

SUMMARY OF PELICAN BAY ADDITION RESIDENTIAL DEVELOPMENT EAW COMMENTS

U.S. DEPARTMENT OF THE ARMY CORPS OF ENGINEERS

A Department of the Army (DA) permit does appear to be required for the proposed activity. If the impacts to aquatic resources are 0.5 acre or less, the project appears to comply with the requirements of the Nationwide Permit (NWP) 29 for Residential Developments. If the project is not eligible for a general permit, a standard permit is required.

The project must be the least environmentally damaging practicable alternative (LEDPA) that meets the project's purpose and need. The LEDPA is the alternative that meets the project purpose, is practicable, and has the least amount of impact to aquatic resources, without having significant adverse impacts to the natural environment. The burden of proof to demonstrate compliance with the guidelines of Section 404(b)(1) of the Clean Water Act (CWA) (40 CFR 230) rests with the applicant; where insufficient information is provided to determine compliance, the guidelines require that no permit be issued. We encourage that the proposal be reevaluated in consideration of this information.

Corps of Engineers' jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Section 10 prohibits the construction, excavation, or deposition of material in, over, or under navigable waters of the United States, or any work that would affect the course, location, condition, or capacity of those waters, unless the work has been authorized by a Department of the Army permit.

If the proposal involves discharge of dredged or fill material into waters of the United States, it may be subject to the Corps of Engineers' jurisdiction under Section 404 of the Clean Water Act (CWA Section 404). Waters of the United States include navigable waters, their tributaries, and adjacent wetlands (33 CFR §328.3). CWA Section 301(a) prohibits discharges of dredged or fill material into waters of the United States, unless the work has been authorized by a Department of the Army permit under Section 404.

If the proposal requires a Section 404 permit application, the Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (40 CFR § 230.10(a)). Time and money spent on the proposal prior to applying for a Section 44 permit cannot be factored into the Corps' decision whether there is a less damaging practicable alternative to the proposal. If an application for a Corps' permit has not yet been submitted, the project proposer may request a pre-application consultation meeting with the Corps to obtain information regarding the data, studies or other information that will be necessary for the permit evaluation process. A pre-application consultation meeting is strongly recommended if the proposal has substantial impacts to waters of the United States, or if it is a large or controversial project.

DEVELOPER'S RESPONSE:

The project proposer has developed a wetland permit application and associated wetland replacement plan for the proposed residential development. This application has been submitted to the Murray County Soil and Water Conservation District (SWCD) as the Local Government Unit (LGU) responsible for administering the Wetland Conservation Act (WCA) rules. The permit application and replacement plan will also be provided to the Army Corps of Engineers. Based on the submitted application, the proposed wetland impacts are less than 0.5 acres and therefore the project will qualify for Nationwide Permit 29 for Residential Development. The project proposer will be required to obtain all applicable wetland permits and adhere to all appropriate requirements, including compensatory wetland mitigation for the proposed development.

COUNTY'S RESPONSE:

The Murray Soil & Water Conservation District (SWCD), as the Local Government Unit (LGU) responsible for the Wetland Conservation Act (WCA), will review and submit a copy to the Murray County Environmental Services Office of the Notice of Decision (NOD) regarding the wetland permit application and associated wetland replacement plan for the proposed residential development.

A copy of the Nationwide Permit 29, through the Army Corps of Engineers, will also be submitted to the Murray County Environmental Services Office.

The developer must meet the requirements in the MPCA approved Stormwater Pollution Prevention Plan and NPDES permit.

OFFICE OF THE STATE ARCHAEOLOGIST (OSA)

The OSA maintains the proposed project area, including the affiliated gravel road, exhibit very high archaeological potential, and the information presented in the EAW is not sufficient to determine a loss of potential and that no further archaeological work is warranted. Therefore, a comprehensive literature review and phase I archaeological reconnaissance survey conducted by a qualified archaeologist is recommended.

DEVELOPER'S RESPONSE:

Additional evaluation of the site to document past disturbance and the potential for cultural resources will be completed as part of the County's permitting process for the proposed residential development. This will include a site visit by a qualified archaeologist when field conditions are appropriate, to observe the site conditions and conduct additional investigations for cultural resources. The site visit will include a combination of field methods deemed appropriate by the archaeologist such as: visual inspection, pedestrian survey, shovel testing, and/or deep testing. Findings from this investigation will be documented and a report will be provided to the County. Based on this investigation it will be determined if avoidance measures are needed or if further investigation is warranted.

COUNTY'S RESPONSE:

The County agrees with the Developer's Response for an additional evaluation of the site with findings submitted to the Murray County Environmental Services Office prior to Final Plat Approval.

SOUTHWEST REGIONAL DEVELOPMENT COMMISSION (SRDC)

Comment 1: In the National Heritage review, Calcareous Fen wetlands were identified on the site. Further consultation is required to minimize impact.

DEVELOPER'S RESPONSE:

A wetland delineation was performed for the entire project site. No calcareous fens were observed or are present on the site. A review of the Calcareous Fens GIS layer was downloaded from the Minnesota Geospatial Commons (MnGEO) website on March 2, 2023 and shows that the nearest record of the calcareous fen is located 3.5 miles southwest of the project site. The Minnesota DNR Conservation Explorer NHIS data also confirms the location of the nearest fen as 3.5 miles southwest. There will be no impacts to calcareous fens from the proposed development. The project proposer will be required to apply for a wetland permit for any proposed impacts to wetlands on the site and provide compensatory mitigation as needed.

COUNTY'S RESPONSE:

The County agrees with the Developer's Response regarding the proximity of the calcareous fens to the project site.

Comment 2: There were no findings from the State Historic Preservation Office.

DEVELOPER'S RESPONSE:

Comment noted.

COUNTY'S RESPONSE:

The County agrees with the Developer's Response that the comment was noted.

Comment 3: The proposed development is within one mile of three feedlots.

DEVELOPER'S RESPONSE:

The County has evaluated the proposed residential development in relation to the location of the existing feedlots and determined the development can proceed through the permit application process.

COUNTY'S RESPONSE:

The project proposer applied for, and was granted, a variance in 2021 by the County to subdivide and plat Pelican Bay Addition Residential Development for 29 residential lots 900 feet from an existing feedlot.

Comment 4: The project does not meet the threshold for a National Register of Historic Places since anything with historical significance has been previously impacted by the previous land use.

DEVELOPER'S RESPONSE:

Comment noted.

COUNTY'S RESPONSE:

The County agrees with the Developer's Response that the comment was noted.

Comment 5: Overall, impacts on the shoreland, and its adjacent waters are not anticipated to be impacted by the construction of residential development.

DEVELOPER'S RESPONSE:

Comment noted.

COUNTY'S RESPONSE:

The project proposer applied for a conditional use permit (CUP) to bring in fill to raise some of the residential lots that are below the regulatory flood protection elevation. Upon a negative declaration of this EAW, Murray County will resume the CUP permitting process to require of the project proposer that filling activities on these lots will not impact the shoreland and adjacent public waters.

STATE HISTORIC PRESERVATION OFFICE (SHPO)

Based on the results of the Phase 1a investigation, it is unclear if the project area has been sufficiently examined to identify significant historic properties. We understand that the consultant identified most of the project area as being previously disturbed, but it would be useful to have a better understanding of the extent (horizontal and vertical) and origin of that disturbance. The photos provided in the report clearly demonstrate disturbances in the southeastern portion of the proposed project area, but not in the remainder of the project area. We recommend that a Phase I archaeological survey be completed for this project and that the potential for deeply buried intact archaeological sites be addressed in that study.

DEVELOPER'S RESPONSE:

Additional evaluation of the site to document past disturbance and the potential for cultural resources will be completed as part of the County's permitting process for the proposed residential development. This will include a site visit by a qualified archaeologist when field conditions are appropriate, to observe the site conditions and conduct additional investigations for cultural resources. The site visit will include a combination of field methods deemed appropriate by the archaeologist such as: visual inspection, pedestrian survey, shovel testing, and/or deep testing. Findings from this investigation will be documented and a report will be provided to the County. Based on this investigation it will be determined if avoidance measures are needed or if further investigation is warranted.

COUNTY'S RESPONSE:

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