

## Memorandum

To: Tonka Bay City Council Members

From: Alison Harwood, WSB

Date: May 15, 2025

Re: Tonka Bay Repatriation Site  
Response to Citizen Petition for Environmental Review  
WSB Project No. 23718-000

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On May 13, 2025 the City of Tonka Bay received a citizen petition for environmental review for the proposed Tonka Bay Repatriation Site Project. The Minnesota Environmental Quality Board (EQB), who oversees the implementation of MN Rule 4410, reviewed and notified the City that the petition was complete on May 13, 2025 and designated the City of Tonka Bay as the Responsible Government Unit for implementation of the Rule.

On behalf of the City, WSB has completed a review of the petition and outlined environmental concerns. The following outlines each concern and results of the review.

### **Petition Concern #1:**

The multi-acre removal of trees and the impact to the surrounding area's air quality, water absorption, and wildlife habitat. A full site tree survey by a certified arborist and commitment to protecting the old growth trees is prudent in protecting the water, soil, air and wetland resources. The tree impact as presented in the May 13th, 2025 presentation sorely understates the kind and amount of trees impacted by this plan.

### *Response:*

The site was inspected by ISA Certified Arborist on May 7, 2025. The woodland is a degraded lowland hardwood forest. Lowland hardwood forests are found in floodplains and in swamp settings away from flowing water (MN DNR). In Tonka Bay, lowland hardwood forests typically have silver maple, American or red/slippery elm, and are dominated by green ash trees growing together with a variety of other tree species such basswood and oak.

The planned trail will utilize part of an existing pathway that is already compacted and cleared of trees. A few edge trees will need to be removed, two of which have a greater than 40% lean. These trees could fall at any time since the root system is exposed and pulling out of the ground. Regardless of planned work these trees should be removed for public safety.

The ISA Certified Arborist observed that the large canopy trees in the larger clearing area were primarily comprised of green ash species showing signs of dieback and dying from emerald ash borer (EAB). EAB is an invasive borer species that kills all types of ash trees within 4-6 years. Tonka Bay and surrounding communities are considered generally infested by the MN Department of Agriculture.

There were a few eastern cottonwood, basswood and northern red oak trees identified in the clearing area as well. The largest trees in the clearing area were two dead and dying bur oak trees on the edge of the wetland. An ISA Certified Arborist will mark edges of critical root

zones to protect significant trees near to the clearing area during construction. As a result of this effort, no significant impacts to the existing woodland are expected.

### **Petition Concern #2**

The multi-acre removal of old growth hardwood trees and the impact their removal will have on competing, invasive plants and trees. A full site tree survey by a certified arborist, commitment to protecting the old growth hardwood trees and a long term restoration and maintenance plan with funding is prudent to restore and protect our natural resources.

#### *Response:*

At this point, emerald ash borer (EAB) will have the greatest impact on the forest area, since green ash is the dominant overstory canopy tree. Since all green ash trees are already showing signs of EAB, it is likely they will all be dead within 3-5 years.

There is already prevalent ground cover of invasive species (European buckthorn and exotic honeysuckle) and they will expand with the canopy openings due to dying ash trees. Because of this, no significant impacts to the existing woodland are expected.

### **Petition Concern #3**

This site serves as critical wildlife habitat to established deer, turkey, fox, coyote, wetland animals, migratory birds, bats, waterfowl, eagles, hawks, owls and many other local animal populations. It is of concern that removing acres of trees, flora and fauna adjacent to a protected wetland and MN Land Trust Preserve will impact wildlife populations on the site and surrounding sites. A site survey conducted by the Minnesota Department of Natural Resources and US Fish and Wildlife Service and further consult on wildlife survey, habitat impacts and proper restoration efforts is prudent.

#### *Response:*

The forest is degraded, with almost the entire subcanopy occupied by European buckthorn. Several other invasive species were also observed, including exotic honeysuckles and large patches of garlic mustard. Few native ephemeral wildflowers are present at the site. Due to the infestation of EAB, the existing ash are expected to be dead within 3-5 years. The opening of the canopy resulting from this dieback will likely be accompanied by the spread of these invasive species.

A review of the DNR Natural Heritage database shows that the following state threatened and/or endangered species may occur in the area:

- Blanding's turtle (*Emydoidea blandingii*) - a threatened turtle species which can occur in wetlands and adjacent habitats. As recommended by DNR, contractors on site will be provided with the DNR informational flyer and notified of the potential for this species to occur in the area. If observed, contractors will notify the DNR for the turtle to be relocated out of harm's way. Construction avoidance of this species typically occurs when construction is in hibernation habitat such as wetlands. This project will not have wetland impacts. The project is not expected to impact Blanding's turtle.

A review of the USFWS Information for Planning and Consultation (IPaC) database shows the following federal threatened and/or endangered species are listed for this area:

- Whooping crane (*Grus americana*) - experimental population, non-essential.
- Monarch butterfly (*Danaus plexippus*) - a proposed threatened butterfly species. Few native ephemeral wildflowers are present at the site, which would support pollinator species such as the monarch butterfly. This site contains low quality habitat for the butterfly.

- Salamander mussel (*Simpsonaias ambigua*) - a proposed endangered mussel species which requires swift-flowing river and stream habitat. There is no suitable habitat for this species in the project area.

Species with a proposed listing are not protected by take prohibitions of the ESA until the rule to list is finalized. Even so, the project is not expected to impact these species.

Wildlife that would typically inhabit this site will be those species accustomed to the frequent disturbances expected in urban and suburban areas. During construction, wildlife may temporarily relocate to surrounding areas; however, following construction and re-establishment of vegetation these wildlife species are expected to return. Following construction, the mounds and surrounding area will be restored using native seed mix, installed by a certified restoration contractor, and is anticipated to benefit wildlife. No significant, permanent, impacts to wildlife are expected due to the project. No impacts to state or federally-listed species are expected.

#### **Petition Concern #4**

The site is predominantly a year-round wetland and beyond the established wetland delineation boundary it is predominately a seasonal wetland with wet ground for many months of the year. The disruption to the wetland on this site will have direct effects on the rest of the connected wetland that lies on the Shorewood City Preserve and Lake Minnetonka which connects directly to this wetland near Crescent Beach in Tonka Bay.

#### *Response:*

A wetland delineation was conducted on October 9, 2024 following the 1987 United States Army Corps of Engineers (USACE) Wetland Delineation Manual and Midwest Regional Supplement. One wetland was identified on the parcel, located predominantly in the northwest and central portions of the site. The wetland boundary was placed along a slight topographic break where there is a loss of wetland hydrology due to slope. The wetland delineation was reviewed on site by the Local Government Unit (LGU) and approved in a Notice of Decision dated November 27, 2024. Project activities will occur outside of the defined wetland boundary in upland. During construction, erosion control best management practices will be in place to minimize the potential for sedimentation off the site. Following construction, the site will be revegetated with native forbs which will stabilize the soils and reduce erosion potential. No primary or secondary impacts to the wetland are expected.

#### **Petition Concern #5**

Many fowl species are observed in this site and are actively nesting. It is of concern that this project will kill many migratory birds, bats, owls, eagles, hawks and turkeys through the destruction of their nests currently occupied by babies or eggs. A site assessment by a professional wildlife conservation agency and nest survey to avoid this is prudent.

#### *Response:*

The Migratory Bird Treaty Act (MBTA) prohibits the take of protected migratory bird species. The Bald and Golden Eagle Protection Act (BGEPA) prohibits the take of bald or golden eagles. The term "take" refers to the killing, capture, selling, trading, and transport of a species without prior authorization. Under this Act it is illegal to disturb, destroy, or remove active nests, meaning nests that have eggs or fledglings present. Tree clearing during nesting time periods (generally May through August) have the potential to cause impacts to migratory birds, if nests are present. If tree clearing and grubbing is conducted during the nesting season (May through August), trees will be surveyed for active nests prior to clearing. If active nests are found, those trees will be marked for removal after the nest is inactive. No

eagle nests were observed onsite during the May 7th, 2025 site visit. No significant impacts are expected to occur to migratory birds, eagles, or raptors.

**Petition Concern #6**

The Northern Long Eared Bat is known to have nearby nesting sites. It is of concern that removal of trees on this site will destroy nesting habitat of the federally endangered Northern Long Eared Bat. Seasonal tree removals have been restricted in nearby areas by the federal government to protect the Northern Long Eared Bat.

*Response:*

A review of the USFWS Information for Planning and Consultation (IPaC) official species list shows that the northern long-eared bat (NLEB) is not listed for this area, so tree removal restrictions do not apply to this site. The City is aware of the general guidance for tree clearing guidelines and recommendations provided by the USFWS and MNDNR and will follow the recommendations as a due diligence measure when clearing trees. The recommended tree clearing avoidance timeframe for areas that are outside of buffered known NLEB areas is June 1 – August 15, however, the City is not obligated to clear during the recommended timelines. If the bat becomes listed for the project location prior to construction, consultation with the USFWS will be initiated and survey guidelines will be followed.

**Petition Concern #7**

Many Bald Eagles are seen utilizing the project site. It is of concern that disruption of this site and removal of trees will impact their nesting habitat. A site assessment by a professional wildlife conservation agency and nest survey to avoid this is prudent.

*Response:*

A tree survey was completed on site on May 7, 2025 to evaluate potential habitat for wildlife. No eagle nests were observed in trees on site. Per the United States Fish and Wildlife Service National Bald Eagle Management Guidelines, construction activities that occur at least 660 feet from an active nest are not likely to disturb nesting activity.

**Petition Concern #8**

The soil stock that is proposed to be placed on this site served as a municipal road base for decades as Pleasant Avenue and Brentwood Avenue in Tonka Bay (see map). What toxins, including heavy metals and PAH's, are in the soil and what is the impact to the surrounding natural area, wetland and associated aquifers? Is the makeup of the soil suitable to support replanting efforts? If the soil is sampled, were enough samples taken to be representative of the entire lot and who performed the sampling and testing?

*Response:*

WSB completed a desktop contamination review using the MN Pollution Control Agency (MPCA) and MN Department of Agriculture (MDA) What's in My Neighborhood (WIMN) databases to identify potential contamination sources/sites located near the soil excavation areas. In general, the soil was excavated for road and utility improvements from a section of Pleasant Avenue between Lilah Lane and Manitou Road and sections of Brentwood Avenue (as well as northern cross street extensions) between Manitou Road and Florence Drive.

No MDA WIMN listings were identified in the vicinity of the soil excavation areas. Two MPCA tank leaks sites were identified within the vicinity of the soil excavation areas indicating potential contamination. The tank leak sites included:

- MCES Lift Station 19 (LS0016940) - Depicted at the northwest intersection of Brentwood Avenue at Florence Avenue. The address was reported as 156 Beehrle Avenue, Excelsior, MN and determined to be missplotted. This site is located approximately 1,500 feet southwest of the soil excavation areas at the Excelsior Public Works facility.
- All American Recreation (LS0019042) – Depicted at the northeast intersection of Brentwood Avenue at Manitou Road. The associated address was reported as 5420 Manitou Road, Tonka Bay, MN and determined to be located approximately 100 feet west of the soil excavation areas. A leak was reported at the site in 2013. The product released was reported as diesel and unleaded gasoline. Follow up investigations were completed at the site in 2014 and 2015, under the MPCA's guidance and 3.7 cubic yards of impacted soil were removed from the site. The MPCA issued leak site closure on June 13, 2017.

No evidence of soil contamination was reported during the soil excavation activities near the All American Recreation site. Therefore, it is presumed that impacted soil from this site did not extend eastward beyond Manitou Road.

On May 8, 2025, WSB screened the soil excavated during the above listed road/utility project and stockpiled at Tonka Bay City Hall. The stockpiled soil totaled approximately 5,000 cubic yards and was divided into two stockpiles containing approximately 2,500 cubic yards each. In general, the soil consisted of sand with clay and gravel, with some mixed dark brown lake sediments and topsoil. Further, the soil contained some tree roots and miscellaneous debris (less than 2%), consisting of pieces of ceramic piping, glass, asphalt, etc. The soil screening was performed by an environmental scientist using a photoionization detector (PID). A total of seven PID screening samples were collected and no elevated PID readings above 0.2 ppm were detected in the stockpiles. In general, soil exceeding 10 ppm with a PID is considered regulated per MPCA guidelines. Further, no odors (petroleum or solvent) or staining indicating contamination was observed in the stockpiles.

Based on the MPCA/MDA WIMN database review, no reports of contamination or regulated soil discovered during excavation, and the soil screening and observations performed on the soil stockpiles, no further environmental sampling is recommended prior to transporting the soil to the repatriation site. The soils appear suitable for re-establishment of vegetation.

#### **Petition Concern #9**

The wetland delineation conducted by the City of Tonka Bay in October, 2024 shows that most of the project site is hydric soil (Figure 5 of the Wetland Delineation Report), an area greater than what is outlined as the wetland boundary. Hydric soils are known to be seasonal wetlands which is true of this area and can be observed throughout the spring and summer months (see photographs). It is of concern that the hydric soils will be disrupted by excavation and grading and the addition of former road base soil will affect what is a seasonal wetland and a direct pathway between the surface elements and the groundwater system.

#### *Response:*

The boundary of the wetland is defined by the methodology in the 1987 USACE Wetland Delineation Manual and Midwest Regional Supplements. Areas of land that were historically wetland but have converted to upland over time will continue to have hydric soil profiles. For an area to be defined as wetland, it must meet three criteria: hydric soils, hydrophytic vegetation, and wetland hydrology. During the site investigation, many of the areas of the site mapped as hydric were lacking hydrology indicators.

**Petition Concern #10**

The creation of 8- to 10-foot-tall mounds of soil will impact the site topography and surrounding land by altering water absorption, water flow, vegetation growth and animal habitat where the terrain is currently relatively flat with lowland vegetation and wetland characteristics.

*Response:*

The creation of mounds will result in a site topography that differs from the existing condition. Visual changes will include the changes to topography and a change to the canopy cover to a more open canopy area. Wetlands on the site have been delineated and no wetland impacts are proposed. No significant changes to the drainage area will occur as a result of construction; therefore, no significant impacts to post-construction vegetation growth, water absorption, or water flow is expected. The size and location of the proposed mounds will not impede animal travel through the site. While wildlife may temporarily leave the project area during construction, it is expected they will return once construction is complete. The revegetated area will provide habitat for a variety of wildlife.

**Petition Concern #11**

The effect of removing tree habitat from this site and replanting with a grass mix per the MIAC Mound Considerations and Overall Management Guidelines memo.

*Response:*

Most of the tree habitat in the area planned for mound building are green ash that are already infected by emerald ash borer and will be dead or dying within 3-5 years. Tree removal to avoid spread of this species would be recommended regardless of the proposed project.

**Petition Concern #12**

The impact of tree removal and creation of 8- to 10-foot-tall soil mounds in a wetland area in regards to erosion and run off into the wetland and surrounding hydric soils.

*Response:*

Soil will be placed outside of the wetland boundary and sediment control best management practices will be used onsite to prevent erosion of soils until vegetation becomes well established. The project will be required to follow erosion and sediment control rules outlined by Minnehaha Creek Watershed District (MCWD). The project will also obtain a National Pollution Discharge Elimination System (NPDES) construction stormwater permit. No primary or secondary impacts to the wetlands will occur because of the project.

**Petition Concern #13**

As presented in the plan dated for review on May 13, 2025, it states that the mounds will be constructed 300 to 400 feet from all homes on Lilah Lane. A current survey and staking of the proposed mound location and current wetland boundary on the parcel is prudent as that area is water covered seasonally and persistent surface water in this area is present. It is of concern that the conditions of the parcel as delineated last fall are not representative of its average and current conditions and construction will disrupt the wetland buffer if no updated survey is conducted.

The wetland delineation completed in October 2024 was reviewed by the WCA LGU (MCWD). Members of the Technical Evaluation Panel (TEP) also reviewed the wetland delineation report. The TEP is made up of representatives from the Board of Water and Soil Resources, Department of Natural Resources, and County.

**Petition Concern #14**

The effect of trucks and hydraulic equipment in a sensitive, hydric soil area adjacent to a wetland and its downstream water resources.

*Response:*

Construction equipment will not be allowed within the wetland area. During construction, sediment control best management practices will be used onsite to prevent erosion of soil until vegetation becomes well-established. The project will be required to follow erosion and sediment control rules outlined by MCWD. The project will also obtain an NPDES construction stormwater permit. No primary or secondary impacts to the wetlands or downstream resources will occur as a result of the project.

**Petition Concern #15**

The effect of continued future expansion of this site for additional soil storage from road construction projects and its impact on short term site regeneration efforts and long-term effects on wildlife habitat, wetland habitat, soil toxicity and wetland health.

*Response:*

The proposed mound area outlined at the May 13, 2025 Council meeting represents the cumulative area where mounds could be placed. No expansion of the site beyond those limits is proposed. Future city projects which may produce soils that would be relocated to this site would be reviewed for potential contamination. If contaminated soils were found, coordination would occur to determine the appropriate handling and disposal methods. The current soils to be relocated to this site are at low risk for contamination. The reviews completed for the site and described above represent the entire potential mound area; thus, no significant impacts to wetlands, wildlife habitat, or soil toxicity are expected.

In consideration of MN Rule 4410.1700 Subpart 7:

- (A) As outlined in the sections above, the city has adequately evaluated the type, extent, and reversibility of the environmental effects of the project.
- (B) Based on the results of the review of the concerns, the project is not expected to significantly impact any of the resources noted above. As a result of this review and anticipated regulatory oversight, the project will not cause any known or reasonably expected cumulative potential effects.
- (C) The City will obtain required permits for the project, including but not limited to Minnehaha Creek Watershed District and NPDES construction stormwater permits.
- (D) The studies completed to date and requirements associated with required permits will adequately anticipate and minimize the potential for environmental effects.

Based on these criteria, the project does not have potential for significant environmental effects and an environmental review pursuant to MN Rule 4410 is not warranted.