

**Proposed Shooting Star Resort and Casino  
Land Use and Compatibility Summary  
Star Lake, Minnesota**

August 4, 2017

## 1. CURRENT CONDITIONS

- a. Trust Land: The only applicable land use regulation on trust lands would be federal or Tribal. The White Earth Nation (Tribe) relies upon the Tribal Council, the governing body of the Tribal Government, to guide and regulate land use and planning on Tribal Lands.

The proposed building footprint is for Resort/Casino is situated on 14.5 acres of Trust Land.

- b. Fee Land: The current fee land for this project accounts for 229.7 acres which is under the primary jurisdiction of the County and State jurisdiction based on the proposed usage of the land. The development on Fee land includes, Waste Water Treatment, Roads, Parking and Water Treatment Facility.

Otter Tail County does not currently have an adopted Comprehensive Plan, nor does it regulate development with any official controls, with the exception of a County-wide Shoreland Management Ordinance (SMO).

Only Tribal land use regulations are applicable on trust lands. However, the Tribal Government desires to work cooperatively with local and State authorities on matters related to land use.

## 2. EXISTING LAND USE – Project Development Area

The project area consists of 132 acres farmland, 34 wooded acres, 2 former farmstead areas and commercial cabinet shop, and 41.1 wetland acres. Both former farmstead areas are located in the central portion of the project area. No parks or trails are located on or adjacent to the project area. Prime farmland and farmland of statewide importance is located on and adjacent to the project area. However, the project area is not subject to the Farmland Protection Policy Act (FPPA) or the Minnesota State Agricultural Land Preservation and Conservation Policy as no federal or state funds will be used for the project.

Table 1 shows the existing land cover types before project development and after project development.

Table 1:

	Before	After		Before	After
Wetlands	41.1	33.7	Lawn/landscaping	8.4	4
Deep water/streams	0	0	Impervious surface	1.5 acres drives, parking 3.2 acres roads	15.9 acres drives, parking, walks 4.3 acres road
Wooded/forest	34	16.9	Stormwater Pond	0	3.9
Brush/Grassland	18	82.4	Other wastewater pond substation	0 0	8.0 1.5
Cropland	132	65.5	Buildings	0.3	2.4
			<b>TOTAL</b>	<b>238.5</b>	<b>238.5</b>

- a. Trust Land: The trust land is 14.5 acres of which is primarily wetland with some wood acreage. The project will convert 8.79 acres of trust land for the development. This includes the 6.17 acres of Wetland being filled and dredged.
- b. Fee Land: The development of fee land owned by White Earth Nation is 229.7, this consist primarily cropland, wooded acreage, homestead sites and commercial cabinetry shops, and wetlands. This project will impact 2.24 acres of wetland on Fee lands, of which 1.23 acres will be filled.

Note: Wetland conversion will have 1.01 acres of temporary wetland disturbance during construction.

Table 2

Total Project Acreage	<i>238.5 including: 8.79 acres of Tribal Trust Land 229.7 acres of Fee Land</i>
Linear project length	<i>8.75 miles (new transmission line) 2.0 miles (replacement transmission line)</i>
Number and type of residential units	<i>25 RV parking locations 180 hotel rooms</i>
Commercial building area (in square feet)	<i>277,000</i>
Industrial building area (in square feet)	<i>0</i>
Institutional building area (in square feet)	<i>0</i>
Other uses – specify (in acres)	<i>20.2 acres of parking and impervious surfaces (including RV parking) 8.0 acres of wastewater treatment ponds 3.9 acres of permanent stormwater ponds 1.5 acres of substation</i>
Structure height(s)	<i>85 ft (maximum)</i>

### 3. SURROUNDING LAND USE

The surrounding land includes Agricultural Land, Rural Vacant Land, Residential, Resort, Seasonal Commercial/Residential, Wild Life Management Area, Public and Institutional Land, and other uses. Table 4 below was created from a OTC dataset containing property tax records and homestead classifications.

The land directly surrounding the proposed project consists of an abandoned golf course, residences, farmsteads, cultivated farmland, and undeveloped wooded and wetland areas.

a. Surrounding Area Primary Land Use

- i. Primary Land Use: Table 4 below show the percentage of land uses in the project development area. The primary land uses in this area include Agricultural at 56%, Rural Vacant Land at 20.8%, Residential at 8.8% and Seasonal Residential at 7%.
- ii. Commercial Land Use: Additional surrounding area land uses includes 21 parcels classified as resorts and 24 parcels classified as seasonal commercial uses.

b. Examples of Surrounding Tourism/Recreation Land Use

Minnesota is home to Tourism, hotel/resort accommodations and lake recreation. Tourism is a critical component in the Otter Tail County economy, employing around 2,000 residents and garnering over \$70 million in gross sales in Otter Tail County in 2010 (MN, 2010).

Examples of commercial tourism and recreational opportunities near Star Lake include the following:

- i. The adjacent property includes a golf course that is closed at this time.
- ii. There are 21 area resorts classified as Seasonal Commercial within the Star Lake surrounding area including:
  1. Fair Hills Resort and Golf Course (17 miles NW of Star Lake, 100-unit resort and recreation center, on Pelican Lake) is comprised of a resort lodge, 100 units of lodging, golf course, water recreational activities, and direct lake access to 500 feet of shoreline from the property.
  2. East Silent Resort (4 miles NW of Star Lake, 11-unit resort and recreation center, on East Silent Lake) offers similar year around accommodation to our project Resort rooms and suites, conference center for weddings, special events and Café for food and beverage alternatives. East Silent Lake is designated by Otter Tail County SMO as a High Density General Development Lake with resort amenities and recreational access to the lake. This resort is all rural in nature.

3. Northern Lights Resort on Dead Lake (8 miles SE of Star Lake, 10-unit resort, on Dead Lake). A family fishing resort in northern Minnesota with scenic lakeside cabins and campsites, swimming. They have seasonal campsites and are open year-round.

c. Minnesota Land Use Compatibility – MN Statutory Definition:

- i. The proposed project includes 245,000 sq. ft. of Resort and resort amenities with infrastructure.
- ii. The OTC Shoreland Management Ordinance uses the compatibility as a regulatory term; however, OTC does not have a Comprehensive Plan that further defines “compatibility”. Therefore, assessing the definition includes that review of this terminology to avoid arbitrarily defining “Compatible Use”.
- iii. MnDNR 2.524 Conditional use. A land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to the comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.
- iv. Example of term language: One source of a Comprehensive Land Use plan defines “compatibility” as “a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition”.
- v. Example of Rural Resort Development;
  1. Arrowwood in Alexandria, MN supports hotel and multifamily accommodation with resort amenities, food & beverage, indoor water park and more.
  2. Grandview Lodge and Resort in Nisswa, MN was voted Star Tribune's 2013 Best Resort for Kids and 2012 Best Resort for Families in Minnesota. Incredible accommodations, 2,500 ft of sandy beach on Gull Lake, 7 dining venues, 2 championship golf course a world-class spa and activities galore.
- vi. The tourism industry in MN is \$14.4 Billion strong and MN Tourism is targeting \$20 Billion in 2020. The industry supports over 475 Resorts across the area of Minnesota and of which 123 resorts exist on area lakes.

#### 4. LAND USE JURISDICTION

a. Trust Land:

The White Earth Nation has jurisdiction and exercises governmental power over approximately 14.5 acres of Trust Land or Restricted Status by the United States Federal Government. Tribal Jurisdiction over Indian Lands was granted by the Tribal Council through resolution and the MCT Ordinance #3 allow the White Earth

Nation to govern this land for purposes of securing the political and economic security of the Band (Tribe) and the health and welfare of its members.

The White Earth Nation tribal lands are typically subject only to the Tribal Ordinances with delegated authority to the White Earth Natural Resource Department and the Federal Government Regulations, governed by such agencies as EPA, US Army Corps of Engineers, and Bureau of Indian Affairs. The federal Clean Water Act supersedes Minnesota's environmental regulations governing the development of wetlands located within the State.

Federal law requires tribal gaming operations to be located on trust land (25 U.S.C. § 2703). Section 404 of the Clean Water Act authorizes the Army Corps of Engineers to issue permits for activities that require the development of wetlands on tribal trust land. Specifically, Section 404 provides that the Secretary of the Army, acting through the Chief of Engineers, may issue permits, after notice and opportunity for public hearings for discharge of dredged or fill material into navigable waters at specified disposal sites. Before issuing a permit, the Army Corps of Engineers determines whether any less environmentally detrimental alternative will accomplish the applicant's goals. The Army Corps analyzes feasible alternatives in light of the overall purpose of the applicant's goals.

Section 401 of the Clean Water Act requires states to set water quality standards. State water quality standards set the conditions that must exist in order to protect beneficial uses of water. When a project will impact waters within Minnesota requires a federal permit, the Minnesota Pollution Control Agency (MPCA) reviews the project under Section 401 to ensure that it will not violate the water quality standards that the MPCA has established for that water body. In Minnesota, the MPCA's authority to review and approve, condition, or deny a federal permit that may result in a discharge to waters of the United States within its borders is limited to non-reservation fee land. The Minnesota Wetland Conservation Act sets forth procedures and conditions that must be considered for avoiding and minimizing impacts and for ensuring adequate replacement of lost public value from unavoidable impacts (Minn. R. 8420.0500-.0544 (2017)).

The White Earth Nation's proposed gaming facility at Star Lake will be constructed on tribal trust land. The provisions of the Clean Water Act governing wetland impact on trust lands apply to the White Earth Nation's permit to fill wetlands at Star Lake. The Army Corps permitting process takes into consideration impacts to surrounding areas. The State of Minnesota's role in applying environmental laws to the White Earth Nation is limited to the extent of jurisdiction as conferred by Congress. The Clean Water Act expressly provides that the Army Corps of Engineers has the authority to issue permits for projects involving the discharge of fill material on wetlands located on tribal trust land. The provisions of the Minnesota Wetland Conservation Act govern only the White Earth Nation's development of the fee land abutting the tribal trust land at Star Lake. Thus, the provisions of the Minnesota Wetland Conservation Act are not relevant to the Army Corps of Engineers in evaluating the White Earth Nation's proposal to discharge fill material into 8.41 acres of trust land on wetlands adjacent to Star Lake for purposes of constructing a

gaming facility. Therefore, the application of Minnesota environmental regulations to the White Earth Nation’s development at Star Lake is preempted by federal law and Minnesota’s regulations cannot dictate development of wetlands on tribal trust land.

- i. State Environmental Regulatory Authority: The House Research Department in January of 2017, provided statutory direction to the House and State Governing Units. <sup>1</sup>

**(Excerpt) In Summary**

**Federal regulatory environmental statutes apply on Indian lands.** Tribal law applies in the absence of federal statutes, or where tribal law is more stringent than corresponding federal law. Qualified tribes may administer several federal environmental programs designated by Congress or the EPA, and are eligible to receive federal financial and technical assistance for that purpose. The federal government retains authority to implement and enforce federal laws in Indian country where a tribe is not delegated to do so.

**State laws that prohibit certain polluting activities and that impose civil or criminal penalties for violations are likely to apply in Indian country to the same extent as in the rest of the state.** State regulatory environmental statutes do not apply on Indian lands. The distinction between these two categories is not, however, a settled area of law.

- b. Fee Land: The current fee land for this project accounts for 229.7 acres which is under the primary jurisdiction of the County and State based on the proposed usage of the land. The development on Fee land includes, Waste Water Treatment, Roads, Parking and Water Treatment Facility.

Otter Tail County does not currently have an adopted Comprehensive Plan, nor does it regulate development with any official controls, with this exception of a County-wide Shoreland Management Ordinance (SMO).

- c. Jurisdiction Permitting Authorities for proposed development:

**Fee Land Development – State and Local Jurisdiction**

Waste Water Treatment	Minnesota Pollution Control Agency
Water Wells and Treatment	Minnesota Department of Health
Groundwater Use	Minnesota Department of Natural Resources
Stormwater	Minnesota Pollution Control Agency
Roads Easement for WWTS	Otter Tail County Road Department

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<sup>1</sup> Research Department  
Minnesota House of Representatives  
600 State Office Building, St. Paul, MN 55155

Roads for Entrance  
Wetland Permit

OTC County Shoreland Management  
Otter Tail County

**Trust Land – Tribal and Federal Jurisdiction**

Commercial Development Permit  
Stormwater Management  
Wetland Permit

White Earth Development Organization  
EPA NPDES Permit  
US Army Corps of Engineers

**5. LAND USE COMPLIANCE OF PROPOSED ACTIONS**

Fee Land:

The project does comply with the Otter Tail Shoreland Management Ordinance for all work locate on the county-regulated Fee land. While the Shoreland Management Ordinance does not apply to the Trust Land, the project has strived to meet these requirements. The EAW under question **9. Land use, b. Zoning Compatibility**, and Table 3 below address how the project complies with requirements as identified in the Otter Tail County Shoreland Management Ordinance.

The buildings and equipment enclosures meet the Shoreland Management Ordinance’s Vertical Separation for the Lowest Floor Elevation Requirements – elevation must be 3 feet above the OHWL or highest known water level – the lowest floor level of the development is at 1335 which is 3.8 ft. above Star Lake’s highest known water level (HKWL) (1331.2) and 5.5 feet above Star Lake’s OHWL (1329.5.) The fire truck access road/pedestrian path, on Trust Land, is locate above the highest known water level.

For Fee Land east of CSAH 41 buildings and parking in this area is approximately 225’ from the OHWL, doubling the 112’-6” setback from Star Lakes OHWL. This includes the 50% increase for commercial projects as identified as one path of compliance by the Shoreland Management Ordinance. Additionally, the project will be screened by a berm at the parking lot and vegetation at both the parking lot and the fire truck access road/pedestrian path, as identified as a second path of compliance by the Shoreland Management Ordinance.

For Fee Land west of CSAH 41 the setbacks are meet for the 200’ from the Unnamed Lake’s OHWL.

Based on the project team’s confirming consultation with the Otter Tail County’s Land and Resource Management staff, it is appropriate for calculation of impervious surface to be made based on the project area that do not have a physical separation such as a right-of-way or a hill, and not by individual parcels. This methodology divided the project into two areas within the Shoreland Management District; areas east of CSAH 41 and west of CSAH 41. The Fee Land is below the impervious surface maximum. When Fee and Trust Land are considered as a whole, based on this methodology, the impervious surface east of CSAH 41 is also below the impervious surface maximum. As a whole the impervious surface is below the allowed impervious surface maximum and does not have environmentally significant effect.



Trust Land:

For the Trust Land the buildings and equipment enclosures meet the recommended 112’-6” setback from Star Lakes OHWL. This includes the 50% increase for commercial projects as identified as one path of compliance by the Shoreland Management Ordinance. The fire truck access road/pedestrian path meets the 75’ set back with the second path of compliance by the Shoreland Management Ordinance with the use of vegetative screening.

<b>Ordinance Requirements</b>	<b>Fee Land</b>	<b>Tribal Trust Land*</b>
<i>Shoreland classifications and use: commercial projects are allowed with a Conditional Use Permit</i>	<i>Meets</i>	
<i>Minimum lot area, water front, and lot width requirements</i>	<i>The Ordinance does not specifically address these issues as they relate to commercial development. However, both the Fee Land and the Tribal Trust Land exceed these requirements for residential projects</i>	
<i>Lowest Floor Elevation Requirements – elevation must be 3 feet above the OHWL or highest known water level</i>	<i>Meets</i>	<i>Meets – the lowest floor level of the development is at 1335 which is 3.8 ft. above Star Lake’s highest known water level (HKWL) (1331.2) and 5.5 feet above Star Lake’s OHWL (1329.5); meets, 3 feet above highest known water level</i>
<i>Minimum structure setback – requires a 75’ setback for Star Lake and 200’ for the Unnamed lake</i>	<i>Location of ancillary buildings (e.g., water treatment building) exceeds by more than 50%. No major facility structures are located within this required setback range.</i>	<i>Exceeds by more than 100%</i>
<i>Maximum Structure Height – residential 35’ Commercial 20’</i>	<i>Meets</i>	<i>Does not meet*</i>

**Table 3: Shoreland Management Ordinance**

<b>Ordinance Requirements</b>	<b>Fee Land</b>	<b>Tribal Trust Land*</b>
<i>Commercial development must be set back double the setback requirements or screened from views from the water</i>	<i>Meets: parking lot is more than double the setback, road will be screened from the water</i>	<i>Meets: building is double the setback requirement and the required fire road will be screened from the water</i>
<i>Stormwater management</i>	<i>Meets</i>	<i>Meets</i>
<i>Total impervious surface coverage of lots within the shoreland area must not exceed 25%, of the lot area, of which the buildings must not exceed 20% of the lot area</i>	<i>Meets –coverage is 7% on the west side of CSAH 41 and 18% on the east side of CSAH 41.</i>	<i>Does not meet solely on the Trust Land. * However, when combined with the Fee Land east of CSAH 41, the development meets the requirement with coverage of 21%</i>
<i>Open space within the shoreland area – must be at least 50% of the project area</i>	<i>Meets –open space is 85% east of CSAH 41 and 61% west of CSAH 41.</i>	<i>Does not meet solely on the Trust Land* However, when combined with the Fee Land on the east side of CSAH 41, the development exceeds the requirements with open space of 82%</i>
<i>Shore Impact Zone must be 100% open space</i>	<i>Meets</i>	<i>Meets</i>
<i>Shore Impact Zone must be 50% in natural or existing state. Shore Impact Zone for Star Lake is 50 feet and 100 feet for the Unnamed Lake.</i>	<i>Exceeds – 100% of shore impact zone is natural or existing state</i>	<i>Exceeds – 100% of shore impact zone is natural or existing state</i>

**6. LIMITED AREA STAR LAKE COMPREHENSIVE PLAN (LASLCP)**

a. Goals and intent

Otter Tail County does not currently have an adopted Comprehensive Plan, nor does it regulate development with any official controls, with the exception of a County-wide Shoreland Management Ordinance.

The County and the White Earth Nation (Tribe) entered into a study to review the area surrounding the proposed Trust Land development (Proposed Project). The agreement was to explore the demographic, geographic and environmental characteristics of the surrounding area, as well as the potential benefits and impacts that could result from development in the Star Lake area.

During LASLCP process, the plan documented existing physical and socio-economic conditions of Star Lake and Dead Lake Townships, and used input from property

owners and public service providers in the study area to identify future needs and a long-term vision for the limited area of Otter Tail County.

The Plan:

- Described the demographic, geographic, and environmental characteristics of Star Lake and Dead Lake Townships.
- Provided an overview of the limited area transportation system and potential system improvements necessary to support development over the next 25 years.
- Outlined potential shared benefits relative to future redevelopment (beyond the Resort and Casino) in the limited area.
- Documented the public engagement process and summarizes the results of the community survey, which will help the community begin to consider its goals and envision more clearly the opportunities and constraints within the study area.

The Plan development process incorporated significant public stakeholder input and feedback regarding existing conditions, potential land use changes, and transportation issues; furthermore, it was guided by a diverse set of jurisdictional agencies, or quasi-jurisdictional agency (White Earth Nation) with utilization of a Project Management Team.

b. Mitigation Alternatives Implemented:

During the public stakeholders phase the Project Proposer was still in the Design Development phase of the project and was able to identify stakeholder concerns and establish mitigating resolution to primary issues within design. Some of those issues and mitigations are summarized below in Table 4.

TABLE: 4	
Issue:	Mitigation:
Building Visibility: Setback and Visual buffer from South Arm	Setback and Visual buffer from South Arm
Visual and Noise:	Proposer decided not to hold outdoor entertainment and would implement quiet time in the RV Park.
Traffic Increase:	Roads Mitigation and Implementation with County
Rural Character:	Proposer revised sizing, scale (height), architecture and selection of materials to complement rural character. Resulting in a reduction in the Building Footprint and impact on Wetland Mitigation.

	Implemented Energy-efficient design and Dark Sky Lighting.
Emergency Management:	Cooperative discussion and planning with Rural providers
Housing Growth:	LASLCP, identified ample growth availability, however Proposer also stipulated much of the employment will be provided through White Earth Tribal members who will be transported by WE Public Transit.
Surface water Protection: Waste Water Treatment and Stormwater Management	Proposer conduct environmental assessments and multiple design initiative to address the area concerns of Star Lake surface waters. Proposer has designed a WWTS without surface water discharge.

c. Current status of LASLCP:

The Limited Area Star Lake Comprehensive Plan was reviewed by all County Officials in January of 2017, the review and motion to release Final LASLCP was completed at the time. At that time, there was no formal adoption as a Comprehensive Plan or Official Control.

The Limited Area Star Lake Comprehensive Plan is NOT intended to be formally adopted as a County Comprehensive Plan under Minnesota Statute Chapter 394, nor was it intended to be adopted as the basis for any official controls under this same statute. Rather, the intent was to take a comprehensive look at the development related issues in this limited area of Otter Tail County.

**7. LAND USE REGULATORY CONTROLS**

The proposed project has demonstrated meeting State (as defined in MN Rules 6120.2500 to 6120.3900) and local rules outlined below (please refer to Table 3 and Table 4):

- a. MnDNR- Model Shoreland Development as defined with the MnDNR Statutes, Chapter 103F.
  - i. Excerpt Language from MnDNR Model Ordinance, Conditional Uses. All conditional uses in the shoreland area are subject to a thorough evaluation of the waterbody and the topographic, vegetation, and soil conditions to ensure:
    - o The prevention of soil erosion or other possible pollution of public waters, both during and after construction;
    - o The visibility of structures and other facilities as viewed from public waters is limited;

- There is adequate water supply and on-site sewage treatment; and
  - The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.
- ii. Mitigation-In evaluating all variances, conditional uses, zoning and building permit applications, the zoning authority shall require the property owner to address, when appropriate, the following conditions, when related to and proportional to the impact, to meet the purpose of this ordinance, to protect adjacent properties, and the public interest:
- Advanced storm water runoff management treatment;
  - Reducing impervious surfaces;
  - Increasing setbacks from the ordinary high-water level;
  - Restoration of wetlands;
  - Limiting vegetation removal and/or riparian vegetation restoration;
  - Provisions for the location, design, and use of structures, sewage treatment systems, water supply systems, watercraft launching and docking areas, and parking areas; and
  - Other conditions the zoning authority deems necessary.
- iii. In evaluating plans to construct sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes, conditions to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters assuming summer, leaf-on vegetation conditions.
- b. Otter Tail County- Existing zoning/land use controls. The proposed resort structures and associated parking and access roadways are considered permitted commercial uses; only the parking areas and access roadways located off the federal trust land require a Conditional Use Permit (CUP). The uses are eligible for a CUP provided design parameters are met.

**Table 4. Land Use Breakdown**

LAND USE	PARCEL COUNT	PERCENT PARCELS	ACREAGE	PERCENT ACRES
AGRICULTURAL	270	15.0	17,554.3	56.0
RESIDENTIAL	412	22.9	2,761.0	8.8
SEASONAL RESIDENTIAL	847	47.1	2,193.7	7.0
SEASONAL COMMERCIAL/RESIDENTIAL	24	1.3	82.5	0.3
RESORT	21	1.2	89.8	0.3
PUBLIC AND INSTITUTIONAL	12	0.7	65.4	0.2
STATE WILDLIFE MANAGEMENT AREA	14	0.8	283.8	0.9
PUBLIC HUNTING GROUNDS (STATE WILDLIFE MANAGEMENT AREA)	4	0.2	596.8	1.9
WATERFOWL PRODUCTION AREA	9	0.5	752.5	2.4
MANAGED FOREST	1	0.1	14.9	0.1
RURAL PRESERVE	6	0.3	358.2	1.2
RURAL VACANT LAND	162	9.0	6,528.3	20.8
TAX EXEMPT AND MISC PROPERTIES	18	1.0	48.2	0.2
WATER, ROW, AND NULL RECORDS	137	—	21,043.1	—
TOTAL WITH NULL EXCLUDED	1,800	100.0	52,376.9	100.0
PLATTED/UNDEVELOPED	74	3.8	175.0	0.1