



**Minnesota Department of Transportation**

Metropolitan District  
1500 West County Road B2  
Roseville, MN 55113

August 17, 2010

Steven Kotke  
Public Works Director and City Engineer  
City of Minneapolis – Room 203 City Hall  
350 South 5<sup>th</sup> Street  
Minneapolis, Minnesota, 55415-1390

RE: Municipal Consent for SP 2781-415 (I-94 Re-habilitations)  
On I-94 from Nicollet Avenue to Cretin Avenue  
In the Cities of Minneapolis, St. Paul, and Hennepin County

Dear Mr. Kottke:

I am transmitting the geometric layout for the above referenced project. This project provides for the rehabilitation of Interstate 94 between Nicollet Avenue, in the City of Minneapolis and Cretin Avenue, in the City of St. Paul. The project is scheduled to be let for construction on December 17, 2010.

Interstate 94 currently provides for four lanes of capacity between the Interstate 35W and Highway 280. This configuration was developed to mitigate traffic as a result of the I-35W bridge collapse and was accomplished through emergency relief funding. Upon completion of the new bridge on I-35W over the Mississippi River and the re-opening of I-35W, we needed to decide whether we would return Interstate 94 to its previous condition or develop the documentation to retain Interstate 94 with four lanes of capacity. Our decision was to maintain the four lanes of capacity on Interstate 94 between the 5<sup>th</sup> Street exit from westbound Interstate 94 and the 6<sup>th</sup> Street entrance to eastbound 94 and Highway 280. This will require the reconstruction of the inside and outside shoulders of Interstate 94, upgrading the drainage facilities, construction of emergency pull-offs, retaining walls, noise walls, and the re-surfacing of Interstate 94 between Nicollet Avenue and Cretin Avenue. This project will also include provisions for ITS on the Interstate 94 corridor between the Lowry Hill Tunnel and Western Avenue. This would be similar to the equipment that has been installed on Interstate 35W with the lane control signals, dynamic speeds, and etc.

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The proposed project does not require the acquisition of right of way or cost participation from the City of Minneapolis. The project will be adding capacity to Interstate 94 between the 5<sup>th</sup> Street Exit Ramp from westbound Interstate 94 and the 6<sup>th</sup> Street entrance ramp to eastbound Interstate 94 and Highway 280. As a result of the added capacity to Interstate 94, we are requesting Municipal Consent from the City of Minneapolis as per Minnesota Statutes 161.162 through 161.167. I have included a copy of our staff approved layout, a copy of our guidance for Municipal Consent, and a draft resolution for the approval of the project.

Sincerely,



Scott Pedersen  
West Area Engineer  
Mn/DOT – Metropolitan District

Enclosures 1 staff approved Geometric Layout  
Guidance for Municipal Consent Process

cc: John Griffith, Mn/DOT – West Area Engineer  
File





**Minnesota Department of Transportation**

Metro District  
1500 County Road B2 West  
Roseville, MN 55113

Phone: (651) 234-7677

Fax: (651) 234-7608

September 15, 2010

To Whom It May Concern:

**SUBJECT: Negative Declaration Regarding the Need for an Environmental Impact Statement for the I-94 Capacity Improvement Project**

This project proposes to increase capacity on I-94 by providing an additional thru lane in each direction of I-94 between Highway 280 and 5th/6th Streets, and by addressing numerous existing spot geometric and safety problems between Vandalia Street and Hiawatha Avenue. All construction will occur within the existing Mn/DOT right-of-way. The proposed project also includes construction of noise walls, and pull-offs to accommodate emergency and disabled vehicles.

Under Minnesota rules, the Minnesota Department of Transportation is the Responsible Governmental Unit (RGU) for this project. The proposed action was described and analyzed in an Environmental Assessment circulated to the EAW Distribution List and others. A **Notice of Availability** appeared in the **EQB Monitor** on June 14, 2010. The comment period closed July 14, 2010.

As the RGU for work on the Minnesota Interstate system, Mn/DOT has undertaken a thorough analysis of the project and its impacts. Through its own analysis, coordination with affected agencies, public and community involvement, and comment letters received, Mn/DOT has determined the project does not have the potential for significant environmental impacts. Mn/DOT has concluded that an Environmental Impact Statement is not required, and has issued a Negative Declaration Order for the project. This decision and determination is supported by the full administrative record of the project, including the Findings of Fact and Conclusions. The Negative Declaration concludes the Minnesota state environmental review process. The project may proceed to permitting, design and construction.

The Minnesota Department of Transportation does not intend to circulate paper copies of the Findings, Conclusions and Order. These items and others are available on the project website at: <http://www.dot.state.mn.us/metro/projects/i94resurfacing/documents.html>.

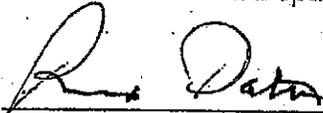
Should any readers not have access to these electronic documents, paper copies may be obtained by contacting Brigid Gombold at 651-234-7674.

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As an item of information, the Federal Highway Administration issued a Finding of No Significant Impact for this project on September 10, 2010, which is attached to this Negative Declaration.

For the Minnesota Department of Transportation



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Rick Dalton  
Environmental Coordinator  
Mn/DOT Metro District

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# Municipal Consent Process

Mn/DOT – HPDP/Scoping

## Basic Process

1. Mn/DOT submits the final layout to the City with a letter requesting City approval of the layout.
2. The City holds public hearing within 60 days of Mn/DOT's submittal and gives a 30-day (minimum) public notice of the hearing. Mn/DOT presents the layout at the public hearing. **60 days**
3. The City Council passes a resolution approving / disapproving the layout (within 90 days of public hearing). If after 90 days from the public hearing the City has not passed a resolution disapproving the layout, the layout is deemed approved. **90 days**
4. If the City approves, Mn/DOT can proceed with the project.
5. If the City disapproves, Mn/DOT's options are:
  - o Make the changes requested by the City (if any)
  - o Refer the layout to an Appeal Board
  - o Stop the project
  - o Modify the project so municipal consent is not required
  - o Prepare a new final layout and start the MC process over from beginning

**Before Appeal: Total Maximum time = 150 days**

## Appeal Process

1. Mn/DOT notifies the City that it is appealing.
2. An Appeal Board of three persons is established:
  - o Mn/DOT appoints a member **Undefined time to establish appeal board**
  - o The City appoints a member
  - o Third member selected by mutual agreement between the City & Mn/DOT. If they cannot agree, Mn/DOT requests the MN Chief Justice to select. The Chief Justice appoints third member within 14 days of Mn/DOT's request. **14 days**
3. Mn/DOT refers the final layout to the Appeal Board. **Undefined time**
4. The Appeal Board holds a hearing (within 30 days of receiving final layout from Mn/DOT). The City and Mn/DOT each present their case. **30 days**
5. The Appeal Board makes its recommendation (within 60 days of the hearing):
  - o Approval; or
  - o Approval with modifications, or
  - o Disapproval of the final layout**60 days**
6. If the Board approves, Mn/DOT can proceed with the project.
7. If the Board disapproves, or approves with modifications, Mn/DOT's options are:
  - o Make recommended modifications (if any), and proceed with the project
  - o Stop the project
  - o Modify the project so municipal consent is not required
  - o Prepare a new final layout and start the MC process over from beginning
  - o If it is an Interstate Highway project, Mn/DOT may proceed with the project using the layout that was not approved (and sends a report to the City and the Appeal Board stating the reasons for doing so).**Maximum for Appeal Process = 104 days + (plus time to establish appeal board, etc.)**

**TOTAL Possible Time = 254 days +**

**NOTE:** If final construction plans contain changes to access, capacity, or right-of-way from the layout approved by the City, Mn/DOT resubmits the changed portion of the plans to the City for approval. (City has 60 days to approve). This holds whether municipal consent was obtained through the basic MC process or through the appeal process.

**Sample City Resolution**  
**RESOLUTION NO. \_\_\_\_\_**  
**RESOLUTION FOR LAYOUT APPROVAL**

At a Meeting of the City Council of the City of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, 200\_, the following Resolution was offered by \_\_\_\_\_ and seconded by \_\_\_\_\_ to wit:

WHEREAS, the Commissioner of Transportation has prepared a final layout for the improvement of \_\_\_\_\_ within the City of \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_; and seeks the approval thereof: and

WHEREAS, said final layouts are on file in the Minnesota Department of Transportation office, \_\_\_\_\_, Minnesota, being marked, labeled and identified as Layout No. \_\_\_ S.P. \_\_\_\_\_ from R.P. \_\_\_\_\_ to \_\_\_\_\_; and

WHEREAS, improvements to city streets and appurtenances have been included in the said final layouts.

NOW, THEREFORE, BE IT RESOLVED that said final layouts for the improvement of said Trunk Highway within the corporate limits be and is hereby approved".

Upon the call of the roll the following Council Members voted in favor of the Resolution:

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The following Council Members voted against its adoption:

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ATTEST:

Mayor \_\_\_\_\_ Dated \_\_\_\_\_, 200\_\_\_\_\_

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

CITY OF \_\_\_\_\_

I do hereby certify that the foregoing Resolution is a true and correct copy of a resolution presented to and adopted by the Council of the City of \_\_\_\_\_, Minnesota at a duly authorized meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_, as shown by the minutes of said meeting in my possession.

(SEAL) \_\_\_\_\_  
City Clerk

# Municipal Consent

## Contact

Steve Ryan, P. E. [steve.ryan@state.mn.us](mailto:steve.ryan@state.mn.us)  
Project and Process Guidance Engineer  
Office of Technical Support  
395 John Ireland Boulevard, MS 676  
St. Paul, MN 55155  
(651) 366-4675

## Forms

For a generic layout-approval resolution for use by a municipality, see *Sample Resolution* in the Appendix.

## Threshold Criteria

Municipal consent should only be requested from a city if it is required.

### When Required

Municipal approval is required for any trunk highway project that results in any of the following within a municipality:

- Alters access,
- Increases or reduces traffic capacity, or
- Requires acquisition of permanent right-of-way.
- (Changing capacity means adding or reducing the number of through lanes. For example, adding auxiliary lanes is not a change in capacity).

### Exceptions

Municipal consent is NOT required (regardless of impacts to access, capacity, or R/W) for projects needed for any of the following:

- Regulate traffic, or
- Install traffic control devices, or
- Other safety measures
- The term "other safety measures" refers to traffic safety measures. For example, the addition of a turn lane is a traffic safety measure; the replacement of a structurally-deficient or fracture-critical bridge is not.

Also, maintenance activities do not trigger the need for municipal consent.

### **Examples**

**Permanent Easements** (such as Drainage Easements) **require** municipal consent (because they take permanent right-of-way).

**Roundabouts** are used for traffic regulation and as a safety measure, and thus are **exceptions** that do not require Municipal Consent even if they involve permanent right-of-way taking.

## **Roles and Procedures**

Municipal consent should only be requested from a city if it is required. (See Threshold Criteria above).

Sometimes a city may choose to waive municipal consent on a specific project. In that case the city council must pass a resolution clearly identifying the project and waiving its right to municipal consent for that project. However, the typical municipal consent process is as outlined below.

### **Procedure (for obtaining municipal consent)**

1. Mn/DOT (District) submits to the city the final layout with a letter requesting city approval. The letter includes a good faith cost estimate of the city's share of the project's cost and the following (either in the letter or in an attached report):
  - project purpose
  - route location
  - short description of the proposed design of the highway
  - any additional supporting data
2. City schedules and holds public hearing (within 60 days of submittal).  
City must schedule within 15 days of receiving Mn/DOT's request for approval and must give 30 days public notice.
3. City passes resolution approving / disapproving (within 90 days of public hearing).  
After 90 from the date of the public hearing, if the city has not passed a resolution disapproving the layout, the layout is deemed approved.

4. If city disapproves, Mn/DOT decides whether to:
  - a. Meet city's condition(s), assuming city approved with conditions:  
Mn/DOT writes city a letter indicating this and attaches revised layout with change(s). This ends the MC process.
  - b. Go to the appeal process.
  - c. Stop the project (do not build the project, or scale project down so that municipal consent is no longer required).
5. If in the final plan Mn/DOT alters access, capacity or R/W, Mn/DOT must re-submit changed portion of plan for city's approval. (The city is not required to hold another public hearing and has 60 days to approve or disapprove).

### **City Approval**

The city can approve either by a formal approval resolution (see generic resolution in Appendix), or by not passing a resolution disapproving the layout within 90 days of the public hearing.

The city's review – with regards to layout approval – is limited to the project elements in the final layout that are within the boundaries of that city. A city cannot impose a condition on its approval that is outside of the city's boundaries.

The process allows the city one opportunity to exercise approval or disapproval of the final layout (unless Mn/DOT alters the plan with regards to access, capacity, or right-of-way). Once a city approves the layout, it cannot rescind its approval later. If a city disapproves with conditions, and if Mn/DOT agrees to meet those conditions – and notifies the city in writing (including copy of revised layout) – then municipal consent has been obtained.

The municipal consent statute applies to changes on "any route on the trunk highway system lying within any municipality." If a T.H. borders a city and no section of the T.H. is completely within the city limits, municipal consent is still required for any of the designated changes (access, capacity, or right-of-way) that do occur within that city. However, if the changes triggering the municipal consent process are on the other side of the T.H. – and thus outside the city's limits – then municipal consent is not required from that city and is not requested from that city.

**City Disapproval**

If a city disapproves the final layout, Mn/DOT can stop the project (or scale it back so that municipal consent is no longer required), or Mn/DOT can take the project to the appeal process.

If the city disapproves – but includes condition(s) for approval, Mn/DOT has the above options plus the option of meeting the city's condition(s), and thus obtaining the city's approval. To do this, Mn/DOT sends the city a letter to that effect with the layout attached (revised to show the change(s)). This completes the municipal consent process; Mn/DOT then has the city's approval. (Sending the letter and revised layout is NOT a resubmittal for further consideration by the city).

**Appeal Process**

The appeal process is the same for interstate and non-interstate projects. However, the Mn/DOT Commissioner is not bound by the recommendations of the appeal board with respect to interstate highways.

If Mn/DOT decides to go to the appeal process, the first step is to establish an Appeal Board of three members: one member appointed by the Commissioner, one member appointed by the City Council, and a third member agreed upon by both the Commissioner and the City Council. (If a third member cannot be agreed upon, the Commissioner refers the selection to the chief justice of the Supreme Court, who then has 14 days to appoint the third member).

After the appeal board is established, the Commissioner refers the final layout to the Appeal Board. The Appeal Board then has 30 days to hold a hearing at which the Commissioner and the City Council may present their cases for or against approval of the layout. Within 60 days after the hearing, the Appeal Board must make its recommendation regarding the final layout. The recommendation can be:

- for approval, or
- for approval with modifications, or
- for disapproval.

The board can also make additional recommendations consistent with state and federal requirements as it deems appropriate. The board must submit a written report with its findings and recommendations to the Commissioner and the City Council.

## Legal Basis

The Minnesota municipal consent statutes (see links below) were revised in the 2001 legislative session.

### State Municipal Consent Statutes

Definitions	<a href="#">MN Statute 161.162</a>
Highway Project Review	<a href="#">MN Statute 161.163</a>
Final Layout Approval Process	<a href="#">MN Statute 161.164</a>
Commissioner Action; Interstate Highways	<a href="#">MN Statute 161.165</a>
Commissioner Action; Other Highways	<a href="#">MN Statute 161.166</a>
Reimbursement of Expenses (for Appeal Board Members)	<a href="#">MN Statute 161.167</a>

## Helpful Links

[Mn/DOT](#)

[Public Involvement](#)

## Glossary

**Municipality:** A statutory or home rule charter city.

**Municipal Consent:** A municipality's approval of Mn/DOT's final layout for a project on a Trunk Highway when such approval is required by State Statute – see Threshold Criteria below. (Approval is by a resolution passed by the elected council of the municipality – the City Council).

## Appendix

Municipal Consent Process  
Sample City Resolution