



City of Duluth
Planning Division

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MEMORANDUM

DATE: January 4, 2018
TO: Duluth City Planning Commission
FROM: Keith Hamre, Director of Planning and Construction Services
SUBJECT: Environmental Assessment Worksheet (EAW) for Kayak Bay Village (PL 17-085)

The purpose of this memo is to provide background and staff recommendation regarding Planning Commission action on the Kayak Bay Village. The 30-day public comment period for the EAW was from October 30 to November 29, 2017. The comments received during the public comment period, and the responses, are attached to this memo. At the January 9, 2018 meeting, the Planning Commission, as the Responsible Governmental Unit (RGU), is to make a determination on the need for an Environmental Impact Statement (EIS).

What is the purpose of the environmental review process?

The Minnesota Environmental Policy Act of 1973 established a formal process for reviewing the environmental impacts of major development projects. The purpose of the review is to provide information to units of government on the environmental impacts of a project before approvals or necessary permits are issued. After projects are completed, unanticipated environmental consequences can be very costly to undo, and environmentally sensitive areas can be impossible to restore. Environmental review creates the opportunity to anticipate and correct these problems before projects are built. The process operates according to rules (legally binding regulations) adopted by the EQB, but it is carried out by a local governmental unit or state agency (which is termed the RGU, for Responsible Governmental Unit). The Duluth City Planning Commission is the RGU for the City of Duluth. The primary role of the EQB is to advise local units and state agencies on the proper procedures for environmental review.

What is an Environmental Assessment Worksheet (EAW)?

An EAW is a document designed to provide a brief analysis and overview of the potential environmental impacts for a specific project and to help the RGU determine whether an Environmental Impact Statement (EIS) is necessary. The EAW consists of a standard list of 31 questions and is meant to set out the basic facts of the project's environmental impacts. The EAW is not meant to approve or disapprove a project, but is simply a source of information to guide other approvals and permitting decisions. The information in the EAW process has two functions: to determine whether an EIS is needed, and to indicate how the project can be modified to lessen its environmental impacts; such modifications may be imposed as permit conditions by regulatory agencies.

What is an Environmental Impact Statement (EIS)?

An EIS is a more detailed analysis of environmental effects. It can frequently take as long as one year for a project to complete the entire EIS process. Unlike the EAW, the EIS does not have a questionnaire type format. Instead, the focus is on the key environmental, social and economic issues that are likely to result from the project, and a detailed analysis of those issues. The EIS also examines whether there are alternative project designs or locations that would result in fewer environmental impacts.

Can the RGU's decision be appealed?

The decision of the RGU to prepare or not prepare an EIS can be appealed in the county district court where the project would take place. The appeal must be filed within 30 days of the date on which the RGU makes its decision. There is no administrative appeal of an RGU; the EQB has no jurisdiction to review an RGU's decision.

What information does the RGU need to take into account when making a decision on the need for an EIS?

The purpose of the EAW, comments and comment responses is to provide the record on which the RGU can base a decision about whether an EIS needs to be prepared for a project. EIS need is described in the rules: "An EIS shall be ordered for projects that have the potential for significant environmental effects" (part 4410.1700, subpart 1). In deciding whether a project has the potential for significant environmental effects, the RGU "shall compare the impacts that may reasonably be expected to occur from the project with the criteria in this rule," considering the following factors (part 4410.1700, subparts 6 and 7):

- A. Type, extent, and reversibility of environmental effects;
- B. Cumulative potential effects of related or anticipated future projects;
- C. The extent to which environmental effects are subject to mitigation by ongoing public regulatory authority; and
- D. The 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 Environmental Impact Statements.

The RGU is obligated to examine the facts, consider the criteria and draw its own conclusions about the significance of potential environmental effects, and it is the purpose of the record of decision to document that the RGU fulfilled this obligation. Among the four criteria, the first and third are usually the most relevant. The first deals with the nature and significance of the environmental effects that will or could result from the project. It relies directly on the EAW information and may be augmented by information from the comments and responses. The third criterion is frequently the main justification for why an EIS is not required. Projects often have impacts that could be significant if not for permit conditions and other aspects of public regulatory authority. However, the RGU must be careful to rely on ongoing public regulatory authority to prevent environmental impacts only where it is reasonable to conclude that such authority will adequately handle the potential problem.

What is the Staff's Recommendation?

Based on the Environmental Assessment Worksheet and correspondence and documentation for this project, Staff recommends that the Planning Commission make a Negative Declaration and does not require an Environmental Impact Statement (EIS) for this project.

Staff are making this recommendation to the Planning Commission due, in part, that much of the potential environmental impacts can be mitigated by public regulatory authority. For example, there was a previous Phase 1 Archology study done in 2015 for the Spirit Mountain Infrastructure Project, which ran along the eastern perimeter of this subject area. The survey results were negative. Regardless, as a condition of approval of a final plat and before any

ground disturbing activities can occur, that City will require an archeological study be conducted.

Related to presence of endangered species, as identified by EAW commenters, the presence of pale sedge could not be positively determined at this time due to limitations related to the growing season of this species. However, an earlier tree survey, conducted in advance of the Kayak Bay Preliminary Plat by staff at LHB, showed no eastern hemlock on site, which was confirmed again in late December 2017. Regardless, a threatened and endangered plant species survey will be required to be conducted approximately in July 2018, and avoidance of impact to eastern hemlock and pale sedge will be required as a condition of final plat approval.

Potential environmental impact can be addressed by conditions of any required permits or approvals. As reinforced by EAW comments, state agency review and approval would be required for this project. In addition to the final plat requirements of an archeological survey and a threatened and endangered species survey, the project proposer would need to adhere to other regulatory controls of the RGU, including shoreland setbacks, wetland avoidance, and storm water and erosion control standards.

Steven Robertson

From: Keith Hamre
Sent: Tuesday, November 14, 2017 8:07 AM
To: Steven Robertson
Subject: FW: Kayak Bay

Please add this comment to the record.

From: Paul Ojanen [mailto:████████████████████]]
Sent: Monday, November 13, 2017 8:16 PM
To: Keith Hamre <khamre@DuluthMN.gov>
Subject: Kayak Bay

This needs an EIS.

To: The Responsible Government Unit (RGU)
for the
Environmental Assessment Worksheet (EAW) for Kayak Bay Village
Proposed Development
or The Duluth Planning Commission c/o Mr. Keith Hamre

From: Citizen Representative for the Citizen Petitioned Environmental
Assessment Worksheet for Kayak Bay Village, Linda Ross Sellner

Re: Citizen Comment Submission on EAW

INTRODUCTION

It is with sincere gratitude for your service and your authority to act as the Responsible Government Unit in making a judgment in regards to this EAW that I offer my comments. For this judgment cannot be in response to your *will* for this development to proceed (for whatever reason), for that would be arbitrary and capricious, but rather that this development and the environmental assessment produced, prove it will have no significant environmental impact. If, after studying the EAW and the citizen comments, you decide the project will have significant environmental effects, the only route is to vote against what has been presented and thus, for the more detailed analysis of an Environmental Impact Statement.

It is my sincere hope that you have studied the current EAW and citizen comments and are fully prepared to make a judgment on December 12th,

2017. If that is not the case, a resolution to table the decision for further study or modifications, may be in order.

I have ordered my comments in response to the order the information is required by the Environmental Quality Board and presented in the EAW. Cumulative effects can be either discussed in conclusion to the individual topic or as an ongoing discussion under each item, as presented.

This cumulative effect is most important and required in making a comprehensive judgment in each category in regards to environmental impact but also, in realizing the current administration's vision for future development in the St. Louis River Corridor. You have a most important task.

I am educated as a Geologist in Land Use Planning—UMD, 1996. I am certified in GIS with 5 semesters of post graduate study at UWS. I am certified as a Construction Installer for Erosion and Stormwater Management. I have served maximum terms on the Duluth Environmental Advisory Council and the Duluth Public Utilities Commission. I knocked on approximately 140 doors in the Riverside neighborhood to the west of the proposed development as well as in surrounding neighborhoods to the north and east. Most of these residents will be able to see the development buildings from their doors and windows. The majority of these residents were unaware of plans for this kind of development in historic greenspace. The developer described the finished product as similar to the Bluestone Development on Woodland Avenue in east Duluth. For the ones who were familiar with that development, that comparison for what was coming now to western Duluth, prompted a desire to sign on to the petition.

I implore Commissioners to hear the voice of the common people surrounding this proposed development. You have no alternative to ascribe their sentiments. They say this development needs more environmental review. No matter what your opinion of the Citizen Representative, rest

assured, my only intention is the public benefit of clean water and the common good via the chance for public input from those most affected. This work has taken an extensive amount of time and effort on my part.

Thank-you for your attention and time spent on this matter.

6. Project Description

b. Here the EAW author gives a description of the proposed development. Nine parcels are described; two parcels are for open space—F and H.

Please refer to the Preliminary Plat map to locate Parcel H in the lower right corner and note in the table, parcel H is .49 acre and is described “Open Space/Parking”. This is misleading. Open Space is most often associated with natural vegetative cover not absence of buildings. The Concept Utility Map shows the proposed use of parcel H. Kayak Bay Drive will terminate here and a parking lot almost filling the half acre plot will be built. This is not Open Space except for the absence of buildings. Parcel F, on the other hand, Will be left as open space in its natural condition. Open Space calculations will not be correct in the EAW if the ½ acre of parcel H are included.

Still under (b.), the 3rd paragraph describes nearby trails and states “The Project intends to take advantage of these resources and connect” the various trails. However, later in the EAW, we are told the Munger Trail may have to be “rerouted” to accommodate Kayak Bay Drive. This is not connection; this is disruption.

Land disturbances are discussed next. “Approximately 12.8 acres of impervious surface” and “A little over half of the Project will remain as green/open space, keep mature trees, and preserve the streams”.

Let us consider the impervious surface calculations first. The best estimates of parcel use in the EAW come from the table on the Site Plan map. Each parcel has a measurement in gross acres. Then a column for “D/U Easement” acreage. The 3rd column is not labeled.

To attempt to make the table substantiate the above statements is highly suspect. Could it be that the third column represents impervious surface creation acres? Parcel R/W is a public street

and its application to D/U Easement acres is “n/a”. Parcel F is open space and not given acreage in column 4. Therefore, one has to conclude column 4 is the impervious surface creation acreage. But parcel H, as we have noted above is to be “Open Space/Park, yet it will almost entirely be covered in impervious surface creation with the road terminus and parking lot.

But let us move on to the totals row at the bottom of the table. Even eliminating the discrepancy over what parcel H will be, the 4th column totals, one can only assume, is impervious surface creation. Out of a total development acreage of 26.80 acres minus the impervious surface creation in each parcel, we are left with 10.16 total acres in the D/U Easement column—or open space. How then, can the developer state, under (6.b), that impervious surface of the project will be 12.8 acres when the table indicates 16.64 acres in column 4?

Also, I object to the EAW stating mature trees will be kept. Over 300 trees will be removed and the determination of which trees to cut had nothing to do with valuing maturity; the ones left are mostly in the ravines of the drainage features. Obviously, this is how the developer justifies how he will “preserve the streams”. Leaving a few trees standing in what was once undeveloped greenspace and filling and impacting the functionality of wetlands highly interconnected to each other and to the streams, does not preserve them; it diminishes the water quality in them.

Page 4 “Land in the Project area is currently vacant”

This is one way to describe the land; and it is a term the Duluth Planning and Construction staff use repeatedly in referencing tax forfeit land as well. It is misleading to use this term as if all land that is not built up is “vacant”. Rather, this development site is historical greenspace. A rudimentary, unsustainable golf course in the 1930’s compromises the only past use of the land.

Further down on the page, we read:

“Infrastructure needs include addition of public roadways with a current total land area of 1.40 acres for Kayak Bay Drive towards the northeast and an approximately equal-sized private street towards the south west”

This then totals to 2.80 acres of road (and sidewalks??). Yet, the bottom row of the table of acreages on the Site Plan map says a “Public Street” in column 5 and labeled “R/W” in column 1 amounts to 1.16 acres of my assumed, impervious surface column. This is a major discrepancy.

6.c Project Magnitude

Here we get another table using the erroneous assumption that parking lots are open space as well as a number of D/U acres being 10.16. But 12.8 ac of impervious surface and 10.16 D/U ac = 22.96, not 26.80 total acres. The discrepancy is cleared up, I presume, by adding lawn and landscape of 4.9 acres (not part of D/U) in another table of Cover Types, pp.4. Storm water ponds are given 1 acre of additional space as well here, so now we are closer to 29 acres.

It makes all values for area in the EAW extremely difficult to see coinciding and forces suspicion for a larger development site of 28.86 acres. This is 2 acres higher than what is stated on the site plan map column.

9. Land Use ii. Plans

This area's preferred future land use of the 2006 Duluth Comprehensive Plan is mostly Preservation and 2/3 of it is under the Sensitive Lands Overlay, requiring better stormwater management and restrictions on development as usual. The EAW mentions collaboration with the City of Duluth and Planning Department on this project, so it is of no surprise that the Planning and Construction Department had this project in mind when they instigated the Riverside Small Area Plan which led to land use changes and only then made subsequent zoning changes to benefit this development even legal. I studied the Riverside SAP and concluded the Riverside citizens were open to new development but they wanted to preserve buffering of greenspace and reuse previously developed land. They wanted development tailored to recreation, not Bluestone-type housing and development. Therefore, when it is stated that "The proposed mixed-use development is compatible with zoning" on page 8, I give that little respect as far as MU-P coming from former residential and industrial zoning. "Future plans of the Project" were detailed in the Riverside SAP and Duluth's Comp Plan, according to the EAW under (9.b). This cannot be substantiated. Where is the "buffer" this project provides to the St. Louis River Estuary mentioned next? For the Munger Trail, this project completely eliminates a southern buffer to the River.

Land Use Cumulative Effects

"As a result of these plans, open natural areas will be developed in accordance to zoning and future plans by the City of Duluth".

WHAT!?! If this is how revitalization of the Western Waterfront is going to go, thank goodness this EAW was petitioned! Open natural areas, in the Comprehensive Plan, are given more importance than any zoning. It calls for these areas to be recognized as significant to the common good. We do not have to put in Bluestone-like developments according to current zoning, to revitalize the St. Louis River Corridor. Smaller scale developments that cater to recreation, not high-end housing, and well buffered from Riverside and the trails are what the people wanted per the Riverside SAP. The Comp Plan also has a guiding principal to reuse previously developed land rather than extend utilities into undeveloped land. Finally, I see no proof of "zoning" that accommodates "sensitive areas surrounding at-risk natural features". The Planning Department, who facilitates zoning changes in Duluth, relies on legal setbacks, such as 150' from trout streams as the only perimeter to curtail zoning. Environmental impacts are not minimized at this measurement. The Sensitive Lands Overlay is hardly recognized in deliberations. The 2006 Comp Plan's Preferred Land Use Map is routinely changed to accommodate desired zoning. The last sentence under Land Use Cumulative Effects, under (9.c), is false.

10. Geology, soils and topography/land forms

Here the EAW author is to identify susceptible geologic feature and discuss the limitations of those features

Depth to bedrock “is expected to range between 60 and 160 feet” is what is offered. This is a woefully incomplete response.

It is imperative in discussing environmental effects to discuss the substrate of the proposed development area. Spirit Mountain is upslope and to the northwest of the site. It is basic geology that highlands erode and crumble over geologic time. The resulting landform is called a tallus slope. It forms in relation to the direction of water and broken up rock from the higher land form to lower elevation and drainage. The clue that substantiates this realization is the name of the landform extending into the St. Louis River as a continuation of drainage over the development site—Tallus Island. It is my professional opinion that the unconsolidated nature of this slope toward the River is unstable, easily eroded and depth to bedrock could be very deep—perhaps beyond the potential for stable footings for buildings.

I asked a soil scientist at the Natural Resources Soil Conservation Service in South St. Louis County, to give me a better analysis of the soils in the project area. To do that, the soil scientist has to consider first, the underlying substrate. Of the four soil units defined, the setting for these soil formations is flats on flood plains or till plains.

10. b. Soils and topography

Here we get into more detailed descriptions of the soil, including “any site conditions relating to erosion potential, soil stability” and “the impacts from project activities”. Yet the author avoids any discussion and directs us to the table of soil types. He even states: “This is not intended to be a detailed soil survey or replace a soil investigation”. This is just another indication of the need for more environmental review. I will give the reader a preview of what he/she would find if that investigation were done. By far, the largest area of continuous soil classification is the E18B unit. This soil forms on till plains in depressions or flats. Its parent material is fill material from surrounding uplands. The next most abundant soil type is in question. The EAW table on page 9 lists E25D at 32.2%. However, the soil report I asked for states only 23.5% of the site contains this soil and the next largest, by area is E9E at 29.3% (the table says 23.9%). Without getting bogged down with discrepancies of percentage of total acres having certain soil types—something that WOULD be flushed out in an EIS—let it suffice to say the three most common soil types in the area have Severe or Moderate erodibility due to sheet and rill erosion. The finest sediments are in the streambeds of the 84th and 85th Avenue creeks. The additional, potentially flood-level input from onsite stormwater ponds could increase sediment to the River exponentially. How evasive that the EAW states “In the Project land’s current state, erosion potential is expected to be low”.

11. Water Resources

Less than a year ago, the MPCA released a report on the water quality of the length of the Mississippi River. By the time it flows through the Twin Cities it fails the Clean Water Act standards for aquatic life and human use. Yet, the northernmost stretches of the Mississippi are of high water quality. The MPCA offered solutions to correcting lower pollution and strategies for maintaining higher water quality currently present. “The forested and wetland-rich character of the northern portion of the basin...must be kept as intact as possible”, the report notes. Commissioner John Linc Stine emphasizes that development in the north threaten the buffering ability of wetlands and forest along the River and sediment is one of the major pollutants.

The St. Louis River Estuary is an MPCA Area of Concern for water quality impairment already. What we are to do to increase the chances for remediation, is value the natural resource functions that can restore water quality and restrict shoreline development in these remaining wetlands and forests. The Duluth City Council recently accepted a \$220,000.00 grant from the EPA to support an 18-month St. Louis River Natural Areas Study and planning process. The process involves the Minnesota Land Trust and the Duluth Natural Areas Program—established to give the City Council a locally controlled mechanism to protect properties of special environmental significance. Those areas include most of the remaining coastal wetlands on the Minnesota side of the St. Louis River Estuary. At the “optional public hearing for Kayak Bay Village EAW” on November 14th, I handed out a map of the potential extent of these coastal wetlands. The proposed development site for Kayak Bay Village lies entirely in the “Tallus Island Wetlands” of the draft natural area zones.

While the EAW states that “No impaired waters exist within Project boundaries” (even though it is on the shore of the Area of Concern), to continue with “and effects on impaired waters by this development are not expected” does not stand to reason. The east border of the development is Knowlton Creek—an Impaired trout stream. To the north is Kingsbury Creek, another Impaired trout stream. Do we continue to degrade water bodies with inappropriate development in their only means for water quality improvement—wetlands and forest—or do we continue to believe engineering can save water quality?. The proof is in the state of existing water quality.

11. b. ii Stormwater-Describe the quantity and quality of stormwater runoff at the site prior to and post construction.

Only a preliminary grading and drainage plan has been provided in Appendix A in the EAW. No data proving stormwater quality or quantity has been gathered—especially with the Spirit Mountain spring meltdown not taken up by snowmaking water pipelines. The environmental effects from stormwater discharge to highly erodible creek beds is not discussed. Soil limitations are not addressed. The City’s MS4 permit to discharge stormwater to “waters of the state” states no reduction in water quality from those discharges is ONLY A GOAL. And so the EAW states “The developer will restrict stormwater discharges to the maximum extent possible (MEP)”. “Before infiltration

basins are designed/constructed, soil testing at the actual location of the BMP will be performed to determine if the soils are conducive to infiltration..”

This kind of hopeful and preliminary condition evaluation are no longer acceptable with the level of water quality impairments existing.

Construction dewatering (extremely high sediment-laden waste water) anticipations of not more than 10,000 gallons of water per day BEFORE STORMWATER POND CONTAINMENT to the creeks, trout stream or River is not acceptable for water bodies already Impaired.

11. a) Wetlands

How is a wetland delineation done? A soil scientist marks a perimeter of a wetland based on soil conditions of frequently- flooded rating and drainage features. Vegetation is also unique to a wetland. But the hydrological connection of the wetland (outlined) is intricately associated with surrounding landforms, slope and land-cover. The EAW stating only 0.48 acres of wetland to be permanently filled is deceptive. The remaining 1.37 acres of wetlands on the building site will ALL be effected by the change in water flow regime along with the denuding of vegetative cover to include 326 trees. Trees play an important role in stormwater uptake. Their water quality function will be eliminated. This is why coastal vegetation improves water quality.

The EAW states development alternatives to minimize wetland impact were considered but the need for residential and recreational development along the St. Louis River Corridor must be satisfied. We need every, existing wetland to be functioning in this sensitive area, NOT more high-end homes or condos in their place. The recreational aspect of this area should be second only to improved water quality for success. Recreation involves greenspace and successful development will value the natural resources, not eliminate them. Yet, the EAW states on page 14: “As the City of Duluth works to revitalize the St. Louis River Corridor, further developments will require filling and grading of previously undeveloped lands”. One can successfully surmise that if this EAW for the first development in the Corridor is accepted as proof that no significant environmental effect will occur, we “open the floodgates” (literally, as well). This is the singular vision of the City Administration for development type. Cumulative effects are not considered. This is the prototype. Greater susceptibility to flooding and erosion is guaranteed and even acknowledged by the EAW (pp.14) but, it also states, the “preservation zones’ (or Preferred Preservation Land Use of the Comp Plan) will provide protection. Again, this assumption is false.

One final consideration under Water Resources Cumulative Effects and please direct your attention to page 15 where it states: “City approval for stormwater management facilities will not be granted until the building plans have been submitted for review with full construction plans and a detail drainage report discussing the site, analysis and hydrologic and hydraulic modeling”.

If one statement or mis-statement could ALONE hold the necessary evidence for the need for an EIS and the inadequacy of this EAW to prove no significant environmental impact, this would be it. For a 27-acre development on a tallus slope, coastal drainage environment, the above modeling, report and analysis NEED TO BE PART OF THE ENVIRONMENTAL IMPACT ASSESSMENT! For too long, construction and development plans go forward with unwavering support for stormwater engineering's later input. Compliance is the responsibility of the business owner! We are living with the results: flooding, erosion at historic levels and water quality impairments. I've stood before the Planning Commission (RGU) before and stated "erosion control is not working". I stand by that statement, especially if we continue to put all confidence in engineering and evaluation AFTER THE FACT in approving development in sensitive areas.

13. Fish, wild life, plant communities and sensitive ecological resources

The Eastern Hemlock is vulnerable to land clearing activities. Pale sedge is vulnerable to habitat loss caused by developments. Lake sturgeon is vulnerable to altered stream hydrology and decreases in water quality caused by sedimentation. Yet, the EAW only states "disturbance will be minimized" or "unavoidable". A permit, called a "take permit" will be used to circumvent these disturbances, if necessary, and so the project's effects on rare and endangered species is disregarded with useless permitting. "As the area continues to develop, habitat suitable for rare and endangered species may continue to decline" (pp.18). How is this prototype OK?

15. Visual

The last sentence in the previous discussion about the cumulative effects on Historic Properties states: "However, potential effects may include interference with scenic and natural views".

This leads into the Visual Effects of this proposed project which will be substantial for an area of historic greenspace, surrounded by neighborhoods and bookended by trails. More specifically, views will be blocked. Views uphill to Spirit Mountain from the Scenic Railway line and the Western Waterfront Trail. Views will be blocked and degraded south from the Munger Trail. This decreases the outdoor experience of recreation. 72 foot high buildings do not need to accompany access to the River. The Riverside SAP specifically stated that residents wanted to retain the buffer along the River. This development is in direct contrast to that and to the desired "more rustic development suited to recreation". And once again, the EAW puts off getting necessary data ahead of time by making the statement on page 20: "maximum elevation of the top of a building be determined prior to making final development plans". An EIS would require this kind of vital data.

Respectfully submitted on this 25th day of November, 2017,

--Linda Ross Sellner

402 W. Arrowhead Rd. Duluth, MN 55803 218-728-1134

Keith Hamre
 RE: Kayak Bay Village Development EAW Comments
 11/28/17

Section 6, b

- References open space to parcel H yet in other areas of the plan such as the table in the site plan map on sheet 4, identifies parcel H as parking. This is a half-acre parking lot for the proposed launch and paddle center in the current Spirit Mountain master plan and adjacent to this development.
- There is ample parking less 0.75 miles south west of this area for the Western Waterfront Trail. The Clyde Ave launch currently has parking that can support both a paddle launch and trail head. We should be using current infrastructure so we do not over develop the river's shoreline.
- Parcel H has no water run off protection in the site plan drawings.
- Plan states (page 3): "An area at the end of the new ¼-mile, 28-foot wide, bituminous Kayak Bay Drive will be owned and operated by the City of Duluth. Kayak Bay Drive will be used to access improvements *cited in this EAW.*" Who is proposing what amenities? The community is not looking for development on the river's shore here.
- No mention of the proposed 10' wide blacktop trail along side the road making this more then a 28' wide hard surface. Site plan sheet 10 shows the trail in section Kayak Bay Drive.

Section 6, d

- Lacks purpose for project.
- Mentions amenities to be added to benefit users of Spirit Mountain. Who is proposing what amenities? This project is outside Spirit Mountain's authority.

Section 6, e

- Lacks description of future development plans and stages. The City is planning with this development group for much more impact to the environment below the tracks where parcel H in this plan is. What is the behind-the-scenes collaboration between the developers and the City?

Section 9, a, i

- The tracks to the south of the development are not Lake Superior & Mississippi Railroad's. It is the Burlington Northern and Santa Fe Railway's tracks. The LSMR does travel on the tracks.
- Not mentioned is to the E of this site is the WLSSD Polk St lift station as well as directly south of the site is the Spirit Mountain pumping station.

Section 9, a, ii

- 2006 City of Duluth Comprehensive Plan and the Riverside Small Area Plan call for parcel H to be used for preservation (below the tracks). The zoning of MU-P is in conflict with "preservation". When applied below the tracks "preservation" with the environment needs to be the priority due to the proximity to the estuary and sensitive areas.

Section 9, b

- The community comments do not support the development below the tracks. See appendix A page 44 of the Riverside Small Area Plan, Environment / Open Space priorities and comments starting on page 64 where there is a sampling of comments.

Section 9, c

- The accumulative effect of this development and previous development below the tracks (parcel H) will forever change the trail users' experience in the area. As proposed the impact will be significant enough to change the natural feel of the area as a micro estuary that is not present along the MN side of the river. Any further development of the area near the water will undoubtedly affect the natural habit that exists there today.

Section 10, a

- Referring to "**Soils**", while there is a list of the soils on site, the text does not mention the presence of red clay which is unstable and highly subject to erosion, especially with the steep slope areas of the grade from the Munger Trail to the BNSF tracks and the steep slopes of the ravines. This will be a special concern when the current vegetation is removed for roads and streets and building sites. Siltation in the water courses on the site empty into the St. Louis river and would seriously degrade the level of improvements made as part of the cleanup of the AOC

Section 10, d

- The area below the tracks (parcel H and more) is already experiencing the cumulative effects of development in the area. The Spirit Mountain pumping station project severely disrupted the area, which is still trying to recover.

Section 11. Water resources

- With the increased storm water run off, the natural areas will experience more impact even when measures are in place. Parcel H has no identified storm water plan.
- Existing issues are present at nearby water access points or beaches (Clyde Ave Launch) often times closing them for human contact with the water due to Escherichia coli. How will this development limit what most likely is already an issue in the Tallas Island bay area?
- With other plans in the works below the tracks and around parcel H of this plan, the actual cumulative effect of impervious areas will be far greater the 12.8 acres.

Section 15 Visual

- The views from the Munger Trail and Western Waterfront Trail users will be significantly impacted. They will change from a very natural setting now to an urban development. View sheds from the Munger Trail will only be of the tall building structure just 200 or so feet away fro the trail. The Western Waterfront Trail is much lower then the development area. The proposed

70' tall building will feel even higher from the trail that will have a looming visual impact as well as reflection from the early morning sun rising across the estuary.

Traffic Impact Study Memo

- Traffic study shows a significant increase, which will reach down to the river estuary causing the existing natural area of the Tallas Island Bay to change forever. This will have an impact on the user experience of the Western Waterfront Trail as well as the Munger Trail. This site was a part of the AOC shallow water habitat improvement when it was dredged a few years ago and has since developed into a sensitive and appreciated wildlife area by the regular users.
- Traffic study also shows a looped road from Grand Ave down to the river crossing the active BN track then back across the tracks again and back to Grand Ave connecting the two housing sections of this project. This will have even a larger impact to the natural area around this project with many accumulative effects
- How this road will impact the users' experience on the existing Munger Trail is not identified. The actual method of crossing the Munger Trail is not defined.

Section 20 Other potential environmental effects

- There are many City projects proposed that overlap and adjacent to this study area that will have an accumulative effect on the environment. These projects are not mentioned here; examples are:
 - Duluth Natural Areas Program for the St. Louis River Corridor
 - Western Waterfront Trail proposed development of more launches
 - Spirit Mountain Master Plan, proposed Paddle Center
 - Indian Point Park
 - Kingsbury & Grassy Point remediation projects
 - Existing additions to launches near by
- No clear end of the proposed Warwick Street anywhere in the plan. The maps show an extension to the water.
- Site plans do not show the existing Spirit Mountain Pumping station.
- This EAW should consider other infrastructure in the area that is already developed so one could make an informed decision on the need for more study in this concentrated area. The areas are: Munger Landing, Spirit Lake Marina, Indian Point Park and the new upcoming Kingsbury Bay area. Most are less than one mile and all less than one and a half miles from this site.

Mike Casey Jr
415 88th Ave W; Duluth, MN; 55808

Steven Robertson

From: Keith Hamre
Sent: Wednesday, November 29, 2017 1:46 PM
To: 'Carole Newkumet'
Cc: Steven Robertson
Subject: RE: EAW Riverside

Carole,
 Your comments will be reviewed by the Planning Commission and a written response will be provided regarding your questions.

Thanks,

Keith Hamre

Director of Planning & Construction Services
 Room 208 City Hall
 218.730.5297

From: Carole Newkumet [mailto:████████████████████]
Sent: Wednesday, November 29, 2017 12:10 PM
To: Keith Hamre <khamre@DuluthMN.gov>
Subject: EAW Riverside

Hi Keith,

I have reviewed the EAW regarding the 27 acre Kayak Bay Village Development proposed by the Spirit Valley Land Company.

In all honesty it has done nothing to alleviate my concerns for over development.

The proposed 12 of 27 acres for impervious surface is my first concern & when you add to that the wetlands that are affected it just doesn't add up to a good idea, especially when you think of the years & dollars spent cleaning up the St. Louis River.

My second concern is traffic. I have lived in Riverside since 1991 & traffic along Hwy 23/Grand Ave has increased gradually over the years. In the section on of the EAW related to traffic in it doesn't indicate if other new developments were taken into consideration for the amount of the traffic generated in the area. I'm referring to the new Grand Avenue Estates & Morgan Park School apartments currently under construction. An eventual total of some 250 new residents.

My third concern is for the over all ecology of the area. I've often heard that living "out here" (translation: in the River Corridor) is like having the country in the city - wildlife, natural beauty & city amenities. In the numerous discussions that I've been involved in regarding the development of the St. Louis River corridor eco-tourism has always been considered a high value both for economics & for recreation. The EAW shows an overall reduction of 6.1 acres of grass land & 12 acres of wooded forest, the very things that would provide eco tourism.

I would like to hear more about my areas of concern. I understand that this particular document relates only to concerns about the environment. Will there be another public input on the economic development? I do want to see economic development in the corridor but not at the risk of destroying those things that make it unique.

Thank you for considering my concerns.

Respectfully,
 Carole Newkumet

Steven Robertson

From: Keith Hamre
Sent: Wednesday, November 29, 2017 4:32 PM
To: Steven Robertson
Subject: FW: comments on the Kayak Bay Village EAW

Here is Alison's comments

From: [REDACTED]
Sent: Wednesday, November 29, 2017 4:18 PM
To: Keith Hamre <khamre@DuluthMN.gov>
Subject: comments on the Kayak Bay Village EAW

Hi, Keith!

I've been working with the "Friends of Western Duluth Parks and Trails" organization for over two years and, with them, eagerly sought and considered information regarding the pertinent facts, citizen desires, City objectives, and overall environmental, economic, and recreational/residential/business wishes for the broad St. Louis River corridor.

Here are my comments regarding the EAW for the Kayak Bay Village:

- * The Kayak Bay Village development is within a large area of the City along the St. Louis River. The Village development identifies environmental features that will impact - and be impacted by - features of the surrounding area. Please consider and "justify" the need for such things as additional parking and river access roads and launches ~ ~ ~
- * The development mentions future development and amenities ~ what are these? How will they impact the environment? (is the priority based on economic development rather than on the impact on environmental quality?)
- * The community participants have preferred no development between the tracks and the river.
- * The visual impact of the development upon the trail users is a serious concern.
- * Has an appropriately comprehensive soils assessment been made? What might be the impact of the proposed development be on the vegetation and water based upon the soil types?
- * Community participants have consistently supported maintaining Kayak Bay as a gentle quiet area and opposed disturbance that is anticipated with significantly increased numbers of users and types of watercraft. ~ doubtfully justifiable when there are and likely will be more launches nearby.
- * I understand that the Kayak Bay Village development is not consistent with the intent and purposes of the Future Land Use Plan.
- * Oh - there are numerous other City projects within the broad area! What will be the cumulative effects? City of Duluth - step back and rise up to consider the environmental impacts of the Kayak Bay project in association with that of the other projects. This why the Future Land Use Plan deserves more "authority".
- * There seem to be some omissions on the map of the plan: the pump station, the lift station a proposed street, a peculiarly looping road, - - - and deal with the potential consequences of adding or ignoring ...adjacent interventions

Overall, Keith, I think this project needs careful scrutiny regarding its relation to other projects underway or proposed ~ What are the community and

developers' priority interests/? What would be the cumulative effects of each upon the total area? This is possibly the largest and last precious "underutilized" area of Duluth! What shape of a piece would or should it have to fit into Duluth's puzzle? What is REALLY best for Nature and Us All?

With apology for my last-minute and hastily typed offerings and with respect for you as I know you to be engaged for the best for us all through your position of influence within the Administration,

Alison Clarke
226 Ridgewood Road
Duluth, MN 55804

Dear Mr. Hamre,

I am writing to comment on the Kayak Bay Village's Environmental Assessment Worksheet (EAW). Please see my comments below.

Thanks,

-Bruce Fehringer 9417 Zimmerly Ave; Duluth, MN 55808 [REDACTED]

Section 6a

"This road will provide access to the St. Louis River and the proposed amenities." What are the "proposed amenities" and who is proposing them?

"Kayak Bay Drive will be used to access improvements cited in this EAW." What are the improvements and who is proposing them? The community is not looking for development on the river's shore here.

Section 6b

There is no mention of the 10 foot wide trail alongside Kayak Bay Drive. This 10 foot trail is shown in Appendix A on sheet 8. This 10 foot wide trail makes the hard surface area of the project much wider than the 28 feet of Kayak Bay Drive.

Section 6b1

I have serious safety concerns for users of the Munger trail due to two new roads crossing the existing Munger trail. The plan says "...pedestrian crossings for Kayak Bay Drive are likely to be.." . "Likely to be" isn't good enough. Before this plan can be approved these safety features need to be solidified as well as which entity will maintain them.

Section 6c (Project magnitude)

Structure heights of 60 to 72 feet are mentioned. Such heights this close to the river are likely to block views of the river and spoil the outdoor experience for those using the Munger and Western Waterfront trails. The max. height of 35 feet for the office space should be the max. height for all proposed structures.

Section 6d (Explain the project purpose; if the project will be carried out by a governmental unit, explain the need for the project and identify its beneficiaries.)

There is no explanation of the project's purpose. Nor is there an explanation for the project's purpose. This section only states who is carrying out the project and mentions that unspecified "amenities" may benefit users of Spirit Mountain. If the only possible beneficiaries of the project are the users of Spirit, then how can this project be justified?

Section 6e (Are future stages of this development including development on any other property planned or likely to happen? Yes No

If yes, briefly describe future stages, relationship to present project, timeline and plans for environmental review.)

Because "YES" was checked, plans for an environmental review for the future project stages and its timeline are to be included in this section. They are NOT

Section 9, a, i

Not mentioned: To the east of this site is the WLSSD Polk St lift station and directly south of the site is the Spirit Mountain pumping station.

Section 9, c

The accumulative effect of this development and previous development below the tracks (parcel H) will forever change the trail users' experience in the area. As proposed the impact will be significant enough to change the natural feel of the area as a micro estuary that is not present elsewhere along the MN side of the river. Any further development of the area near the water will undoubtedly affect the natural habit that exists there today.

Section 10, d

The area below the tracks (parcel H and more) is already experiencing the cumulative effects of development in the area. The Spirit Mountain pumping station project severely disrupted the area which is still trying to recover.

Section 11. Water resources

With the increased storm water run off, the natural areas will experience more impact even when measures are in place. Parcel H has no identified storm water plan.

Existing issues are present at nearby water access points or beaches (Clyde Ave Launch) often times closing them for human contact with the water due to *Escherichia coli*. How will this development limit what most likely is already an issue in the Tallas Island bay area?

With other plans in the works below the tracks and around parcel H of this plan, the actual cumulative effect of impervious areas will be far greater than 12.8 acres.

Appendix A

Jim Filby Williams and his staff are proposing to remove the Mud Lake train causeway because "the science dictates that the causeway removal will improve the health of the river." Yet parcel H is listed as a parking lot near the river's edge and appears to have no runoff protection in the site drawings.

Appendix B

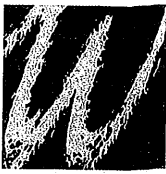
"The Environmental Assessment Worksheet should address whether the proposed project has the potential to adversely affect **the above rare features** and, if so, it should identify specific measures that will be taken to avoid or minimize disturbance."

I didn't see any section of the EAW that addressed the potential to adversely affect the rare features listed in Appendix B.

Appendix C

Regarding archaeology, due to the nature and location of the proposed project, we recommend that a Phase I archaeological survey be completed. The survey must meet the requirements of the Secretary of the Interior's *Standards for Identification* and should include an evaluation of National Register eligibility for any properties that are identified. For a list of consultants who have expressed an interest in

I did not see any documentation in the EAW that specified plans to do a Phase I archaeological survey of the project site.



2626 Courtland Street
Duluth, MN 55806-1894
phone 218.722.3336
fax 218.727.7471
www.wlssd.com



Western Lake Superior Sanitary District

November 21, 2017

Keith Hamre
Director of Planning and Construction Services
City of Duluth
411 West First Street, Room 208
Duluth, Minnesota 55802

Re: EAW for Kayak Bay Village Development

Dear Mr. Hamre:

As you know, the District operates a large regional wastewater conveyance and treatment system that includes the major cities of Duluth and Cloquet. An average of nearly 40 million gallons of wastewater is treated each day at our facility located at 27th Avenue West. A key component of this system is the large diameter wastewater interceptor which conveys wastewater from the Cloquet area and the western portions of Duluth to the treatment plant. Included in this portion of the conveyance system is a major wastewater pumping station located at Knowlton Creek, between the Western Waterfront Trail and the railroad at approximately 88th Avenue West.

Over the past year, the District has had several conversations with City staff regarding the proposed Kayak Bay development project and the challenges and/or opportunities created by the relative location of our existing wastewater infrastructure in this area of Duluth.

District Staff has reviewed the EAW for the proposed development and offers the following comments:

1. Sanitary Sewer Extension Permit

Both the Minnesota Pollution Control Agency and the WLSSD require that any proposed public sewer be approved by both agencies before any construction of the utility can begin. Part of this process is designed to determine the project's consistency with local land use and utility plans, another is to evaluate the effect the proposed project will have on overall sewer system capacity.

On page 3, Item 6b, the EAW suggests the new development could include up to 105,000 square feet of retail space, 175,000 square feet of office space, 540 units of attached dwellings or 65 units of unattached dwellings (townhomes). The District has not yet been provided with estimates of initial and ultimate wastewater flows,

although we have made some rough estimates internally. More specific information on initial and ultimate flows will be required when an actual permit request is submitted for review and approval. At that time, District staff will review the submitted information and determine, based upon system flow/capacity modeling, if this project creates any capacity issues in affected WLSSD assets. While the treatment facility itself has more than adequate capacity to accommodate estimated flow under normal flow conditions, a more thorough evaluation of the potential impacts to the affected pump station and interceptor sewers is still required with this project, as it is with all similar large sewer extension requests.

2. Interceptor Connection Approval

On page 11, Item 11b and in Appendix A, the EAW suggests that the project would be served by a municipal wastewater collection system that would direct-connect to the District's Division D / Scanlon Interceptor at two locations. Please be aware that WLSSD Policy requires that a formal request to connect be made as part of the sanitary sewer extension process to the WLSSD Board of Directors from the City of Duluth, who would manage the connecting sewer. This request would first be reviewed by District engineering staff and then a formal recommendation, with conditions as necessary, would be forwarded to the Board for final action as part of the sewer extension request. Such requests to connect are generally not encouraged, although we do understand that in some circumstances connection to District interceptors is the only viable option available.

3. Other Comments/Concerns

a. Odor

Several months ago, the District was approached by City staff regarding the Kayak Bay project and the potential impact our operations might have on the project area, given the relative location of our wastewater transmission facilities. Of specific concern was the potential for release of nuisance odors from the Knowlton Creek pump station as well as those few manholes along the connecting interceptor sewer south of the project. We provided City staff with a tour of the facilities and even gathered data to demonstrate that odors, while not completely eliminated, have been drastically reduced through earlier investments in an effective odor treatment system at the pump station and adherence to an aggressive program of system maintenance. We offer this comment to affirm that although we will maintain efforts to operate and maintain these facilities in a manner which will control odors, there will likely be occasions when odors may escape onto adjoining properties.

b. Construction

The District's Scanlon / Division D interceptor sewer and Knowlton Creek Pump Station all began operations in the late 1970's. After more than 40 years of operation, both are scheduled for significant rehabilitation beginning in 2025. While the overall impact to the neighborhood is expected to be minimal, this construction activity will create a certain amount of traffic, noise, dust and odor to the area for a short period of time. Permanent easements for these facilities are established and should be recognized in development of final site plans. As always, the District will take extraordinary efforts to minimize problems and impacts to the neighborhood resulting from these future construction projects.

Thank you for this opportunity to comment on the proposed project and associated EAW. Please feel free to contact me at 218-740-4785 if you have any questions or comments on the above.

Sincerely,



Jack Ezell

Manager of Planning and Technical Services

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300
800-657-3864 | Use your preferred relay service | info.pca@state.mn.us | Equal Opportunity Employer

November 28, 2017

Keith Hamre
Director of Planning and Construction Services
City of Duluth
411 West First Street, Room 208
Duluth, MN 55802

Re: Kayak Bay Village Development Environmental Assessment Worksheet

Dear Keith Hamre:

Thank you for the opportunity to review and comment on the Environmental Assessment Worksheet (EAW) for the Kayak Bay Village Development project (Project) in the city of Duluth, St. Louis County, Minnesota. The Project consists of a mixed use development in the St. Louis River corridor. Minnesota Pollution Control Agency (MPCA) staff has reviewed the EAW and have no comments at this time.

We appreciate the opportunity to review this project. Please provide the notice of decision on the need for an Environmental Impact Statement. Please be aware that this letter does not constitute approval by the MPCA of any or all elements of the Project for the purpose of pending or future permit action(s) by the MPCA. Ultimately, it is the responsibility of the Project proposer to secure any required permits and to comply with any requisite permit conditions. If you have any questions concerning our review of this EAW, please contact me by email at Karen.kromar@state.mn.us or by telephone at 651-757-2508.

Sincerely,



Karen Kromar
Planner Principal
Environmental Review Unit
Resource Management and Assistance Division

KK:bt

cc: Dan Card, MPCA, St. Paul
Patrick Carey, MPCA, Duluth



District 1
1123 Mesaba Avenue
Duluth, MN 55811-2798
Office Tel: 218-725-2700
Fax: 218-725-2800

November 29, 2017

Keith Hamre, Director of Planning and Construction Services
City of Duluth
411 West First Street, Room 208
Duluth, Minnesota 55802

RE: Kayak Bay Village Development

Dear Mr. Keith Hamre:

The Minnesota Department of Transportation (MnDOT) has reviewed the above reference environmental document and provides the following comments:

Permits and Approvals (EAW Question 8)

An access permit will need to be obtained from MnDOT for the new street connections with Trunk Highway 23.

Transportation (EAW Question 18)

Subpart A:

The added traffic volumes seems high. The full build is estimated at 9544 trips a day. The current volume on TH 23 (Grand Avenue) is 10,100.

Subpart B:

The discussion on the traffic impacts is lacking the necessary information. For example, the included traffic impact study did not address traffic impacts on Trunk Highway (TH) 23/Grand Avenue except at the intersection. The study did not articulate how the Level of Service (LOS) on TH 23 (Grand Avenue) will be impacted by a doubling of traffic.

The development concept shown in the 2014 traffic impact study does not match the current development plan. For instance, the traffic impact study shows one access to TH 23 (Grand Avenue) serving the whole development. The current concept shows two accesses to the development from TH 23 (Grand Avenue). It is recommended that a new traffic impact study be completed that takes into account the current site plan, including all proposed accesses.

The study presented does not adequately address the project's impact on the regional transportation system. The study should analyze the impact of traffic on TH 23 (Grand Avenue), from the development to Interstate 35.

Water Resources (EAW Question 11)

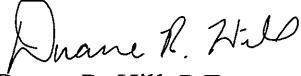
Attached is a copy of the storm sewer plans for a recently completed MnDOT project, located in the same general vicinity as this development. As always, MnDOT wants to ensure that the existing drainage patterns are perpetuated, to avoid any potential issues to our roadways.

An Equal Opportunity Employer

November 29, 2017

Thank you for the opportunity to provide input into this project. If there are any questions pertaining to the comments provided, please contact Jason Alcott at (218) 725-2873 or jason.alcott@state.mn.us.

Sincerely,



Duane R. Hill, P.E.

District Engineer

Attachments

cc: James Miles (MnDOT)
Dave Mohar (MnDOT)
Michael Kalnbach (MnDOT)
Bryan Anderson (MnDOT)



Minnesota Department of Natural Resources
NE Region 2 – NE Regional Director
1201 East Highway 2
Grand Rapids, MN 557440

November 29, 2017
Correspondence # ERDB 20180157

City of Duluth Planning Commission
Attention: Keith Hamre
Director of Planning and Construction Services
City of Duluth
411 West First Street, Room 208
Duluth, Minnesota 55802
PH 218-730-5580; EMAIL khamre@duluthmn.gov

RE: EAW Kayak Bay Village Development

Greeting Mr. Hamre,

The Minnesota Department of Natural Resources (MDNR) reviewed the Environmental Assessment Worksheet (EAW) for the proposed Kayak Bay Village Development. We offer the following comments for your consideration.

General

Please see the attached Region 2 General Guidance for development, construction, and maintenance of trails, corridors, or related projects.

Specific to Document

The following comments are organized by line items and specific topics.

Line Items

Item 13: Regardless of previous impacts and human activities rare species still remain in the lake affect zone on the Duluth area hillside; therefore we would like to see a thorough consideration to determine presence and or absence, and if necessary avoidance, and are asking the following be considered:

Hemlock: On page 17: "A tree survey was conducted on site and while eastern hemlocks were noted as a special tree within the area, none were documented within the Project borders." We ask for clarification: were some species found close by but outside the project area? or is this

taken from the NHIS report? More importantly - a "tree survey" doesn't supply enough information. We ask that the project use the recommendations stated in the NHIS letter: to use a DNR-qualified surveyor and contact Lisa for survey protocols.

Pale sedge: Page 18: "As the pale sedge may exist on site, disturbance will be minimized to the greatest extent possible and a take permit will be applied for is disturbances to this endangered species is unavoidable." Please explain this process in detail how this has been determined or will be determined. We ask that the project use the recommendations stated in the NHIS letter: to use a DNR-qualified surveyor and contact Lisa for survey protocols.

Page 17 Sec. a Paragraph 2: The EAW has incorrect information in this paragraph. Stewart Creek is not stocked by MNDNR, but does support a naturally reproducing Brook Trout population. Kingsbury Creek is currently only stocked with Brown Trout, but does support some natural reproduction of Rainbow and Brook Trout.

Specific Topics

NHIS

We recommend that a qualified surveyor conduct a botanical survey, using the list of approved surveyors and contacting Lisa Joyal for coordination regarding survey protocols.

Construction and development

We recommend minimizing the use of impervious surfaces; consider the use of pervious materials and surfaces particularly in Parcel 'H', closest to the St. Louis River, and for any recreational access roads; and use only native MN species for any re-seeding/planting. (See General Guidelines for more details)

We suggest using sustainable building design: minimizing footprint, carbon emissions, using bird and wildlife friendly construction to reduce adverse impacts to the natural resources and reduce potential adverse impacts to the climate.

The City of Duluth and DNR Division of Parks and Trails have had correspondence on this development over the past few years. Originally the City requested an at grade crossing and the DNR desires a separated grade crossing to provide safe and continued recreation in that corridor. A few meetings, phone calls, and emails have taken place since with some new conditions. The City has requested an 'at grade' crossing to reduce costs and the DNR is willing to help make that happen provided:

- 1) Kayak Bay Drive is the only access across the Willard Munger State Trail. No additional crossings can be requested or will be approved along this section of trail.
- 2) The 'at grade' crossing must be approved by the DNR and meet our specifications in order to proceed.
- 3) Minor upgrades to the trail crossing at Riverside Ave must be part of the plan.
- 4) Minor upgrades to the crossing on Polaski Street where it connects with a trail head parking area behind the Willard Munger Inn must be part of the plan.
- 5) No further encroachment within the Willard Munger Trail right-of-way and limit the potential for issues.

Cumulative Effects

Please consider and outline the cumulative impacts of this project on the natural resources and in conjunction with climate change; and explain how the project plans to minimize these impacts when and where possible.

Thank you for the opportunity to review the document. We look forward to receiving responses to our comments. Please contact Margi Coyle with any questions; she is the agency's Regional Environmental Assessment Ecologist and can be reached at (218) 328-8826 or margi.coyle@state.mn.us.

Sincerely,



Patty Thielen
NE Regional Director

CC:

Randall Doneen

Kate Fairman

Lisa Joyal

Mike Peloquin

Darrell Schindler

Margi Coyle

Equal Opportunity Employer


**DEPARTMENT OF
NATURAL RESOURCES**

Minnesota Department of Natural Resources
 Division of Ecological & Water Resources
 500 Lafayette Road, Box 25
 St. Paul, MN 55155-4025

October 16, 2017

Correspondence # ERDB 20180157

Mr. Karl Everett
 AMI Consulting Engineers
 91 Main Street
 Superior, WI 54880

RE: Natural Heritage Review of the proposed Kayak Bay Village Development,
 T49N R15W Section 23; St. Louis County

Dear Mr. Everett,

As requested, the Minnesota Natural Heritage Information System has been queried to determine if any rare species or other significant natural features are known to occur within an approximate one-mile radius of the proposed project. Based on this query, rare features have been documented within the search area (for details, please visit the Rare Species Guide at <http://www.dnr.state.mn.us/rsrg/index.html> for more information on the biology, habitat use, and conservation measures of these rare species). Please note that the following rare features may be adversely affected by the proposed project:

- Eastern hemlock (*Tsuga canadensis*), a state-listed endangered plant species, has been documented in the vicinity of the proposed project. Eastern hemlock usually occurs in well-drained, sheltered valleys and ravines. Protecting all surviving stands from any land clearing activities is a major conservation need for this species. Establishing a minimum one tree length buffer around the perimeter of any populations is recommended. Please note that Minnesota's endangered species law (MS 84.0895) and associated rules (Chapter 6212.1800 - 6212.2300 and 6134) prohibit the taking of endangered or threatened species, including their parts or seeds, without a permit. If there is suitable habitat within the project area and there will be any tree removal, we recommend that a qualified surveyor (please see enclosed list) conduct a botanical survey to ensure the protection of this rare species. For plants, taking includes picking, digging, or destroying. I have attached information regarding surveying, including a list of surveyors. **Please contact the Endangered Species Environmental Review Coordinator, Lisa Joyal at lisa.joyal@state.mn.us or 651-259-5901 before any survey work is initiated**, as you will need to discuss potential surveyors, survey protocol, and other requirements.
- Pale sedge (*Carex pallescens var. neogaea*), a state endangered plant species, has been documented in the vicinity of the project. This species is found in moist, grassy or rocky habitats on the margin of fire-dependent forests adjacent to the Lake Superior shore. This species is mainly impacted by the loss of habitat from development, road building & maintenance, and certain high-intensity recreational activities. If there is suitable habitat within the project area, we recommend that a qualified surveyor (please see

enclosed list) conduct a botanical survey to ensure the protection of this rare species. **Please contact Lisa Joyal before any survey work is initiated.**

- The lake sturgeon (*Acipenser fulvescens*), a state-listed special concern species, has been documented in Lake Superior in the vicinity of the proposed project. This species can be adversely impacted by actions which alter stream hydrology or decrease water quality, including sedimentation, dredging and filling, stream dewatering, impoundment, eutrophication, channelization, and pollution/contamination. Therefore, it is important that effective erosion and sediment control practices be implemented and maintained during construction and be incorporated into any stormwater management plan.
- The Environmental Assessment Worksheet should address whether the proposed project has the potential to adversely affect the above rare features and, if so, it should identify specific measures that will be taken to avoid or minimize disturbance.
- Please include a copy of this letter in any state or local license or permit application. Please note that measures to avoid or minimize disturbance to the above rare features may be included as restrictions or conditions in any required permits or licenses.

The Natural Heritage Information System (NHIS), a collection of databases that contains information about Minnesota's rare natural features, is maintained by the Division of Ecological and Water Resources, Department of Natural Resources. The NHIS is continually updated as new information becomes available, and is the most complete source of data on Minnesota's rare or otherwise significant species, native plant communities, and other natural features. However, the NHIS is not an exhaustive inventory and thus does not represent all of the occurrences of rare features within the state. Therefore, ecologically significant features for which we have no records may exist within the project area. If additional information becomes available regarding rare features in the vicinity of the project, further review may be necessary.

For environmental review purposes, the results of this Natural Heritage Review are valid for one year; the results are only valid for the project location (noted above) and the project description provided on the NHIS Data Request Form. Please contact me if project details change or for an updated review if construction has not occurred within one year.

The Natural Heritage Review does not constitute review or approval by the Department of Natural Resources as a whole. Instead, it identifies issues regarding known occurrences of rare features and potential effects to these rare features. If you have not done so already, please contact your DNR Regional Environmental Assessment Ecologist to determine whether there are other natural resource concerns associated with the proposed project (contact information available at http://www.dnr.state.mn.us/eco/ereview/erp_regioncontacts.html). Please be aware that additional site assessments or review may be required.

Thank you for consulting us on this matter, and for your interest in preserving Minnesota's rare natural resources.
An invoice will be mailed to you under separate cover.

Sincerely,

A handwritten signature in black ink that reads "Samantha Bump". The signature is written in a cursive, flowing style.

Samantha Bump
Natural Heritage Review Specialist
Samantha.Bump@state.mn.us

Enc. Rare Species Survey Process

Cc: Margi Coyle

Re: Response to Paul Ojanen's Comment on Kayak Bay Village Development EAW

AMI Consulting Engineers P.A. appreciates the opportunity to respond to the comment from Paul Ojanen for the Kayak Bay Village Development EAW.

In his letter, dated November 13, 2017, Mr. Paul Ojanen requested that an EIS be completed. AMI would like to thank Mr. Ojanen for his comment.

Our response to his comment is as follows:

“An EIS shall be ordered for projects that have the potential for significant environmental effects” (Minnesota Rules 4410.1700, subpart 1). As per the EAW Guidelines, the RGU, City of Duluth Planning Commission, will consider the following in determining the need for an EIS.

- A. Type, extent, and reversibility of environmental effects;
- B. Cumulative potential effects;
- C. The extent to which environmental effects are subject to mitigation by ongoing public regulatory authority provided that the RGU may rely only on mitigation measures that are specific and can reasonably be expected to be effective; and
- D. The 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 Environmental Impact Statements.

Re: Response to Citizen Petition Representative Comments on Kayak Bay Village Development EAW

AMI Consulting Engineers P.A. appreciates the opportunity to respond to the comments from Linda Ross Sellner, Citizen Petition Representative, for the Kayak Bay Village Development EAW.

In her letter, dated November 25, 2017, Ms. Linda Ross Sellner identified discrepancies between the attached plan set and the described project and calculations in the EAW, as well as differences between the residents' vision of future development according to the Riverside Small Area Project and the proposed development. Concerns over the cumulative and individual impacts to wetlands and nearby impaired waters were raised, including the insufficiency of buffer zones in protection of these natural areas. Further analysis of the composition and erodibility of the soils was requested. Overall, it is the opinion of the commenter that further environmental investigation is required. AMI would like to thank Ms. Linda Ross Sellner for her comments and concerns.

Our response to these comments are as follow:

Section 6: Project Description

Parcel H is intended to be used for parking and open space. It is understood parking does not constitute as natural open space. Furthermore, although Parcel H may be referred to as open space in the plan set, the acreage was not included in open space calculations of proposed land use in the EAW responses. As the project is still in the conceptual design phase, there may be discrepancies between the attached plan set and the project described in the EAW. Responses in the EAW are based on the conceptual design plan set included in the EAW but reflect the most current proposed development.

The Munger Trail may need to be rerouted to avoid crossing with Kayak Bay Drive. The City of Duluth is currently in communication with MNDNR to design the Munger Trail Crossing with Kayak Bay Drive. This development will provide access to both the Western Waterfront Trail and Munger Trail by way of Kayak Bay Drive and thus aid in the connectivity of recreational features. As the plan set represents the early conceptual design of the project, it is not the best estimate of land usage. Please refer to land use calculations included in the EAW responses for best estimates of all proposed total and specific land usage including the impervious surface associated with proposed roads. The proposed project is 27.13 acres as identified in 6c and 7 of the EAW questions.

Section 9: Land Use

This development is intended to provide better access and improvements to the existing recreational facilities in the area. The only development proposed between the railroad tracks and the St. Louis River is the parking lot in Parcel H. Therefore, the additional undeveloped area will serve as a buffer zone to the river. Buffer zones will also be acknowledged around both streams onsite.

Section 10: Geology, soils and topographic landforms

According to USGS maps, the first word in the island's name is spelled "Tallas." AMI does not know the origin of the name for Tallas Island. Whether it was someone's name or whether the name **TALLAS** comes from the Greek mythology, Thalassa, who is a primordial sea goddess, daughter of Aether and

Hemera, but it does not appear to originate from the word “talus” that geologists use to define as the pile of rocks that accumulates at the base of a cliff, chute, or slope. The spelling of the first word in the name of the island “Tallas Island” is not the same as the geologic term “talus.”

It is important to note that talus accumulates at the base of a cliff or steep slope, as per the definition offered by the USGS: “...rock fragments ... at the base of a cliff or very steep, rocky slope, ...” The proposed development is not at the base of very steep cliff or slope. For talus to accumulate, there would have to be a vertical or near-vertical slope immediately adjacent to an area of interest.

If Tallas Island was derived from talus, Tallas Island would be composed of rock fragments. According to the Phase I Archeology Survey of the Spirit Mountain Infrastructure Project (2015) “The sediments on Tallas Island were primarily medium to coarse grained sands with small pieces of gravel. The island appears to be a sand bar that formed on the lee side of the Riverside Marina or an earlier landform present upstream at Riverside.”

10. b. Soils and topography

To address concern of erosion potential, as stated in the EAW “...erosion potential is expected to be low. Based on a site walk by AMI on August 11, 2017, there were no obvious erosional surfaces...” such as streams undercutting trees, signs of slope slumping, etc. The project area is heavily vegetated, thus stabilizing soils and reducing erosion potential compared to bare soils. AMI used current, available information on the soils and topography in the project area from available USGS maps and the US Department of Agriculture, 2017.

The purpose of the geology section in the EAW is to describe the geology underlying the project area and identify susceptible geologic features such as sinkholes, shallow limestone formations, unconfined/shallow aquifers, or karst conditions. Also, it is important to discuss limitations of these features, effects the project could have on these features, and identify project designs or mitigation measures to address effects to geologic features. AMI used available geological information from the Minnesota Department of Natural Resources to identify the bedrock type and depth underlying the project is reported as being Precambrian gabbro, sandstone, and siltstone. The more recent Glacial Geology is clays and silts from the Superior Lobe that were deposited in the Pleistocene Epoch. AMI used current, available information on the soils and topography in the project area from available USGS maps and the US Department of Agriculture, 2017.

The bedrock slope from the point of rocks and to the west past Spirit Mountain appears stable, does not appear to have landslide potential, and does not exhibit signs of an unstable talus slope. The soils, glacial clays, and silts can erode, but can be controlled with proper stormwater management techniques. Other developments in the area have successfully stabilized the soils in the vicinity, including buildings and development at the steeper nearby Spirit Mountain complex. AMI did not find evidence of sinkholes, landslides, talus piles, karst topography, or see limitations on the project associated with the geology or soils in the vicinity.

Section 11: Water Resources

The project does not directly border the St. Louis River, as an undeveloped buffer zone exists between the majority of the space south of the railroad tracks extending to the shoreline of the St. Louis River Estuary. Parcel H, 0.49 acres of proposed parking lot, is the only development proposed south of the railroad tracks. Furthermore, the two streams located within the project boundary are not identified as impaired waters. Knowlton Creek, an impaired Trout Stream, is located approximately 300 feet northeast of the project boundary.

Currently, stormwater control plans have not been finalized and will be added upon final design of the proposed project. All disturbed areas will be included in the stormwater control design. Stormwater control devices will be implemented prior to any construction or dewatering activities.

Wetlands will be avoided to the maximum extent possible. A total of 0.48 acres of wetlands are proposed to be filled and mitigated for in accordance to permitting requirements. This is not to say the remaining wetland area will not be affected by the filled wetlands as it may cause altered hydrology within the area. Therefore, wetland fill is minimized to the greatest extent possible to allow for the construction of Kayak Bay Drive. Over half of the 698 mature trees identified onsite will be preserved, thus the stormwater uptake function provided by the trees will not be eliminated but only reduced. Furthermore, all disturbed land will be revegetated with native plants. Stormwater control plans will be designed to account for the reduced stormwater uptake and increased stormwater produced.

Section 13: Fish, wildlife, plant communities, and sensitive ecological resources (rare features)

In response to the Natural Heritage Review letter, DNR-qualified botanical experts from Short Elliott Hendrickson Inc. (SEH) were contracted to assist in assessing the habitat. Specifically, SEH completed a winter walk-through of the property on December 28, 2017, to complete winter tree identification. The purpose of this preliminary visit was to evaluate the need for a growing season survey, based on the suitability of habitat present for pale sedge (*Carex pallescens*). This also included observations for eastern hemlock (*Tsuga canadensis* var. *canadensis*, state endangered) in the project area, which would be an easily distinguished conifer seen at this time of year (winter), particularly during leaf-off of deciduous trees and shrubs.

In general, the open areas of the site appeared to have a presence of non-native and/or invasive species, such as common tansy, wild parsnip, Kentucky blue grass, and common burdock. While this casual observance during winter months does not constitute a formal plant survey, the open areas appear less likely to provide suitable habitat for pale sedge (*Carex pallescens*). However, wooded areas in and adjacent to ravines in the site contained some invasive species such as common buckthorn, but still appeared to represent native plant communities. These areas may be suitable for pale sedge (*Carex pallescens*), particularly at edges and openings in the canopy, in which a survey in summer 2018 will be planned, including both the wooded ravines and edges, and the overall non-forested/wooded areas within the project limits to confirm presence or absence of pale sedge (*Carex pallescens*).

Section 15: Visual

As this project is still in the conceptual design phase, all structure heights provided are estimates and therefore subject to change. Visual effects will be considered upon finalizing designs. Furthermore, no buildings will be built between the Western Waterfront Trail and the St. Louis River, thus preserving the outdoor experience for trail users.

Re: Response to Comments by Mike Casey Jr. on Kayak Bay Village Development EAW

AMI Consulting Engineers P.A. appreciates the opportunity to respond to the comments from Mike Casey Jr. for the Kayak Bay Village Development EAW.

In his letter, dated November 28, 2017, Mr. Mike Casey Jr. identified discrepancies between the plan set and the proposed project. Incomplete data was identified for stormwater plans on parcel H, description of purpose and future stages of the project, and the cumulative effects with a variety of currently proposed projects as well as currently impaired waters. Suggestions to use existing nearby parking features to reduce impervious surfaces of this project were made. Concerns as to the visual effects to the trail users experience, as well as the additional crossing plans for Munger Trail with Kayak Bay Drive were noted. AMI would like to thank Mr. Mike Casey Jr. for his comments and suggestions.

Our response to these comments are as follow:

Section 6: Project Description

Parcel H is intended to be used for parking. It is understood parking does not constitute as natural open space. Furthermore, although Parcel H may be referred to as open space, the acreage was not included in open space calculations of proposed land use. Parcel H, a proposed parking lot, is the only development proposed to occur between the railroad tracks and the St. Louis River. All further development will occur north of the railroad tracks.

The parking available 0.75 miles southwest of the development will be considered in designing the final development. This provides an option to minimize increased impervious surface associated with this development.

Stormwater control plans will be implemented into the final design plan set.

Spirit Valley Land Company is proposing the Kayak Bay Village Development. The proposed project intends to provide retail, office, and residential amenities. These amenities aim to revitalize West Duluth and the St. Louis River Corridor and will be of close access to users of the recreational trails and Spirit Mountain. Spirit Mountain is not involved in this development.

Future stages of this development, as identified on page 5, Section 6e, are a hotel, retail space, and housing units. These amenities will complement the currently proposed development of the project area and of Kayak Bay Drive. Currently, future stages of this development are expected to occur between 2020 and 2025.

The project is still in the conceptual design phase; therefore, it has not been confirmed if the additional 10-foot-wide trail next to Kayak Bay Drive will be installed. If the trail is included in the final design, it will increase the impervious surface beyond the 28-foot-wide road.

Section 9: Land Use

As identified on the Minnesota Department of Transportation Shortline Freight Railroad Map, the section of railroad bordering the project are Lake Superior & Mississippi Railroad tracks (yellow line indicating LSMR). According to the St. Louis County Land Explorer, the Right of Way is owned by

Northern Pacific Railway. However, the current Lake Superior & Mississippi Railroad reserves 5.2 miles of the original railroad right-of-way into Duluth, part of this 5.2 miles is the section of track bordering the proposed Kayak Bay Village Development.

We appreciate the additional information of features near the project site including the Spirit Mountain pumping station southeast of the project area.

As identified in Figure 7: Future Land Use Map, it is correct that Parcel H is located in an area associated with preservation. However, the area is zoned for Mixed-Use Planned.

No structures will be built between the Western Waterfront Trail and the St. Louis River, thus preserving the outdoor experience for the trail users. This development will continue to visually affect the nearby hiking trails in conjunction with the impaired views due to the Spirit Mountain pump station southeast of the railroad tracks.

Section 10: Geology, soils and topography/land forms

To address concern of erosion potential, as stated in the EAW "...erosion potential is expected to be low. Based on a site walk by AMI on August 11, 2017, there were no obvious erosional surfaces..." such as streams undercutting trees, signs of slope slumping, etc. The project area is heavily vegetated, thus stabilizing soils and reducing erosion potential compared to bare soils. AMI used current, available information on the soils and topography in the project area from available USGS maps and the US Department of Agriculture, 2017.

The bedrock slope from the point of rocks and to the west past Spirit Mountain appears stable, does not appear to have landslide potential. The soils, glacial clays, and silts can erode, but can be controlled with proper stormwater management techniques. Other developments in the area have successfully stabilized the soils in the vicinity, including buildings and development at the steeper nearby Spirit Mountain complex. AMI did not find evidence of sinkholes, landslides, karst topography, or see limitations on the project associated with the geology or soils in the vicinity.

Section 11: Water Resources

Currently, stormwater control plans have not been finalized and will be added upon final design of the proposed project. All disturbed areas will be included in the stormwater control design. The altered wetland hydrology and increased stormwater runoff from the proposed project may affect current impaired water conditions. However, upon finalizing designs, stormwater controls will be designed to handle the increased runoff as well as the developer will work with WLSSD to control wastewater associated with the development. If stormwater and wastewater controls are implemented appropriately, this project will not have an effect of the *E. coli* contamination currently troubling the surrounding area.

This project does not propose any construction between the railroad tracks and the St. Louis River beyond the parking lot in Parcel H. Furthermore, the Kayak Bay Village Development project proposes a total of 12.8 acres of increased impervious surface. We are not able to comment on the additional impervious surface proposed through other projects.

Section 15: Visual

As this project is still in the conceptual design phase, all structures height provided are estimates, and therefore subject to change. Visual effects will be considered upon finalizing designs. Furthermore, no buildings will be built between the Western Waterfront Trail and the St. Louis River, thus preserving the outdoor experience for the trail users.

Traffic Impact Study Memo:

The Munger Trail crossing with the proposed Kayak Bay Drive is still in the planning process. Contact has been made with the MNDNR for guidance and regulations on how to design this crossing in a safe and user-friendly method.

The Traffic Impact Study was based on the conceptual designs of the proposed Kayak Bay Village Development and may differ from the current plan set. Traffic impacts will be considered upon the final design of the proposed development.

Section 20: Cumulative Impacts

The end of Warwick Street will be clearly defined in the Final Plan Set. Continued development within the area has the potential to alter hydrology through increased impervious surfaces and possible filling of wetlands, adversely affect rare species through decline of habitat, and change the current visual atmosphere of the area. Opportunities to reduce impervious surfaces by utilizing existing infrastructure will be considered in the final design phase of the project.

Re: Response to Carole Newkumet's Comments on Kayak Bay Village Development EAW

AMI Consulting Engineers P.A. appreciates the opportunity to respond to the comments from Carole Newkumet, resident of the Riverside Neighborhood, for the Kayak Bay Village Development EAW.

In Ms. Carole Newkumet's letter, dated November 29, 2017, concerns were raised on the decline of grassland and wooded forest in the project area, as well as the addition of traffic by other currently developing projects in the area. Opportunity for further public input on the economic impacts of these developments was also requested. AMI would like to thank Ms. Carole Newkumet for her comments and concerns.

Our response to these comments are as follow:

Wetlands and Impervious Surfaces:

Wetlands impacts are proposed with this project but are minimized to the greatest extent possible as well as plan to be mitigated in compliance with permitting requirements. Furthermore, buffer zones will be used to minimize effects to nearby bodies of water, including the two streams onsite as well as the nearby St. Louis River and Knowlton Creek. Stormwater controls will be finalized with the final design to ensure proper control and containment of the additional stormwater produced with the development and increased impervious surfaces.

Traffic:

Additional traffic caused by this development as well as other proposed developments were considered in the cumulative effects. The addition of the Grand Avenue Estates and Morgan Park School will cause additional traffic in the area. The currently suggested traffic light improvements as per the Traffic Impact Study should help control the influx of traffic. However, the Traffic Impact Study is based on solely the Kayak Bay Village Development.

Eco-Tourism:

The proposed development aims to provide better access to the recreational amenities (hiking trails and natural features) in this area. Open space will be conserved to the greatest extent possible while also allowing for development within the area.

Public Input:

There will not be a meeting seeking public input on the economic implications of this development, as this process is to determine the potential environmental impacts.

Re: Response to Alison Clarke's Comments on Kayak Bay Village Development EAW

AMI Consulting Engineers P.A. appreciates the opportunity to respond to the comments from Alison Clarke for the Kayak Bay Village Development EAW.

In Ms. Alison Clarke's letter, dated November 29, 2017, concerns were raised of the visual impacts from the trail, the cumulative impacts of this project with other future developments in the area, the lack of a comprehensive soil assessment, possible omissions in the map plan, as well as the consistency of this development with the wishes of the community and the Future Land Use Plan. AMI would like to thank Ms. Alison Clarke for her comments and concerns.

Our response to these comments are as follow:

Proposed Project and Future Developments:

Future developments in the project area include a hotel, retail space, and housing units. The impacts of these developments are included in the overall project impacts identified in the EAW.

The only development planned to occur between the tracks and the river is a proposed parking lot in Parcel H. No development beyond the parking lot in Parcel H will occur south of the Western Waterfront Trail, leaving the visual effects to be minimal. There will however be visual effects to users of the Munger Trail.

The plan set attached to the EAW represents the initial conceptual stage of the project design. Therefore, slight discrepancies between the described project and the plan set may occur.

Geology, soils, and topography/land forms:

A comprehensive soil assessment has not been conducted. AMI used current, available information on the soils and topography in the project area from available USGS maps and the US Department of Agriculture, 2017. The project area is heavily vegetated, thus stabilizing soils and reducing erosion potential compared to bare soils. Any disturbed land will be reseeded with native vegetation. The soils, glacial clays, and silts can erode, but can be controlled with proper stormwater management techniques. Other developments in the area have successfully stabilized the soils in the vicinity, including buildings and development at the steeper nearby Spirit Mountain complex. AMI did not find evidence of sinkholes, landslides, talus piles, karst topography, or see limitations on the project associated with the geology or soils in the vicinity.

Future Land Use:

As shown in Figure 7: Future Land Use, the project area includes areas for preservation, urban residential, and commercial waterfront. This project proposes both residential and commercial developments, as well as will use buffer zones surrounding the two streams within the project area to help preserve these natural features.

Interests of Community and Developer:

One of the land use priorities as identified through the community visioning and engagement process of the Riverside Small Area Plan, was the current lack of local restaurants and light commercial or retail space. This proposed project aims to develop the project area, so these amenities may be provided. Furthermore, in discussions with residents in attendance to the public engagement meetings of the Riverside Small Area Plan, a need for additional housing opportunities, and a need for commercial enterprises to support local families and recreational amenities were identified.

Spirit Valley Land Company, LLC aims to develop the project area so that these amenities may come to fruition.

Continued development within the area has the potential to alter hydrology through increased impervious surfaces and possible filling of approximately half an acre of wetlands, adversely affect rare species through decline of habitat, and change the current visual atmosphere of the area.

Re: Response to Bruce Fehringer's Comments on Kayak Bay Village Development EAW

AMI Consulting Engineers P.A. appreciates the opportunity to respond to the comments from Bruce Fehringer for the Kayak Bay Village Development EAW.

In Mr. Bruce Fehringer's letter, the purpose of the project was questioned, concerns were also raised for future developments, visual effects, stormwater plans for parcel H, as well as safety concerns for the users of the Munger Trail and Western Waterfront Trail. AMI would like to thank Mr. Bruce Fehringer for his comments.

Our response to these comments are as follow:

Section 6: Project Description

The "amenities" or "improvements" proposed by Spirit Valley Land Company LLC, are still in the conceptual design phase. Currently retail, office, and residential amenities/improvements are proposed.

The project is still in the conceptual design phase; therefore, it has not been confirmed if the additional 10-foot-wide trail next to Kayak Bay Drive will be installed. If the trail is included in the final design, it will increase the impervious surface beyond the 28-foot-wide road.

The Munger Trail crossing with the proposed Kayak Bay Drive is still in the planning process. Contact has been made with the MNDNR for guidance and regulations on how to design this crossing in a safe and user-friendly method.

As this project is still in the conceptual design phase, all structure heights provided are estimates and therefore subject to change. Visual effects will be considered upon finalizing designs. Furthermore, no buildings will be built between the Western Waterfront Trail and the St. Louis River, thus preserving the outdoor experience for trail users.

The proposed project intends to provide retail, office, and residential amenities. These amenities aim to revitalize West Duluth and the St. Louis River Corridor and will be of close access to users of the recreational trails and Spirit Mountain.

Future stages of this development, as identified on page 5, Section 6e, are a hotel, retail space, and housing units. These amenities will complement the currently proposed development of the project area and of Kayak Bay Drive. Currently, future stages of this development are expected to occur between 2020 and 2025.

Section 9: Land Use

We appreciate the additional information of features near the project site including the Spirit Mountain pumping station southeast of the project area.

The nearby hiking trails will be visually impacted by this development. The hiking trails have also been previously visually impacted by the Spirit Mountain pump station south of the railroad tracks.

Section 11: Water Resources

Currently, stormwater control plans have not been finalized and will be added to the final design of the proposed project. All disturbed areas will be included in the stormwater control design.

The altered wetland hydrology and increased stormwater runoff from the proposed project may affect current impaired water conditions. However, upon finalizing designs, stormwater controls will be designed to handle the increased runoff as well as the developer will work with WLSSD to control wastewater associated with the development. If stormwater and wastewater controls are implemented appropriately, this project will not have an effect of the *E. coli* contamination currently troubling the surrounding area.

Parcel H, 0.49 acres of proposed parking features, is the only development proposed between the railroad tracks and the St. Louis River. Furthermore, the Kayak Bay Village Development proposes a total of 12.8 acres of increased impervious surface. We are not able to comment on the additional impervious surface proposed through other projects.

Appendix B: Natural Heritage Information System Letter

Please see Section 13: Fish, wildlife, plant communities, and sensitive ecological resources for discussion on potential effects to the rare and endangered features identified in Appendix B.

Appendix C: State Historic Preservation Letter

The City of Duluth will require an archaeological survey be conducted before any ground disturbing activity is approved. The final plat for this development has not been approved and a survey will be required before it may be reviewed by the planning commission.

Re: Response to WLSSD's Comments on Kayak Bay Village Development EAW

AMI Consulting Engineers P.A. appreciates the opportunity to respond to the comments from Jack Ezell, Manager of Planning and Technical Services for WLSSD, for the Kayak Bay Village Development EAW.

In Mr. Jack Ezell's letter, dated November 21, 2017, clarifications were made to the requirements of the approval and permitting process by WLSSD. Corrections to the possible odors as a result of this project were also noted. AMI would like to thank Mr. Jack Ezell for his comments and clarifications.

Our response to these comments are as follow:

Sanitary Sewer Extension Permit:

The developer will seek approval from MPCA and WLSSD before beginning any construction of a public sewer. Furthermore, as plans are finalized, and the developer seeks permit approval and project review, estimates of initial and ultimate wastewater flows will be provided.

Interceptor Connection Approval:

It is understood a formal request must be made to connect to the District's Division D / Scanlon Interceptor. This request must be made as part of the sanitary sewer extension process to the WLSSD Board of Directors from the City of Duluth.

Other Comments/Concerns:

We appreciate the additional information as to controlling odors, and concur occasional odors may escape onto adjoining properties.

Permanent easement for the District's Scanlon / Division D interceptor sewer and Knowlton Creek Pump Station will be recognized in the development of final site plans.

MPCA had no comments but would like to receive a copy of the decision letter.

Re: Response to MnDOT's Comments on Kayak Bay Village Development EAW

AMI Consulting Engineers P.A. appreciates the opportunity to respond to the comments from Duane Hill, District Engineer for MnDOT, for the Kayak Bay Village Development EAW.

Mr. Duane Hill's letter, dated November 29, 2017, identified deficiencies in the traffic study, as well as clarified permit requirements. AMI would like to thank Mr. Duane Hill for his comments and clarifications.

Our response to these comments are as follow:

Permits and Approvals:

It is understood an access permit will need to be obtained from MnDOT for the new street connection with Trunk Highway 23.

Transportation:

The added traffic volumes are based on the Traffic Impact Study prepared by Westwood in April of 2014. This study was based on the conceptual designs of the proposed Kayak Bay Village Development and may differ from the current plan set. Traffic impacts will be considered upon the final design of the proposed development. Furthermore, it is understood the current traffic study is limited in scope by only addressing the intersection to Trunk Highway 23.

Water Resources:

Upon final design of the proposed project, existing drainage patterns will be perpetuated to the extent feasible and as approved by City of Duluth Engineers to avoid potential issues to the roadways.

Re: Response to MNDNR's Comments on Kayak Bay Village Development EAW

AMI Consulting Engineers P.A. appreciates the opportunity to respond to the comments from Patty Thielen, MN DNR, for the Kayak Bay Village Development EAW.

In her letter, dated November 29, 2017, Ms. Patty Thielen requested further action in response to the Natural Heritage Review and identified endangered species on or near the site of Kayak Bay Village Development. It was also requested that the cumulative effects in conjunction with climate change be discussed. A correction was made as to the involvement of DNR and trout stocking in Stewart Creek. As well as suggestions and guidance were provided to further minimize impacts to the natural resources during the planning and construction phases of the project. AMI would like to thank Ms. Patty Thielen for her comments and clarifications.

Our response to these comments are as follow:

General:

We appreciate the Region 2 General Guidance for development, construction, and maintenance of trails, corridors, or related projects. This document will be reviewed prior to finalizing designs and suggestions will be incorporated into the final design where possible.

Item 13: Fish, wildlife, plant communities, and sensitive ecological resources (rare features):

In response to the Natural Heritage Review letter, DNR-qualified botanical experts from Short Elliott Hendrickson Inc. (SEH) were contracted to assist in assessing the habitat. Specifically, SEH completed a winter walk-through of the property on December 28, 2017, to complete winter tree identification. The purpose of this preliminary visit was to evaluate the need for a growing season survey, based on the suitability of habitat present for pale sedge (*Carex pallescens*). This also included observations for eastern hemlock (*Tsuga canadensis* var. *canadensis*, state endangered) in the project area, which would be an easily distinguished conifer seen at this time of year (winter), particularly during leaf-off of deciduous trees and shrubs.

In general, the open areas of the site appeared to have a presence of non-native and/or invasive species, such as common tansy, wild parsnip, Kentucky blue grass, and common burdock. While this casual observance during winter months does not constitute a formal plant survey, the open areas appear less likely to provide suitable habitat for pale sedge (*Carex pallescens*). However, wooded areas in and adjacent to ravines in the site contained some invasive species such as common buckthorn, but still appeared to represent native plant communities. These areas may be suitable for pale sedge (*Carex pallescens*), particularly at edges and openings in the canopy, in which a survey in summer 2018 will be planned, including both the wooded ravines and edges, and the overall non-forested/wooded areas within the project limits to confirm presence or absence of pale sedge (*Carex pallescens*).

Prior to initiating a survey for pale sedge (*Carex pallescens*), the City of Duluth and AMI, along with its sub-contractor, SEH, will work with the DNR to concur on the proposed protocol and survey approach. The survey would be proposed in early to mid-July, with a report provided two (2) weeks following the survey. This report would be provided to the Minnesota DNR Natural Heritage Program for review and

concurrency. If any occurrences of pale sedge (*Carex pallescens*) or otherwise listed species are encountered in the project area, these would also be documented in the report.

Fish Stocking:

We appreciate the correction and concur that the MNDNR does not stock Stewart Creek, but does support a naturally reproducing Brook Trout population. Kingsbury Creek is currently only stocked with Brook Trout, as well as natural reproduction of Rainbow and Brook Trout is supported.

Construction and Development:

Impervious surfaces will be minimized to the greatest extent possible, as well as native Minnesota species will be used for all re-seeding and planting of disturbed ground.

All MNDNR requirements for the crossing of the Munger Trail with Kayak Bay Drive will be followed.

Cumulative Effects:

When possible, efforts will be made to reduce impacts to the natural resources within the project area. As this project is still in the conceptual stages, the recommendations provided in the MNDNR Region 2 General Guidance for development, construction, and maintenance of trails, corridors, or related projects, will be referenced in the final designs.

According to the Minnesota Sea Grant webpage, <http://www.seagrant.umn.edu/climate/superior>, climate change will affect the Lake Superior area, in regard to the scope of this project, with warmer annual temperatures, drier summers (reduction in soil moisture), lower water levels in Lake Superior due to increased evaporation, and changes in the species composition of both terrestrial and aquatic ecosystems. Wetlands impacts are proposed with this project but plan to be mitigated in compliance with permitting requirements. Impacts to wetlands will alter the area hydrology. Therefore, it is important to employ stormwater control measures to better control potential runoff associated with the project. Stormwater management plans will be designed in conjunction with the final proposed plans. Native Minnesota plants will be used to revegetate all disturbed ground, as well as current existing natural features will be preserved to the greatest extent possible.



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MEMORANDUM

TO: Lisa Joyal | Minnesota DNR Endangered Species Review Coordinator

FROM: Allyz Kramer, Senior Biologist | Principal (SEH)

DATE: January 2, 2018

RE: Threatened and Endangered Plant Species Survey Protocol for Kayak Bay Village EAW, Duluth, St. Louis County, MN
SEH No. AMICE 144631 14.00

The purpose of this memo is to describe proposed protocol for a rare plant survey to be conducted in support of the Kayak Bay Village Environmental Assessment Worksheet (EAW). Minnesota Department of Natural Resources (DNR) comments on the published EAW identified potential habitat for the state-listed species pale sedge (*Carex pallescens*, state endangered) and eastern hemlock (*Tsuga canadensis* var. *canadensis*, state endangered) in the project area. In response to these comments, AMI Consulting Engineers, PA (AMI), on behalf of the City of Duluth, has contracted with SEH to conduct a rare plant survey for these species. We understand that the DNR requests that prior to initiation of field surveys that the proposed protocol and approach be submitted to the DNR Natural Heritage program staff for review and concurrence.

SEH staff biologist Natalie White visited the site on December 28, 2017 to conduct a preliminary habitat assessment, and search for occurrences of eastern hemlock (which would still be easily visible and identifiable in winter). The purpose of this preliminary visit was to evaluate the need for a growing season survey, based on the suitability of habitat present for pale sedge. Open areas of the site appeared to be highly altered and dominated by non-native and invasive species, and unlikely to provide suitable habitat for listed species. Wooded areas in and adjacent to ravines running through the site contained some invasive species, but still appeared to represent native plant communities. These areas may be suitable for pale sedge, particularly at edges and openings in the canopy. No eastern hemlocks were observed during this site visit. This is similar to the findings of others that completed site tree survey work for the project area that no eastern hemlock were observed in the project limits; this was reported in the Kayak Bay Village EAW published by the City of Duluth.

Ms. White plans to complete the full rare plant survey in early to mid-July 2018, when pale sedge perigynia should be mature and provide definitive identification for the species. Ms. White will use a well-developed search image approach, and conduct a focused meander along the woodland edge habitats most suitable for pale sedge. Because the site is relatively small, we propose to search all areas of suitable habitat during the field survey. If any other state-listed flora species are observed, these will also be documented. Ms. White will keep a running list of all plant species encountered within the target area. If the survey encounters listed element occurrences, Ms. White will photograph the specimens with reference to a measured scale, and the location will be recorded with a Trimble Geo XH handheld GPS unit capable of sub-meter accuracy. If suspected pale sedge is found, we propose to collect mature perigynia to verify the identification. The collection will be limited to the minimum necessary for a verified identification, and in no case will more than 20% of the available perigynia be collected.

A report will be compiled summarizing methods, results, and photo-documentation within two (2) weeks following the completion of the field survey. Upon approval from AMI's and the City of Duluth's for release of the report, SEH will provide the report to DNR Natural Heritage staff for review and concurrence. The data gathered will be

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 418 West Superior Street, Suite 200, Duluth, MN 55802-1512
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Threatened and Endangered Plant Species Survey Protocol for Kayak Bay Village EAW, Duluth, St. Louis
 County, MN
 January 2, 2018
 Page 2

used to document the affected environment as it may pertain to environmental review and/or permitting documents for the proposed Kayak Bay Village project. The precise location of any documented record of a listed species will not be published for the general public. Rather, habitat and/or known records will be generalized for discussion and analysis as appropriate to describe potential project effects. Should any occurrences of pale sedge be located in the project area, location and population data collected will be provided to the DNR using the reporting requirements set forth by the Natural Heritage Program.

We realize that collection of any listed plants and/or or their parts may require a specialty collection permit authorized by your agency. If you agree to our approach for survey and reporting, we will prepare an application for a collections permit to be authorized by your agency.

We have included resumes for our team of expert botanists familiar with the flora of Northeastern Minnesota. Allyz Kramer is qualified by the Minnesota DNR for survey of general flora and *Botrychium spp.* in the state. She will oversee the survey and reporting. Natalie White is also a qualified botanist, who is currently preparing her application for acceptance on the state's pre-qualified list of botanists for general flora. Resumes for both Ms. Kramer and Ms. White are attached for your review.

Comments regarding our approach to this rare plant survey should be directed to the following individuals:

Allyz Kramer, PWS, CWD | Principal
 SEH Sr. Biologist
akramer@sehinc.com
 Direct | 218.279.3011
 Mobile | 218.260.0826

Natalie White, PWS, CWD
 SEH Biologist
nwhite@sehinc.com
 Direct | 218.279.3003
 Mobile | 218.340.3961

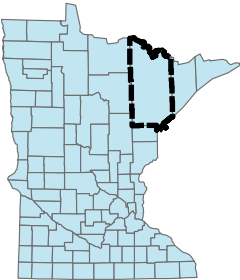
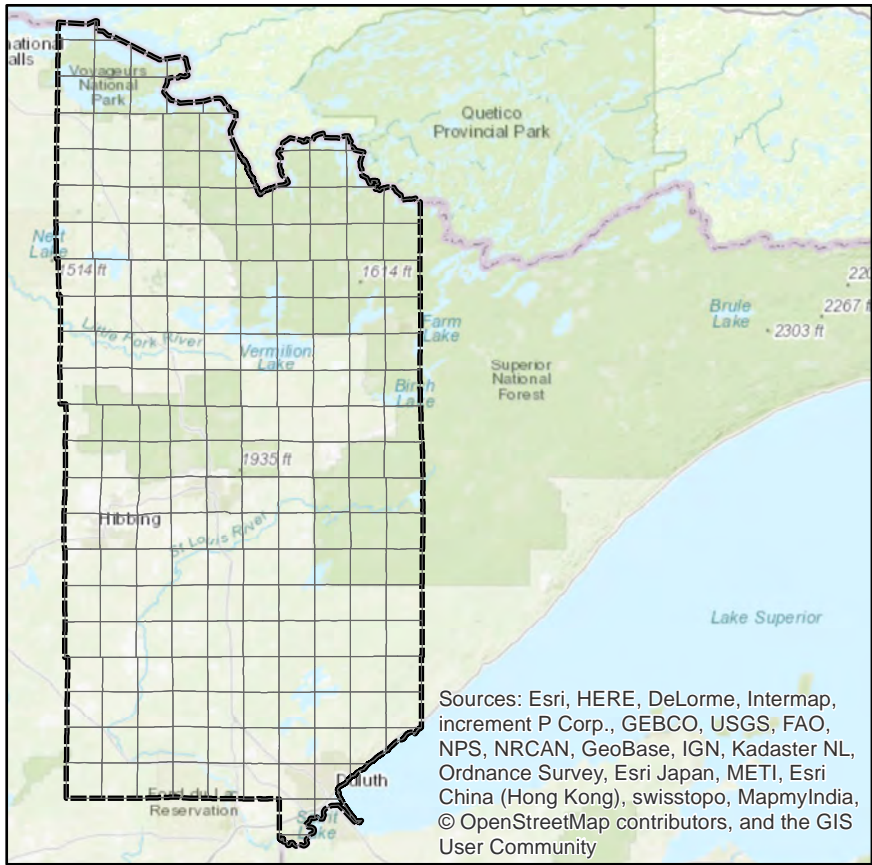
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Attachments: **Figure 1 – County Map (from EAW)**
Figure 2 – Project Location Map (from EAW)
Resumes for Allyz Kramer & Natalie White

c: Karl Everett, PE, PG – AMI Consulting Engineers, PA

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St. Louis County, Minnesota



Legend

- County Boundary, St. Louis County, MN
- Townships, St. Louis County, MN

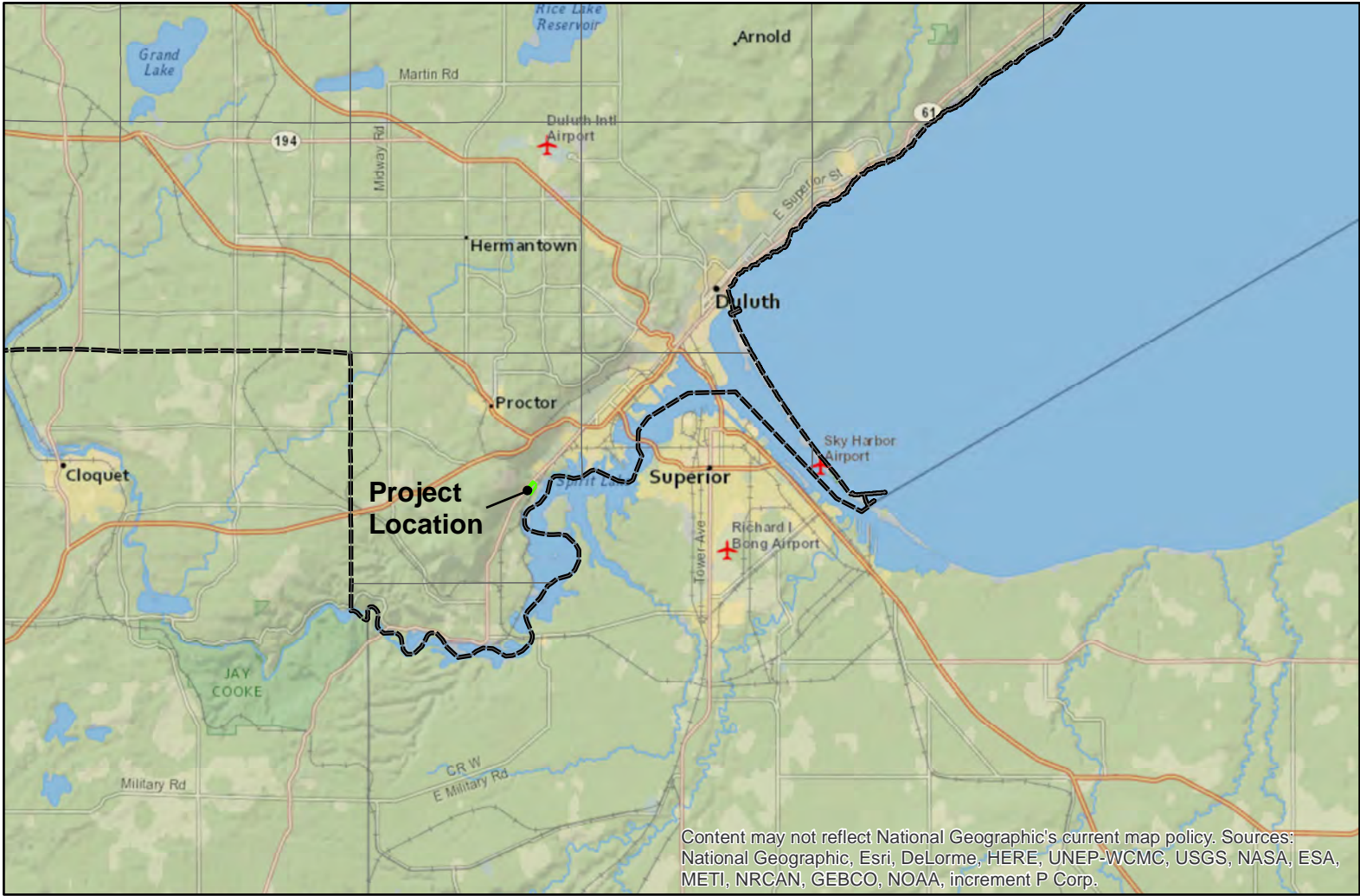


Figure 1: County Map

Figure 2: Project Area

