



**OTTER TAIL COUNTY BOARD OF COMMISSIONERS
NEGATIVE EIS DECLARATION FOR BLUE HERON BAY**

A public hearing was held on December 11, 2002, on the Blue Heron Bay project proposed by the R. Murray Partnership, LLP. After consideration of the public comments, the Planning Commission decided to table the project until the mandatory Environmental Assessment Worksheet (EAW) was completed.

At a public meeting held on March 19, 2003, the Otter Tail County Planning Commission considered the need for an Environmental Impact Statement prior to further action concerning the project known as Blue Heron Bay.

The Planning Commission had received written comments during the comment period and provided a summary to those in attendance. The Planning Commission heard additional comments from Jim Erickson, Denny Johnson, Doug Martin, Eric Hansen, Dean Sather, Bill Peterson, Spencer Schram, Paul Swenson and James Morken.

Planning Commission members present at the hearing were Bert Olson, Chairman, Robert Schwartz, Leona Zimmerman, Linda Bergerud, David Trites, Frank Lachowitz, Richard Sha, Joe Maske, Rod Boyer and Les Estes. Bill Kalar, Marsha Bowman and Joyce Thompson of the Office of Land and Resource Management were present, as were David J. Hauser and Barbara R. Hanson of the Otter Tail County Attorney's Office.

Based on all of the information received during the comment period and on observation made by Planning Commission members, the Otter Tail County Planning Commission made Findings of Fact and a Recommendation that an Environmental Impact Statement on the Blue Heron Bay project was neither necessary nor required and that a negative declaration should be ordered.

On March 25, 2003, the Otter Tail County Board of Commissioners reviewed the Findings of Fact and Recommendation of the Planning Commission. The Board heard additional comments from Jim Erickson, a representative of R. Murray Partnership, LLP; Charles Krekelberg, an attorney for the Dead Lake Association; Spencer Schram, Dead Lake Association; Robert Russell, attorney for R. Murray Partnership, LLP; Gary Reuhmann; Ernie West, Dead Lake Township; and Leona Zimmerman, Dick Sha, and Joe Maske, Otter Tail County Planning Commission.

The Otter Tail County Board of Commissioners, having reviewed the Recommendation of the Planning Commission, having reviewed the documents submitted into the record, and being fully advised in the premises, makes the following Findings of Fact and Order:

FINDINGS OF FACT

I.

An Environment Assessment Worksheet (EAW) was prepared on behalf of Otter Tail County for Blue Heron Bay pursuant to mandatory categories in Minnesota Rules 4410.4300, Subpart 19A - Residential Development and Subpart 36A - Land Conversion.

II.

The EAW was filed with the Environmental Quality Board and a notice of availability was published in the EQB Monitor on February 3, 2003. A copy of the EAW was sent to all persons on the EQB distribution list and a copy was available for review in the Otter Tail County Offices.

III.

The 30-day EAW public review and comment period began on February 3, 2003 and ended on March 5, 2003.

IV.

The EAW, the comment letters received, a report from the Dead Lake Association, and the Response to Public Comments by the developer are incorporated by reference into this record of decision on the determination of the need for an Environmental Impact Statement.

V.

The proposed project is a mixed residential community and recreational club. Information contained in Items 1-10 in the EAW describing the Project Title, Proposer, Designated RGU, Reason for the EAW, Project Location, Description of the Project, Project Magnitude, Permits and Approvals, Land Use and Cover Types is accurate and complete.

VI.

R. Murray Partnership made several amendments to the proposed project to mitigate potential environmental impacts. The amendments include:

- a. Reducing the density of the Development to 139 units
- b. docking spaces will be limited to the number of units (139)
- c. eliminating the stormwater pond proposed in Wetland I
- d. adopting the no wake and buoyed channel recommendations of the Department of Natural Resources (DNR) for motor boat mitigation
- e. some of the docking facilities in the east bay will be limited to small boats, canoes and paddle boats
- f. adopting the recommendations of the DNR on the eagles' nest.

VII.

The Otter Tail County Planning Commission and County Board of Commissioners have reviewed the project according to the criteria set forth in Minnesota Rule Chapter 4410.1700 Subp 7.

- a. type, extent, and reversibility of environmental effects;
- b. cumulative potential effects of related or anticipated future projects;
- c. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and
- d. extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EIS's.

VIII.

The project, as revised, meets the maximum density requirements of the County Shoreland Management Ordinance. Cluster development minimizes the potential impacts of the project. Otter Tail County has the ability to mitigate the environmental effects through its regulatory authority. Based on the description of the project, no issues are identified that have the potential for significant environmental effects.

IX

The main peninsula, which is the location of the project, is particularly suitable for a cluster development. A cluster development is less likely to pose any significant environmental problems than developing individual lots, and is subject to greater control and regulation.

X.

That there is "additional real estate," as defined in the proposal, adjacent to the main part of the development. Although the additional real estate may support limited development, it is suitable to be part of the project. The determination as to the number of units the project can support is subject to the conditional use permit process.

XI.

The form of ownership and management of the property are not particular environmental issues. The development will be subject to a conditional use permit.

XII.

The proposed vacation of the township road poses no potential for significant environmental effects. The construction of any new road does not pose any potential for significant environmental effects and would be subject to the conditional use permitting process.

XIII.

The project is in a shoreland area of a natural environment lake, and the standards for the cluster development will be subject to standards designed for a natural environment lake.

XIV.

The project is a large one, however, the parcel is large, suitable for development, and will be subject to the conditional use process and rules relating to cluster developments. Some variances are being requested with regard to the height of barns; the number, size and location of water oriented accessory structures; and the number of dock spaces. Approval would be necessary both through the conditional use process and the variance process. With the volume of information available, appropriate conditions can be imposed to prevent any potential significant environmental effects.

XV.

The Otter Tail County Shoreland Management Ordinance does have a provision indicating that subdivisions must not be approved that are designed so that variances from one or more of the standards and official controls are needed. This will have to be taken into consideration in the conditional use permit and variance processes, however, property owners have a right to request variances. Variance requests can be denied.

XVI.

That the parcel could potentially support approximately 73 lake lots and 14 back lots if it was not developed as a cluster development. If developed as individual lots, the parcel could have as many water-oriented accessory structures as lake lots and the potential for an unregulated number of docks.

XVII.

The proposed commercial uses are subject to conditional use permits and do not create the potential for significant environmental effects.

XVIII.

Based on the substantial benefits of the proposed wastewater system, no issues are identified that would result the potential for significant environmental effects. Further, ongoing regulatory authority of the MPCA and the County mitigates the impacts from the wastewater system. Based on the description of the project, no issues are identified that have the potential for significant environmental effects.

XIX

Any wells on the property are subject to the regulation of the Minnesota Department of Health and do not pose a potential for significant environmental effects.

XX.

The project is located near the Dead Lake Wildlife Management Area and Moorhead State University's 80-acre research facility. This location may be considered as part of the permitting process, and does not create a potential for significant environmental impact.

XXI.

Dead Lake has significant shallow areas with muddy bottoms and emergent vegetation, including areas off shore to the project. A cluster development has less potential for environmental effects than single lot development. The impact on the lake can be mitigated by limiting the number, location and type of docking facilities. Based on the Shoreland Management Ordinance, up to 102 boat slips could be authorized if the "additional real estate" is not included in the calculation; 116 if the "additional real estate" is included.

XXII.

Implementing the boating recommendations of the DNR will prevent any significant adverse effects that could result from the proposed development. Otter Tail County and the DNR have the ability to mitigate the environmental effects of boating through their ongoing regulatory authority. Based on the description of the project, no issues are identified that have the potential for significant environmental effects.

XXIII.

As with any development, there will be some displacement of wildlife, however, the project includes open space and there are large acreages of protected lands nearby. There are nesting sites in the location of the development, the impact of which can be limited by the timing of construction. The developer has agreed to follow DNR recommendations regarding a bald eagle nest.

XXIV.

The proposed wetland impacts are primarily for roads accessing the site and are determined to be unavoidable. Wetland impacts are very minor and will be mitigated through the Minnesota Wetland Conservation Act (WCA) process. The project encompasses the avoidance, minimization and replacement sequencing as required by WCA. Based on the description of the project, no issues are identified that have the potential for significant environmental effects.

XXV.

Implementing the recommendations of the DNR, adherence to the MPCA stormwater permit and practices proposed at Blue Heron Bay will prevent any significant adverse impacts that will result from the proposed development. Otter Tail County, MPCA and the DNR have the ability to mitigate the environmental effects of erosion and sedimentation through their ongoing regulatory authority. Based on the description of the project, no issues are identified that have the potential for significant environmental effects.

XXVI.

The impact of stormwater from construction activities is very minor because sediment control practices will be applied; stormwater runoff from building sites will be contained onsite and there will be no discharge of stormwater from construction activities to the lake. Blue Heron Bay will be a phosphorus free community. Based on the description of the project, no issues are identified that have the potential for significant environmental effects.

XXVII.

The project does not involve the dredging of marinas, and any dredging would have to be the subject of permitting from the Department of Natural Resources.

XXVIII.

Erosion control during construction will be addressed as part of the conditional use and site permit process. The development of this land does not give rise to potential for significant environmental impacts relating to fertilizer or chemicals. The project as designed would have less impact than individual lots, and would have minor impact compared with the total watershed of the lake. Based on the description of the project, no issues are identified that have the potential for significant environmental effects.

XXIX.

The soils in the area are known and identified in the county soil survey. Also, any sewage system would be subject to percolation testing and MPCA and County permitting. Based on the soil properties of the site, no issues are identified that would result the potential for significant environmental effects.

XXX.

Burned debris on the property is subject to proper disposal pursuant to solid waste regulation, as will be all the other solid waste generated within the development. Fuel and other hazardous materials are subject to proper storage regulations, and do not cause a potential for significant environmental effect.

XXXI.

There is no potential for significant environmental impacts from traffic generated by the proposed development.

XXXII.

Visual impacts on the lake do not create any potential for significant environmental effects and are subject to the conditional use permit process.

XXXIII.

The impact on infrastructure and public services does not create any significant environmental concerns.

XXXIV.

There is no evidence that archeological properties are present that would be diminished by the proposed project. The state archaeologist has been notified of potential sites within the development. Any others found would have to be reported. Based on the description of the project, no issues are identified that have the potential for significant environmental effects.

XXXV.

The county has sufficient information to make environmentally sound permitting decisions regarding the project.

XXXVI.

The project does not have potential for significant environmental effects, any potential environmental effects can be addressed by the permitting process.

CONCLUSIONS

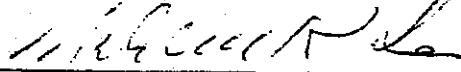
1. Otter Tail County has fulfilled the procedural requirements of law and rule applicable to the need for an Environmental Impact Statement for the proposed Blue Heron Bay project.
2. There are no elements of the project that pose the potential for significant environmental effects.
3. There are adequate and appropriate state and local regulations governing the activities of this project that will limit and control environmental effects.

ORDER

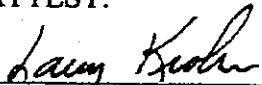
NOW, THEREFORE, IT IS HEREBY ORDERED that a negative declaration is hereby made, no Environmental Impact Statement is required.

Dated: April 1, 2003

OTTER TAIL COUNTY BOARD OF COMMISSIONERS

By 
Malcolm Lee, Chairman

ATTEST:


Larry Krohn, Clerk

