

**Official Lake County Planning Commission
Minutes
Two Harbors Law Enforcement Center
August 5, 2019**

Approved as corrected
8/19/19

The Lake County Planning Commission sat in session at 6:00 p.m. on this date to conduct an accelerated hearing at the request of the applicant.

Members Present: Chair Joe Skala, Simbre Fosness, John Bathke, Dan Zeimet, and Commissioner Rich Sve.

Members Absent: Mabel Tarlton, Jim Weinzierl, Mike Hoops

Planning and Zoning Staff Present: Neva Maxwell (Land Use Specialist), and Jill Paron (Environmental Services Specialist). Christine McCarthy (Environmental Services Director) recused herself from the hearing, but was present in the audience.

Other County Staff Present: Russ Conrow (Lake County Attorney)

Joe Skala called the meeting to order at 6:00 P.M.

The hearing, **Knife River Reach 4 Restoration EAW Review**, filed by **Lake Superior Steelhead Association**, was to determine if an Environmental Impact Statement is required and make a recommendation to the County Board.

Neva Maxwell read the legal requirements and gave the staff report. Comments were received from 3 State agencies during the comment period. Minnesota State Historic Preservation Office recommended a Phase One archaeology survey be completed. The Office of the State Archaeologist comment stated the project area has a moderate to high likelihood of containing unrecorded archaeological sites or features and recommends a qualified archaeologist conduct a survey. The Minnesota Pollution Control Agency provided general comments applauding coordination with the DNR, a comment regarding hazardous wastes on the site, the area contains good habitat and a diversity of species, and they suggest adding mufflers to machinery to control noise. The project proposers also provided a response to these comments.

Maxwell explained the project is a stream restoration to restore cold water habitat for trout.

The funding is from a state funded Lessard-Sam grant. She stated the project is proposed to happen over 3 years on over 6800 linear feet of stream. No comments were received from the general public.

Maxwell explained the process to determine if an Environmental Impact Statement is needed. She also explained more about the archaeological review and when it is usually done. She mentioned she spoke with the Soil and Water Conservation District engineers and was informed that they now conduct a Phase One Archaeological Study as a standard part of their EAW's.

Skala asked what triggers the need for an archaeological study.

Maxwell stated she contacted the State Archaeologists Office regarding what they are looking for with a stream restoration project where logging and flooding has occurred. She was told the Phase One study is a field study. Also, flooding can wash away artifacts, but can also seal them in under the sediments. Maxwell also stated that the ACOE is still waiting for the 106 approval which is cultural and archaeological resources review, as part of their permitting process. Maxwell reached out to find out where the ACOE is in that process, but they would not comment.

Sve asked how the request from the State Historic Preservation Office differs from the ACOE review. Maxwell wasn't sure. She stated the project cannot begin until all permits are issued. The [106 approval] is part of the ACOE permit. If the ACOE requires an archaeological study, that permit will not be issued until the study is complete.

Craig Wilson of Environmental Troubleshooters represented the application. He provided a detailed explanation of the EAW and the nature of the project for the Planning Commission.

Zeimet asked about clay and expressed concerns of water quality during construction. Wilson stated there isn't much clay, that this area is granular sand, gravel, and cobble. He also explained that

water will be pumped around the construction area and berms will be used. He also explained that the time frame is to avoid spawning times.

There was general discussion about water temperatures and beaver ponds.

Skala stated a decision needed to be made on the need of an EIS. He stated it didn't appear from the EAW that an EIS was needed, but something may need to be done for the archaeological study.

Maxwell explained the options for making a decision. Skala saw no reason to ask for an EIS.

Sve agreed that the EAW was sufficient. He stated MPCA was basically requesting best management practices. SHPO and OSA are asking for an archaeological review. He referenced work being done in the 1950's in the Voyageur's [National Park] looking for artifacts, and artifacts were being found in old stream beds where the stream channel had shifted. He stated the Knife also meanders and has shifted. He stated it was important that if anything should be found that all work stops and proper authorities notified. Wilson assured it would.

Bathke asked about the elevation of Reach 4. Wilson stated they created the most detailed elevation map ever created for a steam project. Bathke asked again what the elevation is due to the fact that thousands of years ago the water levels would have been much higher, and therefore, campsites and settlements would be in the higher elevations. Bathke was wondering if this stretch of the river would be in that higher elevation. Wilson did not provide an answer.

Sve stated this project was presented and reviewed by Lessard-Sams [Outdoor Heritage Grant] who much of the funding is from. It has gone through review by that Board, which lends weight to the findings. Also, the ACOE has the 106 review, which is not yet complete.

Skala asked if the ACOE will require an archaeological study. Maxwell stated we don't know yet, they may not. Bathke stated the project cannot go forward until the ACOE makes a decision.

Sve stated they need to decide on whether there is a good chance artifacts, Native American or otherwise, may be found, and make the reasoning

for their decision clear in the findings. He stated the EAW explains the project will be less invasive than many stream restorations.

Bathke stated the explanation on how the stream mechanics work makes it less likely anything would be found there. He stated he didn't think people would camp down there, people would be up on top of the bluff. Skala asked why people would be down there in the first place, except for fishing.

Maxwell added that her conversation with staff at the OSA explained that streams can wash away artifacts, but they can also seal them in. She also reminded the Planning Commission that not all of the project is bank stabilization, some work is creating new channel where there are currently trees. It is the latter part of this project that triggered the need for an EAW.

Sve asked how the funding will be paid out. Wilson stated it is a reimbursement program. Sve asked over how many years. Kevin Bovee (Lake Superior Steelhead Association) said it would be over 5 years. Sve commented that the 5-year timeframe would allow for having the project pushed back a year to do further study.

Zeimet asked what would happen if something was found, could the study take years? Maxwell explained the process is to take a sample every 50 feet and do a sieve analysis. A Phase One is only an introductory study, to see if they find anything. She added that the East Beaver River project had a Phase One, and that the TSA [Soil and Water Conservation District, Technical Service Area 3] does a Phase One as a standard practice. She stated we learn from the practices of other projects.

Fosness asked for more information about the TSA. Maxwell explained this is engineering staff that provides engineering services for the SWCD and covers Northeast Minnesota. She spoke with Keith Anderson, the head engineer, and he said they do the Phase One study as part of their stream restoration projects, because they tend to trigger a request from the state and the ACOE.

Wilson explained they will not be moving soil along the entire 6800 feet in the project area. Only 600 feet are creating new channel.

Sve asked if they could request a study on only those 600 feet.

Skala asked if they could approve the EAW without. Sve answered the ACOE could still require an archaeological study.

Conrow stated this [archaeological study] is a recommendation, not a requirement. Does that work if this year's project schedule ends September 15th? Conrow asked if the ACOE permit would be complete by then? Wilson stated he spoke with the ACOE and it was expected to be ready next week. He explained they plan to do the top portion this year, in a hope to stabilize that portion before another flood.

Wilson stated the stream projects Maxwell was referring to were in the Fond du Lac area along the St. Louis River. Maxwell corrected him, and said she was referring to the East Beaver River in Lake County. She also mentioned she spoke with Andrew Chambers at the ACOE and he stated it was ambitious to expect the 106 approval by Monday [August 12th]. She stated Keith Anderson from TSA told her their ACOE permits with a 106 review took from September of 2018 to July of 2019 for approval. She stated this doesn't mean this permit will take as long, she just wanted to help them understand that the ACOE permitting process can take a longer time.

Skala stated based on how Native Americans have acted in the past, it is unlikely they used that [Knife River] as a navigational tool, or traveled up and down it, or camped there. He stated it's not a fishery or wild rice area, which is where they would have camped, like up in the Boundary Waters.

Maxwell explained the hard part in deciding the need for the archaeological study, is that it is not their specialty. She stated she would like to see the project go through and the trout stream gives them a limited work time. She also reminded the Planning Commission that a comment from [OSA] is that the area has a moderate to high likelihood of containing unrecorded archaeological sites or features.

Wilson stated it would seem likely artifacts would be in the higher areas.

Skala stated it doesn't seem that this area would have the needed food supply for Native Americans

to be there.

Fosness asked about the comment reference to a database. Maxwell stated the comment said nothing was found for the area in the database. That doesn't mean nothing exists, just that nothing has been reported in the database. Maxwell explained the comment from [SHPO] states they will reconsider the need for a survey if documentation can be provided of a previous survey or disturbance in that area.

Wilson stated the lower banks were looked at in 2010 according to the DNR.

Maxwell read from SHPO's comment: *"We will reconsider the need for a survey if the project area can be documented as previously surveyed or disturbed. Any previous survey work must meet contemporary standards. **Note:** plowed area and right-of-way are not automatically considered disturbed. Archaeological sites can remain intact beneath the plow zone and in undisturbed portions of the right-of-way."*

Sve commented there have been other disturbances in the area; homes have been built and he has never heard of anything being uncovered.

Sve read his notes on possible findings on the OSA and SHPO request: The grant was funded by Lessard-Sams, it requires federal approval, the SHPO databank didn't show anything previously recorded, the Native Americans would have followed areas of wild rice or fisheries, and you [Skala] didn't feel that was the case with the Knife [River], the area has gravel pits, logging, and airport constructed, and homes. None of these, to their knowledge, has uncovered artifacts. They don't know if other studies have been done in that area.

Bathke also stated that some homes were farms, which would have disturbed a much larger area.

Motion by Bathke supported by Zeimet to recommend to the County Board a negative declaration for the need for an Environmental Impact Statement with the following Findings of Fact:

Findings:

1. The project met the criteria for funding by Lessard-Sams [Outdoor Heritage Grant].

2. The information received from the EAW is thorough and no EIS is needed.
3. Should the applicant discover archaeological artifacts or rare species, they are aware of the need to stop all work and contact appropriate authorities.
4. The Army Corps of Engineers will also be determining the need for an archaeological study as part of the 106 cultural review for the required ACOE permits.
5. According to the State Historic Preservation Office no archaeological sites or historic structures were identified in the search of the Minnesota archaeological inventory and historic structures inventory for the search area requested.
6. The presence of wild rice and fisheries are uses of Native Americans which have not been documented on the Knife River, Reach 4.
7. Gravel pit excavation, intensive logging, airport construction, home construction, and farming in the area have not uncovered artifacts.

Motion passed by unanimous vote **(PCR-19-017)**.

Motion by Sve supported by Bathke to adjourn the meeting. Motion passed by unanimous vote.

Respectfully Submitted,

Jill Paron
Environmental Services Specialist