

Staff Report – Proposed Findings of Fact on EAW Determination

1. We agree with EQB's determination that the city is the RGU for this EAW petition determination.
2. The Council finds that the circumstances set forth in the EAW petition do not make it exempt from an EAW determination under Minnesota Rules 4410.4600. That provision lists exemptions from EAW. The Harbor Project meets none of the criteria to be exempt from an EAW.
3. The threshold determination that must be made with respect to an EAW Petition is whether the Petition sites circumstances that make an EAW mandatory. Minnesota rules Section 4410.4300 outline the Mandatory EAW Categories. This project does not fall under any of the Mandatory EAW Categories identified in 4410.4300, because the plan is for 27 units in a development that is not phased and is in an incorporated city with sanitary sewer service. The Council finds that an EAW is not mandatory in this instance as the development does not meet the mandatory requirement for an EAW. Specifically, with respect to 4410.4300 subpart 19a (C) the area involved in this project is not in a sensitive shore land area, as set forth in Minnesota Rules 4410.0200 subpart 79a, nor it's references. Also, pursuant to Minnesota Rules 4410.1000, subpart 2, the circumstances set forth in the EAW petition do not make an EAW mandatory under Minnesota Rules section 4410.4400.
4. Thus, the Council finds that the determination of whether an EAW is necessary for the Harbor Project is discretionary on the part of the East Gull Lake City Council. The Council then proceeds under Minnesota Rule 4410.1100, subpart 6.
5. Under Minnesota Rule 4410.1100 subpart 6, "in considering the evidence, the RGU must take into account the factors listed in part 4410.1700, subpart 7." Those criteria are used in deciding whether a project has the potential for significant environmental effects, and the following factors shall be considered:

A. Type, extent and reversibility of environmental effects:

For analysis of this and the following criteria, the City sought further information from the proposer/applicant, Harstad Hills, the City Administrator, the City Engineer, Jeff Ledin, and from Kelly Condiff, the Cass County Soil and Water Wetlands expert who was enlisted to analyze the applications of behalf of Cass County. Each of the above people issued number by number replies to a 16-point check list entitled "Potential Environmental Effects" which was supplied by the EAW petitioner as part of the EAW petition. (attached hereto as Exhibit A) Each of the responses is incorporated into these findings, including as analysis of this criteria item as well as the following criteria items. Those as well as a review of all of the other information supplied as part of the EAW petition analyses form the basis for the City's consideration of this criteria item.

Questions answered per Rob Mason, City Administrator/Planning & Zoning Administrator:

1. INCREASED BOAT TRAFFIC 27 BOATS ON THE CHANNEL IN THE SUMER IS BOUND TO AFFECT THE FISH AND TURTLE POPLUATIONS
Per conversation with Darrin Hoverson, MnDNR Hydrologist, his report and permit pertained that they determined "This is the least environmental alternative to what could be done on the channel," there is no impact on fish spawning as the area is a feeding ground in the spring due to warming waters and bait fish appearing. Turtle impact is not significant and once the dredging is done they will relocate back to the area as 50% of the channel will not be touched.
5. MUCH OF THE REMAINING TREES LEFT FOR WILDLIFE AFTER THE STORM WILL BE SACRIFICED TO THE PROJECT.
In order to provide the required roads and infrastructure, yes a portion of the trees will be sacrificed. The

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developer has also changed some plans to allow for walkout units in the Northwest corner that will preserve as many tall pines as he can. It is to his advantage to save as many as possible and he will do so. He has also submitted a landscape plan that calls for an addition of 113 trees (45 of these will be 6 feet tall or more

6. THIS MANY TWO STORY SINGLE DWELLING HOUSES AND CARS WILL TOTALLY RUIN THE SCENIC DRIVE THAT SO MANY PEOPLE ENJOY WALKING, BIKING AND HORSE RIDING ALONG. AND WHERE ARE THE ELECTRIC LINES NEEDED FOR THIS PROJECT GOING TO BE HIDDEN. THE GROUND IS TOO MUCH WETLAND TO PUT THEM UNDERGROUND.

The development will be done tastefully and will be maintained by the association in a manner that will complement the area.

9. GROUND WATER CONTAMINATION, WASTEWATER TREATMENT – SEWER POND FAILURE DISASTER.
The City's wastewater system is currently 25 years old at Squaw Point and needs some upgrades. Regardless as to this development we have been planning for years to either improve the plant or have an alternative. Currently we have a Facility plan being done per MPCA rules by SEH Engineering firm and a decision to improve the situation will be made in the 2017 season

11. INCREASED TRAFFIC – WE HAVE A HIGH TRAFFIC ROAD ALREADY-WHAT WILL THE ADDITION OF THESE ADDITIONAL CARS FOR 27 SINGLE FAMILY UNITS PLUS ALL THEIR VISITORS DO TO OUR POOR LITTLE ROAD WITH NO SHOULDERS.

Currently Squaw point road has very little shoulder to walk or ride in as it is a traffic hazard. The future plan as discussed with the Park and Trail committee and discussed with the developer who is providing right of way on the south side of Squaw Point Road is to build a trail from the Gull Lake Dam to the intersection of Hillview Forest Road.

Questions answered per Jeff Ledin, East Gull Lake City Engineer:

3. HIS ADDED RUN-OFF FROM HIS HOLDING PONDS COULD VERY WELL CAUSE SERIOUS EROSION IN THE HIGH TRAFFIC AREAS.

All changes to runoff/drainage have been addressed by developer's plans, which use national, state and local best management practices.

4. SOIL CONTAMINATION FROM LANDSCAPING RUN OFF IS DEFINITELY AN UNPREDICTABLE FACTOR AT THIS TIME, ESPECIALLY IF MR. HARSTAD FOLLOWS THROUGH WITH HIS THREAT TO INCREASE THE NUMBER OF UNITS IF HE DOESN'T GET HIS WAY.

Soil contamination from runoff is not unpredictable. All changes to runoff/drainage; SWPPP uses accepted national, state and local best management practices.

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Additional environmental review will not bring forward any new information related to the environment.

7. WALKING, BIKING AND HORSE RIDING ALONG. AND WHERE ARE THE ELECTRIC LINES NEEDED FOR THIS PROJECT GOING TO BE HIDDEN.

Water, sewer, electric, cable TV and telephone lines will be buried.

9. GROUND WATER CONTAMINATION, WASTEWATER TREATMENT – SEWER POND FAILURE DISASTER.

The City of East Gull Lake has successfully operated a municipal wastewater treatment system under permit from the MPCA since the early 1990's. The proposed development will discharge wastewater into the East Gull Lake treatment system, where wastewater will be treated by the licensed staff under the oversight of the MPCA. Furthermore, the City is actively in the process of conducting Facility Planning (following MPCA rules) to improve the capacity and quality of treatment of the wastewater treatment system in the northern part of the City (project area).

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10. STORMWATER RUNOFF SEEMS TO BE CONTAINED BUT DOES NOT TAKE INTO ACCOUNT ANOTHER EXTREMELY WET YEAR. OUR PRO-BONO WETLANDS SCIENTIST HAD THIS TO SAY AFTER STUDYING THIS PART OF MR. HARSTAD’S PROPOSAL “ONE THING THAT I STILL AM NOT SURE ABOUT IS WHAT THE ACTUAL WETLAND IMPACTS ARE AND WHERE THE DEVELOPMENT FALLS COMPARED TO THE DELINEATED BOUNDARIES.”
Project applicant through his consultants has prepared the delineation in accordance with environmental standards and the delineation has been accepted by the appropriate agencies. A requirement for additional investigation would be in excess of the lawful requirement.
11. INCREASED TRAFFIC – WE HAVE A HIGH TRAFFIC ROAD ALREADY-WHAT WILL THE ADDITION OF THESE ADDITIONAL CARS FOR 27 SINGLE FAMILY UNITS PLUS ALL THEIR VISITORS DO TO OUR POOR LITTLE ROAD WITH NO SHOULDERS.
This road is a City collector road. Project related changes in traffic patterns fall within the functional classification of the existing roadway corridor and additional investigation will not bring forward any new information.
12. AN ARCHAEOLOGICAL DIG WAS CONDUCTED BY HOW THOROUGHLY WAS THE AREA EXAMINED CONSIDERING THE CLOSENESS OF THE GULL LAKE DAM INDIAN BURIAL GROUND?
The archeological investigation adequately addressed the potential of impacts
14. FLOODING OF OUR HAY LANDS IS A MAJOR CONCERN.
There is no evidence or reason to suspect the proposed development will alter drainage patterns off site (adjacent property)
15. MORE CARS-MORE POLLUTION. OVER USE OF SEWER POND COULD RESULT IN SERIOUS EMISSIONS
Neither of these points is factual and need not be considered.

Questions answered per Marty Harstad, Developer:

1. INCREASED BOAT TRAFFIC BY 27 BOATS ON THE CHANNEL IN THE SUMMER IS BOUND TO AFFECT THE FISH AND TURTLE POPULATIONS.
In the state of Minnesota, the highest governing agency of fish and reptiles is the Minnesota Department of Natural Resources or DNR. Prior to the petition, the DNR had issued a permit for the dredging and creation of the harbor. As part of the permit the DNR had numerous divisions within the DNR review the application. This included the fisheries division which had to sign off, prior to the Permit being granted.
2. THE WETLANDS SURVEY WAS DONE IN ONE OF THE DRIEST YEARS ON RECORD SINCE MR. HARSTAD HAS OWNED THE PROPERTY.
Wetland delineations are a science that by law requires a qualified professional that is certified by the state of Minnesota to perform them. Ben Meister, Certification Number 1031 performed the wetland delineation on 10/21/13. The delineation was reviewed and confirmed on site by Kelly Condiff, of Cass County, the official County wide government wetland specialist. The delineation and mitigation plan was also reviewed on 5/16/16 by the Technical Evaluation Panel or TEP. This panel is made up of representatives of Cass County, Minnesota Department of Natural Resources, Army Corp of Engineers and the Board of Water and Soil Resources. The TEP Panel reviewed the wetland delineation and its mitigation plan.
3. HIS ADDED RUN-OFF FROM HIS HOLDING PONDS COULD VERY WELL CAUSE SERIOUS EROSION IN THE HIGH TRAFFIC AREAS.
Adam Ginkle an engineer licensed by the State of Minnesota, License Number 43963 designed the grading plan and accompanying utility plans. Holding ponds have been engineered and sized to accommodate runoff from high traffic areas as well as all areas of the project. Grading and utility plans will be reviewed by the cities Licensed Engineer prior to installation.
4. SOIL CONTAMINATION FROM LANDSCAPING RUN OFF IS DEFINITELY AN UNPREDICTABLE FACTOR AT THIS TIME, ESPECIALLY IF MR. HARSTAD FOLLOWS THROUGH WITH HIS THREAT TO INCREASE THE NUMBER OF

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UNITS IF HE DOESN'T GET HIS WAY.

Careful attention to detail has been used in minimizing any runoff from landscaping into adjoining wetlands. The grading plan as submitted as part of the application with the City includes numerous stormwater ponds and infiltration basins designed to pretreat any run off prior to discharge into adjoining wetlands. Mr. Harstad has not made any threats about increased density. Density is determined by ordinance and the City's Comprehensive Plan. Mr. Harstad only presented a document created by the City Planning and Zoning Coordinator, Mr. Charles Marohn. This document, dated 1/7/02 stated that the property in the same location as the property being considered as part of the current 2016 application would support a base Density of 50.5 units with a potential to reach a maximum of 85 units.

5. MUCH OF THE REMAINING TREES LEFT FOR WILDLIFE AFTER THE STORM WILL BE SACRIFICED TO THE PROJECT.

The project has been designed to retain as many trees as possible. Nineteen of the twenty seven homes are being built in the area of the property that is currently being used as pasture. The remaining eight homes will require some tree removal. Building plans have been modified to create walkout style homes on six of the eight lots. By modifying the six homes to walkouts the developer will be able to save the majority of trees on site. The developer is also proposing to plant 154 new trees on site.

6. THIS MANY TWO STORY SINGLE DWELLING HOUSES AND CARS WILL TOTALLY RUIN THE SCENIC DRIVE THAT SO MANY PEOPOE ENJOY WALKING, BIKING AND HORSE RIDING ALONG. AND WHERE ARE THE ELECTRIC LINES NEEDED FOR THIS PROJECT GOING TO BE HIDDEN. THE GROUND IS TOO MUCH WETLAND TO PUT THEM UNDERGROUND.

As part of the landscape plan the developer has provided significant screening along Squaw Point road. The developer is also donating 33 feet of right away along Squaw Point road. This additional right of way has the potential to make walking and biking much safer and enjoyable for the community. Electric lines would be buried in the new development. On 6/6/16 Braun Intertec completed 21 soil borings on the property. As part of the 21 borings, they measured the depth of the ground water elevation. In the general area of where underground utilities will be located the highest water table found was 4.5 feet below the surface with most being greater than 9.5 feet (the end of borings). Underground utilities are generally installed 30 inches under the soil surface.

7. WALKING, BIKING AND HORSE RIDING ALONG. AND WHERE ARE THE ELECTRIC LINES NEEDED FOR THIS PROJECT GOING TO BE HIDDEN.

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8. THE GROUND IS TOO MUCH WETLAND TO PUT THEM UNDERGROUND.

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As part of the development of the total development being 62.7 acres or 2,731,212 square feet, the development will be impacting 5,462 square feet of wetland. As part of the approved Wetland Mitigation Plan, we are buying wetland credits at a 2 to 1 ratio, or 10,924 square feet. We are also creating 76,940 square feet of new ponds and 1,404 square feet of infiltration basin.

11. INCREASED TRAFFIC – WE HAVE A HIGH TRAFFIC ROAD ALREADY-WHAT WILL THE ADDITION OF THESE ADDITIONAL CARS FOR 27 SINGLE FAMILY UNITS PLUS ALL THEIR VISITORS DO TO OUR POOR LITTLE ROAD WITH NO SHOULDERS.

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The road is one of the highest quality roads in the city. It has great site lines for oncoming traffic. The developer is donating 33 feet of right of way which allows the city room for trails, shoulders or even a wider road in the future.

12. AN ARCHAEOLOGICAL DIG WAS CONDUCTED BY HOW THOROUGHLY WAS THE AREA EXAMINED CONSIDERING THE CLOSENESS OF THE GULL LAKE DAM INDIAN BURIAL GROUND?

A complete Phase I Archaeological Survey was completed on 6/7/16 by Trefoil Cultural and Environmental. Prior to doing any field work, all known historic properties within one mile of the development were reviewed. On site exploration included 42 individual test sites on the development. At its conclusion, the recommendation was; “No additional archaeological survey or evaluation is recommended”.

13. NOISE FACTORS-27 MORE PEOPLE, CAR RADIOS BLARING, POOL PARTIES (A POOL IS PART OF THE PLAN), BARBECUES ETC. WE TOLERATE THE OCCASIONAL BLAST OF MUSIC FROM ERNIE’S AND THE DRAG RACERS AT BIR BECAUSE WE KNOW THEY ARE OF SHORT DURATION, ARE ALREADY AN INTEGRAL PART OF OUR COMMUNITY LIFE, AND WE HAD LITTLE OR NO IMPACT INTO BIR DEVELOPMENT.

Noise should not be a problem coming from this empty nester development. Both Ernie’s and BIR are commercial properties that loud music and loud parties are part of their makeup. Our development is a single family development that through its homeowner’s association could police itself should its residence become too loud for the community.

14. FLOODING OF OUR HAY LANDS IS A MAJOR CONCERN.

I believe that the hay land that is of concern is across Squaw Point road. If so, Squaw Point road is higher than either one of our properties. The only way for water to move from our development to the hay land is through the culvert that runs under the road to the channel. We are not proposing to alter the culvert

15. MORE CARS-MORE POLLUTION. OVER USE OF SEWER POND COULD RESULT IN SERIOUS EMISSIONS

Short of zero growth within the city, I’m not sure how to answer this. Our little development being 27 homes on 62.7 acres is clearly not the tipping point of the above concerns.

16. STEP TWO ISSUES NOT ALREADY ADDRESSED: THE RGU HAS NOT DECIDED TO REQUIRE AN EAW. NONE HAS EVER BEEN ISSUED. THIS IS A RESIDENTIAL PROJECT. IT MAY CONSIST OF 27 SINGLE UNIT DWELLINGS OR BE INCREASED TO OVER 100 IF MR. HARSTAD’S THREATS ARE VALID.

Mr. Harstad is requesting approval to develop 62.7 acres into 27 home sites. No more, no less.

17. THIS PROJECT IS LOCATED VERY NEAR THE EAST GULL LAKE CITY HALL ON THE SQUAW POINT ROAD. THIS IS WETLANDS SURROUNDING A MAN-MADE CHANNEL THAT WAS DECLARED UNDEVELOPABLE ABOUT 40 YEARS AGO AND HAS REMAINED IN THAT STATE EVER SINCE. MOST OF THE LAND IS WETLANDS USED ONLY OCCASIONALLY BY FISHERMEN AND THE AREA IS INCLUDED IN GRAZING RIGHTS CLAIMED BY THE ORIGINAL FAMILY THAT OWNED THE PROPERTY THROUGH AN AGREEMENT REACHED AT THE TIME OF THE DISSOLUTION OF THE SAJON DEVELOPMENT COMPANY THAT IS RESPONSIBLE FOR DREDGING THE ORIGINAL CHANNEL. SEE COMMUNICATIONS FOLDER FOR CONTACT INFORMATION FOR MR. HARSTAD.

Mr. Harstad has followed ALL rules and regulations of any permitting government agencies. He either has or has pending approvals from ALL government agencies other than the City of East Gull Lake. He has submitted a complete application with the City and has met any and all city ordinances and requirements of the city’s Comprehensive Plan.

The Petition and subsequent application to the Environmental Quality Board is nothing more than a Tactic being used by the Sach’s family to kill the development. They are clearly of the belief that if the development doesn’t happen, their grazing rights will remain intact.

Questions answered per Kelly Condiff, Cass County Soil & Water Administrator:

I am only answering questions that are pertaining to wetlands

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2. THE WETLANDS SURVEY WAS DONE IN ONE OF THE DRIEST YEARS ON RECORD SINCE MR. HARSTAD HAS OWNED THE PROPERTY.

The Delineation done takes that into account by looking at redox features in the soil and looks at climate data for the year.

3. HIS ADDED RUN-OFF FROM HIS HOLDING PONDS COULD VERY WELL CAUSE SERIOUS EROSION IN THE HIGH TRAFFIC AREAS.

These are infiltration basins as well allowing for water to enter soil gradually.

4. SOIL CONTAMINATION FROM LANDSCAPING RUN OFF IS DEFINITELY AN UNPREDICTABLE FACTOR AT THIS TIME, ESPECIALLY IF MR. HARSTAD FOLLOWS THROUGH WITH HIS THREAT TO INCREASE THE NUMBER OF UNITS IF HE DOESN'T GET HIS WAY.

Mr. Harstad would have a hard time building any additional units especially when the WCA TEP Panel would put him through sequencing and would likely deny further filling.

9. GROUND WATER CONTAMINATION, WASTEWATER TREATMENT – SEWER POND FAILURE DISASTER.

Look at the building plans and survey it is clearly shown. Who is pro-bono wetland scientist?

11. INCREASED TRAFFIC – WE HAVE A HIGH TRAFFIC ROAD ALREADY-WHAT WILL THE ADDITION OF THESE ADDITIONAL CARS FOR 27 SINGLE FAMILY UNITS PLUS ALL THEIR VISITORS DO TO OUR POOR LITTLE ROAD WITH NO SHOULDERS.

That is clearly explained by the SHPO document.

No further comments

Questions answered per Larry Kramka, Houston Engineering, Inc. Senior Environmental Project Manager:

This is not a number by number response to petitioner's 16 point check list. Rather, Mr. Kramka's responses to each criteria item are repeated here.

The project will permanently alter 6.7 acres of an undeveloped 32.2-acre parcel of land by developing a confined PUD with 27 single family residential units. The Project will install a road, utilities, clubhouse and pool. The project will also be developing 27 boat mooring slips within a previously excavated channel by constructing a retaining wall, inland navigation channel excavation, and harbor excavation. The navigation is an artificial extension of the lake that was excavated in the 1960s and is not a natural feature.

This parcel of land was previously platted for development but has remained largely undeveloped. However, the project site has been affected by previous road fills and grazing of horses. The site contains 25.5 acres of wetlands onsite which are dominated by reed canary grass. This is considered an invasive plant and ecological threat to natural wetlands. A very marginal amount (approximately 0.12 acres) of wetlands will be permanently filled as part of the residential development. The 25.5 acres of wetlands adjacent to the residential units on the property will be preserved and placed in a conservation easement. The development will connect to the City's existing sanitary sewer system, which is permitted and regulated by the Minnesota Pollution Control Agency (MPCA). The sewer system was installed to service this parcel of land and accommodate a larger number of units when originally extended to the property edge. Storm water will be managed appropriately in accordance with East Gull Lake and MPCA rules and guidelines.

The current land use has been primarily pasture land for horses. Another permanent effect of the project will be to remove the horses from grazing within the shore land of Gull Lake and the wetlands on the property. The removal of the horses will eliminate the ongoing disturbance to plant growth that reduces plant diversity. The horses disturb the plant community by trampling plants and through disturbing and compacting soil. Reed canary grass propagates in part from plant fragments, which grazing can exacerbate. As animals

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use the site and access the wetland areas, the potential for degradation of the adjacent wetland edges occur from the weight of animals disturbing the soft moist soils. The potential exists for animal waste to contaminate the shallow groundwater and near-shore environment with phosphorous, sedimentation, and bacteria.

The above cited comments from Rob Mason, Jeff Ledin, Marty Harstad, Kelly Condiff and Larry Kramka are incorporated by reference as analysis of this criteria item.

B. Cumulative Potential Effects. The RGU shall consider the following factors:

- Whether the cumulative potential effect is significant
- Whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect
- The degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect, and
- The efforts of the proposer to minimize the contributions from the project

Questions answered per Larry Kramka, Houston Engineering, Inc. Senior Environmental Project Manager:

The project does not pose significant cumulative potential for negative impacts. The project will be developing 6.7 acres of land on a 32.2-acre parcel that was previously platted for development. The remaining 25.5 acres of wetland will be in a conservation easement and no longer pastured by horses. The removal of the horses from this land will improve the ecological integrity of the site and adjacent areas by reducing horse excrement and potential runoff into nearby water resources. With the wetlands no longer being pastured, vegetation will be enabled to reestablish and soil health will be improved, resulting in a more stable wetland environment. This parcel is zoned for medium density residential land use and the project provides a new development that positively supports the City's growth. The project is compliant and consistent with zoning, land use and planning. The project design has been refined to provide the least environmentally damaging approach for the development, which includes avoiding impacts to wetlands and providing the most desirable number and configuration of residential units with the additional benefit of safe water access. The project maintains the riparian rights for the current and future landowners, provides safe and reliable access to Gull Lake for the existing and future landowners, and maintains the ecological integrity of the lake by utilizing the existing excavated side channel for its initially intended purpose. Over the course of project development, the project has been reviewed by the City, DNR, U.S. Army Corps of Engineers (USACE), Cass County, and the Gull Lake Association. The project design has been refined during its development for further avoidance and minimization of potential impact. The proposed project is the preferred, least environmentally damaging alternative. The project is compliant with and will meet applicable standards and regulations. Wetland delineations were conducted by a qualified professional certified by the state of Minnesota and site-confirmed by the Cass County wetland specialist. Wetland delineations are routinely conducted during all climatic conditions and methods are used to account for antecedent moisture conditions to assure that wetland boundaries are correct. The delineations, sequencing and mitigation have been reviewed by the WCA TEP for Cass County. A complete Phase I Archaeological Survey was completed for the project, concluding "No additional archaeological survey or evaluation is recommended." Activities occurring within the previously excavated channel, south of the development are already permitted and will be compliant with conditions prescribed. The project will comply with requirements for wetland fill, regulated under Section 404 of the Clean Water Act. Sanitary sewer of the proposed residential units will be connected to the City's system which is regulated according to state law. Stormwater management will be compliant with state standards and regulated by the MPCA.

The above cited comments from Larry Kramka are incorporated by reference as analysis of this criteria item.

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C. The extent to which the environmental effects are subject to mitigation by on going public regulatory authority. The RGU may rely on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project.

Questions answered per Larry Kramka, Houston Engineering, Inc. Senior Environmental Project Manager: Impacts have been avoided, minimized, or mitigated through the project design and have been discussed through ongoing coordination with local and state regulatory agencies with regards to associated local and state permits and approvals. The project will be regulated by the following:

- DNR Public Waters Permit;
- USACE permit;
- WCA replacement plan;
- Conservation easement on remaining wetlands;
- MPCA Construction Stormwater Permit and SWPPP;
- Preliminary and final platting;
- Conditional Use Permit with the City; and
- A developer's agreement with the City.

Ongoing mitigation by public regulatory authorities primarily involves Cass County SWCD and Minnesota DNR with respect to wetland issues on the site. These agencies have oversight over their respective permitting on the project.

The above cited comments from Larry Kramka are incorporated by reference as analysis of this criteria item.

D. The extent to which the environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, including other EISs.

Questions answered per Larry Kramka, Houston Engineering, Inc. Senior Environmental Project Manager: There are no other studies planned or necessary.

Also attached hereto and incorporated by reference into these findings as exhibits B and C are a transcript of DNR representative Darrin Hoverson's public comments at the September 6, 2016 city council meeting. (Exhibit B) As well as his written comments issued afterward. (Exhibit C)

Based on all of the above information, the City, as the RGU with respect to this EAW petition, finds that the evidence by and within the EAW fails to demonstrate that the project may have the potential for significant environmental effects. Because the determination of the necessity of an EAW is discretionary by the city as the RGU, under 4410.4500, the City declines to require an EAW because it does not determine that because of the nature or location of the proposed project, the project does not have the potential for significant environmental effects.

In summary, the Staff Report, comprised of information gathered from several sources and in light of the extensive study that has gone into the Harbor Application, including participation by other jurisdictional agencies such as DNR, Cass County Soil and Water Conservation District, the TEP panel and the Army of Corps of Engineers, it is not recommended that the City Council require an EAW with respect to this application. It is recommended that the EAW petition be denied.

EXHIBIT A

WRITE ABOUT POTENTIAL ENVIRONMENTAL EFFECTS CHECKLIST FROM GUIDELINES SUMMARY

1. INCREASED BOAT TRAFFIC 27 BOATS ON THE CHANNEL IN THE SUMMER IS BOUND TO AFFECT THE FISH AND TURTLE POPULATIONS.
2. THE WETLANDS SURVEY WAS DONE IN ONE OF THE DRIEST YEARS ON RECORD SINCE MR. HARSTAD HAS OWNED THE PROPERTY.
3. HIS ADDED RUN-OFF FROM HIS HOLDING PONDS COULD VERY WELL CAUSE SERIOUS EROSION IN THE HIGH TRAFFIC AREAS.
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12. FLOODING OF OUR HAYLANDS IS A MAJOR MAJOR CONCERN.
13. MORE CARS-MORE POLLUTION. OVER USE OF SEWER POND COULD RESULT IN SERIOUS EMISSIONS

STEP TWO ISSUES NOT ALREADY ADDRESSED: THE RGU HAS NOT DECIDED TO REQUIRE AN EAW. NONE HAS EVER BEEN ISSUED. THIS IS A RESIDENTIAL PROJECT. IT MAY CONSIST OF 27 SINGLE UNIT DWELLINGS OR BE INCREASED TO OVER 100 IF MR HARSTAD'S THREATS ARE VALID. THIS PROJECT IS LOCATED VERY NEAR THE EAST GULL LAKE CITY HALL ON THE SQUAW POINT ROAD. THIS IS WETLANDS SURROUNDING A MAN MADE CHANNEL THAT WAS DECLARED UNDEVELOPABLE ABOUT 40 YEARS AGO AND HAS REMAINED IN THAT STATE EVER SINCE. MOST OF THE LAND IS WETLANDS USED ONLY OCCASIONALLY BY FISHERMEN AND THE AREA IS INCLUDED IN GRAZING RIGHTS CLAIMED BY THE ORIGINAL FAMILY THAT OWNED THE PROPERTY THROUGH AN AGREEMENT REACHED AT THE TIME OF THE DISSOLUTION OF THE SAJON DEVELOPMENT COMPANY THAT IS RESPONSIBLE FOR DREDGING THE ORIGINAL CHANNEL. SEE COMMUNICATIONS FOLDER FOR CONTACT INFORMATION FOR MR HARSTAD.

EXHIBIT B

Darrin Hoverson, MnDNR area hydrologist covering Cass County, testimony:

We have been reviewing this project for the better part of two years, since Marty first presented it. Allowable amount of docking slips is based upon the amount of shoreline. When you put in 16 [housing] units but only have 300 feet of shoreline you're restricted to the amount of docks. Because the channel is connected, this project has many, many thousands of feet of shoreline, what would be natural shoreline as well as both sides of the harbor. [Question: So are the docks going all the way down the channel?] Nope, there will be a consolidated docking facility. As part of the evaluation of this project there were multiple alternatives that were evaluated. DNR was concerned with a number of them, particularly going over that remnant bog location to the lakeside [area leading to the lake outside of the channel], putting what could be realistically a very large and/or unlimited, depending on the way that you developed it, project, and putting that mooring facility out in the lake. So the DNR had extensive review with our fish, our wildlife, our management trying to consolidate and re-evaluate alternatives to provide recommendations, again with the County, the City, the Army Corps of Engineers, the DNR, our staff. Because, yes that question has come up: allowable number of units based upon this parcel and the 27 units is allowable density based upon the shoreline ordinance. Does that include the entire property North and South side or just the [?] parcel? At least what's been determined it as 27 being allowable units there is enough shoreline there that will allow them to have that. The rules are normally based upon the smallest shore lot out there, 100 feet on Gull Lake as a General Development Lake. So there's potentially, here's an alternative [referring to online survey map of dock potential options] one of the alternatives that were evaluated and that's definitely something the department would be gravely concerned with something like that. So the only mooring is restricted to 27 slips, not 27 docs, and that includes a single slip no more than one per [housing] unit and one is, no matter if it's a jet ski or a 20 foot pontoon, that's one unit. (13 or 14 docks)

[Question regarding fish spawning in the ditch.] Most of this or actually feeding, far fewer are in there spawning. They come in right after ice out, that becomes a warm area, invertebrates become warm, they start to become active, small fish will follow that, and your bluegills, pumpkin seeds, and croppies will follow and your bass will follow in after that. It is normally in response food availability, is actually what's happening. It has far less to do with spawning, because most fish cannot spawn in muck; northern pike can because they have sticky eggs that stick to the sides of plants. But we definitely considered that, our area fisheries manager Marc Bacigalupi, is far more concerned with, if this is a development, which development is allowable, we have to look at what is the least impact alternative for specific purpose and need. If the City is to allow a development we evaluate the docking and mooring needs for that location. And the alternatives that were evaluated, this is what we determined to be the least impactful alternative. The remainder three-quarters or two-thirds of the harbor channel itself is not to be dug and the other is to be maintained. It doesn't mean that those croppies and bluegills won't still come in there in that warm water in the springtime, and there's still muck there, there's still going to be an invertebrate community there. One of the restrictions is to not place the spoil on the edges of the harbor; it has to be completely removed. Yes, fish and wildlife, there's all kinds of plants in that bog that are very unique that we are definitely

concerned with. [Question regarding potential of 100 units, so how many docks could be put in] We could potentially look at, this is hypothetical, those small slips, under the current shoreland rules, cannot be sold individually to the south side [of the channel]. Specific statute requires them to be lumped until they meet a conforming lot which would be very difficult to do with the south lots. It doesn't mean that something else or some development, or some alteration of what's existing there couldn't happen. There's some portion of this site that is developable. If this is what is agreed upon, this is your decision as a community [looking at the Council]. We [DNR] come in and look at specific requests for addressing moorings, docking and access to the lake. For example, the bay out front is very shallow, if you were to put all those watercrafts in two foot of water, you are not going to just damage the channel, but you will damage acres and acres of the lake, disturbing water quality and quantity. It is extremely damaging to the lake when you are boating through large amounts of shallow water.

To speak on the ability to getting our [DNR] meeting notes, they are always available. You have to put in a data practice request to the DNR.

[Question regarding requests for Technical Evaluation Panel (TEP) meeting notes. Are you a member of the TEP?] I am a member of the TEP, Cass County Soil and Water Conservation District is the wetland conservation acting administrator for Cass County. Kelly Condiff is the appointed staff to develop those findings and develop process of notice. Was a formal application ever submitted for wetland impacts? We evaluated at least the wetland impacts. The harbor is public water. That is not underneath the wetland conservation act. That is under the state public water statute of rules. So it's evaluated under a different set of criteria. The development and any fill of the wetland, which was, I can't remember, a number of square feet there, not enormous, but it was there, was evaluated. [Question: The TEP panel looked at something different than the marina?] We use the TEP for two purposes in Cass County. The TEP official duty is to look at and administer the Wetland Area Conservation Act and provide recommendations. In Cass County we have used it because we have large number of channel, dredging and excavation projects, primarily on our large lakes, Winnibigoshish, Leech and Cass Lakes. There are multiple jurisdictions there, with the Corps, the DNR and the County, so we use it as an ad hoc group to discuss those projects as well that aren't Wetland Area Conservation Act administrated, but we have the staff there and we still talk about them. That was what that role played in discussion with staff. There were no formal findings associated with any of that process. The processes of the DNR comments are sent to the LGU, Corps and other Tribal, those types of groups that are out there. [Question regarding minutes taken at the TEP meeting, as they were requested.] I would assume not if Kelly didn't provide them, as it is discretionary. It is his [Kelly's] responsibility, the Wetland Area Conservation Act administrator, to take TEP minutes and formal paperwork for notices to the City.

[Question regarding fish and wildlife habitat] On any project we evaluate multiple impacts: water quality, fish and wildlife habitat, and impacts even to the community in some cases. So to use a similar process: you avoid the impact, you minimize the impact, you mitigate the impact. The Wetland Area Conservation Act follows that same mantra. The State Public Water specifically saying it. That's the same thing you follow through: you avoid the impact,

particularly the impact to the most sensitive resources. Many cases here, when we do an alternative analysis we look at what is going to be the least impact while still meeting the purpose and need for the specific project.

[Question regarding issues needing more time to research the project and why the DNR issued the permit instead of the Corps of Engineers.] There were at least two inquiries about the project. One would have been wetland delineation. Verification of the wetland is correct. That would have been done normally with Cass County, the Army Corps [of Engineers] and the applicant. The DNR is rarely involved with a formal wetland delineation. The second part of the question: as to why the DNR is the one approving the project. We have oversight and administration of public water rules that include the Gull Lake and anything at the Ordinary High Water (OHW) and lakeward of it. That doesn't mean the Corps doesn't have responsibilities here as federally navigable water and have a dual permitting responsibility, that they have not completed as of yet. But that doesn't mean that we don't have authority. In many cases, we are more restrictive than what the Army Corps of Engineers may require and or permit. But they permit discharges; these aren't necessarily discharges into the public water. So there's a number of things you can speak on with the Army Corps [of Engineers] contact here in Brainerd regarding their permitting process and where that is, but the DNR has full responsibility as a regulatory agency to permit such as the local government does and other entities to pass through thresholds.

[Question regarding involving EPA to the petition and need more time to connect this issue with the National Fish and Wildlife Service] I can only speak on what would be experience; it's been rare that the National Fish and Wildlife Service have invoked something outside the core project where they don't have specific land or responsibilities that they are administrating. It's pretty normal that the DNR takes the lead role in Minnesota on projects that aren't on federal land.

[Question regarding invasive species] My prior position at the DNR was an invasive species specialist in the State of Minnesota. So I have a lot of experience with different things including Zebra Mussels. What's likely limited Zebra Mussels in that bay right now is some level of water quality in the channel, water condition, calcium carbonated limitation, and/or maybe the ph is too high. They are not in there because of the water condition, not because they have not had access to it. Will it be an area that will be not be inundated? I definitely cannot say that, but is it an area that would have been exposed, surely, because Gull Lake already has Zebra Mussels in it. [Question: Don't they need something solid to attach to like a dock or a rock?] Plants; the way Zebra Mussels transport more around the state is on a plant. They attach to a plant, the plants have boat access or on load equipment. And then that plant, it's rare, unless that equipment has Zebra Mussels on it. But previously it would have been very rare that Zebra Mussels would have fallen off or affix to something in a very short period of time. It was that they were attached to plants and it was the plants that moved those critters around. [Question: So, there's nothing opening this channel up and 27 boats coming in and out of it on a constant basis that would probably drag those Zebra Mussels in there.] I would say that it likely already has plenty, if you start taking water quality samples in the lake; Zebra Mussel abundance in

water samples is very high. And you folks are familiar, this year, okay maybe it's not so bad, and then other years, where did they all come from; they are all over the lake. There're years of abundance and less abundance; they find equilibrium in the lake sooner or later.

[Question regarding the horses on wetlands] Stating what's in the shoreland rules and standards in regards to getting animal units concentrated in areas where they're material is, the feeding, the grazing and the deposition of droppings, is concentrated and treated before it reaches the lake, there are plenty of facilities adjacent to the lake in the State. Could they become problems? Yes. Do I have a position on this one? No. The animal units are relatively small, in that regards. But, I can't say how, I'm not familiar enough. Generally the DNR is interested in removing animals from the shoreland zone specifically because there is an increased risk. That is basic in the shoreland rules. I don't have a formal position on it here.

EXHIBIT C

Public Water Work Permit Review – 1960-0398 – Gull Lake

Part I: Initial Review and Resources Summary

Fill-out prior to sending out Request for Comments and add to attachments

Description of Project: - Marty Harstad – 27 unit residential PUD – Gull Lake – Harbor Expansion request.
Excavate 376' x 30' harbor adjacent to existing channel for 27 mooring spaces for proposed development. Request includes maintenance excavation of existing channel approximately 1600' from open water to 50 ft past proposed mooring location.

Resource Summary

1 Mile	Lies within/Adjacent
<input checked="" type="checkbox"/> Rare & Natural Features – Potential for Northern Long Eared Bat – guidance provided to applicant	<input type="checkbox"/> Any Public Land
<input type="checkbox"/> Rare plant community	<input type="checkbox"/> Wild or Scenic River
<input type="checkbox"/> Wildlife Management Areas	<input type="checkbox"/> Trout Stream or Lake
<input type="checkbox"/> Aquatic Management Areas	<input checked="" type="checkbox"/> Impaired public water - Mercury
<input type="checkbox"/> Scientific & Natural Areas	<input type="checkbox"/> WCA wetlands
<input type="checkbox"/> Calcareous Fen	<input type="checkbox"/> Minnesota State Water Trail
<input type="checkbox"/> US Fish & Wildlife Service Lands	<input checked="" type="checkbox"/> Designated Infested Water – Zebra Mussels
<input type="checkbox"/> Other Resource Concern -	<input type="checkbox"/> Jurisdictional Ditch
	<input type="checkbox"/> Other Resource Concern

Part II: Internal Review

Summary of Comments Received: Please review comments and timeline. Multiple comments received from DNR Fisheries, EWR staff & Cass County Technical Evaluation Panel regarding project. DNR F&W staff comments were incorporated into DNR comments submitted to applicant March 7, 2016. No comments received from USACOE. City of East Gull Lake is supportive of project and will incorporate harbor into PUD CUP for development. Cass SWCD had no comments regarding project except for wetland impacts from housing and trail and authorized replacement through banking program.

Field Inspection Made (notes on Pg2): Y N - Multiple Field Inspection were made

Mitigation Involved: Y N

Project does not require **Environmental Review**: - Harbor is approximately 12,000 sq ft

- >1 acre of public water
- Stream diversion/realignment >500ft or any amount in a trout stream
- Channelization of a watercourse >10 mi² drainage
- Marina > 20,000 ft²

Project conforms to MN Rules 6115 (hyperlinks to Rule):

- | | |
|--|--|
| <input type="checkbox"/> Filling in PW (6115.0190) | <input type="checkbox"/> Water Level Controls (6115.0220) |
| <input checked="" type="checkbox"/> Excavation in Public Water (6115.0200) | <input type="checkbox"/> Bridges, Culverts, Intakes, and Outfalls (6115.0230) |
| <input type="checkbox"/> Structures in Public Waters (6115.0210)* | <input type="checkbox"/> Drainage of Public Waters (6115.0270) |
| <input type="checkbox"/> Restoration of Public Waters (6115.0215) | * <input type="checkbox"/> Recorded Permit is not required or has been received. |

Notes/Recommendations: The project as revised is considered the “least impact” solution to the alternatives presented and will meet criteria set under MR 6115.0200 & 6115.0201 SPECIFIC STANDARDS; EXCAVATION, Subp. 5. Harbors and boat slips. Harbors and boat slips: C. Excavations for development of private inland harbors or boat slips serving fewer than 25 watercraft or watercraft less than 20 feet in length shall be limited to those waters where; (3) the proposed site is located in an area of the water body where offshore mooring or excavations or extensive dock development would create unreasonable obstructions to public use and navigation of the water body. Part (1) & (2) do not apply in this case but due to the shallow nature of the offshore bay, its bog habitat that is a unique and limited habitat to this part of the lake & since the channel is present and already a prior disturbance that could be maintained as a “navigation channel” as allowed in 6115.0201 subpart 4, B. The project is recommended for approval.
Darrin Hoverson 7/7/2016

DNR Timeline – Harstad Channel Project

June 4, 1960 – Original Channel was authorized

June, 2014 – Met with project proposer and City of East Gull Lake

May 12, 2015 – DNR internal meeting to discuss proposed harbor in Harstad channel on Gull Lake

September 2015 – Darrin Hoverson met with Larry Kramka, Houston Engineering with revised project proposal

January 13, 2016 – Project Amendment was submitted January 13, 2016 with alternative analysis

February 2, 2016 – DNR internal meeting regarding request

February 8, 2016 – County TEP meeting – City of East Gull Lake Town Hall

March 2016 – DNR Site Visit w/Area Fisheries Manager Marc Bacigalupi & Specialist Heather Baird

May 3, 2016 – Mr. Kramka with Houston Engineering sent revisions

May 11, 2016 – Cass County TEP reviewed Wetland impacts from development and the harbor

June 15, 2016 – Marc Bacigalupi (Fisheries), Christine Reisz (DNR wildlife) & Tom Groshens (DNR EWR) agree project as finalized is least impact alternative and can be authorized as reviewed.

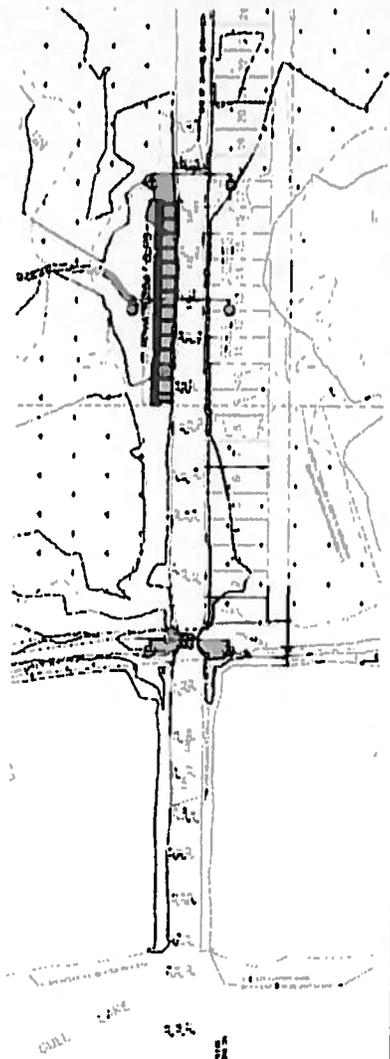
June 27, 2016 – Larry Kramka, on behalf of applicant Marty Harstad, agrees to mechanism (Plat condition & Covenants or Association Agreement to restrict all future mooring to the 27 slips as well as remove all spoil material off site and not to be placed along the channel edge.

July 7, 2016 – Darrin Hoverson, Area Hydrologist Authorized Project

Final Plans - Harbor and Channel Excavation Cross Sections

CHANNEL EXCAVATION EXHIBIT

-for- Martin Hanstad



- 1" = 10'
- 2" = 20'
- 3" = 30'
- 4" = 40'
- 5" = 50'
- 6" = 60'
- 7" = 70'
- 8" = 80'
- 9" = 90'
- 10" = 100'

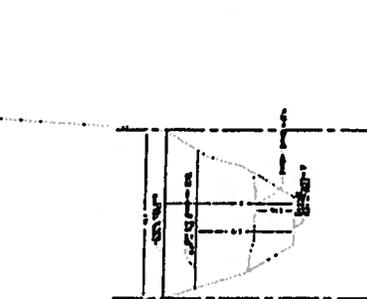
NOTES

- 1. All elevations are to Mean Sea Level.
- 2. All dimensions are in feet and inches.
- 3. All dimensions are to centerline unless otherwise noted.

NORTH

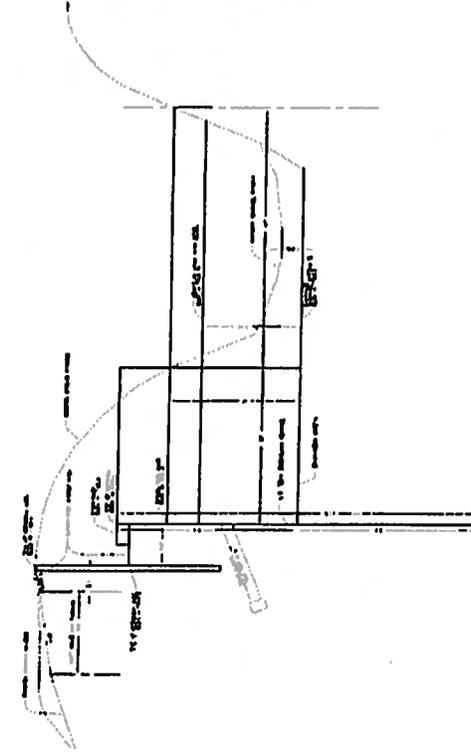
GROSS SECTION A

Scale: 1" = 20' HORIZ.
Scale: 1" = 2' VERT.



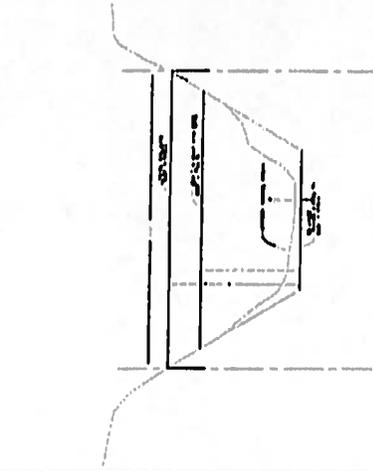
GROSS SECTION B

Scale: 1" = 20' HORIZ.
Scale: 1" = 2' VERT.



GROSS SECTION C

Scale: 1" = 20' HORIZ.
Scale: 1" = 2' VERT.

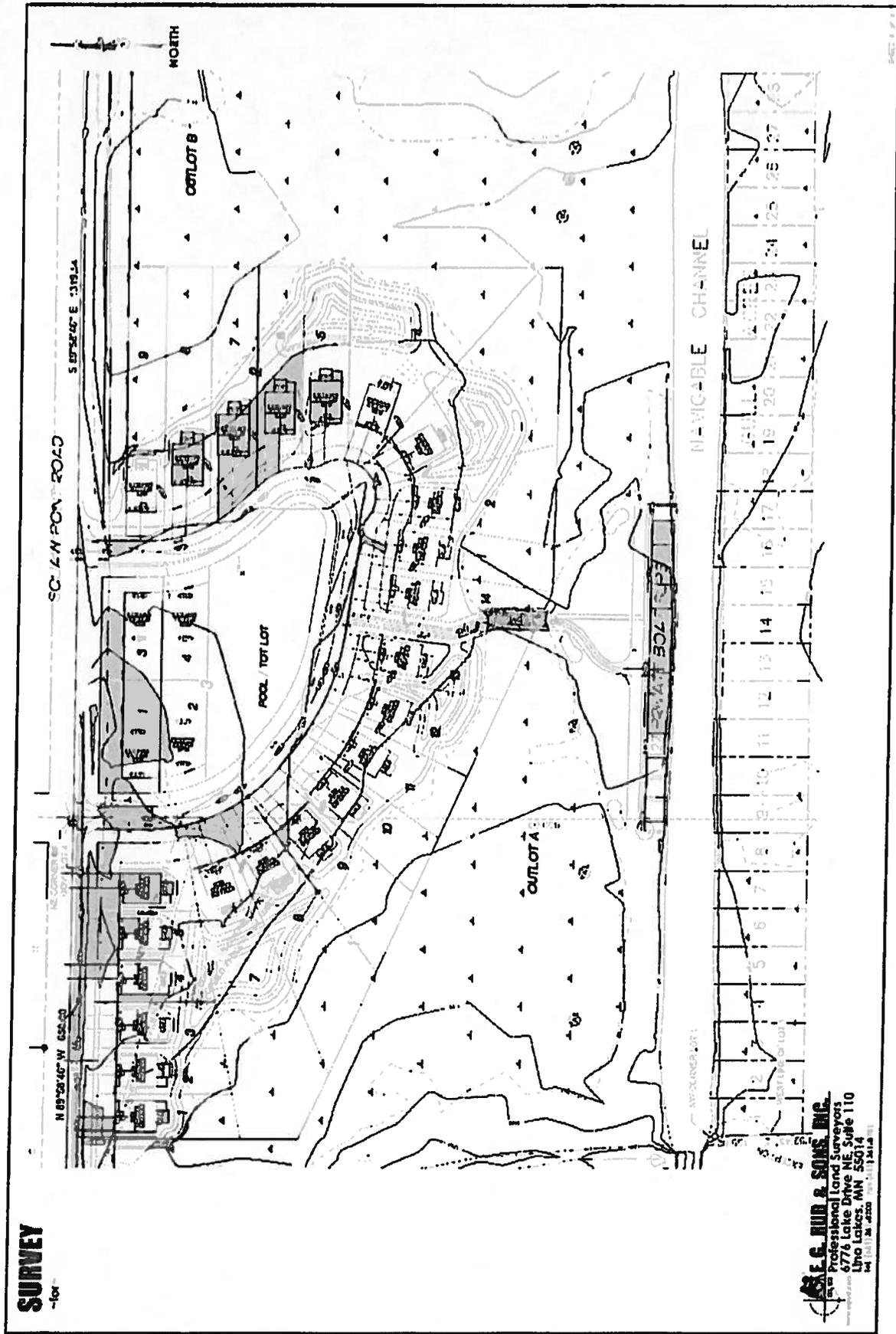


A.E. G. RUD & SONS, INC.
 Professional Land Surveyors
 6776 Lake Drive NE, Suite 110
 110 Lakes, MN 55014

DATE	DESCRIPTION

11/20/2011

Final Plans - 27 Unit PUD and Harbor Location

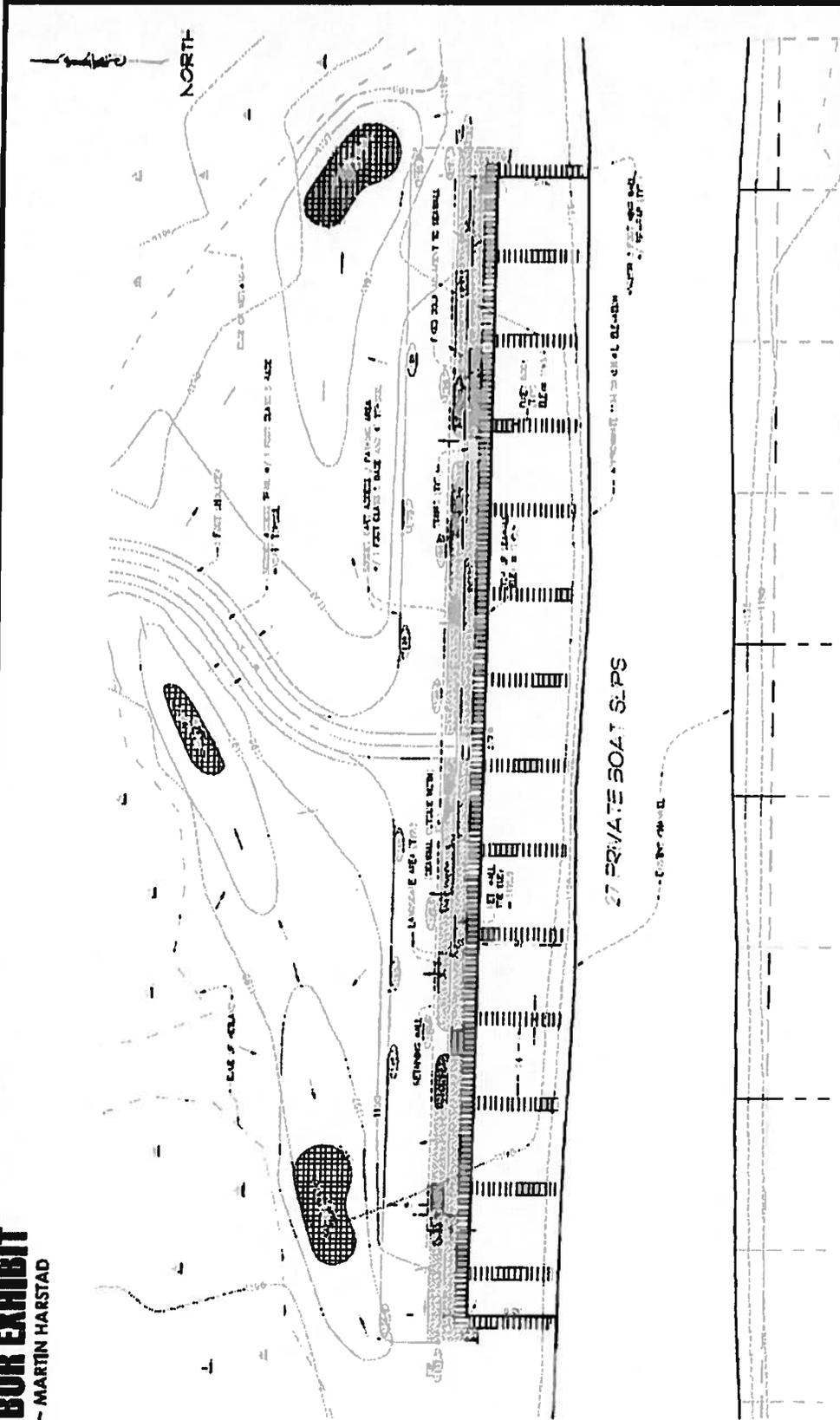


SURVEY
-for-

R.S.E.G. HUB & SONS, INC.
Professional Land Surveyors
4776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel: 763-438-1211 Fax: 763-438-1212

SEC. 14, T. 141 N., R. 14 W.

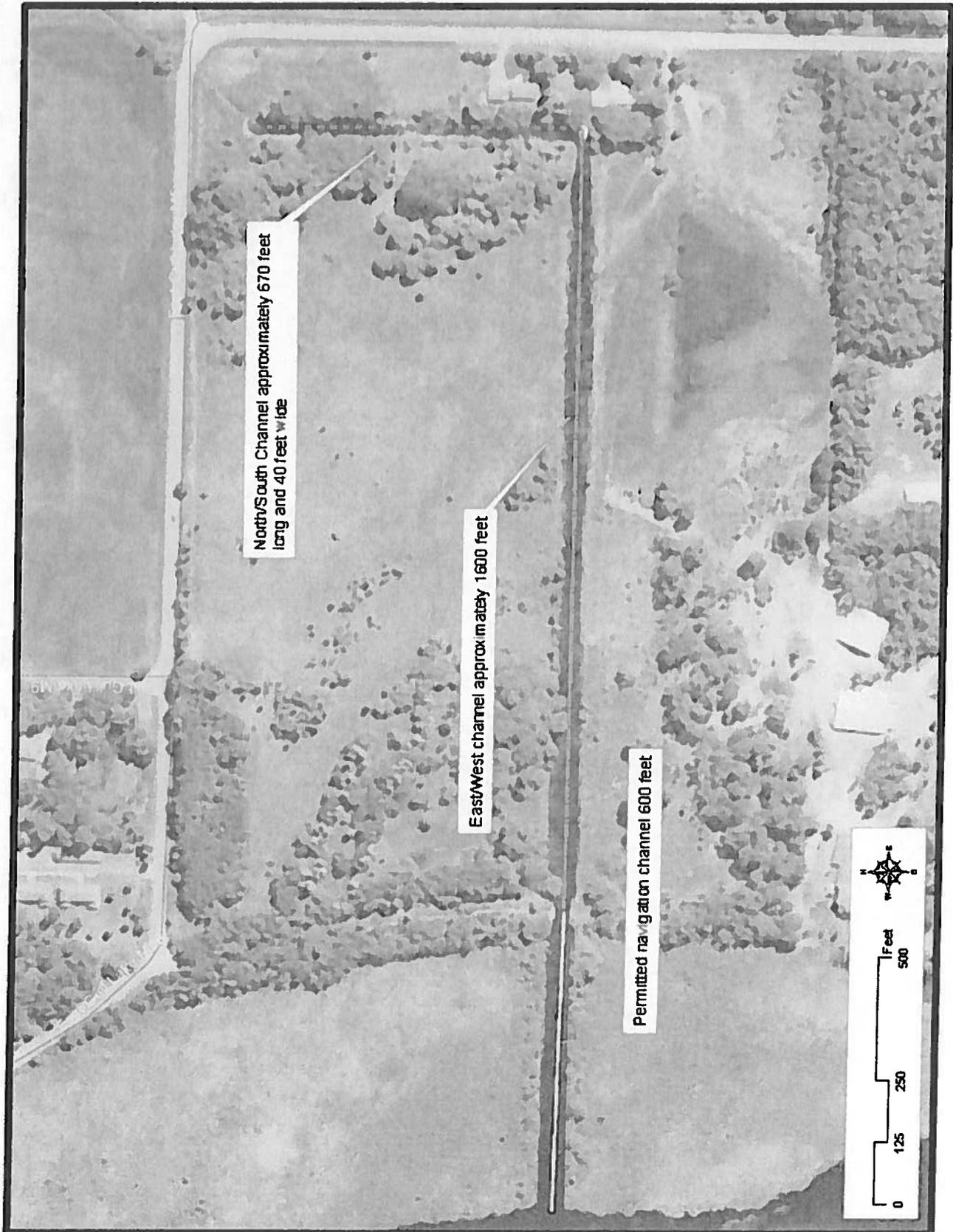
HARBOR EXHIBIT
-for- MARTIN HARSTAD



Date: 03/16/15
Drawn By: JAC
Scale: 1" = 30'
Job No: 13705PP

SAVED: C:\Users\jacob\OneDrive\Documents\13705PP\Job 13705PP.dwg 3/16/2015 1:25:09 PM CST

DAVE R. BOO & SONS, INC.
Professional Land Surveyors
4774 Lyle Drive NE, Suite 110
Lino Lakes, MN 55014
TEL: 763-434-8888 FAX: 763-434-8889



North/South Channel approximately 670 feet long and 40 feet wide

East/West channel approximately 1600 feet

Permitted navigation channel 600 feet



EXHIBIT D



Building a Better World
for All of Us®

September 9, 2016

RE: East Gull Lake, Minnesota
Sanitary Sewer and "The Harbor"
Development
SEH No. EAGUL 113541 14.00

Honorable Mayor and City Council
c/o Rob Mason, City Administrator
City of East Gull Lake
10790 Squaw Point Road
East Gull Lake, MN 56401

Dear Mayor and Members of the City Council:

This letter is follow-up to other communications with City staff, the Planning Commission, and others involved with this project. There has been some questioning and controversy by a few members of the public about a proposed development known as "The Harbor". My intent here is to write a concise response on the potential environmental impacts from sanitary sewers for the above listed development from the perspective of the City's consulting engineer.

As you know, since the early 1990's the East Gull Lake system has been developed to where it treats waste water for the majority of water front property in the City. In doing so, the treatment facilities discharge clean effluent according to regulation, under the oversight of the MPCA (Permit MN0059871). Wastewater generated from the project's 27 residential units, plus pool facility will be conveyed through new infrastructure to East Gull Lake's municipal system. The design and construction of the facilities for the development will be done in accordance with an MPCA Sewer Extension Permit. This permit dictates compliance with design standards¹ that ensure high quality infrastructure and environmental protection. It is my expectation the extension permit will be granted by the MPCA for this development. If there are conditions associated with the permit, these will need to be addressed. However, with respect to environmental concerns, it is my opinion no significant environmental impact will occur pertaining to sanitary sewer issues as a result of this development. The process of collecting and treating wastewater to a high standard, under the oversight of the MPCA, will continue.

1

- Recommended Standards for Wastewater Facilities, Great Lakes – Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. (Ten States Standards)
- Standard Utilities Specification, City Engineers Association of Minnesota.
- Design Flow and Loading Determination Guidelines, Minnesota Pollution Control Agency.

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 416 South 6th Street, Suite 200, Brainerd, MN 56401-3540
SEH is 100% employee-owned | sehinc.com | 218.855.1700 | 866.852.8880 | 888.908.8166 fax

Honorable Mayor and City Council
September 9, 2016
Page 2

Completion of the MPCA extension permit process remains as an important step in the approval of this development. However, it is just one of the permits that are being scheduled and sequenced into the approval process. From an environmental quality perspective, ordering a discretionary EAW would be unlikely to bring forward any important new information.

Please contact me if you have any questions.

Sincerely,

SHORT ELLIOTT HENDRICKSON INC.



Jeffrey R. Ledin, PE
Sr. Professional Engineer

mrh

c: Planning Commission
Tom Pearson, City Attorney

b:\ae\leaguf\common\harstad development\l city sanitary sewer for the harbor - 090916.docx

EXHIBIT E

Timeline of past and future events for "THE HARBOR" Project

July, 1962	City signs original plat for Gull Acres development
May, 1979	City votes to close Bridge and road for Gull Acres to Squaw Point Road
1983	Recorded date on Cass County GIS for Road closure
1994	Harstad first meeting with City staff to discuss potential development
December 6, 2005	Resolution with City to discuss land donation for tax write off
June, 2014	Meeting of TEP panel at City Hall to discuss the potential for the Marina
August, 2014	P&Z meeting and City Council meeting for review about The Harbor
July, 2016	Harstad meeting with GCOLA Board of Directors on project
July 7, 2016	City receives notice of approved DNR Harbor excavation
July 5, 2016	Application and payment for CUP is received from Harstad
July 5, 2016	Application and payment for Preliminary plat is received
July 15, 2016	Public notice and letters sent to neighbors for July 26 P&Z meeting
July 13, 2016	P&Z meeting canceled due to needing more information
August 19, 2016	Public notice and letters sent to neighbors for August 30 P&Z meeting
August 30, 2016	P&Z meeting is held at City Hall
September 1, 2016	Notice received from EQB for complete petition
September 6, 2016	Regular City Council meeting addressed EQB petition for EAW
September 13, 2016	Continuation of City Council meeting for EAW determination; CUP and Preliminary Plat