



# LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

## RECORD OF DECISION

Findings of Fact, Conclusion, and Lake Minnetonka Conservation District (LMCD) Resolution  
151

Declaring a Negative Need for an Environmental Impact Statement (EIS)

5<sup>th</sup> Street Ventures, LLC  
4681 Shoreline Drive  
Spring Park, MN 55331

### Dock Reconfiguration and Reconstruction

#### Finding of Fact

1. Pursuant to Minnesota Rules for Marina Projects, 4410.4300, Subpart 25, the Lake Minnetonka Conservation District (LMCD), acting as the Responsible Governmental Unit (RGU), prepared the mandatory Environmental Assessment Worksheet (EAW) for the proposed dock reconfiguration and reconstruction project.
2. The EAW is incorporated by reference in this Record of Decision.
3. As indicated in the EAW, 5<sup>th</sup> Street Ventures, LLC proposes to reconfigure and reconstruct an existing multiple dock licensed site located at 4681 Shoreline Drive, Spring Park, MN 55384 (within Seton Lake of Lake Minnetonka).
4. The LMCD Board of Directors authorized the submittal of an EAW to the Minnesota Environmental Quality Board (EQB) on August 10, 2016.
5. A press release announcing the availability of the EAW for public review and comment was sent to Lakeshore Weekly News on August 15, 2016.
6. The EAW was filed with the EQB and notice for its availability for public review and comments was published in the *EQB Monitor* on August 22, 2016. A copy of the EAW was sent to all persons on the EQB Distribution List and to persons who requested a copy.
7. The 30-day public review and comment period for the EAW began on August 22, 2016 and ended on September 21, 2016.
8. The LMCD maintained all document, and respective updates, at [www.lmcd.org](http://www.lmcd.org), under "Hot Topics."

9. During the 30-day public review and comment period, the LMCD received written comments on the EAW from four regulatory agencies with two Divisions from one agency (five total). Comments were received from: 1) MnDOT Metro Division – Planning, 2) MN DNR (Central Region and Natural Heritage Review), 3) Minnesota Pollution Control Agency, and 4) Metropolitan Council. The respective comments, with LMCD’s acknowledgement of receipt, are summarized below and attached:

MnDOT Metro Division – Planning

Michael Corbett, PE, reviewed the EAW and had no concerns.

The LMCD has noted Mr. Corbett’s comments for the record.

MN DNR (Natural Heritage Review, Division of Ecological and Water Resources)

Ms. Lisa Joyal, Endangered Species Review Coordinator, acknowledged receipt of the subject EAW and its query with the Minnesota Natural Heritage Information System (NHIS). The NHIS query determines if any rare species or other significant natural features are known to occur within an approximate one-mile radius of the proposed project. It was found that pugnose shiners (*Notropis anogenus*), a state-listed threatened fish species, and least darters (*Etheostoma microperca*), a state-listed fish species of special concern, have been documented in Lake Minnetonka. The two species are vulnerable to the removal of aquatic vegetation from lakes, increase in eutrophication from nutrient enrichment, and increase in water turbidity or siltation that can be caused from pollutions, pesticides, and runoff.

Ms. Joyal further stated that while the proposed project is unlikely to negatively affect these species, actions to help improve the habitat conditions for these fish include the following recommendations: minimize the use of pesticides and fertilizers, maintain or restore lakeshore vegetation, minimize the removal of negative aquatic vegetation, and maintain effective erosion and sediment control practices.

The NHIS is maintained by the Division of Ecological and Water Resources, Department of Natural Resources and is continually updated as new information becomes available. It is the most complete source of data on Minnesota’s rare or otherwise significant species, native plant communities, and other natural features. However, the NHIS is not an exhaustive inventory and thus does not represent all of the occurrences of rare features within the state; acknowledging the possibility that ecologically significant features for which they have no record may exist within the project area. To this end, if additional information became available regarding rare features in the vicinity of the project, further review may be necessary.

For environmental review purposes, the results of their review, specific to the project location and description provided, are valid for one year. The LMCD is to contact Ms. Joyal should project details change or for an updated review if construction has not occurred within one year.

The Natural Heritage Review does not constitute review or approval by the MNDNR as a whole but only identifies issues regarding known occurrences of rare features and potential effects of such. It was recommended that the LMCD contact the MN DNR Regional Environmental Assessment Ecologist for the full review.

Contact information was offered for further review and comments.

The LMCD has noted the MN DNR Natural Heritage Review Division's comments for the record and has acknowledged the following:

- Pugnose shiners (*Notropis anogenus*), a state-listed threatened fish species, and least darters (*Etheostoma microperca*), a state-listed fish species of special concern, have been documented in Lake Minnetonka. The two species are vulnerable to the removal of aquatic vegetation from lakes, increase in eutrophication from nutrient enrichment, and increase in water turbidity or siltation that can be caused from pollutions, pesticides, and runoff.
- If additional information becomes available regarding rare features in the vicinity of the project, a further review may be necessary.
- The LMCD should contact Ms. Joyal if project details change or if construction is not completed within one year.
- The LMCD did contact the MN DNR Regional Environmental Assessment Ecologist whose comments are offered within.

MN DNR (Central Region, Division of Ecological and Water Resources)

Ms. Rebecca Horton, Regional Environmental Assessment Ecologist, acknowledged review of the subject EAW. The following was noted: 1) the MN DNR Area Fisheries Managers have set work exclusion dates in Public Waters in order to allow for fish migration and spawning. For Seton Lake, the exclusion dates are April 1<sup>st</sup> to June 30<sup>th</sup> and 2) the MN DNR acknowledged there are no known rare species that will likely be negatively affected by this project, Ms. Horton recommended the proposer recognize the Natural Heritage review's comments and act to improve habitat for the two state listed species that are known to occur in the vicinity of the project; acknowledging appreciation, in advance, for those efforts. Contact information was offered for further questions or comments.

The LMCD has noted the MN DNR's comments for the record and will notify the proposer of the work exclusion dates of April 1<sup>st</sup> to June 30<sup>th</sup> and their recommendation

to address the actions outlined by the Heritage Review to improve habitat for the two state listed species.

Minnesota Pollution Control Agency

Ms. Karen Kromar, Planner Principal, Environmental Review Unit, Resource Management and Assistance Division, acknowledged receipt and review of the subject EAW. Ms. Kromar further acknowledged that staff had no comments at this time.

Ms. Kromar requested a copy of the Record of Decision and stated that their communication does not constitute approval by the Minnesota Pollution Control Agency of any or all elements of the project for the purpose of pending or further permit action(s) by the Agency. She further stated that it is the responsibility of the project proposer to secure any required permits and to comply with any requisite permit conditions.

Contact information was offered for further review and comments.

The LMCD has noted the Minnesota Pollution Control Agency's comments for the record and will notify the proposer of their permitting responsibilities as noted above.

Metropolitan Council

Ms. Lisa Beth Barajas, Manager, Local Planning Assistance, acknowledged receipt of the subject EAW. The Council staff reviewed the EAW's accuracy, completeness, potential impacts, and the need for an Environmental Impact Statement (EIS). Council found that the proposed project was consistent with regional policies and an EIS was not needed for regional purposes. Additional comments offered included:

- The approved site plan identified the location of vegetated shoreline to the south of the dock facility to be much closer in proximity to the dock than in the proposed site plan. It was their understanding that the shoreline location is due to that shoreline being part of the perimeter of a floating bog that exists within the general area. Ms. Barajas documented that there was a high likelihood that the bog could float off of its previously anchored position and migrate north towards the channel and the newly proposed dock structures where it existed in the late 1950's through the 1990's.
- That Hennepin County Environment and Energy staff, who maintains Seton Channel open for navigational purposes, indicated that the bog tends to change in size and location from year to year but has continued to maintain within the channel for at least the last 60 years (confirmed by aerial photos).
- Conditions of sufficient Lake level rise for the bog to become unanchored and move during any particular summer season have increased during the last couple of decades due to significant increases in the frequency of very heavy and extreme precipitation events.

- It is their understanding that the anchoring of the bog is costly and limited to open water season only.
- It is their Council staff's recommendation that a license for the dock facility expansion only be granted if the commercial marina owner agrees to be financially responsible for any facility damage resulting from "natural" bog migration and the cost of moving/anchoring the bog during any future boating season (with any necessary approvals) should it migrate into the dock facility.
- The Council will take no formal action on the EAW and contact information was provided.

The LMCD has noted Metropolitan Council's comments for the record.

#### Conclusions

The LMCD has fulfilled all applicable procedural requirements of law and rule regarding the determination of need for an Environmental Impact Statement (EIS) for the proposed reconfiguration and reconstruction project at Howard's Point Marina.

1. The proposed project has been evaluated by the public and the LMCD to determine potential environmental effects. Based on the findings and record in this matter, the LMCD has determined that the proposed project does not have the potential for significant environmental effects. LMCD Resolution 151, which is attached to this Record of Decision, was approved by the LMCD Board of Directors on October 12, 2016 declaring a negative need for an EIS.
2. A copy of this RGU Record of Decision is being provided, within five days, to all persons on the EQB Distribution List, to persons commenting, and to persons who requested a copy. This Record of Decision will also be available on the LMCD's website.



Emily Herman, Administrative Assistant/Technician  
To/Through Vickie Schleuning, Executive Director  
Lake Minnetonka Conservation District  
RGU Representative

10-12-16

Date

Emily Herman

---

**Subject:** FW: 5th Street Ventures, LLC New Multiple Dock License EAW

**From:** Corbett, Michael J (DOT) [<mailto:Michael.J.Corbett@state.mn.us>]  
**Sent:** Tuesday, August 23, 2016 11:06 AM  
**To:** [jbrimeyer@lmcd.org](mailto:jbrimeyer@lmcd.org)  
**Cc:** Sherman, Tod (DOT); Scheffing, Karen (DOT); Moynihan, Debra (DOT)  
**Subject:** 5th Street Ventures, LLC New Multiple Dock License EAW

Hello Mr. Brimeyer,

Thank you for the opportunity to review the Environmental Assessment Worksheet (EAW) for the **5th Street Ventures, LLC New Multiple Dock License**, located at 4681 Shoreline Drive in Spring Park, Minnesota. The Minnesota Department of Transportation (MnDOT) has reviewed the EAW and has no concerns.

If you have any questions, please let me know.

Thanks,

**Michael Corbett, PE**  
MnDOT Metro Division – Planning  
1500 W County Road B-2  
Roseville, MN 55113  
651-234-7793  
[Michael.J.Corbett@state.mn.us](mailto:Michael.J.Corbett@state.mn.us)

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AUG 23 2016

BY: \_\_\_\_\_



# Minnesota Department of Natural Resources

Division of Ecological and Water Resources, Box 25

500 Lafayette Road

St. Paul, Minnesota 55155-4025

Phone: 651-259-5109 E-mail: [lisa.joyal@state.mn.us](mailto:lisa.joyal@state.mn.us)

September 15, 2016

Correspondence #: ERDB 20170069

Mr. James Brimeyer  
Lake Minnetonka Conservation District  
5341 Maywood Drive, Suite 200  
Mound, MN 55364

RE: Natural Heritage Review of the proposed 5<sup>th</sup> Ventures, LLC New Multiple Dock License,  
T117N R23W Section 18, Hennepin County

Dear Mr. Brimeyer,

As requested, the Minnesota Natural Heritage Information System (NHIS) has been queried to determine if any rare species or other significant natural features are known to occur in the vicinity of the proposed project. Based on this query, pugnose shiners (*Notropis anogenus*), a state-listed threatened fish species, and least darters (*Etheostoma microperca*), a state-listed fish species of special concern, have been documented in Lake Minnetonka. These two species are vulnerable to the removal of aquatic vegetation from lakes, increases in eutrophication from nutrient enrichment, and increases in water turbidity or siltation that can be caused from pollution, pesticides, and runoff. While the proposed project is unlikely to negatively affect these species, actions to help improve the habitat conditions for these fish include the following recommendations: minimize the use of pesticides and fertilizers, maintain or restore lakeshore vegetation, minimize the removal of native aquatic vegetation, and maintain effective erosion and sediment control practices.

The Natural Heritage Information System (NHIS), a collection of databases that contains information about Minnesota's rare natural features, is maintained by the Division of Ecological and Water Resources, Department of Natural Resources. The NHIS is continually updated as new information becomes available, and is the most complete source of data on Minnesota's rare or otherwise significant species, native plant communities, and other natural features. However, the NHIS is not an exhaustive inventory and thus does not represent all of the occurrences of rare features within the state. Therefore, ecologically significant features for which we have no records may exist within the project area. **If additional information becomes available regarding rare features in the vicinity of the project, further review may be necessary.**

For environmental review purposes, the results of this Natural Heritage Review are valid for one year; the results are only valid for the project location (noted above) and the project description provided on the NHIS Data Request Form. Please contact me if project details change or for an updated review if construction has not occurred within one year.

The Natural Heritage Review does not constitute review or approval by the Department of Natural Resources as a whole. Instead, it identifies issues regarding known occurrences of rare features and potential effects to these rare features. Thank you for consulting us on this matter, and for your interest in preserving Minnesota's rare natural resources. An invoice will be mailed to you under separate cover.

Sincerely,

Lisa Joyal

Endangered Species Review Coordinator

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SEP 15 2016

BY: \_\_\_\_\_

cc: Becky Horton, Kate Drewry, Daryl Ellison



MINNESOTA DEPARTMENT OF NATURAL RESOURCES  
CENTRAL REGION  
1200 WARNER ROAD  
SAINT PAUL, MN 55106  
651-259-5800

September 20, 2016

Transmitted electronically

James Brimeyer  
5341 Maywood Road, Suite 200  
Mound, MN 55364

RE: 5<sup>th</sup> Street Ventures, LLC New Multiple Dock License EAW

Dear James Brimeyer,

The Minnesota Department of Natural Resources (MNDNR) has reviewed the Environmental Assessment Worksheet (EAW) for the 5<sup>th</sup> Street Ventures, LLC New Multiple Dock License located on Seton Lake of Lake Minnetonka.

As the project moves forward, please keep in mind that the MNDNR area Fisheries Managers have set work exclusion dates in Public Waters in order to allow for fish migration and spawning. For Seton Lake, these exclusion dates are April 1 – June 30. If the project requires work in the bed of the lake, these exclusion dates apply.

Section 13 notes that a Natural Heritage review request has been submitted to the MNDNR, but had not been received prior to the submittal of this EAW. The Natural Heritage letter has since been sent to you (dated September 15, 2016) and is attached. While the DNR notes that no known rare species are likely to be negatively affected by this project, it does recommend actions that the proposers can take to improve habitat for two state listed species, pugnose shiners (*Notropis anogenus*) and least darters (*Etheostoma microperca*), that are known to occur in the vicinity of the project. The DNR appreciates any efforts made by the proposer to improve habitat for these and other native species.

No response was provided for Section 19. The DNR recommends providing information pertaining to cumulative potential impacts, or noting where these effects were addressed under other EAW items.

Please feel free to contact me with any questions regarding these comments ([becky.horton@state.mn.us](mailto:becky.horton@state.mn.us), or 651-259-5755)

Sincerely,

/s/ Rebecca Horton  
Regional Environmental Assessment Ecologist – Central Region  
Division of Ecological and Water Resources

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BY: \_\_\_\_\_

[mndnr.gov](http://mndnr.gov)



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# Minnesota Pollution Control Agency

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800-657-3864 | 651-282-5332 TTY | [www.pca.state.mn.us](http://www.pca.state.mn.us) | Equal Opportunity Employer

September 20, 2016

Mr. James L. Brimeyer  
Interim Executive Director  
Lake Minnetonka Conservation District  
5341 Maywood Road, Suite 200  
Mound, MN 55364

Re: 5<sup>th</sup> Street Ventures, LLC New Multiple Dock License Environmental Assessment Worksheet

Dear Mr. Brimeyer:

Thank you for the opportunity to review and comment on the Environmental Assessment Worksheet (EAW) for the 5<sup>th</sup> Street Ventures, LLC New Multiple Dock License project (Project) located in the city of Spring Park, Hennepin County, Minnesota. The Project consists of the addition of 28 boat storage units to the existing dock structure. Minnesota Pollution Control Agency (MPCA) staff has reviewed the EAW and have no comments at this time.

We appreciate the opportunity to review this Project. Please provide the notice of decision on the need for an Environmental Impact Statement. Please be aware that this letter does not constitute approval by the MPCA of any or all elements of the Project for the purpose of pending or future permit action(s) by the MPCA. Ultimately, it is the responsibility of the Project proposer to secure any required permits and to comply with any requisite permit conditions. If you have any questions concerning our review of this EAW, please contact me via email at [Karen.kromar@state.mn.us](mailto:Karen.kromar@state.mn.us) or via telephone at 651-757-2508.

Sincerely,

A handwritten signature in black ink that reads "Karen Kromar".

Karen Kromar  
Planner Principal  
Environmental Review Unit  
Resource Management and Assistance Division

KK:bt

cc: Dan Card, MPCA, St. Paul  
Teresa McDill, MPCA, St. Paul

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September 20, 2016

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SEP 20 2016

Ms. Vickie Schleuning, Executive Director  
Lake Minnetonka Conservation District  
5341 Maywood Road, Suite 200  
Mound, MN 55364

BY: \_\_\_\_\_

**RE: 5<sup>th</sup> Street Ventures, LLC New Multiple Dock License EAW**  
City of Spring Park, Hennepin County, Minnesota  
Metropolitan Council District 3  
Metropolitan Council Review File No. 21596-1

Dear Ms. Schleuning:

The Metropolitan Council received the Environmental Assessment Worksheet (EAW) for the proposed project on August 18, 2016. Fifth Street Ventures, LLC proposes to expand its existing commercial multiple dock marina facility within Lake Minnetonka's Seton Lake, adjacent to Seton Channel (Channel). The overall size of the marina facility triggered the need for this mandatory EAW.

Council staff reviewed the EAW's accuracy, completeness, potential impacts, and the need for an Environmental Impact Statement (EIS). Council staff finds that the proposed project is consistent with regional policies and an EIS is not needed for regional purposes. The following comments are offered in regard to the proposed facility expansion.

The EAW figure (dated 2003) depicting the 'Approved' or existing dock configuration identifies the location of vegetated shoreline to the south of the dock facility to be much closer in proximity to the dock than in the more recent figure (dated 2016) depicting the 'Proposed' expanded dock configuration. It is our understanding that the difference in shoreline location is due to that shoreline being part of the perimeter of a floating bog that exists within this general area of the Channel. Construction of the dock facility expansion as proposed would locate new dock facilities and boat slips in an area adjacent to the Channel where the bog had previously anchored itself. There is a high likelihood of the bog's floating off of its current temporarily anchored position and potentially migrating back north, to the area of the Channel where it existed from the late 1950's through the 1990's during this application's license period should be considered to be high.

Hennepin County Environment and Energy staff tasked with maintaining Seton Channel open to boat navigation indicate that the bog tends to change in size and location from year to year, but has continued to remain located within the Channel for at least the last 60 years, as confirmed by aerial photos. The bog most likely remains in this general area due to both prevailing winds and currents, but becomes unanchored from the substrate and rotates or migrates within the

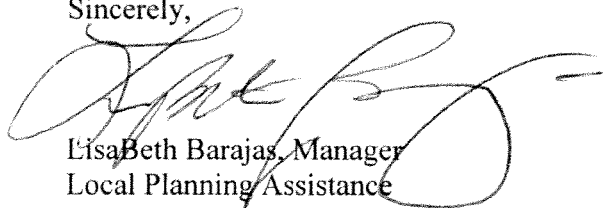
Ms. Vickie Schleuning  
September 20, 2016  
Page 2

Channel whenever Lake water levels rise sufficiently high for it to float free from the bottom. Conditions of sufficient Lake level rise for the bog to become unanchored and move during any particular summer season have increased during the last couple of decades as our area of the country has experienced significant increases in the frequency of very heavy and extreme precipitation events. We would therefore expect that the potential for the bog to move within the Channel to be high during any given future summer boating season. It is our understanding that anchoring of the bog is a costly endeavor that is only of limited duration and effectiveness, as any anchors installed in the bog must be removed at the close of each boating season to prevent their becoming snowmobile passage safety issues during periods when the Lake is iced over.

It is Council staff's recommendation that a license for dock facility expansion only be granted if the commercial marina owner agrees to be financially responsible for any facility damage resulting from 'natural' bog migration and the cost of moving/anchoring the bog during any future boating season (with any necessary approval from LMCD, watershed, Hennepin County, Minnesota Department of Natural Resources, or other agencies), should it migrate into the dock facility or its slip access channel. Hennepin County is only responsible for moving and temporarily anchoring the bog should it become an impediment to Seton Channel navigation.

This concludes the Council's review; the Council will not take formal action on the EAW. If you have any questions or need further information, please contact Jim Larsen PE, Principal Reviewer, at 651-602-1159.

Sincerely,



Lisa Beth Barajas, Manager  
Local Planning Assistance

CC: Steve O'Brien, MHFA  
Tod Sherman, Development Reviews Coordinator, MnDOT - Metro Division  
Jennifer Munt, Metropolitan Council District 3  
Judy Sventek, Water Resources Assessment  
Freya Thamman, Sector Representative  
Raya Esmacili, Reviews Coordinator



**STATE OF MINNESOTA  
LAKE MINNETONKA CONSERVATION DISTRICT**

**RESOLUTION 151**

**A RESOLUTION ORDERING A NEGATIVE DECLARATION ON THE NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT FOR 5<sup>th</sup> STREET VENTURES, LLC ENVIRONMENTAL ASSESSMENT WORKSHEET**

WHEREAS, the Lake Minnetonka Conservation District (LMCD) is the Responsible Governmental Unit (RGU) in the preparation of the Environmental Assessment Worksheet (EAW) for proposed dock reconfiguration and reconstruction project at 5<sup>th</sup> Street Ventures, LLC; and

WHEREAS, the LMCD has submitted a copy of the EAW to all public agencies on the EAW distribution list, publishing EAW availability in the EQB Monitor on August 22, 2016, all of which were done in accordance with applicable State laws, rules, and regulations; and

WHEREAS, the 30-day comment period ended on September 21, 2016, with four public agencies commenting (two Divisions within one); and


WHEREAS, the LMCD acknowledges the comments from MnDOT Metro Division (Planning), Metropolitan Council, Minnesota Department of Natural Resources (MN DNR) Central Region and Natural Heritage Review, and the Minnesota Pollution Control Agency; and

WHEREAS, the comments received do not support a need for an Environmental Impact Statement (EIS) on the proposed project; and


WHEREAS, the LMCD has considered the comments that were received and shall complete the Record of Decision supporting the declaration of negative need, including responses to the commenting public agencies.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the LMCD has made a negative declaration on the need for an EIS for 5<sup>th</sup> Street Ventures, LLC proposed dock reconfiguration and reconstruction project.

ADOPTED by the Board this 12<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
James Jay Green, Chair

ATTEST:

  
\_\_\_\_\_  
Gregory J. Thomas, Secretary