

**MINUTES OF THE  
OTTER TAIL COUNTY BOARD OF COMMISSIONERS  
Government Services Center, Commissioners' Room  
500 Fir Avenue W., Fergus Falls, MN  
Tuesday, October 31, 2006  
9:30 a.m.**

**Call to Order**

The Otter Tail County Board of Commissioners convened Tuesday, October 31, 2006, at 9:30 a.m. at the Otter Tail County Government Services Center with Commissioners Roger Froemming, Chair; Dennis Mosher, Vice-Chair, Bob Block, and Syd Nelson present.

**Approval of Agenda**

Motion by Nelson, second by Mosher, and unanimously carried to approve the County Board agenda of October 31, 2006, with the following additions:

Land & Resource Director – Wetland Appeal & Final Plat Extension Request  
Cancel – Insurance Recommendation

**Approval of Minutes**

Motion by Mosher, second by Block, and unanimously carried to approve the County Board minutes of October 24, 2006, as mailed.

**Approval to Pay Bills**

Motion by Froemming, second by Nelson, and unanimously carried to approve payment of the County Board bills per Attachment A of these minutes.

**Conditional Use Permit – Tim Crompton**

Land & Resource Director, Bill Kalar, reported that the after-the-fact Conditional Use Permit application of Tim Crompton on Pelican Lake was tabled for further information and a site inspection. Upon consideration of the applicant's revised proposal, Mr. Kalar stated the agreement as follows: lowering of the walls along with some reshaping between the walls and using deep rooted vegetation with the westerly wall remaining as constructed except for the last 15' which would be lowered to match grade and then deep rooted vegetation would be planted. This work would not be completed this fall, but, rather next spring due to potential erosion concerns. Motion by Nelson, second by Mosher, and unanimously carried to deny the after-the-fact Conditional Use Permit as written and approve a Conditional Use Permit for the site restoration as outlined in the Engineering Report submitted to the Land & Resource Office and modified by the Land & Resource Director's report. The property is described as Pt GL 3 Bg NW Cor Lot 12, Anderson Beach Addn N 26 Degrees W 35' N 41 degrees E 72' to lake SELY along LK 35' SWLY 72' to Bg remains one parcel #504 & #71-005 not to be split; Scambler Township, Pelican Lake (56-786).

**Conditional Use Permit – Ethanol Plant**

Mr. Kalar stated that Ag Enterprises is requesting reinstatement of the Conditional Use Permit application now that the Environmental Assessment Worksheet has been completed. Mr. Kalar advised that the County has not analyzed the route of non-contact waste water that would flow to the South and into the Otter Tail River; however, this route may be in the City of Fergus Falls jurisdiction. Motion by Block, second by Mosher and unanimously carried to approve the Conditional Use Permit application for the Ethanol Plant as previously requested. Discussion followed regarding timelines. Commissioner Block and Mosher amended the

motion and second to extend the timelines for the project as follows: The pipes may be installed until December 1, 2006. If the project is not completed, the applicant would have until December 1, 2007, to complete the installation.

### **Environmental Needs Analysis – Echo Bay**

Mr. Kalar reported that the Conditional Use Permit application request from Homeland Investments received on September 20, 2006, was considered by the Planning Commission on October 11, 2006. The Planning Commission recommended that an Environmental Assessment Worksheet be prepared (as requested by the Applicant) in response to a citizen's petition that the Environmental Quality Board had received. On October 17, 2006, this recommendation was heard by the County Board, at which time, the applicant withdrew his request for preparation of an EAW. The County then proceeded with an Environmental Needs Analysis. Mr. Kalar stated that his recommendation is that an EAW not be prepared, in this circumstance, and requested that the County Attorney present reasons and rationale for that recommendation. County Attorney, David Hauser, presented two documents; one with findings and reasons that would not require that an EAW be completed and the other document with findings that would require an EAW. Mr. Hauser reviewed the options with the Board and stated that any subdivision of greater density than 34 units (single family residential metes and bounds) would require governmental approval and potentially, environmental review during the permitting process. Homeland Investment continues to maintain that they did not receive a copy of the citizen's petition in a timely manner as required by law. Other reasons for not requiring an EAW on the road request for Echo Bay is that future projects are not connected and an EAW for a large project has already been completed. Mr. Hauser agreed with the Land & Resource Director that an EAW is not needed.

Chairman Froemming opened discussion, to the public, regarding the Conditional Use Permit Application of Echo Bay to construct a road(s). Attorney, Tami Norgard, representing the Pelican Lake Property Owners Association, spoke in favor of requiring an EAW and presented reasons including potential phased-in or connected development. Attorney, Paul Jenson, representing Homeland Investment (applicant) spoke in opposition of requiring an EAW on unknown anticipatory future plans. He stated that if the applicant later decides to plat the property, it may be appropriate to determine environmental review. PLPOA President, Dave Majkrzak, stated that the Association would not object if the applicants would commit to single family units.

Motion by Block, second by Mosher, and unanimously carried to adopt the Findings and Order (Attachment B included with Official Minutes) that does not require an EAW for the Conditional Use Permit application submitted by Homeland Investment for road construction and denies the citizen petition for an EAW.

### **Blue Heron Bay EIS Adequacy Decision**

Mr. Kalar stated that the County Board must make a decision of adequacy on the Environmental Impact Statement that was prepared for Blue Heron Bay on Dead Lake. The County Board has received copies of the Draft EIS and the Final EIS. These documents were prepared by Wenck and Associates with Steve Menden as the principal preparer. Mr. Kalar and Mr. Hauser have reviewed the documents and Mr. Kalar recommended that the items of concern have been properly addressed in the Final EIS. Mr. Hauser presented an Adequacy Determination with findings and copies were provided. He reviewed the contents

of the document and the Conclusions on Page 10 of the document. There is also a provision for an inadequacy finding, in which case, the County would have 60 days to obtain the information that is lacking. Mr. Hauser noted that four comment letters were received on the Final EIS and those comments are part of the record. The Court pointed out that the comments from the DNR are important and the DNR submitted a comment letter that the EIS was adequate. Mr. Hauser noted that the County Board must decide if this is an adequate EIS so the County has the information needed to consider a Conditional Use Permit. The Final EIS would then be published and made final.

At 10:25 a.m., Chairman Froemming opened the floor to the public for comment on the adequacy of the Final EIS for Blue Heron Bay. Terry Sullivan and Doug Martin, spoke on behalf of the Dead Lake Association, and expressed concern that the Final EIS is not adequate in certain areas, especially mitigation. The DLA strongly supports a dramatic reduction in homes, boat slips, and docks, which they believe is the best mitigation strategy because every house built on the lake results in some degradation of the lake.

EIS Preparer, Steve Menden, responded that:

- 1) whether the number of homes falls towards the lower end or higher end, the mitigation items identified in the Final EIS would reduce impacts irregardless of the number of units, and
- 2) the spokespersons for the DLA need to have a better understanding of how the mitigation standards are selected and then put in place.

Harry Merickel, property owner on West Battle Lake spoke in favor of both the Blue Heron Bay project and the Echo Bay project because growth is inevitable and healthy for the economy of Otter Tail County.

Blue Heron Bay Developer, Jim Erickson, spoke on the adequacy of the document, the DNR approval of the adequacy of the document, and County staff recommendation that the EIS is adequate. He also addressed the Board regarding mitigation and potential reduction in the number of units.

Motion by Nelson, second by Froemming, and unanimously carried to adopt the proposed Findings of Adequacy for the Final EIS for Blue Heron Bay on Dead Lake as presented and attached to the Official Minutes as Attachment C.

### **Recess & Reconvene**

At 10:44 a.m., Chairman Froemming declared the meeting of the Otter Tail County Board of Commissioners recessed for a short break. The meeting was reconvened at 10:57 a.m.

### **Wetland Appeal**

Mr. Kalar reported that the County has been involved with a wetland problem in Corliss Township for about a year. This issue has been to the Board of Water and Soil Resources; however, the property owner has appealed the County's decision to require restoration. The BWSR has requested that the County review and act on the appeal before the BWSR will look at the appeal. This local review is part of the Wetland Conservation Act rules. Currently, the County does not have a WCA Appeal System in place. Lengthy discussion took place. Motion by Froemming, second by Nelson, and unanimously carried to approve scheduling a

County Board meeting on December 5, 2006, which was not originally scheduled for a Board meeting and hear the Wetland Appeal of Mr. Winkelman and designate the County Board as the Appeal Board for Wetland Issues.

**Final Plat Filing Extension for "The Pier"**

Motion by Froemming, second by Mosher, and unanimously carried to extend the filing date for the Plat known as "The Pier" until December 1, 2006, as requested by Moore Engineering.

**Personnel Committee**

Chairman Froemming appointed Commissioner Syd Nelson to the vacant position on the Otter Tail County Personnel Committee.

**Adjournment**

At 11:46 a.m., Chairman Froemming declared the meeting of the Otter Tail County Board of Commissioners adjourned until 9:30 a.m. on Tuesday, November 7, 2006.

Dated: \_\_\_\_\_ OTTER TAIL COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
Roger Froemming , Board of Commissioners Chair

Attest: \_\_\_\_\_  
Larry Krohn, Clerk

10/31/2006  
12:18:04

OTTER TAIL COUNTY AUDITOR  
PANELSON RECEIPTS AND DISBURSEMENTS SYSTEM COUNTY 56 IFD66  
WARRANTS FOR PUBLICATION PAGE 1

WARRANTS APPROVED ON 10/31/2006 FOR PAYMENT 10/31/2006

VENDOR NAME	AMOUNT
BRIAN ARMSTRONG	156.33
ART N SIGN INC	1,582.00
ASSOCIATION OF MN COUNTIES	80.00
BACHMAN PRINTING COMPANIES	197.62
GAYLON BAKKEN	140.06
BARNA GUZY & STEFFEN LTD	39.00
BATTLE LAKE HARDWARE & RENTAL	8.29
MARK BECKER	186.50
HEATHER BRANDBOG	81.44
CITIZENS ADVOCATE	159.00
DACOTAH PAPER COMPANY	209.65
DEX MEDIA EAST	356.12
ELECTION SYSTEMS & SOFTWARE IN	8,606.90
ELLENSON CAULKING CO	590.00
FERGUS FALLS MEDICAL GROUP	3,228.00
CITY FERGUS FALLS	3,294.80
FERGUS TIRE CENTER	396.61
FORENSIC SOLUTIONS LLC	375.00
FRONTIER PRECISION INC	90.63
GALL'S INC	96.89
GOVERNMENT MANAGEMENT GROUP	215.00
HEARTLAND AUDIO INC	242.35
MARILYN HELLER	89.00
HENNEPIN CO MEDICAL CTR	639.00
HENRY'S FOODS INC	1,051.06
HIGH PLAINS TECHNOLOGY	3,408.01
IAAO	175.00
INNOVATIVE OFFICE SOLUTIONS	92.46
INSIGHT PUBLIC SECTOR	990.50
INTERSTATE INC	118.20
KELLY SERVICES INC	2,822.82
L & L SERVICE	14.52
LAKES AREA PEST CONTROL LLC	79.88
LOCATORS & SUPPLIES INC	273.75
MARTIN'S PAINTING & MORE	2,268.00
MATTHEW BENDER & COMPANY INC	78.00
MCCC MI 33	370.95
M MCGEE MD, PA	400.00
WENDY METCALF	223.14
METRO SALES INC	275.20
MIDWESTERN MAT RENTAL & SUPPLY	69.60
MN CO ATTORNEYS ASSOCIATION	195.00
MN DEPT OF LABOR AND INDUSTRY	100.00
MN OFFICE OF ENTERPRISE TECHNO	1,200.00
OFFICEMAX CONTRACT INC	153.51
OLSON OIL CO INC	211.46
OTIS ELEVATOR CO	96.25
OTTER TAIL CO TREASURER	251.83
OTTER TAIL FAMILY SERVICES COL	300.00

10/31/2006 12:18:04 OTTER TAIL COUNTY AUDITOR  
PANELSON RECEIPTS AND DISBURSEMENTS SYSTEM COUNTY 56 IFD66  
WARRANTS FOR PUBLICATION PAGE 2

WARRANTS APPROVED ON 10/31/2006 FOR PAYMENT 10/31/2006

VENDOR NAME	AMOUNT
OTTERTAIL TRUCKING INC	5,202.00
PACIFIC BANCNOTE COMPANY LLC	1,250.00
PELICAN RAPIDS PRESS	856.10
PEPSIAMERICAS	229.00
RAMSEY COUNTY	1,200.00
REGIONS HOSPITAL	270.00
SHERWIN WILLIAMS	16.06
SHESHUNOFF INFORMATION SERVICE	323.95
SOUTH MILL SERVICE	13.63
STEINS INC	12,073.32
SYNERGY GRAPHICS INC	28,805.31
THERMAL TECHNOLOGIES INC	547.01
SPENCER THOMAS	15.00
TOOL CRIB OF THE NORTH	250.17
TRANQUILITY BUILDING SERVICES	452.63
TRI STAR RECYCLING	3,995.90
UNIFORMS UNLIMITED	13.42
VICTOR LUNDEEN COMPANY	253.47
VOSS LIGHTING	339.46
WEST PAYMENT CENTER	233.00
WHITE BANNER UNIFORM SHOP	64.00

\*\*\*\* FINAL TOTAL..... \$92,682.76 \*\*\*\*

**OTTER TAIL COUNTY BOARD OF COMMISSIONERS****EAW NEEDS DETERMINATION FOR THE  
CONDITIONAL USE PERMIT APPLICATION INVOLVING TOPOGRAPHICAL  
ALTERATIONS TO PROPERTY OF HOMELAND INVESTMENT COMPANY IN DUNN  
TOWNSHIP, SECTIONS 17 AND 20**

Otter Tail County received an application for a conditional use permit involving topographical alterations involved in the grading and filling necessary to provide a road on a 172-acre parcel of land on the 20th day of September, 2006. The matter was scheduled for a public hearing before the Planning Commission on October 11, 2006. Otter Tail County received notice from the Environmental Quality Board that a citizen's petition for an Environmental Assessment Worksheet for the Homeland Investment Company project had been received. Initially at the Planning Commission hearing, the proposer, Homeland Investment Company, agreed to proceed with an EAW, however, at the County Board meeting where the matter was set on October 17, 2006, the proposer withdrew his agreement to an Environmental Assessment Worksheet.

Otter Tail County had previously reviewed a conditional use application for a cluster development on the same parcel by Homeland Investment Company entitled The Preserve at Echo Bay, which application did include an Environmental Assessment Worksheet. The County Board made a negative determination on the need for an Environmental Impact Statement, however, that decision was appealed, and the proposer subsequently withdrew the application for the cluster development.

Otter Tail County, having reviewed the evidence presented by the petitioners, the application of the proposers, having reviewed the information available to it from the application and Environmental Assessment Worksheet for the cluster development, makes the following Findings and Order:

**FINDINGS****I.**

The project is an application for a conditional use permit requesting to construct private driveways, with work to be done in two phases: Phase One - Proposed length of 8,720 feet, maximum 24 foot top, minimum 20 foot, total cubic yards proposed, 27,896—summer, 2007; Phase Two - Proposed length of 2,571 feet, maximum 24 foot top, minimum 20 foot, total cubic yards equals 582 no later than 2010, as per plans submitted on file in Land and Resource 9/20/06.

**II.**

No proposal is before the County for any other development or subdivision of land within the 172-acre parcel owned by the proposers.

III.

The petition for an EAW describes no potential environmental affects which may result from the project.

IV.

The petition contains no material evidence indicating that, because of the nature or location of the proposed project, there may be potential for significant environmental affects.

V.

Petitioners appear to be anticipating future development and raising the concerns of connected actions and phased actions, which may be considered pursuant to Minnesota Rule 4410.1000, subpart 4, in determining the need for an Environmental Assessment Worksheet. Specifically, the petition states:

. . . while no specific subdivision plan is being circulated by this developer at this point, the CUP for a road with future plans for associated subdivisions and metes and bounds property divisions will inevitably result in a large number of housing units and accompanying boat slips. The Pelican Lake Property Owners Association wants to make sure that this is not a case where the developer intends to engage in segmentation, arguing that each individual step is simply a small step and does not require environmental review. The Lake Association requests environmental review of the entire cumulative plan and reasonably anticipated developments in order to determine what level of boat traffic and/or densities should be appropriate for this 172-acre property.

VI.

The project is a routine road application with minor grading and filling in any particular location. The road proposal avoids wetlands, is laid out away from public waters and does not have the potential for significant environmental affects.

VII.

The information available to the County in a through environmental assessment worksheet, dated August 24, 2005, prepared for a proposed cluster development on the same parcel of land provides the County with extensive information about the nature of the parcel and about a road proposal substantially similar to the one before the County at this time. That information shows that the project has no potential for significant environmental affects.

VIII.

A metes and bounds subdivision of the property to five-acre parcels, each of which would be buildable as a single-family residential parcel, may be made pursuant to the Otter Tail County Subdivision Controls Ordinance with no governmental decisions or approvals being required.

IX.

Based upon all the information available to the County, including the previously completed Environmental Assessment Worksheet, and the fact that the potential number of single family 5-acre lots on the 172-acre parcel could not exceed 34 (ignoring any and all geographical limitations which may reduce the number), the project and connected or phased actions do not have the potential for significant environmental affects.

X.

A metes and bounds subdivision into five-acre parcels is exempt from the requirements of environmental review pursuant to Minnesota Rule 4410.4600.

XI.

Roads already exist on the parcel and easements could be created to authorize access. A metes and bounds subdivision could occur without the need for the conditional use permit being requested. The proposed road could serve the property whether or not it is subsequently subdivided.

XII.

A subdivision of land with greater density than a metes and bounds subdivision would require either platting or a conditional use permit for a cluster development, either one of which would require governmental decisions and could be the subject of environmental review at that time.

XIII.

Although the cover letter of the Environmental Quality Board dated October 9, 2006, purports to have sent a copy of the petition to an attorney, J. J. Cline, who has represented Homeland Investments, the representatives of Homeland Investment Company claim not to have received a copy of the petition.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Otter Tail County Board hereby denies the petition for an Environmental Assessment Worksheet pursuant to Minnesota Rule 4410.1100.

IT IS FURTHER ORDERED that an Environmental Assessment Worksheet is not needed pursuant to Minnesota Rule 4410.1000.

Dated: \_\_\_\_\_

OTTER TAIL COUNTY BOARD OF  
COMMISSIONERS

By \_\_\_\_\_  
Roger Froemming, Chair



**OTTER TAIL COUNTY BOARD OF COMMISSIONERS  
ADEQUACY DETERMINATION OF THE EIS FOR BLUE HERON BAY**

Otter Tail County is preparing an Environmental Impact Statement (EIS) on the proposal by Blue Heron Bay Land Company, LLC, a residential development on a 257 acre parcel consisting of a large peninsula, a small peninsula and an island located on Dead Lake, pursuant to Minnesota Statutes Chapter 116D and Minnesota Rules 4410.0200 through 4410.6500. Otter Tail County, having issued the Scoping Decision for the EIS on November 15, 2005, engaged a consultant, Wenck Associates, Inc. of Maple Plain, Minnesota, to prepare the EIS. The EIS has been prepared pursuant to the provisions of Minnesota Rules 4410.2000 through 4410.3100 and came before the Otter Tail County Board of Commissioners for an adequacy determination on October 31, 2005, the County Board, having reviewed the Draft EIS, the comments thereto, the Final EIS and the comments thereto.

A Draft EIS was prepared pursuant to Minnesota Rule 4410.2600, and was distributed as required. The notice of the availability of the Draft EIS was published in the EQB Monitor on July 3, 2006. An informational meeting was held and public comments were received through August 15, 2006. A press release was issued on the Draft EIS to the Fergus Falls Daily Journal on June 28, 2006. All the procedural requirements of Rule 4410.2600 relating to the Draft EIS having been met, the County proceeded to a Final EIS.

A Final EIS was completed pursuant to Minnesota Rule 4410.2700. Since only minor changes in the Draft EIS were suggested in the comments on the draft, the written comments and the responses of the County have been bound as a separate volume and circulated as the Final EIS. Copies of the Final EIS were distributed as required by Minnesota Rule 4410.2700, subpart 3, and notice of the availability of the Final EIS was published in the EQB Monitor on October 9, 2006. The County issued a press release to the Fergus Falls Daily Journal on October 6, 2006. Contents of the notices and distribution were in compliance with the provisions of 4410.2700. The County received four comment letters to the Final EIS.

REVIEW OF EIS

The Draft and Final EIS address all the potentially significant issues and alternatives raised in the Scoping Decision. Although much of the information to be included in the EIS can be found throughout the document, following is a review of the items that were to be contained in the EIS and where in the documents the information is contained:

A. An analysis of the entire 257 acre project considering the cluster development as proposed, a conventional lot and block subdivision plat, a development that is a combination of clustered residential units and traditional subdivided lots and no build alternative. This should include a study of how many lots and back lots are possible under a conventional subdivision plat alternative.

• **Addressed on DEIS pg. 3-4**

The study should include the appropriateness of the subject land for a cluster (planned unit) development pursuant to Minnesota Rule 6120-3800, subd. 2, including:

- a. Existing recreational use of the surface waters and likely increases in use associated with planned unit development;

- **DEIS Chapter 3.5 Boating Use on pg. 3-45**
    - b. Physical and aesthetic impacts of increased density;
  - **Addressed in both the DEIS and FEIS in multiple sections of the evaluation of potential impacts from the alternatives.**
    - c. Suitability of land for the planned unit development approach;
  - **DEIS Chapters 3.1 – 3.4**
    - d. Level of current development in the area; and
  - **DEIS Chapter 3.1 and Chapter 3.15**
    - e. Amounts and types of ownership of undeveloped land.
  - **FEIS Figure 3**
- B. An updated list of the permits and approvals required.

The EIS will identify all permits and approvals required for this project. While some permit application review may occur concurrently with the EIS preparation, no permits may be issued until after the EIS process is completed. Information for the following permits may be gathered concurrently with preparation of the EIS.

<b>Unit of government</b>	<b>Type of application</b>
US Army Corps of Engineers	404 wetland permit
Department of Natural Resources	Marina Permit
Department of Natural Resources	Water Appropriation Permit
Department of Natural Resources	Aquatic Plant Management Permit
Department of Health	Water Well Const. Permit
Minnesota Pollution Control Agency	Liquid Storage Tank Permit
Minnesota Pollution Control Agency	State Disposal System Permit
Minnesota Pollution Control Agency	Sanitary Sewer Ext. Permit
Minnesota Pollution Control Agency	Storm Water General Permit for Construction Activities
Otter Tail County	Cluster Development Conditional Use Permit, including confirmation of classification for use as cluster development under county shoreland management ordinance
Otter Tail County	Plat Approval
Otter Tail County	Wetland Mitigation Plan, WCA Permit
Otter Tail County	Sewage System Permit
Otter Tail County	Grading and Fill Permits
Otter Tail County	Site Permits

The following is a list of permits for which a record of decision will be required:

<b>Unit of government</b>	<b>Type of application</b>
Otter Tail County	Cluster Development Conditional Use Permit, including confirmation of classification for use as cluster development under county shoreland management ordinance
Otter Tail County	Plat approval

- **DEIS Chapter 2.0**
  - C. A study of the nitrate levels on the property and the impact development would have on the ground water and discharge into the lake.
- **DEIS Chapter 3.2 and FEIS discuss groundwater and nitrates**
  - D. Up-to-date aquatic vegetation maps, including references to vegetation of special significance as fisheries habitat, waterfowl habitat and non-game bird species.
- **DEIS Chapter 3.7 – Section 3.9 and Figure 3-21**
  - E. Updated information from the Minnesota Department of Natural Resources Natural Heritage Program, which shall include information on any species known to inhabit the property or found in the lake approximate to the property that is listed by the state or federal government as endangered; threatened or of special concern, a description of how the species would be affected by the project and a description of measures that will be taken to minimize adverse impacts.
- **DEIS Appendix E and Chapter 4.5**
  - F. Current and historic lake elevations tied to a common benchmark. This should include the date the outlet was constructed and any pre-outlet elevations, if known.
- **DEIS Chapter 3.6 pg. 3-53 and 3-59**
  - G. Historic information on coverage of aquatic vegetation based on a review of past aerial photography and a review of Department of Natural Resources and United States Fish and Wildlife Service lake data. This should include as much information as possible about fluctuation in wild rice and other aquatic vegetation important to waterfowl.
- **DEIS Chapter 3.7 pg. 3-59 and 3-63**
  - H. Historic information about shoreline development, based on county records and aerial photography.
- **DEIS Chapter 3.15, pg. 3-89 and Figure 3-3**
  - I. Current and historic waterfowl use, (spring, summer and fall) and waterfowl management of Dead Lake, based upon Department of Natural Resources and United States Fish and Wildlife Service records, and including information on specific high value aquatic vegetation, if available. Information about applying the Federal Migratory Waterfowl Feeding and Resting law to Dead Lake.

- **DEIS Chapter 3.9 pg. 3-74**
- **General sentence about Fed. Migratory Waterfowl Feeding and Resting Law on pg. 3-77.**
  - J. Description of the Dead Lake Fishery, including description of sensitive habitats and any available angler use data.
- **DEIS Chapter 3.8 pg. 3-70**
  - K. More information should be provided on the referenced forestry plan, including a comparison of the alternatives with regard to the removal of trees, or other terrestrial vegetation, and when mitigation techniques will be used.
- **DEIS Section 4.1 – Forestry Mitigation. Also addressed in the FEIS Section 3.9.**
  - L. The extensive shallow water areas of Dead Lake should be considered in this analysis.
- **DEIS covers this in multiple chapters and sections. The FEIS also specifically addresses shallow bay impacts and cumulative impacts.**
  - M. Information about wells not identified in the EAW that may be found on the property, if any.
- **DEIS Chapter 3.2**
  - N. Identification of projected boat density and impacts associated with the project and boat use on Dead Lake. The boating density study needs to account for the unique features of Dead Lake, including its shallow nature, dense emergent vegetation patches and dense submergent vegetation, the affect of travel routes and boat locations, the disruption of bottom sediments from propeller and other turbulence, the potential for increased turbidity, weakening of rooted aquatic vegetation, the affect of increased boat activity an phosphorous levels, the impact on water birds, including nesting, the potential for long distance travel to and from the proposed facilities and the types of boats to be docked and used at the various facilities. The study should include appropriate mitigation techniques that can be applied to the project, and should include a comparative study of the different alternatives.
- **DEIS Chapter 3.5 and addressed throughout the document where the evaluation of alternatives is discussed. FEIS also includes additional discussion on boating impacts as part of Chapter 3 - Expanded Responses to Comments.**
  - O. An analysis of surface water runoff The EIS should include identification of all proposed rain gardens (three are identified in the text of the EAW, but only two are shown on maps), the impacts upon wetlands on the parcel, and potential for surface water runoff to the lake.

- **DEIS Chapter 3.3 – Wetlands and Storm water Runoff. Two rain gardens are proposed for Alternative 1. FEIS further addresses comments pertaining to wetlands and storm water management.**
  - P. A discussion of the environmental effects of waste water treatment from the project including the potential for nutrient flow, including nitrogen, from the wastewater treatment system into the lake through ground water. This part of the Environmental Impact Statement should discuss potential impacts to aquatic habitats, if any, from this affect.
- **DEIS Chapter 3.4 includes discussion on community waste water treatment and individual sewage treatment systems.**
- **FEIS Section 3.1.4 discusses the potential impacts from wastewater treatment.**
  - Q. A clarification of the lake level for calculations made for storm water analysis, wetland impacts and boating impact on the lake. The Environmental Impact Study needs to take into account ground water test results, including the nitrate levels in the ground water, their impact on the use of wells on the property and appropriate mitigation techniques.
- **FEIS Response to Comments: 2.1.8 – Houston Engineering, Comment #4 regarding lake level elevation.**
- **DEIS Chapter 3.2 discusses groundwater, wells, and nitrates. The FEIS includes discussion of groundwater, wells, and nitrates in Chapter 3 - Expanded Responses to Comments.**
  - R. Information about any existing solid waste, hazardous waste or storage tanks not identified in the EAW that may be found on the property, if any.
- **DEIS Chapter 3.11, no solid waste, hazardous waste or storage tanks were found on the property.**
  - S. A comparison of the increase in traffic resulting from the alternatives, with specific consideration to the inadequacy of and the impact on 370th Street and Murray Road.
- **DEIS Chapter 3.12 and FEIS Chapter 3 - Expanded Responses to Comments regarding impacts to the WMA and MSU property.**
  - T. A description of mitigation measures to be utilized to manage odors, noise and dust associated with the project, particularly during the construction phase.
- **DEIS Chapter 3.14 discusses odors, noise, and dust and appropriate mitigation strategies.**
  - U. An additional phase one archaeological study, and the phase two or phase three studies required by any appropriate site discoveries. Any discoveries of Native American sites will also require documentation and consultation with federally recognized Native American tribes.

- **DEIS Chapter 3.10, DEIS Appendices F, L, and M, and FEIS Chapter 3 – Archaeological Response.**

V. A description of mitigation measures to be utilized to manage lighting impacts associated with the project.

- **DEIS Chapter 3.13, DEIS Figures 4-1 and 4-2, FEIS Chapter 3 - Expanded Responses to Comments.**

### **ECONOMIC, EMPLOYMENT AND SOCIOLOGICAL IMPACTS**

The EIS shall evaluate the local economic and sociological impacts of the project and/or major alternatives.

- **DEIS Chapter 3.15**

#### REVIEW OF COMMENTS TO DEIS

The Final EIS includes Appendix 2, which is actual copies of the comment letters to the Draft EIS identifying by number the substantive comments. The comments are included in the EIS. The Final EIS includes responses to all of the substantive comments on pages 2-1 through 3-31.

#### REVIEW OF COMMENTS TO FEIS

The County received four comment letters to the Final EIS. The actual letters are part of the record in this matter and available to the County in making its decision on the conditional use permit application. A summary of the comments, and responses thereto, is as follows:

#### **Dead Lake Association (DLA)**

1. Commends County for accurately identifying substantive comments.
2. Feels the reduction in homes and boat slips was not adequately addressed as a mitigation measure in the FEIS and requests that this measure receive “appropriate and equal consideration” in the decision-making process.

Although the reduction in homes and boat slips was not specifically analyzed as a mitigation measure, the DEIS states that the magnitude of impact(s) is in many ways tied to that frequency or intensity of an occurrence (number of homes or boat slips), a form of mitigation would be a reduction in the number of homes and boat slips/docks for either Alternative 1 or 2 or a combination of cluster and lot-block developments. This statement is made at the beginning of the mitigation chapter and is carried forward as an underlying theme through the rest of the mitigation measures.

Alternative 1 provides a maximum number of homes and boat slips that would potentially be built, and Alternative 2 consists of a smaller number of homes and boat slips. Each alternative was analyzed for potential impacts. This information can be used as a basis for decisions during the permitting process for determining the number of homes and/or boat slips that would be appropriate for the project site. At the DLA’s request, the reduction of occurrences could be considered during the local permit process as a mitigation measure.

3. The DLA supports the DNR comment to “discuss the mitigation measures that are not chosen and the potential consequences of not adopting them.” The DLA does not think there is enough information in the FEIS regarding this and that the County will not be able to adequately evaluate the consequences of not adopting certain measures during the CUP process.

The EIS provided basic information on a range of mitigation measures and strategies that could be used to avoid and minimize potential environmental impacts. Prior to the final project design, the County can narrow down the list of mitigation measures identified in the EIS, so appropriate mitigation measures can be selected. This will allow the County to determine how mitigation measures could effectively be used individually and/or in different combinations to address certain impacts associated with the project. This evaluation could also include the potential consequences of not adopting a particular mitigation measure.

4. The DEIS and FEIS do not adequately address the level and significance of potential impacts from boating associated with the preferred alternative. Also concerned that proposed mitigation strategies will not be strictly enforced.

The DEIS and FEIS identified potential boating impacts based on available data and information. From the data and analysis, it is evident that where boats travel in shallow areas, there will be destruction of vegetation, resuspension of sediments, and damage to and/or loss of fishery, wildlife, and waterfowl habitat.

The mitigation measures described in the EIS provide strategies for minimizing these impacts through buoyed access channels, no-wake or no-motor zones, and other means. Implementation of these strategies will require coordination and cooperation between the County, local and state law enforcement agencies, the lake association, residents at the development, and the general public using the lake. Implementation may require changes in existing ordinances or creating a water surface use ordinance for the lake. It may require conditions imposed during the permitting process for the proposed project, such as where boat slips and marinas may be located. It may also require educating boaters on Dead Lake about shallow bay ecosystems and prevention of impacts to these areas.

5. Requests clarity for the Mitigation Summary Table in Section 1.4 since it “sets the foundation for future permits.” Requests that the table include all mitigation strategies proposed in the DEIS and FEIS.

The Mitigation Summary Table is intended to provide an at-a-glance outline of the mitigation measures included in Chapter 4 of the DEIS. Those measures labeled as proposed indicate that a particular mitigation measure is being proposed as part of the alternative listed. Those mitigation measures labeled as applicable indicate that the particular mitigation measure is not being proposed as part of the alternative, but could be used to avoid or minimize impacts. The table is not intended to be a legal basis for permitting. Further evaluation of mitigation measures will need to occur during the permitting process. This will result in greater detail for what the appropriate mitigation measures will be and how they will be implemented.

6. Concerned that key components of the preferred alternative had not been finalized at the time the FEIS was prepared, which does not allow the accurate assessment of potential impacts from the preferred alternative.

Although the preferred alternative (Alternative 1) had not been finalized at the time the EIS was prepared, the EIS examines a high (138 units in Alt. 1) and a low (58 Units in Alt. 2) number of homes that may be built for the project. The project plans used for analysis in the EIS also provide street alignments, marinas, and other facilities. This provided the data and information needed to complete an analysis of the project alternatives. Typically, the project design is not finalized before completing the EIS.

As long as the proposed final project design falls within the limits of Alternative 1 and 2, then identified mitigation measures for Alternatives 1 and 2 could be applied. The information provided in the Draft EIS could still be reasonably applied to a proposed final project design.

Through the conditional use permit process, a public hearing will be held. The planning commission will determine whether to deny the permit request or approve the permit request with certain conditions imposed on the project design and operation. This will allow the County the opportunity to work with the developer to modify the project design as necessary to avoid and minimize impacts to the environment.

7. Requests that the County's final environmental determination include reference to no dredging as part of the project and require an environmental review if dredging is included later.

No dredging is proposed. It would require DNR review and approval. The comment is noted and will be taken under advisement during the permitting processes.

8. References Aug. 15 comment letter regarding the DLA request for additional and updated information regarding wetland impacts and stormwater management. Cites EQB guidance regarding how to address physical impacts to water resources and surface water runoff. Believes the FEIS is inadequate regarding this given the "sensitive nature of the surrounding area." Requests that the County disclose the actual wetland impacts (including hydrological impacts and updated wetland delineation) associated with the preferred alternative and pertinent data regarding the stormwater management system.

As indicated in the FEIS response to comments, identified as DLA comments #34 and #35, EIS level review does not provide the detail that is being requested by the DLA. As part of the final project design layout, a detailed storm water management plan can be completed. In addition, a final project design will allow a more detailed evaluation of potential wetlands impacts and the creation of a wetlands mitigation plan. Wetland losses will be mitigated. The final mitigation area will be selected in accordance with the provisions of the Wetland Conservation Act (WCA), the Otter Tail County Shoreland Management Ordinance and the recommendations of the Technical Review Panel of Otter Tail County.

9. Requests clarity on how the mitigation measures tied to a homeowners' association will be implemented and managed, since an HOA does not have legal enforcement authority. Also requests that the County carry forward mitigation strategies in the EIS process into the permitting process.

Homeowners' associations (HOAs) are usually setup as non-profit corporations, consisting of a board of directors, which hold regular meetings, take minutes, and have annual budgets. HOAs are typically established to maintain a certain standard quality in a development in order to keep property values as high as possible.

Typical restrictions enforced by a HOA include paint colors, types of lighting, landscape designs, number and types of vehicles, and garage size and location. Not as typical are restrictions related to the number or type of boats, type of dock materials used, shoreline vegetation required, etc. Residents wanting to do something outside of the HOA restrictions would seek a variance through the HOA board through a public hearing process. An additional function of a HOA is to collect dues to operate and maintain common areas and facilities. In the case of proposed BHB project, this may include operation and maintenance of a centralized wastewater treatment system and the care of designated open spaces, for example.

Through the establishment of bylaws, the HOA can require automatic membership for residents, which may also include liens being placed on an individual's property if they fail to pay their dues.

Comment noted regarding carrying forward the EIS mitigation strategies, which will be taken under advisement during the permitting process.

10. Ready to work with the County, developer and key stakeholders on the project.

Comment noted.

### **Minnesota DNR**

1. States that the EIS meets the Minnesota Environment Policy Act adequacy requirements in Minnesota Rules.
2. The DNR further states that it will work with the County and others to implement the various mitigation measures in the EIS through the Conditional Use permitting process.

### **Donna Peterson**

1. Indicates the EIS was prepared poorly. Uses the Dead Lake and Lake Christina comparison as an example of the inadequacies of the EIS.

The EIS is intended to provide a factual basis for future decisions regarding the proposed project. The Dead Lake and Lake Christina comparison table provides information about the physical characteristics of the two lakes as identified by DNR. Additional information in the FEIS indicates that over half of Dead Lake is less than 10 feet deep. All of this information can be used to assist decision-makers with their conclusions about a proposed project and with decisions on any permitting that may occur for the project.

### **Gary Ruehmann**

1. Recognizes that lighting design criteria can be part of the CUP and stresses that it should be included. Also encourages the County Commissioners to establish a way to address future lighting issues in the County.

The EIS provides information that can be used in the conditional use permit process to address lighting issues in the final project design. The comment is noted and will be taken under advisement. Regarding future lighting issues, the EIS provides information that can be used by the County when it is ready to explore options for addressing lighting issues associated with potential future developments.

CONCLUSIONS

1. The Final EIS addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can reasonably be obtained has been analyzed in conformance with Minnesota Rule 4410.2300, Items G and H.

2. The Final EIS provides responses to the substantive comments received during the Draft EIS review concerning issues raised in the scoping.

3. The EIS was prepared in compliance with the procedures of Minnesota Statutes Chapter 116D and Minnesota Rules 4410.0200 to 4410.6500, records of which are on file with the Office of Land and Resource Management.

NOW, THEREFORE, IT IS HEREBY DETERMINED that the EIS for Blue Heron Bay is adequate.

Notice of this determination shall be provided to all persons receiving copies of the final EIS pursuant to Minnesota Rule 4410.2700, subpart 3, within five days of the decision and shall be published in the EQB Monitor.

Dated: \_\_\_\_\_

OTTER TAIL COUNTY BOARD OF COMMISSIONERS

By \_\_\_\_\_  
Roger Froemming, Chair