Decision Memo

Trunk Highway 38 Improvement and Easement Project

USDA Forest Service, Eastern Region
Chippewa National Forest
Deer River Ranger District
Itasca County, Minnesota

Background

The Minnesota Department of Transportation (MnDOT), in cooperation with the Federal Highway Administration and the Chippewa National Forest, proposes to complete road repairs and maintenance on two segments of Trunk Highway 38 (TH 38) within the Chippewa National Forest. Since some of these activities would occur on national forest lands, the Forest Service has a decision to make on activities on national forest lands.

An evaluation of roadway pavement was conducted by the Minnesota Department of Transportation along portions of TH38 in 2013. The study indicated that the segment between Marcell and Pughole Lake showed inslope eroding and sloughing away of the gravel shoulder, deteriorated culverts and a road surface that is uneven, rough and cracked. Additionally it has reduced sight distance at the crest hill at Wildernesssa Road (milepost 14.5).

A significant portion TH 38 between Marcell and Pughole Lake is located within the Chippewa National Forest, which is managed by the Forest Service. MnDOT does not have any property rights within the project segments; rather it has assumed rights with nothing recorded; to maintain and operate the highway in its existing footprint from shoulder Point of Intersect (PI) to shoulder PI which is 15 feet on either side of the centerline. This inadequate width technically limits MnDOT’s authority and ability to maintain the roadside of the highway such as removal of damaged or hazardous trees, repairing culverts, or improving ditches.

Primary Need

The pavement along this segment of TH 38 is deteriorating, which has resulted in the following issues:

- The structural condition of the road surface is uneven, rough, and cracked.
- There are deteriorated culverts under the road that are in poor condition.
- There are areas of the road that have inslope erosion and are sloughing away from the gravel shoulder and the edge of the bituminous roadway.
- There is a low area in the road at milepost 26.0 that is frequently overtopped during snowmelt and heavy rains.

An evaluation of the roadway pavement was conducted along portions of TH 38 in 2013. The study indicated that both segments showed deterioration and fair to poor performance levels.
This Project would grant to MnDOT 75 feet of easement or right of way on either side of the centerline for the entire segment. This would require approximately 105 acres of additional easement on CNF land, 15 acres of permanent right-of-way on state forest land (Bowstring State Forests), 8 acres on Itasca County Land and approximately 79 acres of permanent right-of-way on privately owned land.

Land and Resource Management Plan Desired Conditions

D-TS-1 The existing national Forest System roads that are suitable for passenger vehicles provide a safe and affordable system for administrative and public access to NFS land.

D-TS-4 The National Forest road system provides a “seamless” interface with the neighboring public road agencies based on coordinated use, function, and agency goals.

While TH 38 is not a National Forest system road, it is a key transportation artery to access National Forest system roads and the Forest, and therefore, I considered this project for achieving the overall intent of these Desired Conditions.

Decision

My decision is to issue a construction permit to MNDOT to allow implementation of the proposed action as described here. I reviewed public comments, Forest specialist’s reports and comments, and all applicable law and the Forest Plan. I also will issue a permanent easement to MnDot to maintain the Th38 corridor.

Easement stipulations in Appendix B and Mitigation List will be applied in addition to all applicable Forest Plan Standards and Guidelines, and Voluntary Site-Level Forest Management Guidelines (MFRC, 2012).

Implementation of the proposed action includes:

- Restoring the pavement condition which would reduce the continual maintenance costs, improve ride quality for users of the highway, and maintain the structural integrity of the road so that future load postings would not be necessary;
- Repairing approximately 2,000 feet of inslopes including cutting of 1 acre of trees
- Repairing approximately 1,200 feet of crest hill grades including cutting of 1.3 acres of trees
- Repairing 9 and replacing 50 failing culverts as well as cutting of 3.33 acres of trees

My decision is the segment of Trunk Highway 38 between Marcell and PugHole Lake as displayed on the attached map.

This action is categorically excluded from documentation in an environmental impact statement (EIS) or an environmental assessment (EA). The applicable category of actions is identified in agency procedures as ‘Repair and maintenance of roads, trails, and landline boundaries.’ (36 CFR 220.6(d)(4)). This category of action(s) is applicable because the activities in the project, and potential long-term activities in the permanent easement, include repair and maintenance of the sections of Highway 38 within the easement area extending 75 feet to either side of the road center line, as described in my decision.
I find that there are no extraordinary circumstances that would warrant further analysis and documentation in an EA or EIS. I took into account resource conditions identified in agency procedures that should be considered in determining whether extraordinary circumstances might exist:

1. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species.

   It was determined that this decision No Effect for the Gray wolf and Canada Lynx; is ‘May affect, but will not cause prohibited incidental take’ on Northern Long-eared bat. Notice of a Section 7 determination and request for concurrence was sent to the USFWS on March 23, 2016 (Record # 24). This notice started a 30 day review period in which the USFWS may provide any additional concerns, otherwise the Section 7 review is considered to be complete. The 30 day review period has passed and no further correspondence has been received from the USFWS, signaling its concurrence with the Section 7 determination.

   This decision will have no effect or may impact individuals or habitats, but is not likely to result in a loss of viability in the Planning Area, nor cause a trend toward Federal listing for all sensitive species.

2. Flood plains, wetlands, or municipal watersheds.

   **Floodplains:** Executive Order 11988 calls for avoidance of adverse impacts associated with the occupancy and modification of floodplains. Floodplains are defined by this order as, “...the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent [100-year recurrence] or greater chance of flooding in any one year.”

   The Project corridor is located in an area that is unmapped by FEMA. Due to the nature of the Project being restoration of existing paved highway, there should not be an effect on any floodplains.

   To further ensure that floodplains-related impacts are minimized, Best Management Practices are incorporated (Record 17 & 21).

   **Wetlands:** Executive Order 11990 calls for avoidance of adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, “...areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.”

   Up to 1.7 acres of wetlands may be impacted. MN DOT will obtain necessary permits from the U.S. Army Corps of Engineers, and carry out required avoidance and compensatory mitigation. The area of impervious surface would not change as a result of these projects. My decision would have minimal or no effects to floodplains and municipal watersheds. Any future construction proposed in the easement area would require review by the Forest Service before decisions are made as outlined in the easement stipulations. (Record 21 & 17).

   **Municipal Watersheds:** Municipal watersheds are managed under multiple use prescriptions in land and resource management plans.
There are no municipal watersheds on the Forest. This decision will not affect municipal watersheds.

3. Congressionally designated areas such as Wilderness, Wilderness Study Areas, National Recreation Areas.

   This decision does not affect Wilderness, Wilderness Study Areas or National Recreation Areas, since these do not occur on the Forest.

4. Inventoried roadless areas or potential wilderness areas.

   There are no inventoried roadless areas (Roadless Area Conservation Rule or Forest Plan) in the decision area (Plan FEIS Appendix C, p. C-93 & 94). This decision will not affect inventoried roadless areas.

5. Research natural areas.

   There are no Research Natural Areas in the decision area. This decision, with impacts limited to the immediate area of activity, will not affect Research Natural Areas.

6. American Indians and Alaska Native religious or cultural sites.

   No tribal concerns were identified for this project (Record 28).

7. Archaeological sites, or historic properties or areas.

   Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. Section 106 of the National Historic Preservation Act also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered in federal lands. It affords protection of archaeological resources and sites that are on public and Indian lands. The Native American Graves Protection and Repatriation Act covers the discovery and protection of Native American human remains and objects that are excavated or discovered on federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through “in situ” preservation, but may encompass other actions to preserve these remains and items. This decision complies with the cited Acts. Surveys were conducted for Native American religious or cultural sites, archaeological sites, and historic properties or areas that may be affected by this decision (Record #14). A ‘no properties affected’ determination was made. Consultation on this finding occurred with the Minnesota State Historic Preservation Office (Record #14).

   No other extraordinary circumstances related to the project were identified.

Public Involvement

This action was originally listed as a proposal on the Chippewa National Forest Schedule of Proposed Actions since January 2016 and updated periodically during the analysis.

Public involvement included listing in the Forest's Schedule of Proposed Actions since January 2016. MnDOT on behalf of the USFS sent out a project letter dated November 23, 2015 (Record # 7) asking interested parties to provide Project comments. Approximately 150 letters were sent out and approximately 10 responses from individual commenters were received. The majority of
the commenters were in favor of the Project because it would provide much needed long term repairs to the corridor. (Record #9). Additionally it was discussed at MN Highway 38 Leadership Board meeting August 19, 2015.

A public informational meeting was also held June 15, 2016 where approximately 40 parties attended and were largely in favor of the project (Project #25). Common themes heard at the meeting were as follows:

- How will project updates be provided to interested parties?
- When will the project begin?
- Will the road be closed for the project construction duration?
- Will road turn outs be a part of the project?
- How will this impact the resort visitors?

Findings Required by Other Laws and Regulations

This decision is consistent with the Chippewa National Forest Land Management Plan and all applicable laws and regulations. I have summarized some pertinent requirements below.

**Federal Land Policy and Management Act** - This Act allows the granting of easements across National Forest System Lands. The regulations at 36 CFR 251 guide the issuance of permits, leases, and easements under this Act. Permits, leases, and easements are granted across National Forest System lands when the need for such is consistent with planned uses and Forest Service policy and regulations. This decision is consistent with this Act.

**Forest Plan Consistency (National Forest Management Act)** - The Act requires all projects and activities be consistent with the Plan. The Plan has been reviewed in consideration of this project. This decision is responsive to guiding direction contained in the Plan, as summarized in Section I of this document. This decision is consistent with the standards and guidelines contained in the Plan.


- Soil, slope or other watershed conditions will not be irreversibly damaged. The decision implements Best Management Practices which the analysis has shown to be appropriate and effective in preventing irreversible damage to watershed conditions (Record #18, 21, 17).
- Assure that lands can be adequately restocked within five years after final harvest when trees are cut to achieve timber production. Restocking is not applicable; permanent openings are created for wildlife habitat improvement, vistas, recreation uses, road construction, or similar practices.
- Protection is provided for streams, wetlands and other bodies of water from detrimental changes to water conditions or fish habitat. The decision implements Best Management Practices which the analysis has shown to be appropriate and effective in preventing damage to water conditions and fish habitat (Record #17).

The interdisciplinary review has been completed and the potential environmental, social and economic effects have been assessed. The record (#17, 18, 21) documents interdisciplinary review of the proposal, and the effects are consistent with Forest Plan objectives for the uses of the area.
Endangered Species Act - See Section II, Item B1 of this document. (Record #11, 28).

Sensitive Species (Forest Service Manual 2670) - See Section II, Item B1 of this document. (Record #21).

Clean Water Act - This Act is to restore and maintain the integrity of waters. The Forest Service complies with this Act through the use of Best Management Practices. This decision incorporates Best Management Practices to ensure protection of soil and water resources (Record #28).

Wetlands (Executive Order 11990) - See Section II, Item B2 of this document.

Floodplains (Executive Order 11988) - See Section II, Item B2 of this document.

Federal Cave Resources Protection Act - This Act is to secure, protect, preserve, and maintain significant caves, to the extent practical. No known cave resources will be affected by this decision.

National Historic Preservation Act - See Section II, Item B7 of this document.

Archaeological Resources Protection Act - See Section II, Item B7 of this document.

Native American Graves Protection and Repatriation Act - See Section II, Item B6 of this document.

Wild and Scenic Rivers Act - See Section II, Item B4 of this document.

Environmental Justice (Executive Order 12898) - This Order requires consideration of whether project would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement occurred for this project, the results of which I have considered in this decision-making. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

National Environmental Policy Act - This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

Administrative Review (Appeal) Opportunities
This decision is not subject to administrative review pursuant to 36 CFR 218.

Implementation Date
This decision may be implemented immediately.

Implementation is scheduled to begin on or after April 2017.

Contact
For additional information concerning this decision, contact: Barbara Knight, Land Management Planner, during normal office hours (weekdays, 8:00 a.m. to 4:30 p.m.) at the Deer River Ranger
In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer and lender.