent of the bluffland restoration mitigation item is to further offset the impacts of the Preferred Alternative on the Wisconsin bluff. Mitigation items include:

1. Removal of the Buckhorn sign. The Buckhorn sign is located approximately 1,800 feet north of the Preferred Alternative river crossing location along the Wisconsin bluff. Under this mitigation item, WisDOT will remove the sign and the bluff will be allowed to return to a natural state. The attached Memorandum of Understanding developed between WisDOT and the property owner, Edward T. Johnston, includes provisions for its removal.
2. Partial restoration of the Wisconsin approach to the Lift Bridge. Under this mitigation item, WisDOT will remove and restore the existing STH 64 roadway between the Lift Bridge and STH 35. WisDOT will redevelop a portion of STH 64 as a Loop Trail as described in the Visual Quality Manual for this project. WisDOT will remove the existing CTH E roadway between the CTH E/STH 64 intersection and State Street. WisDOT will revegetate the road rights-of-way with native species following removal of the pavements.

d. Removal of Terra Terminal Building:

The Terra Terminal building has been evaluated as not eligible for listing in the National Register of Historic Places. MnSHPO concurs with this evaluation. However, the Terra Terminal site is adjacent to the National Register-eligible Hersey Bean Saw Mill and Planing Mill archaeological sites. Mn/DOT will coordinate any activities planned for this area with the Mn/DOT Cultural Resources Unit and the MnSHPO. Refer to Chapter 11 and the Section 106 MOA in Appendix G of the SFEIS for additional detail on the Hersey Bean sites.

Mn/DOT will remove the Terra Terminal building, an old fertilizer warehouse on the Stillwater Municipal Barge Facility property, under this mitigation item, removing an existing man-made structure from the Riverway and restoring the shoreline to a more natural condition. Mn/DOT will also remove construction debris (asphalt and concrete) used for bank stabilization near the building and the removal of below-water debris near the shoreline. A natural condition will be created along the shoreline with removal of the existing construction debris (e.g., concrete slabs). Any replacement materials necessary to maintain riverbank stabilization will have a natural appearance. Mn/DOT will coordinate with the City of Stillwater on the removal of construction debris and the replacement with natural material to ensure bank stabilization to ensure that this is consistent with the plan for the park setting along the Riverway.

Mn/DOT will coordinate removal of the Terra Terminal building with Stillwater. Mn/DOT has identified the Terra Terminal building site as a potential construction staging site. Once the building structure is removed, the Terra Terminal building pad could also be used as a staging area during construction. Identification of all construction staging sites will be completed during final design. When construction is complete, Mn/DOT will remove the building pad and restore the site. Mn/DOT is currently working with the City of Stillwater to relocate the Bergstein Shoddy Mill buildings to the site of the Terra Terminal building.

Four different aspects of mitigation focus on the Terra Terminal property. The National Park Service proposed removal of the building and shoreline restoration to mitigate scenic impacts. The City of Stillwater plans to develop the area as a park. A segment of the recreational loop trail will cross this property. Historic preservation interests propose the possibility of moving the historic Shoddy Mill buildings to the Terra Terminal site, once the terminal is removed. In addition, the site is a possible construction staging area. See Stipulation IV. B. of the Section 106 MOA for this project. All of the above-mentioned parties must cooperate in use and development of this property in order to ensure that Riverway mitigation goals are achieved.

Since the publication of the SDEIS, a report has been completed for the City of Stillwater that outlines possible riverway and cultural resource impacts with the relocation of the Shoddy Mill buildings to this site. Refer to Chapter 11 and Stipulation IV. F. of the Section 106 MOA for this project in Appendix G of the SFEIS for additional detail.

e. Kolliner Park:

The Kolliner Park property, located on the Wisconsin shoreline of the St. Croix River adjacent to the Lift Bridge and the existing STH 64 approach roadway, will be allowed to revert to a natural state. WisDOT will remove non-historic, man-made elements (e.g., access road; parking lot pavement; miscellaneous items) from the site. Although the pavement for the access road will be removed, the revegetated roadway will remain usable for emergency and city vehicle access. Some minor grading may be required following removal of these elements. Some retaining walls may also remain intact to provide site drainage as requested by the WisDNR. Following removal of these elements, the park would be allowed to revert to a natural state.

The Kolliner Park property is owned by the City of Stillwater. The property will remain under the ownership of the City of Stillwater with the implementation of this mitigation item. Although the park master plan cannot be implemented fully (i.e., the proposed access road and parking would not be feasible because there would be no vehicular access available to the general public to the site), the City could still develop, subject to applicable federal, state and local government regulations, other elements proposed in the park master plan.

f. Riverway Interpretation:

The Riverway interpretation mitigation item will include interpretation items (e.g., informational and mobile kiosks, bulletin boards) related to natural and cultural resources to enhance the recreational experience for users of the Riverway. Examples of potential content of the interpretation items are provided in Section 14.2.1.1 of the SDEIS, and include material related to natural and historic resources. Interpretive items related to natural resources may include items related to zebra mussels in the St. Croix River (e.g., education, research, or inspection programs), informational material on other invasive species, items related to water quality, or items related to the Riverway's resources and values. Interpretive items related to historic resources may include installation of interpretive materials in locations such as downtown Stillwater, Kolliner Park or the Stillwater Boom Site related to archaeological sites and past uses.

As part of the Project, Mn/DOT will provide funding in the amount of \$300,000 to the NPS. The NPS, in coordination with the Minnesota Department of Natural Resources (MnDNR) and WisDNR, will be responsible for the content and implementation of this mitigation item. NPS

will also consult with MnSHPO and WisSHPO to prevent adverse impacts to historic resources per Stipulation VI. C. of the Section 106 MOA for this project.

g. Public Boat Access:

As part of the Project, Mn/DOT will pay funding in the amount of \$1.2 million to the MnDNR for costs associated with locating and constructing a public access facility on the St. Croix River in the general project vicinity. MnDNR will conduct location studies, environmental documentation, and any mitigation necessary for access construction impacts. MnDNR has not yet determined the location of the access. The history and issues surrounding the public boat access mitigation item are described in Section 14.2.1.1 of the SDEIS.

h. Loop Trail System:

- i. As part of the compensation to offset impacts of a new river crossing on the recreational values of the Riverway, Mn/DOT and WisDOT will complete a loop trail system between Minnesota and Wisconsin. Subject to the planned Lift Bridge rehabilitation work, Mn/DOT and WisDOT will open the trail for use within one year after the St. Croix River Crossing Project is open to traffic. The location of the loop trail system is illustrated in Figure 15-2.
- ii. As part of the loop trail system, Mn/DOT and WisDOT will convert the Lift Bridge to a pedestrian/bicycle facility. Mn/DOT will place bollards, or similar gating elements, within the Chestnut Street right-of-way in Stillwater to prevent vehicular access by the general public to the Lift Bridge, but still allowing for any traffic operations on Chestnut Street. These bollards would be removable and allow for maintenance, emergency, and city-owned vehicles to access the Lift Bridge and Kolliner Park in Wisconsin. Lift Bridge management and operations as part of the loop trail system are described in more detail in the Section 106 Amended MOA in Appendix G of this SFEIS and in Section 15.4.1.4 of this SFEIS. With conversion of the Lift Bridge to a pedestrian/bicycle facility, the existing operation regulations and lift schedule will stay in effect.
- iii. Within one year after opening of the new river crossing, Mn/DOT will initiate a rehabilitation project on the Lift Bridge, with the work elements described by the priorities established in the Lift Bridge Management Plan.
- iv. The conceptual design of the loop trail will be included in the Visual Quality Manual currently being developed by Mn/DOT and WisDOT. Preliminary design for the loop trail anticipates two separate trails, one for pedestrians and one for bicyclists, through the Stillwater Municipal Barge Facility property and up the Wisconsin bluff from the Lift Bridge to STH 35 within the existing STH 64 right-of-way. Through the Stillwater Municipal Barge Facility property, Mn/DOT will construct a higher speed bicycle trail on an existing railroad grade along the west boundary of the site. A lower speed pedestrian trail will follow the St. Croix River shoreline at the east boundary of the property. This plan for the loop trail through the Stillwater Municipal Barge Facility property is consistent with the park plan for this site. Refer to Figure 15-3 for an illustration of the loop trail through the Stillwater Municipal Barge Facility property.
- v. Up the Wisconsin bluff, WisDOT will construct the bicycle trail at the existing road grade; the pedestrian trail will also be constructed at the existing road grade with intermittent landings. WisDOT will construct the loop trail within the existing STH 64 right-of-way from the Lift Bridge to existing STH 35. Refer to SFEIS, Figure 15-4 for an

illustration. A cross section of the potential loop trail design and revegetation up the Wisconsin bluff is illustrated in Figure 15-5. A photo simulation of the loop trail and revegetation is illustrated in Figure 15-6. Vegetation between the two trails up the Wisconsin bluff will be addressed in the Visual Quality Manual. WisDOT will construct a parking facility (approximately 40 stalls) at the top of the bluff in Houlton, with access to the loop trail system. WisDOT will construct bollards at the top of the bluff in Wisconsin across the loop trail to prevent vehicular access by the general public from the loop trail at the top of the Wisconsin bluff. These bollards would be removable and allow for maintenance and emergency vehicles to access the loop trail.

- vi. The loop trail will utilize paved shoulders along existing STH 35 and a shared-roadway facility on existing CTH E through Houlton, past the Houlton Elementary School, to the proposed STH 64 – STH 35/CTH E interchange. WisDOT will construct a cul-de-sac on existing CTH E at the interchange, and a parking facility to the south of the cul-de-sac. This parking facility will provide access to the loop trail system near the STH 64 – STH 35/CTH E interchange. The loop trail will continue south from the cul-de-sac at existing CTH E, include an underpass under the new STH 35 roadway, and continue parallel to the west side of the new STH 64 roadway south to the new river crossing.
  - vii. As part of the completion of the loop trail, Mn/DOT will also partner with the City of Stillwater in grading the Stillwater Municipal Barge Facility property following construction. Mn/DOT will complete the grading under a construction contract as part of the river crossing construction. MnDOT will consult the City of Stillwater as part of this process to ensure that the grading is completed consistent with their plans for the future park development. The grading will be completed to the extent possible while still avoiding the natural and cultural resources (i.e., Hersey and Bean site) of the Stillwater Municipal Barge Facility property. See Stipulation IV. F. of the Section 106 MOA for this project for further details.
  - viii. Ownership, operation and maintenance of the loop trail will be determined through discussions with appropriate federal, state, and local agencies during final design. Mn/DOT and WisDOT anticipate transferring ownership, operation, and maintenance responsibilities for the loop trail to the respective local units of government. An operations plan, to be completed prior to opening of the loop trail, will define compatible and safe uses for the loop trail system. The trail was designed intending for non-motorized uses only and restricted trail use during winter months. Refer to Section 16.2.2.3 of this SFEIS for a discussion of additional involvement with the City of Stillwater regarding completion of the loop trail and other temporary impacts to Stillwater-owned property.
  - ix. The conceptual design of the loop trail is included in the Visual Quality Manual and describes the location of the trails and aesthetic treatments.
- i. Recreation, Education and Riverway Restoration:
- i. A new St. Croix River crossing will result in adverse impacts to the visual qualities of the Riverway and will also result in an adverse impact to a user's recreational experience along the Riverway. The following is a description of the three components of this mitigation item:
    - a. Archaeological Surveys: A new river crossing will impact the visual qualities for which the Riverway was set aside and will impact people's recreational experience on

the Riverway. To compensate for this, the riverway agencies (NPS, MnDNR, WisDNR) have proposed to restore native vegetation and develop campsites along the Lower St. Croix National Scenic Riverway (Lower Riverway) in order to enhance the camping experience while protecting the Riverway's resources. Prior to any management activities to remove exotic species and restore natural species (e.g., burning or other treatment plans) or prior to any campsite expansion, the NPS shall complete archaeological surveys of the affected areas in their respective states, in consultation with the Minnesota and Wisconsin SHPO's in that state, and any objects found will be documented and curated.

- b. **Historic Research:** A new river crossing will impact and change the appearance of the river and shoreline. To raise awareness among river users and researchers of how man has changed the river in the past, the NPS, in consultation with the Minnesota and Wisconsin SHPO's, will document the river changes implemented by the U. S. Army Corps of Engineers (i.e., decisions; proposed and implemented plans; photographs and drawings). The NPS will also document, including photographs, the history of the Boomsite and its effect on the Riverway and the logging industry. The results of these efforts will be a scholarly document and an overview of the research on the NPS website.
  - c. **Restroom Facilities:** Increasing recreational use of the St. Croix River has elevated demand for restroom facilities along the river. To respond to this demand, and to minimize pollution associated with the lack of proper sanitation, NPS will construct new restroom facilities along the Riverway to enhance the recreational experience while protecting the Riverway's resources.
- ii. As part of the Project, Mn/DOT will provide funding in the amount of \$250,000 for these three components of this mitigation item to the NPS. The NPS will be responsible for any Section 106 consultation required for the activities in this mitigation item. The NPS will be responsible for the purchase and maintenance of the restroom facility.
- j. Covenants on Excess Property:

This mitigation item will require the placement of covenants on potential excess properties from the 1995 Final EIS Preferred Alternative alignment in Wisconsin and the former STH 35 wayside rest area to limit future development. There will be no excess property available on the Minnesota side of the Riverway in lower Oak Park Heights; all of the previously purchased right-of-way for the 1995 FEIS Preferred Alternative alignment will be used by the Preferred Alternative.

The excess property in Wisconsin could eventually be sold as surplus property. If sold as surplus property, WisDOT shall record deed-restrictive covenants on the properties that are consistent with Lower St. Croix National Scenic Riverway Cooperative Management Plan (CMP) guidelines (e.g., bluff setback; structure height – see Appendix A of the CMP). WisDOT anticipates a loss of approximately \$466,000 on the sale of these properties with the restrictive covenants in place.<sup>1</sup> The anticipated covenants on the excess WisDOT-owned properties are listed below, and further described in Chapter 15 of this SFEIS. The three excess property parcels from the 1995 Final EIS Preferred Alternative alignment are shown on attachment to this MOU titled “WisDOT Excess Right-of-Way Layout.”

---

<sup>1</sup> Estimate for the difference in Wis/DOT selling excess property with and without a restrictive covenant is \$10,000 per acre.

- i. Lands west of Existing STH 35, both at the former wayside south of the project and along the 1995 Final EIS Preferred Alternative alignment, if sold by WisDOT as excess right-of-way, shall be restricted to "Conservancy District" use as defined by St. Croix County Zoning as follows: *Conservancy District is established to preserve and perpetuate in an open state certain areas such as lowland swamps, marshes and wetlands, floodplains and stream beds, slopes, bluffs, wooded areas and other areas of aesthetic value which, because of their unique physical features, are deemed desirable to be retained for the benefit of this and future generations. The regulations of the Conservancy District are intended not only to preserve and perpetuate open space land and water areas consistent with the intent and purpose of this chapter, but also to protect the community and the County from costs and consequences that may be incurred when unsuitable development occurs in such areas.*

The land west of Existing STH 35 at the former wayside south of the project is approximately 9.9 acres in size. The land west of Existing STH 35 in the area of the 1995 Preferred Alternative is approximately 10.8 acres in size.

- ii. Land east of Existing STH 35 along the 1995 Preferred Alternative alignment from Existing STH 35 to the east-west  $\frac{1}{4}$  line of Section 26, Town 30 North, Range 20 West, approximately  $\frac{1}{4}$ -mile south of Existing CTH E, if sold by WisDOT as excess right of way, shall be restricted to "Agriculture Residential District" use as defined by St. Croix County Zoning as follows: *Agricultural Residential District: This district is created to establish areas within which agricultural uses, commercial uses serving agriculture, limited commercial, institutional residential uses may be located. The Agricultural Residential District is intended to include areas in which exclusive agricultural use on an area-wide basis is not warranted due to such factors as the existence of mixed uses prior to the date the district was established and located, demonstrated or expected ability of farm and selected nonfarm uses to exist in close proximity without undue conflict or a determination that the area is in a state of transition to urban residential character.*

The restriction on this parcel could be removed if equal or greater acreage with equivalent restrictions is provided in the Town of St. Joseph. This parcel of land is approximately 25.9 acres in size.

- iii. Land adjacent to the New STH 64/35/CTH E interchange north of the east-west  $\frac{1}{4}$  line of Section 26, Town 30 North, Range 20 West, approximately  $\frac{1}{4}$ -mile south of Existing CTH E to the proposed south right-of-way line for Relocated STH 35, is not required to have any restrictions in use on the deed in the sale as excess right-of-way. This parcel of land is approximately 6.7 acres in size.

k. Spill Response Plan.

As population grows and traffic levels increase in St. Croix County, Wisconsin, Washington County, Minnesota and in the Minneapolis/St. Paul metropolitan area, the risk of traffic related spills within the St. Croix River basin increases. A comprehensive spill response plan will help improve the ability for federal, state, regional and local governments to respond to such spills, and minimize the potential adverse impacts to surface waters, groundwater and aquatic and terrestrial wildlife populations and habitats.

As part of the Project, Mn/DOT will provide funding in the amount of \$100,000 to the NPS to work with contractors or consultants to develop a River Defense Network for spill response.

This effort will include mapping spill entry routes and determining time of travel for various flow regimes and spill locations. It will also include arrangements for spill contractors and equipment storage at various locations along the river for rapid deployment.

#### 10. Monitoring and Reporting

- a. On March 1st of every year, FHWA shall submit a summary annual report to the signatories detailing the measures carried out pursuant to the terms of this MOU. FHWA shall submit an annual report every year until the mitigation item work contained within this MOU is completed.
- b. The annual report will describe all actions taken by FHWA, Mn/DOT, WisDOT and other agencies during the preceding year to implement the terms of this MOU, identify any problems or unexpected issues encountered during the year, any disputes and objections submitted or resolved, any changes recommended in implementation of the MOU, and any scheduling changes. The annual report shall also include a timetable of mitigation item activities proposed for implementation within the following year or two.
- c. The signatories of this MOU shall review the annual report and provide their comments to FHWA within thirty (30) days of receipt of the report. FHWA shall also provide the annual report to the Mn/DOT Cultural Resources Unit, the MnSHPO and the WisSHPO.
- d. At its own discretion or at the request of any signatory to this MOU, FHWA shall convene a meeting to facilitate review and comment on the annual report, and to resolve any questions about its content and/or to resolve adverse comments.

#### 11. Oversight Committee.

An Oversight Committee, composed of representatives from the National Park Service, Minnesota Department of Natural Resources, Wisconsin Department of Natural Resources, U.S. Fish & Wildlife Service, Minnesota Department of Transportation, Wisconsin Department of Transportation, and Federal Highway Administration, will receive Annual Reports as described above and at the group's discretion, meet on an as-needed basis (minimum of annual meetings are expected).

Attachments: Preferred Alternative Layout  
Mitigation for Riverway Impacts Graphic dated 03-14-06  
MOU between Mn/DOT and Xcel for the Barge Unloader Facility  
MOU between WisDOT and Edward T. Johnston for removal of Buckhorn sign  
WisDOT Excess Right-of-Way Layout

Signatures signify agency concurrence with this Memorandum of Understanding

National Park Service

By: Tom Bradley

Tom Bradley

Superintendent

St. Croix National Scenic Riverway

Date: 3/27/06

Minnesota Department of Transportation

By: Khani Sahebjam

Khani Sahebjam

Metro District Engineer

Date: 4/11/06

Wisconsin Department of Transportation

By: Rory L. Rhinesmith

Rory L. Rhinesmith

Regional Operations Manager

Division of Transportation System Development

Date: 03/21/06

Federal Highway Administration

By: Thomas K. Sorel

Thomas K. Sorel

Division Administrator

Date: 3-28-06

Wisconsin Department of Natural Resources

By: Scott Humrickhouse

Scott Humrickhouse

Director

West Central Region

Date: 3/24/06

Minnesota Department of Natural Resources

By: Kent Lokkesmoe

Kent Lokkesmoe

Director

Division of Waters

Date: 3-27-06



LEGEND

Proposed Road	---
Existing Road	---
Proposed Intersection	⊕
Existing Intersection	⊙
Proposed At-Grade	▭
Proposed Overpass	▭
Proposed Underpass	▭
Proposed Bridge	▭
Proposed Tunnel	▭
Proposed Viaduct	▭
Proposed Culvert	▭
Proposed Drainage	▭
Proposed Utility	▭
Proposed Structure	▭
Proposed Foundation	▭
Proposed Retention	▭
Proposed Erosion	▭
Proposed Slope	▭
Proposed Embankment	▭
Proposed Cut	▭
Proposed Fill	▭
Proposed Excavation	▭
Proposed Retention	▭
Proposed Erosion	▭
Proposed Slope	▭
Proposed Embankment	▭
Proposed Cut	▭
Proposed Fill	▭
Proposed Excavation	▭



**SRF** CONSULTING GROUP, INC.  
 ALTERNATIVE B-1  
 WITH 1995 AT-GRADE  
 INTERSECTION DESIGN

# ST. CROIX RIVER CROSSING PROJECT

## MITIGATION FOR RIVERWAY IMPACTS

	Record Of Decision July 2005	Lift Bridge Repair Project Ending Summer 2005	FHWA Authorization Of Funding	Letting Of Project	Begin Construction	End Construction	One Year After Construction
Removal Of Xcel Barge Unloading Facility And Mooring Cells	MOU Between Mn/DOT And Xcel				Use Existing Facility for Staged Construction		Removal Of Xcel Barge Unloader & Mooring Cells
Mitigation for Damages to Blufflands			\$2,000,000 Joint Powers Agreement With Mn/DOT and WisDNR \$2,500,000 Joint Powers Agreement With Mn/DOT and St. Croix Co.			Purchase/Protect Blufflands, Fee Title, Development Rights to Easements	
Bluffland Restoration	MOU Between WisDOT And Sign Owner				Removal Of The Backhoe Sign		Restoration Of Wis Approach Lift Bridge Per Visual Quality Manual
Removal Of Terra Terminal Building		Identify As Construction Staging Site		Removal Of Terra Terminal Building Building Pads Removed And Site Restored		Potential Use As Construction Staging Site	
Kalliner Park					Removal Of Non-Historic Man-Made Elements And Allow Reversion To A Natural State		
Riverway Interpretation			\$300,000 Joint Powers Agreement With Mn/DOT And NPS (Local Agency)			Implementation Of Riverway Interpretation	
Public Boat Access			\$1,200,000 Interagency Agreement With Mn/DOT And MaDNR Site search, Study For Boat Access Location, And Environmental Study By MaDNR.				
Loop Trail System		Final Design Of Loop Trail System			Construction Of Loop Trail System		Construction And Completion Of Loop Trail On Approaches to Lift Bridge And On Lift Bridge
Recreation, Education and Riverway Restoration: - Archeological Surveys - Historical Research - Restroom Facilities			\$250,000 Joint Powers Agreement With Mn/DOT And NPS			Implementation Of The Agreement	
Covenants On Excess Property		Draft Covenant Language					Disposition of excess properties with Covenants
Spill Response Plan			\$100,000 Joint Powers Agreement With Mn/DOT And NPS			Implementation of the Agreement	

### TIME LINE DEFINITIONS

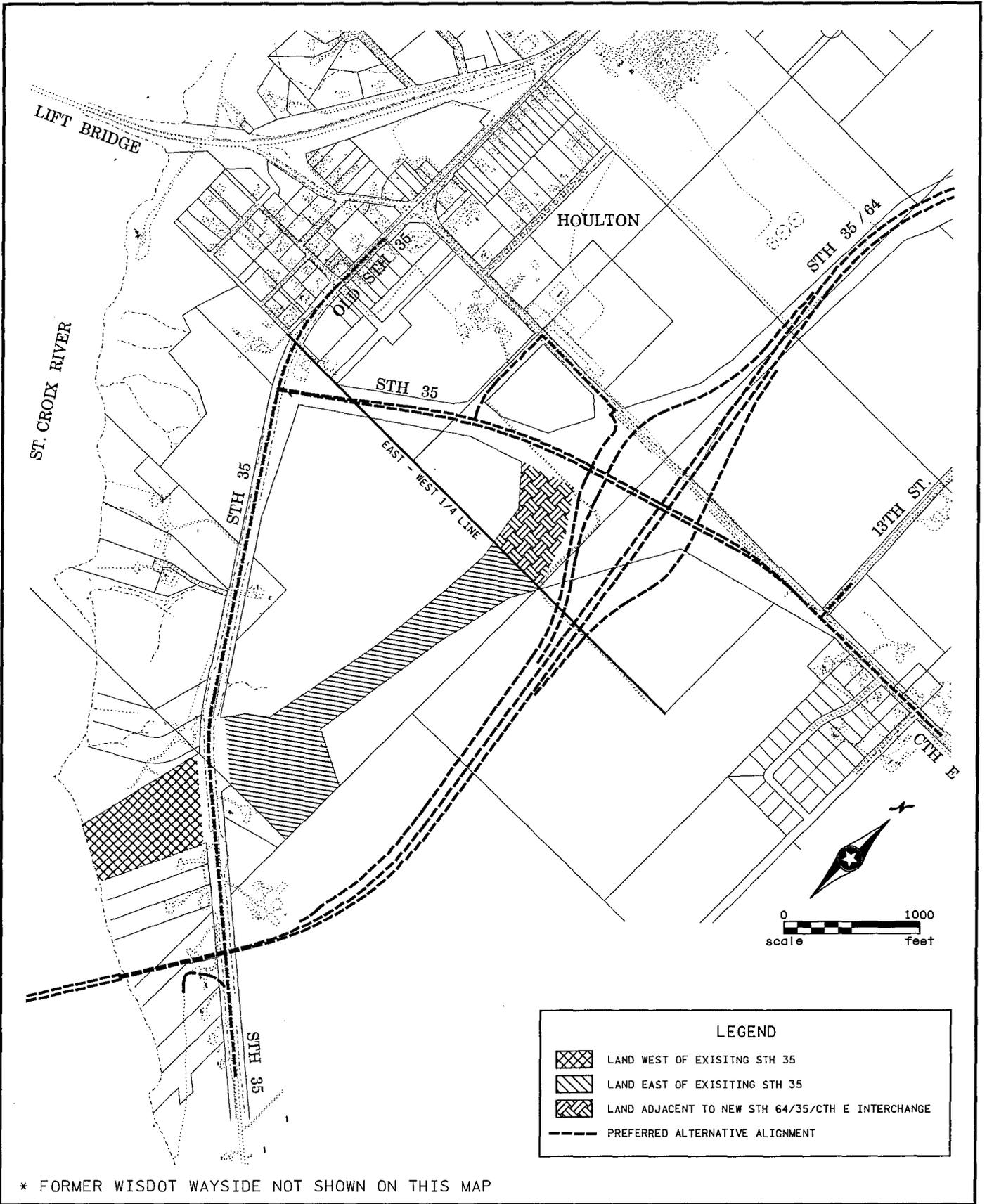
Record Of Decision: FHWA's Environmental Decision Document

FHWA Authorization: Normally 5 weeks prior to letting

LETTING: DOT's Advertise for bids, hiring construction contractors, typically 4-6 weeks prior to construction

**Memorandum of Understanding Between  
The Minnesota Department of Transportation  
And  
Northern States Power Company d/b/a Xcel Energy**

1. Removal of Barge Unloader Facility. As a part of the St. Croix River Crossing Project, the Minnesota Department of Transportation ("MnDOT") will remove from the Northern States Power Company's d/b/a Xcel Energy (NSP) Allen S. King generating plant the Barge Unloader Facility including, but not limited to, the entire barge unloading structure, mooring cells, and support cells, the truss and conveyor belt system between the unloader and Transfer House #1. ("Facility"). The Pivot Cell will be left in place. The entire removal of the Barge Unloader Facility will follow the completion of the new river crossing bridge construction.
  - 1.1. NSP will designate an NSP employee to work with MnDOT and it's Contractor to coordinate all on site activities during the removal of the Barge Unloader Facility.
  - 1.2. NSP may salvage any portion of the in-place Barge Unloader Facility but must complete such work at least 6 months prior to MnDOT advertising the bridge contract. NSP shall also notify MnDOT of any major modifications to the in-place Barge Unloader Facility and associated equipment such that potential contractors will be fully aware of the scope of work required for the Facility's removal.
  - 1.3. The Pivot Cell will remain in place with no modifications except as may be required for the removal of other facilities and equipment removed from the Facility. The Pivot Cell will be left in place to allow its use as a future mooring Facility for barges that NSP may need to place at the site.
  - 1.4. Coal spillage located under and around the Barge Unloader Facility will be left in place and will not be part of the removal of the Barge Unloader Facility.
  - 1.5. The mooring cells gravel contents will not be removed by MnDOT and will be allowed to remain on the river bottom for aquatic habitat.
  - 1.6. The sheet piling of the cells will either be pulled entirely or cut off near the river bottom and removed at Mn/DOT's discretion.
  - 1.7. The concrete cap on the cells (except for the Pivot cell) will be removed.
  - 1.8. All materials removed from the Barge Unloader Facility will become the property of MnDOT's Contractor.
  - 1.9. The opening left in Transfer House #1 by the removal of the Barge Unloader Facility shall be repaired by MnDOT's Contractor.



H:\Projects\4686\VF\HOU\Graphics\VF\EIS\4686\_ait-bl\_rw\_color.rw5

\* FORMER WISDOT WAYSIDE NOT SHOWN ON THIS MAP

# WISDOT Excess Right-of-Way Layout

St. Croix River Crossing Project

Riverway Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE WISCONSIN DEPARTMENT OF TRANSPORTATION  
AND  
EDWARD T. JOHNSTON**

This Memorandum of Understanding is to serve as an preliminary agreement between the Wisconsin Department of Transportation (WISDOT) and Edward T. Johnston (OWNER) in regards to the possible removal of the Buckhorn sign located on the OWNER's property located in Sections 27 and/or 34, Town 30 North, Range 20 West, Town of St. Joseph, St. Croix County, Wisconsin.

The following stipulations are agreed to in general and shall be negotiated as specific items in a Construction Permit to be executed between the WISDOT and the OWNER:

This work will include removal of the individual Buckhorn sign letters, all supporting foundations, and all electrical connections serving only the sign.

WISDOT will determine the appropriate timeframe for the Buckhorn sign removal and will coordinate these schedules and removal activities with the OWNER. The removal work, once started, shall occur in a timely manner.

The OWNER will allow temporary access to and from the OWNER's property to WISDOT and its contractor at no cost.

WISDOT will restore all disturbed areas on the OWNER's property to conditions agreeable to the OWNER which shall include restoring the ground to its original contours, replacing topsoil seeding, fertilizing and mulching all areas disturbed by the Buckhorn sign removal activities.

WISDOT and its contractor will be responsible, at no expense to the OWNER, for securing from any other organizations or agencies, including, but not limited to, the Wisconsin Department of Natural Resources any permits that may be required to conduct the Buckhorn sign removal and associated work.

It is the understanding of both WISDOT and the OWNER that there will be no financial compensation by either party for the work and tasks described in this Memorandum of Understanding.

If the St. Croix River Crossing project is not constructed, removal of the Buckhorn sign will not be done and it will be left in place.

  
\_\_\_\_\_  
Thomas J Beekman, P.E.      12-5-05      Date  
Wisconsin Department of Transportation

  
\_\_\_\_\_  
Edward T. Johnston      12-5-05      Date  
Property Owner

2. Use of the Barge Unloader Facility as a Barge Staging Area

- 2.1. An Extradosed Bridge Type is recommended for the preferred new river crossing bridge type. Construction of a new river crossing bridge will require barge oriented activities. Because of this, the Barge Unloader Facility would become a barge staging area where barges used for the construction of the new river crossing would be moored.
- 2.2. Recent evolution of a wetland located near the new river crossing has eliminated that area as a potential staging area, creating a shortage of available staging areas for this project. If additional staging areas are necessary, MnDOT will contact NSP during the design phase about the availability of a NSP site known as the "West Construction Building Area". If this site is to be used as another staging area, access to that site is only allowed from the Emergency Vehicle Access Road via the entrance off of TH 95 at the Wastewater Treatment Plant.
- 2.3. NSP will designate an NSP employee to work with MnDOT and it's Contractor to coordinate all on site activities during the staged construction of the new river crossing bridge.

3. Disclosure

- 3.1. NSP acknowledges that the only known potentially hazardous waste issues associated with the Facility is the lead paint coating. All PCB oil transformers have been removed from the Facility. Any transformers on the Facility now contain only non-hazardous transformer oil.
  - 3.2. The Barge Unloader Facility steel structure is covered with lead based paint. MnDOT will be solely responsible for and will use the appropriate disposal/recycling methods for removing and disposing these materials. MnDOT's Contractor will comply with MnDOT's Standard Specifications for Construction during the removal and disposal of these materials.
  - 3.3. In the event that lead or lead coatings are detected on non-steel components or if other materials that may be classified as hazardous waste are detected on the barge unloader Facility then MnDOT must immediately notify NSP and such notification must be documented in writing. NSP will be allowed the option to approve of the disposal of such hazardous waste or dispose of such hazardous wastes at its own selected disposal site.
4. Transformers. Electrical transformers located on the barge unloader Facility will be removed and disposed of by NSP, approximately 3 months prior to the use of the Barge Unloader Facility as a staging area

5. Access.

5.1. The majority of work associated with either the Barge Staging Area or the removal of the Barge Unloader Facility shall be conducted from the river. NSP will allow temporary access to and from the Barge Unloader Facility and work areas to MnDOT and its contractor at no cost to MnDOT. A potential temporary access is located adjacent to the northern property line of NSP on an existing gravel road (Emergency Vehicle Access Road). Access to this area is only allowed from the Emergency Vehicle Access Road via the entrance off of TH 95 at the Wastewater Treatment Plant.

5.2. The parties agree to coordinate for use and maintenance of the temporary access.

6. Permit. NSP will issue a temporary occupancy permit at no cost to MnDOT or MnDOT's Contractor to conduct the barge staging and barge unloader Facility removal and associated work. MnDOT and MnDOT's Contractor will be responsible, at its expense, for securing from any other organizations or agencies including but not limited to the Minnesota Department of Natural Resources, U. S. Army Corp of Engineers, U. S. Fish and Wildlife Service, any other permits that may be required to conduct the barge unloader Facility removal and associated work.
7. Nesting Site. NSP will relocate the Osprey nesting site presently located on the barge unloader Facility. NSP will also relocate the camera and its associated equipment.
8. Timing. MnDOT and its Contractor will determine the appropriate timeframe for the Staging Work and Facility's Removal and will coordinate these schedules and removal activities with NSP. The Staging Work and Removal Work, once started, shall occur in a timely manner and shall in no way interfere with the operation of the King plant; in the event of any conflicts the King plant operations shall have priority. The Staging Work will correspond with the construction timeframe of the new river crossing bridge. The Barge Unloader Removal work shall be completed within 12 months following the opening of the new river crossing bridge.
9. Security. MnDOT recognizes the need for NSP to maintain security in and around their operation. Following the Staging Work and removal of the Barge Unloader Facility, MnDOT will assure that a lockable gate is placed on this emergency vehicle access road and that NSP will receive keys or any other means necessary to open the gate. MnDOT and NSP will review and evaluate the need for a security guard patrol during the timing of this MOU. The review and evaluation will occur no less than 60 days prior to the Staging Work.
10. Boat Ramp. The St. Croix River Crossing Project is currently not planning for the construction of a boat ramp adjacent to the King Plant. A Boat Ramp location study, environmental study, and wetland mitigation is anticipated to be performed by Mn/DNR prior to any boat ramp construction within the riverway.
11. Emergency Vehicles. Emergency vehicle access to the King plant will be provided during the Staging Work and removal of the Barge Unloader Facility. The present route uses the gravel road south of the treatment plant to enter the King Plant. MnDOT will continue to provide a similar emergency vehicle roadway. Following the Staging Work and removal of the Barge Unloader Facility, MnDOT will assure that a lockable gate is placed on this emergency vehicle access road and that NSP will receive keys or any other means necessary to open the gate. NSP will continue to be responsible for the snow removal from the emergency vehicle access.

12. It is the understanding of both MnDOT and NSP that there will be no financial compensation by either party for the work and tasks described in this MOU.
13. If the St. Croix River Crossing project is not constructed, the barge staging area and removal of the Facility will not be conducted and the barge unloader Facility will be left in place.
14. Responsibility of MnDOT and its Contractor. MnDOT will incorporate its "Standard Specifications For Construction" into its contract with its Contractor, including, without limitation, specification 1712 "Protection and Restoration of Property". All property of MnDOT, its contractors, employees, or agents upon or within NSP's premises shall at all times be there at their own risk. MnDOT , will be responsible for its own acts and omissions to the extent provided by Minnesota Statutes section 3.736 and other applicable law. All property of MnDOT, its contractors, employees or agents upon or within NSP's premises shall at all times be there at MnDOT's own risk. MnDOT will require its contractor to obtain Worker's Compensation insurance and Liability insurance in a minimum amount of \$5,000,000, specifically covering work to be performed on or about NSP's premises, and naming NSP as an additional insured with respect to such work. The following insurance coverages will be required:
  - Bodily Injury Liability
  - Property Damage Liability
  - Physical Damage to PropertyThe insurances shall be in full force and effect before any work is performed on NSP's Right of Way, including hauling of materials. The insurance shall not be canceled by the Contractor until the work for which it is required has been completed and accepted. If MnDOT or its contractors have or obtain insurance for this MOU, MnDOT or its contractor shall grant NSP a waiver of subrogation by its insurance company for any loss or damage to MnDOT's or its contractor's property.
15. This Memorandum of Understanding ("MOU") is not a binding agreement and that any binding obligations of the parties to this MOU will be made pursuant to written, and properly executed and approved agreements (s). This MOU merely depicts a proposed plan of action for the mutual convenience of the parties.

I concur with this Memorandum of Understanding

Northern States Power Company,  
d/b/a/ Xcel Energy

By: Mark Fritsch  
Mark Fritsch  
Director – Allen S. King Plant

Date: 9-28-2005

Minnesota Department of Transportation

By: Patrick L. Hughes  
Patrick Hughes  
Metro Division Engineer

Date: 10/11/05

Attachments: Preferred Alternative Layout  
Current Project Schedule