

In the Otter Tail County Board of Commissioners

**SCOPING DECISION
FOR THE EIS FOR BLUE HERON BAY**

The Otter Tail County Board of Commissioners, having previously issued a negative determination as to the need for an Environmental Impact Statement for the Blue Heron Bay project on April 1, 2003, and the Minnesota Court of Appeals in a decision filed February 1, 2005, remanded the matter to the County for preparation of an Environmental Impact Statement. The Otter Tail County Board of Commissioners issued a draft Scoping Decision in County Board Resolution #2005-53, pursuant to Minnesota Rule 4410.2000, subp. 3.B., which draft Scoping Decision was published in the EQB Monitor on September 26, 2005, with a 30-day comment following. The Board of Commissioners, having received comments and having held a public meeting for comments on October 11, 2005, and the County Board having fully examined each of the issues originally raised in the Environmental Assessment Worksheet, makes the following Scoping Decision:

INTRODUCTION AND PURPOSE

Otter Tail County is preparing an Environmental Impact Statement (EIS) on a proposal by Blue Heron Bay Land Company LLC (the "developer") for a residential development for a 257-acre parcel consisting of a large peninsula, a small peninsula and an island located on Dead Lake.

DISCUSSION

1. The project title is Blue Heron Bay.
2. The proposer was R. Murray Partnership, LLP., and is now Blue Heron Bay Land Company, L.L.C.
3. The responsible governmental unit is Otter Tail County.
4. That an Environmental Assessment Worksheet was mandatory pursuant to Minnesota Rules 4410.4300, subp. 19.A. and subp. 36.A.
5. The project is located in Sections 19, 20, 29 and 30 in Dead Lake Township in the County of Otter Tail.
6. That the description of the proposed project was a transformation of a 257-acre peninsula and island on Dead Lake into a mixed residential community and recreational club. The cluster development originally proposed include 151

seasonal and permanent residential housing units, a general store, restaurant, two swimming pools, marina, common mooring facilities and an access road.

The Environmental Impact Statement shall include: 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 a no build alternative. This should include a study of how many lots and back lots are possible under a conventional subdivision plat alternative. 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;
 - b. Physical and aesthetic impacts of increased density;
 - c. Suitability of land for the planned unit development approach;
 - d. Level of current development in the area; and
 - e. Amounts and types of ownership of undeveloped land.
7. The magnitude of the project was properly described in the Environmental Assessment Worksheet.
 8. The known local, state and federal permits were described in paragraph 8 of the Environmental Assessment Worksheet. However, because of some changes to the original plans and the passage of time, the list of permits and their current status have changed.

The Environmental Impact Study shall include: An updated list of the permits and approvals required.

9. The project site had formerly been used as two farm sites. The existence of nitrates have been found in the ground water. Adjacent to the project site are the Dead Lake Wildlife Management Area and a Minnesota State University—Moorhead research facility.

The Environmental Impact Study shall include: A study of the nitrate levels on the property and the impact development would have on the ground water and discharge into the lake.

10. The cover types are described in the Environmental Assessment Worksheet.

11. Fish, wildlife, vegetation and ecologically sensitive areas may be impacted by the project.

The Environmental Impact Study shall include:

- a. Up to date aquatic vegetation maps, including references to vegetation of special significance as fisheries habitat, waterfowl habitat and non-game bird species.
- b. Updated information from the Minnesota Department of Natural Resources Natural Heritage Program. Information on the impact on existing wildlife, including American bald eagle, blue herons, or endangered or threatened species on land and in water.
- c. 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.
- d. 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.
- e. Historic information about shoreline development, based on county records and aerial photography.
- f. 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.
- g. Description of the Dead Lake Fishery, including description of sensitive habitats and any available angler use data.
- h. 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.
- i. The extensive shallow water areas of Dead Lake should be considered in this analysis.

12. There will be physical impacts on water resources resulting from surface water management as discussed in paragraph 17. Wetlands in the project are subject to protection under the Wetlands Conservation Act.
13. Water use on the property was adequately reported in the Environmental Assessment Worksheet. Any wells on the property are subject to regulation of the Minnesota Department of Health and do not pose a potential for significant environmental affects.

The Environmental Impact Study shall include: Information about any existing wells on the property, which may need to be sealed, and the impact of planned wells.

14. The property is within the area regulated by the Otter Tail County Shoreland Management Ordinance, being within 1,000 feet of a classified lake and is subject to the regulations outlined in the ordinance.
15. The project will change the number or type of watercraft on Dead Lake.

The Environmental Impact Study shall include: 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 on 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.

16. The Environmental Assessment Worksheet describes the erosion and sediment control methods to be used during and after the project construction.
17. The project will alter the natural topography of land resulting in a need for surface water runoff plans.

The Environmental Impact Study shall include: 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.

18. The Environmental Assessment Worksheet accurately describes the waste water system which requires a permit from the Minnesota Pollution Control Agency.

The Environmental Impact Study shall include: 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 effect.

19. In addressing geological hazards and soil conditions, the EAW assumed the groundwater was at the same elevation as the lake at 1326. Drawings presented in the EAW indicate a water elevation of 1322.5. Measured lake levels from the Minnesota Department of Natural Resources range from a lowest recorded elevation of 1325.53, and an average elevation of 1327.58, and a highest record elevation of 1328.41. The Minnesota Department of Natural Resources designated ordinary high water level is 1327.1.

The Environmental Impact Study shall include: 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 and appropriate mitigation techniques.

20. The Environmental Assessment Worksheet describes solid wastes, hazardous wastes and storage tanks as they affect the property. All are subject to regulations and do not cause a potential for significant environmental effects.

The Environmental Impact Study shall include: Identification of any existing solid waste, hazardous wastes or storage tanks which may be presently on the site.

21. The Environmental Assessment Worksheet generally describes the traffic situation adequately. However, there may be an increase in traffic.

The Environmental Impact Study shall include: 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.

22. The Environmental Assessment Worksheet provides adequate information regarding vehicle related air emissions, and the project does not pose potential for significant environmental impacts.

23. There are no regulated stationary sources of air emissions proposed for the project. There is no potential for significant environmental impacts relating to stationary source air emissions.

24. The Environmental Assessment Worksheet adequately describes odors, noise and dust, and there is no potential for significant environmental impacts relating to these matters.

The Environmental Impact Study shall include: More information about odors, noise and dust during construction phases of the project.

25. The Environmental Assessment Worksheet identified that a phase one archaeological reconnaissance was prepared for the project and included excerpts of the study. The Office of the State Archaeologist questioned the methods and reporting of the study.

The Environmental Impact Study shall include: 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.

26. Visual impacts are adequately described in the Environmental Assessment Worksheet and do not create any potential for significant environmental effects.

The Environmental Impact Study shall include: More information from the proposer on the plans for lighting of the project.

27. The project is compatible with and subject to land use regulations, including the County Shoreland Management Ordinance and Sanitation Code, as well as any applicable state and federal regulations.

28. Impact on infrastructure and public services does not create any significant environmental concerns.

29. The project is not tied to any other development, existing or proposed, on Dead Lake.

30. There are no other potential environmental impacts.

NOW, THEREFORE, the scope of the environmental impact study shall include:

EIS CONTENTS

This section of the scoping document outlines the items to be contained in the Blue Heron Bay Project EIS. In accordance with Minn. R. 4410.2300, the EIS shall be prepared in a prescribed/standard format and will include: a brief project description; an updated list of governmental approvals; evaluation of alternatives; and evaluation of environmental impacts; economic impacts and mitigative measures. The major issues listed below emerged during the draft scoping process, and will be addressed by the draft EIS in the appropriate sections.

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 a no build alternative. This should include a study of how many lots and back lots are possible under a conventional subdivision plat alternative. 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;
- b. Physical and aesthetic impacts of increased density;
- c. Suitability of land for the planned unit development approach;
- d. Level of current development in the area; and
- e. Amounts and types of ownership of undeveloped land.

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:

<u>Unit of government</u>	<u>Type of application</u>
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:

<u>Unit of government</u>	<u>Type of application</u>
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

- 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.
- D. Up to date aquatic vegetation maps, including references to vegetation of special significance as fisheries habitat, waterfowl habitat and non-game bird species.
- E. Updated information from the Minnesota Department of Natural Resources Natural Heritage Program. Information on the impact on existing wildlife, including American bald eagle, blue herons, or endangered or threatened species on land and in water.
- 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.
- 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.
- H. Historic information about shoreline development, based on county records and aerial photography.
- 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.
- J. Description of the Dead Lake Fishery, including description of sensitive habitats and any available angler use data.

- 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.
- L. The extensive shallow water areas of Dead Lake should be considered in this analysis.
- M. Information about any existing wells on the property, which may need to be sealed, and the impact of planned wells.
- 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 on 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.
- 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.
- 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.
- 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 and appropriate mitigation techniques.
- R. Identification of any existing solid waste, hazardous wastes or storage tanks which may be presently on the site.

- 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.
- T. More information about odors, noise and dust during construction phases of the project.
- 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.
- V. More information from the proposer on the plans for lighting of the project.

ECONOMIC, EMPLOYMENT AND SOCIOLOGICAL IMPACTS

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

TENTATIVE EIS SCHEDULE

(The County will endeavor to follow the following schedule, however, it is understood that it may not be possible due to the availability of consultants to work with the County and need for gathering additional information. In any event, the County will not exceed the time limits required pursuant to the Minnesota Rules.)

Final Scoping Decision issued.....November, 2005
 Release of Draft EIS; public meeting.....January/February 2006
 Final EIS issued.....March 2006
 EIS Adequacy Determination.....April 2006

Dated: _____

**OTTER TAIL COUNTY BOARD OF
 COMMISSIONERS**

 Robert Block, Chair